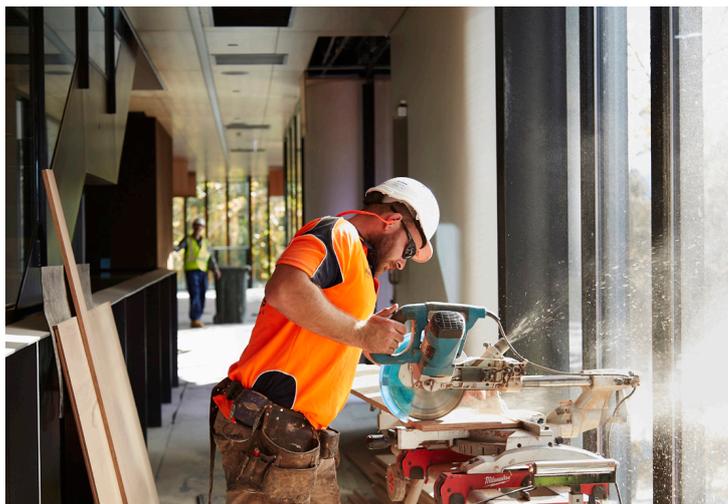
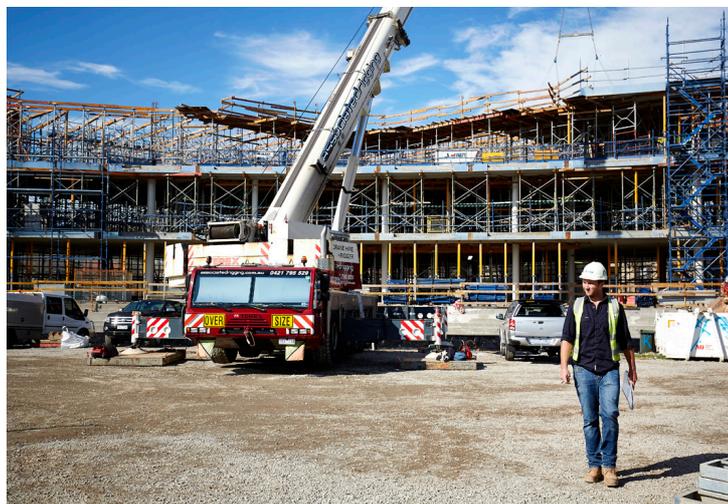


# RESPONSE TO VICTORIAN CLADDING TASKFORCE CHAIRS'

# INTERIM REPORT

MASTER BUILDERS ASSOCIATION OF VICTORIA





1 December 2017

## **MASTER BUILDERS WELCOMES CLADDING PLAN BUT CALLS FOR BROAD INDUSTRY CONSULTATION, IMPLEMENTATION FAIRNESS AND MANDATORY TRADES REGISTRATION**

The Victorian Government today responded to the interim report of the Chairs of the Victorian Cladding Taskforce, Prof The Hon John Thwaites and The Hon Ted Baillieu. The Victorian Cladding Taskforce Chairs' Interim Report was handed to the government at the end of October, containing a number of findings and recommendations.

“We are pleased that the Taskforce Chairs and the Government have recognised that improvements are required across the whole industry, including with dissemination and availability of information as well as more effective regulatory advice and enforcement,” Radley de Silva, CEO, Master Builders Association of Victoria, said.

“An improvement by all players across the building and construction industry is required,” Mr de Silva said.

“To improve the skills of the industry, which is a need as evidenced by the Interim Taskforce Report, we would have liked to see a recommendation for mandatory trades registration in Victoria.”

“Master Builders looks forward to more detail around implementation timeframes, allocation of appropriate resources to the audit and regulatory process, and pragmatic and fair funding arrangements,” Mr de Silva said.

