

THE CLADDING TRAP

Guidance for the insurance industry

THE CLADDING TRAP

A November 2014 fire at a Melbourne Docklands apartment building and the tragic June 2017 Grenfell Tower fire in London highlighted fire safety risks arising from use of non-compliant, combustible aluminium composite panel (ACP) cladding.

Those events were catalysts for all states and territories to introduce audits, fact sheets, ministerial guidelines, legislation, and regulations about properties in your portfolios that contain external ACP cladding and combustible insulation or sarking, which could destroy lives and property.

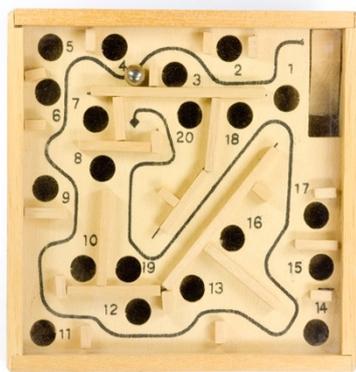
On 4 February 2019 another fire occurred at the Neo200 apartment block in Spencer St, Melbourne. ACP cladding was involved in spreading the fire up an external wall of the same type of construction as Grenfell, but with no loss of life and limited damage.

An objective of the new regulations is to protect insureds who are:

- Owners of buildings under development facing bans on use of external ACP with polyethylene (PE) or expanded polystyrene (EPS) cores
- Owners' corporations and apartment owners of existing buildings where potentially non-compliant external walls have ACP cladding installed, and
- Owners receiving buildings from developers and construction firms that have used non-compliant products and issued certificates that may not be legitimate.

WHAT IS THE CLADDING TRAP?

The new regulations have created a minefield of inconsistent complexity that, when combined with insurance law on liability, disclosure, utmost good faith, policy considerations, and risk management, creates a maze of legal issues and compliance problems.



***THIS GUIDE HELPS YOU TO UNDERSTAND
THE NEW REGULATIONS TO PROTECT
YOU AND YOUR CLIENTS FROM WHAT
FERM ENGINEERING CALLS "THE
CLADDING TRAP".***

The issue now has become even more complex with a decision by CertMark International, a product certification body, to withdraw certification for nine ACP and EPS products. That means Australian Building Codes Board CodeMark certificates issued for those products are no longer valid.

It also aims to launch national awareness about the cladding trap to assist the general insurance industry to negotiate the maze of regulation.

Unless you are abreast of new laws for properties in your portfolios and the overarching regulatory time frames for registration and risk improvements, ramifications for your PI, your clients' BI, and occupancy rates, plus fines and penalties, could be unwelcome surprises.

INSURANCE - WHAT TO CONSIDER

As an insurance intermediary you are obliged to report changes to property risks. That knowledge creates increased exposure to sums insured for contamination, toxicity, and machinery and electrical breakdown because all would be affected by fires generated by combustible ACP cladding, regardless of whether it was notified to you and your clients' insurers.

Your clients may suffer unexpected consequences from inaction or ignorance, such as:

- Possible liability for bodily injury and property damage
- Extra costs of alternative accommodation
- Decreasing property values
- Unexpected, expensive rectification costs
- Reduced rental income and increased vacancies
- Potential difficulties in selling apartments.

EVERY FIRE INVOLVING ACP CLADDING IS DIFFERENT.

In two ACP fires in Melbourne, each facility presented differently and had different outcomes.

The February 2019 Neo200 apartment fire was extinguished faster and caused limited damage, compared to the 2015 Lacrosse apartment fire that took days to extinguish and destroyed property.

EVERY PROPERTY PRESENTS A DIFFERENT FIRE SPREAD RISK AND HAS TO BE CATEGORISED AND POTENTIAL CONSEQUENCES UNDERSTOOD BY INSURERS, INTERMEDIARIES, OCCUPANTS, STAKEHOLDERS AND AUTHORITIES.

Tolerance for leaving ACP cladding in place is dwindling, particularly after the Neo200 fire.

FERM ENGINEERING HAS REVIEWED ALL STATES' AND TERRITORIES' RESPONSES TO THE FIRES. THE FOLLOWING POINTS HAVE EMERGED FROM OUR REVIEW:

THERE IS NO AGREED DEFINITION OF CLADDING, SO CAREFULLY EXAMINE ANY