Quotes from Radley de Silva, CEO, Master Builders Association of Victoria:

### **On the role of the VBA**

- *“For too long, the VBA has taken a reactive stance—acting as an enforcer, instead of providing adequate guidance and interpretations of the law, to better enable building practitioners to comply with them. We would welcome the establishment of a State Building Inspector within the VBA to address those issues.”*
- *“The VBA needs to visit more sites to ensure better adherence to quality on our building sites, and the Government’s desire to see the VBA attend 10 per cent of worksites is a step in the right direction. We consider that the VBA should inspect a larger proportion of owner-builder sites and other high-risk locations that require more oversight.”*



## On audit and rectification

- *“Master Builders calls for a pragmatic, efficient and effective rectification solution. We believe that the rectification standard proposed by the Taskforce must provide a reasonable and fair allocation of responsibility for rectification, as well as reasonable and fair timeframes and costs. Significant consultation across industry will be required to establish those pragmatic solutions and we strongly urge such consultation in respect of the rectification standard.”*
- *“A review of the VBA’s initial audit of around 170 buildings should not result in unnecessary duplication and costs for those builders who have already contributed significant time and resources to the audits.”*

## On introducing new statutory duties

- *“In considering introducing a statutory duty of care on building practitioners (including architects and designers) – we consider that any statutory duty of care must be reasonable, practicable and fair.”*
- *“Approaches such as a Code of Conduct for private building surveyors, should not impose undue burdens on them, especially given the responsibilities across the whole supply chain which should be considered in this context.”*

## On the concept of compulsory warranty insurance for multi-unit residential developments

- *“Master Builders strongly advocates for the focus of reform to be on the full spectrum of industry participants adhering to clearly articulated and understood building regulations, rather than introducing insurance products which really just are a reaction to the problem.”*

## On mandatory trades registration

- *“We are disappointed, in the face of evidence of the need to improve the skills of industry participants, that the Taskforce Chairs and Government failed to introduce a system of mandatory trades registration and compulsory CPD program. Skilled and qualified trades are a crucial factor in ensuring quality, cost and safety outcomes for all Victorians.”*

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## Victorian Cladding Taskforce Chairs' Interim Report and Victorian Government's Response

The Victorian Government today responded to the Interim Report of the Chairs of the Victorian Cladding Taskforce, Prof The Hon John Thwaites and The Hon Ted Baillieu. The Victorian Cladding Taskforce Chairs' interim report was handed to the government at the end of October, containing a number of findings and recommendations.

The Interim Report attributed the widespread use of non-compliant cladding to three factors: the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues.

Master Builders Association of Victoria served on the Stakeholder Reference Group of industry professionals and peak bodies that made submissions to the Taskforce.

In summary, the many recommendations of the Interim Report *included*:

- That the Taskforce continues its work to oversee with DELWP the Statewide audit and audit of all Victorian Government buildings;
- The prevention of the further use of ACPs with a polyethylene core and expanded polystyrene (EPS) cladding, for class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys;
- That the VBA leads a statewide audit, overseen by the Taskforce of privately owned, residential, multi-unit buildings, three storeys and above and all public-use buildings two storeys and above;
- The establishment of a State Building Inspector or State Building Surveyor to provide authoritative compliance advice, provide technical guidance and provide interpretations of relevant standards;
- That the Taskforce completes development of a rectification standard, to be used by the VBA in its audit as well as fire safety engineers and private building surveyors;
- That the Taskforce work with the Department of Treasury and Finance to further consider and research options for financing building rectification;
- That the Taskforce oversees an independent review of the VBA's post-Lacrosse audit and its findings;
- That the VBA improves in many areas such as compliance and enforcement activities and working to ensure practitioners have greater understanding of the NCC and building legislation;
- Consideration of legislative response to make building surveyors and fire safety engineers act independently, supported by a Code of Conduct established by the VBA;



- The Minister advocate nationally for the development of a standard that would define and restrict the use of “FR” in marketing;
- The Essential Safety Measures regime should be strengthened;
- **Longer-term reforms including:**
  - Undertaking consultation on a wide range of topics including:
    - Introducing a statutory duty of care on building practitioners (including architects and designers) to protect occupants and consumers in the residential strata sector;
    - Introducing shared responsibility legislation that would apply to manufacturers, importers and suppliers of building products;
    - Introducing compulsory warranty insurance for residential multi-unit developments and insurance by commercial builders.
  - Consideration be given to improvements in the current private building surveyor model in Victoria.
  - Consideration of the role of VBA relative to local government and the MBS.
  - That DELWP (and VBA) consider the compliance and enforcement powers of regulators, as well as the penalties and sentencing practices under the *Building Act*.
  - Strengthening the requirements for fire safety designs to be independently reviewed, inspected and approved – including introducing an additional mandatory inspection stage for fire safety designs.
  - That the Commonwealth should make arrangements to make Australian Standards be available to industry for free.

In response to the Interim Report, the Government announced it will take action, including:

- Directing the VBA to inspect more worksites and buildings each year – from less than two per cent to up to 10 per cent of worksites;
- Directing the VBA to conduct a statewide audit of residential buildings likely to have combustible cladding and any found to be non-complaint will have to be rectified;
- Appointing a State Building Inspector to provide technical knowledge;
- Restricting the use of ACPs with a PE core and the use of expanded polystyrene (EPS) cladding on buildings above two storeys.

Master Builders is broadly supportive of the findings and recommendations of the Taskforce Chairs and in particular supports the recognition that this is a whole of supply chain issue and that no particular group or sector is responsible. Master Builders also strongly endorses the availability of Australian Standards for free.

The interim report recognised that industry in its submissions had pointed to “*poor quality workmanship, or inexperienced professionals*” highlighting “*a general need to increase skills and capabilities amongst building practitioners*”. Indeed the report states:

*“Many stakeholders expressed concerns to the Taskforce about the level of skills and training in the construction industry including trades, building practitioners and professionals.”*

In light of the broad support from industry to improve skills in the sector, Master Builders considers that the Taskforce and Government lost an opportunity to recognise and introduce a mandatory

trades registration scheme and compulsory CPD program to improve the quality, skills and safety outcomes in the industry.

Master Builders however, considers that thought should be had to ensuring that unintended consequences are avoided, and in particular highlights its concerns that:

- A review of the VBA's initial audit of around 170 buildings should not result in unnecessary duplication and costs for those builders who have contributed significant time and resources to the audits that have already been conducted.
- The VBA must be given appropriate resources to conduct the audits, to ensure that the agency is not diverted from its important day-to-day regulatory activities such as proactive building inspections and registration activities.
- Appropriate implementation timeframes, allocation of appropriate resources to the audit and regulatory process, and pragmatic and fair funding arrangements must be established if this is to be an effective and efficient outcome.
- If a rectification standard is to be established, it should be developed in consultation with the industry broadly. The taskforce has commissioned a panel of fire safety engineers and facade system experts to develop a standard for rectification. The standard will be evidence based, incorporating Australian and international product test results, fire modelling and full-scale fire tests. The Interim Report notes that there has been considerable interest from stakeholders and other jurisdictions in the Risk Assessment Tool and the rectification standard, and that the Taskforce has offered to share these materials – although we assume that this means they will be shared after they have been developed. Master Builders considers it vital that key industry stakeholders are given the opportunity to provide input into the standard for rectification before it is publically released.
- The role of the State Building Inspector should oversee a broad and formalised program of information, education, technical advice and support from the VBA, for the industry.
- Approaches such as a Code of Conduct for private building surveyors, should not impose undue exposure for surveyors – given the reality of a shortage of building surveyors in the industry and the responsibilities across the whole supply chain which should be considered in this context.
- In respect of considering introducing a statutory duty of care on building practitioners (including architects and designers) to protect occupants and consumers in the residential strata sector - any statutory duty of care must be reasonable, practicable and fair.
- The *Building Act 1993* has been the subject of significant amendment and reform over the past few years, including giving the VBA extensive new investigative and search powers and increasing the offence provisions and penalties on building practitioners. Master Builders cautions against more change in these areas, before we have been able to determine the adequacy and operation of the current changes which have only recently come into effect.
- Strengthening the requirements for fire safety designs to be independently reviewed, inspected and approved should be considered in light of the potential unintended consequences such as delays, costs and impact on housing affordability and skilled practitioners in the industry.
- In considering insurance in the industry, Master Builders strongly advocates for the focus to instead be on the full spectrum of industry participants adhering to clearly articulated and understood building regulations to help Victoria eliminate the problem, rather than introducing insurance products which really just are a reaction to the problem.

# Media Release

The Hon Richard Wynne MP  
Minister for Planning



Friday, 1 December, 2017

## TAKING ACTION ON CLADDING

The Andrews Labor Government will take action to prevent the use of combustibile cladding on Victorian buildings as part of the most significant overhaul of the building sector in decades.

The Government today released the Victorian Cladding Taskforce Chairs' interim report, which outlines the extent of combustibile cladding on buildings and makes significant recommendations to address the issue.

The Taskforce has identified up to 1,400 buildings as most likely having Aluminium Composite Panels (ACP) with a polyethylene (PE) core or Expanded Polystyrene (EPS).

No building has required an evacuation order by Victorian regulators, provided certain safety measures are met while rectification works are carried out, such as alarms, sprinklers or evacuation procedures.

In response to the Taskforce's findings, the Government has directed the Victorian Building Authority (VBA) to inspect more worksites and buildings, including a statewide audit of residential buildings likely to have combustibile cladding.

The VBA is providing \$5 million to get the audit done and any buildings found to be non-compliant will have to be rectified. To take action on cladding the Government will also:

- Appoint a State Building Inspector – a leading expert to provide the very best technical knowledge
- Restrict the use of ACPs with a PE core and the use of expanded polystyrene (EPS) in Victoria on buildings above two storeys
- Require the VBA to inspect more of Victoria's buildings each year – from less than two per cent to up to 10 per cent, putting building practitioners on notice
- Appoint former VicRoads chief executive John Merritt to the Victorian Cladding Taskforce as a Special Adviser to the Minister.

The Government will take immediate action to address cladding on publicly-owned buildings, including hospitals. A Department of Health and Human Services audit has already looked at 1,100 buildings and has identified eight hospitals where non-compliant cladding must be replaced.

Works to rectify the Royal Women's Hospital are under way, while the remainder of sites will be brought into compliance within 36 months. A further 12 hospital buildings remain under assessment.

### Quote attributable to Minister for Planning Richard Wynne

*"We're taking action to overhaul the building industry and prevent the use of combustibile cladding. We're giving the VBA the tools it needs to complete an unprecedented audit and we'll crack down on those who flout the rules."*

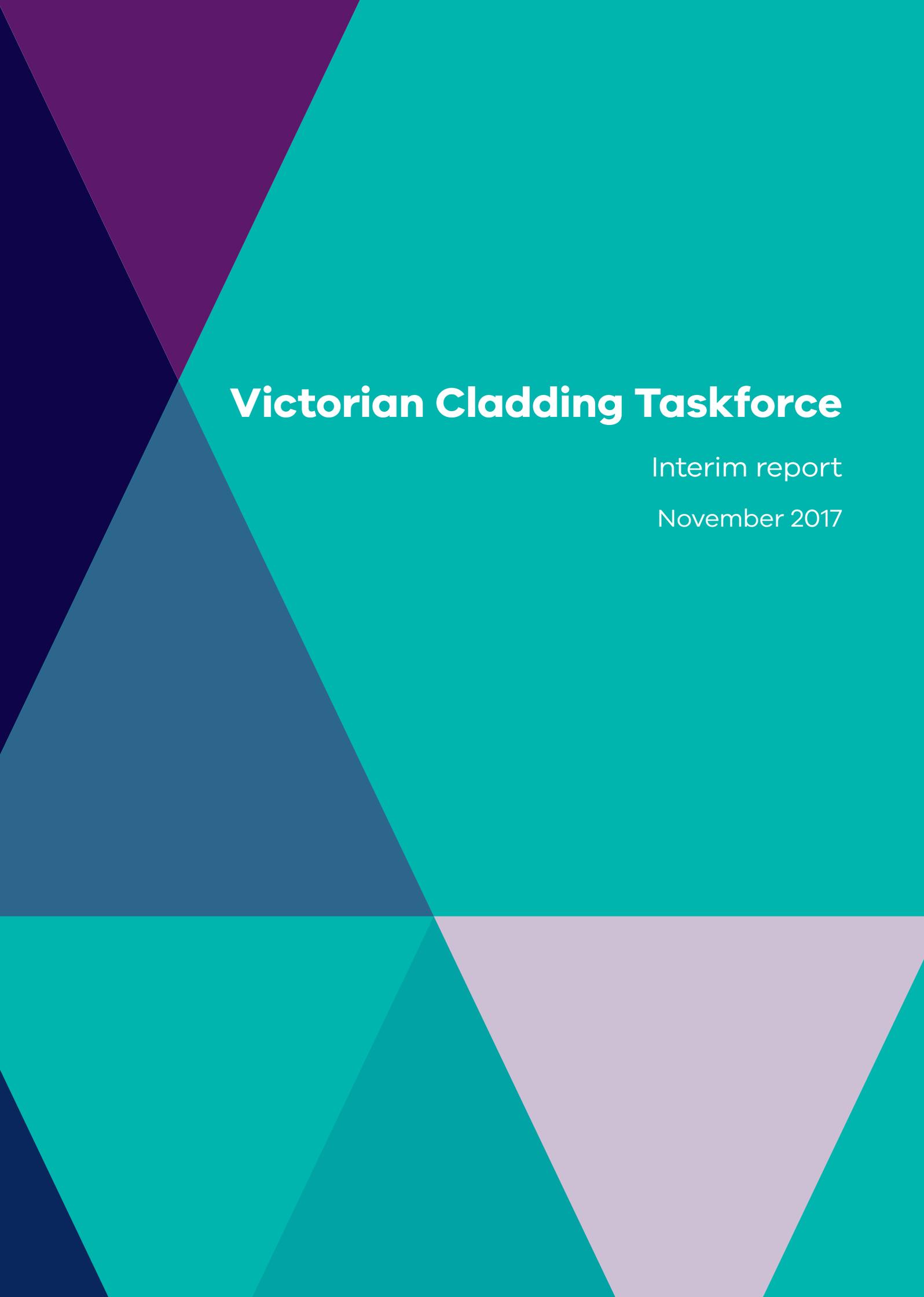
### Quote attributable to Victorian Cladding Taskforce Co-Chair Ted Baillieu

*"Everyone from builders to suppliers and the regulator need to lift their game. We want to see maximum levels of compliance and more of an effort from the industry to accept responsibility and ensure everyone is safe."*

### Quote attributable to Victorian Cladding Taskforce Co-Chair John Thwaites

*"There has been a culture of non-compliance throughout the building sector that has meant combustibile cladding has become a widespread material used on multi-storey buildings. This culture has to change."*

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# **Victorian Cladding Taskforce**

Interim report

November 2017

# Foreword

We are pleased to present our interim report on the work of the Victorian Cladding Taskforce to the Minister for Planning.

The 2014 fire at the Lacrosse apartment building in Melbourne's Docklands and the tragic Grenfell fire in London in June this year, highlighted the fire safety risks arising from the non-compliant use of exterior cladding.

We found combustible cladding is widely used on buildings throughout Victoria.

The Report sets out our interim recommendations to ensure Victorians are safe in their homes, their property is protected and buildings comply with the law.

The Taskforce is currently overseeing a pilot audit of buildings in six municipalities. This important work will contribute to an audit methodology that can be used Statewide.

A robust audit process is complex and will take some time.

The Victorian Government will also continue to audit state owned and occupied buildings.

We recommend the Taskforce continues its work to determine a rectification standard with a final report to be commissioned at the discretion of the Minister for Planning.

We thank stakeholders, industry professionals and interested parties for their contribution to this vital task; their knowledge, expertise and experience has been greatly appreciated.



A blue ink signature of Ted Baillieu, written in a cursive style.

A black ink signature of Prof John Thwaites, written in a cursive style.

**Ted Baillieu and Prof John Thwaites**

Co-chairs, Victorian Cladding Taskforce

# Summary

## Introduction

On 3 July 2017, the Victorian Government established the Victorian Cladding Taskforce to investigate the extent of non-compliant external wall cladding on buildings Statewide, and make recommendations for improvements to protect the public and restore confidence that building and fire safety issues are being addressed appropriately.

The 2014 fire at the Lacrosse apartment building in Melbourne's Docklands and the tragic Grenfell fire in London in June this year, highlighted the fire safety risks arising from the non-compliant use of combustible cladding.

## Findings

The Victorian Cladding Taskforce has found systems failures have led to major safety risks and widespread non-compliant use of combustible cladding in the building industry across the State.

The extent of non-compliance has been supported by the findings of the Victorian Building Authority (VBA) audit after the Lacrosse apartment fire.

We found the failings identified by the VBA in 2015 were not merely administrative, or paper-based, but were significant public safety issues, which are symptomatic of broader non-compliance across a range of areas within the industry.

The problem of widespread non-compliant cladding can be attributed to three factors: the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues.

Under its Terms of Reference, the Taskforce prioritised community health and safety and this was a guiding principle in assessing building risk, the breadth and severity of the issue and how to address it.

A Stakeholder Reference Group (SRG) was established enabling the Taskforce to tap into the expertise of industry professionals and peak bodies and utilise the communications channels to their members.

Most members of the SRG made submissions outlining their views on the potential causes of non-compliant use of cladding, summarised as follows:

- inadequate compliance and enforcement and low risk of consequences to deter breaches of the law
- competitive commercial pressures which incentivise the taking of shortcuts
- over-reliance on the building surveyor role as an assurance mechanism
- inadequate on-site inspection, supervision and quality assurance
- inaccurate and potentially misleading labelling and/or marketing of products
- complexity, ambiguities and poor understanding of the application of the National Construction Code (NCC) and how to comply with it
- variations in regulations and codes and their inconsistent interpretation over time regarding combustibility tests and use of panels
- a widely held view that combustibility standards in the NCC are too onerous and stifle new product innovation
- substitution of non-compliant products between the approval phase and the construction phase
- incorrect, inadequate or misleading documentation including product certificates
- poor quality workmanship, or inexperienced professionals, highlighting a general need to increase skills and capabilities amongst building practitioners, and
- poor understanding of performance-based solutions, evidentiary requirements and inadequate oversight.

We found as the products became more prevalent and visible in the industry, a general complacency or blind spot occurred as to the risks.

## Recommendations

We make the following priority recommendations:

- that the Taskforce continues its work, at the Minister's discretion and oversees with DELWP the Statewide audit and audit of all Victorian Government buildings until completion.
- that the Minister for Planning implement as a priority measures to prevent the use of aluminium composite panels (ACP) with a polyethylene core (as agreed at the Building Ministers' Forum) and expanded polystyrene (EPS) cladding, for class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys. These measures should be highlighted in a product safety alert and remain in place until he is satisfied with compliance with new testing standards and a permanent labelling system is introduced.
- that the Taskforce oversee the completion of pilot audits in six councils to inform final inspection and assessment processes, including the finalisation of the Taskforce's Risk Assessment Tool.
- that the Victorian Government act as an exemplar and undertake a comprehensive audit of its own assets and leased buildings, overseen by the Taskforce.
- that the Victorian Government uses its procurement powers to stop future use of aluminium composite panels (ACP) with a polyethylene core on government buildings.
- that the VBA lead a Statewide audit overseen by the Taskforce of privately owned, residential, multi-unit buildings, three storeys and above and all public-use buildings two storeys and above, and that:
  - the audit prioritise buildings identified by the Taskforce as likely to have either ACP or expanded polystyrene cladding
  - the VBA develop a resourcing model for the audit, including consideration of inspection workforce options and likely budget impacts to ensure that the work is properly funded
  - the Taskforce and/or the VBA write to the owners of prioritised buildings, advising of their obligations and encouraging them to seek professional advice on the nature of their cladding.
- that a State Building Inspector or State Building Surveyor is established within the VBA to provide authoritative compliance advice, provide technical guidance and provide interpretations of relevant standards.
- that the Taskforce complete the development of a rectification standard, to be used by the VBA in its audit as well as fire safety engineers and private building surveyors. The rectification standard will set out appropriate action for rectifying buildings with non-compliant external wall cladding based on a safety risk assessment, stakeholders will be asked to promote it as part of the voluntary activation of the private sector.
- that the Taskforce work with the Department of Treasury and Finance to further consider and research options for financing building rectification.
- that the Taskforce oversees an independent review of the VBA's post-Lacrosse audit and its findings.
- that the VBA:
  - significantly increase its compliance and enforcement activities to deter future breaches
  - review and consolidate its current compliance, enforcement and prosecution policies to more clearly reflect a risk-based compliance and enforcement approach
  - ensure that private building surveyors do not have prohibited exclusions from their professional indemnity insurance policies
  - work to ensure practitioners have greater understanding of the NCC and building legislation so compliance is taken more seriously
  - immediately resource planned improvements to its data collection and analysis capabilities
  - develop a resourcing model and business case to allow it to effectively discharge these functions.

- that bodies responsible for disciplinary action against professionals in the building industry, including the Architect Registration Board Victoria, Building Practitioners Board and the VBA ensure that hearings take place expeditiously into matters of professional conduct.
- that consideration be given to amending the Building Act to ensure building surveyors and fire safety engineers act independently, supported by a code of conduct developed by the VBA.
- that the Minister for Planning advocate nationally to develop a standard that would define and restrict the use of “FR” (Fire Resistant, Fire Retardant or Fire Rated) in the marketing of products.
- that relevant authorities collaborate to educate the community on risks associated with excessive occupancy levels and to undertake enforcement where appropriate.
- that the regime for establishing, maintaining and enforcing Essential Safety Measures (ESM) and the qualifications of those inspecting such systems, in multi-storey buildings be strengthened.
- that the Taskforce further explore options for low cost financing be explored to allow owners’ corporations to fund works and allow for any long-term costs that are borne by owners to be distributed over time.

We also recommend that further consideration and consultation occur on the following longer-term reforms:

- that DELWP develop a discussion paper and undertake consultation on:
  - introducing a statutory duty of care on building practitioners (including architects and designers) to protect occupants and consumers in the residential strata sector
  - introducing shared responsibility legislation that would apply to manufacturers, importers and suppliers of building products along similar lines to product safety legislation introduced in Queensland in August 2017
  - introducing compulsory warranty insurance for residential multi-unit developments and insurance by commercial builders.
  - the range of the other measures outlined in this report to improve the regulation of building product safety
  - introducing a requirement to seek approval of significant variations to plans, and to lodge drawings and specifications with councils that reflect building plans and specifications ‘as built’
  - the restoration of the role of Clerk of Works to oversee building works and provenance of building products.
- that consideration be given to improvements to the current private surveyor model in Victoria to ensure an effective and efficient model that would improve levels of compliance, the rigour of inspection and clarify and improve the effectiveness of enforcement of building laws.
- that consideration be given to reconsidering and clarifying the role of the VBA relative to local government and the MBS.
- that DELWP review the compliance and enforcement powers in the Building Act to ensure that regulators are equipped with a suite of comprehensive, fit for purpose tools that allow for quick, responsive, robust interventions.
- that DELWP, with input from the VBA, analyse the penalties under the Building Act and consider whether maximum penalties and sentencing practices are adequate.
- that the Government consider measures to strengthen of the requirements for fire safety designs to be independently reviewed, inspected and approved:
  - requiring that fire safety related performance solutions be peer reviewed by a second fire safety engineer who is truly independent to the design process
  - requiring that a registered fire safety engineer inspect and approve the works carried out pursuant to their fire safety designs at specific mandatory notification stages
  - introducing an additional mandatory inspection stage for fire safety designs
  - expanding the scope of fire safety matters that require the report and consent of the Chief Officer

- increasing the time allowed for the Chief Officer to make a determination on an application for report and consent
- prescribing additional matters that would require the Chief Officer's consent and that the Minister promote through the Building Ministers' Forum (BMF) the adoption of the rectification standard as a national model.
- that the Minister continue to encourage the BMF and ABCB to improve the clarity and readability of the NCC. Such a review should reduce the number of subjective standards included in the Code and improve consistency of language used to describe compliant performance standards.
- that the Minister write to the Commonwealth Minister urging the Commonwealth to make arrangements that would allow Australian Standards to be made available free of charge.
- that the Taskforce continue to work with peak bodies and professional associations to disseminate its advisory notes to owners.

## **Communications**

We recommend the Taskforce website continues and is updated and maintained by DELWP and added as a landing page to the VBA website.

We also recommend direct communications with tenants and the general public be rolled out and visual aids be developed to improve the understanding of the NCC.



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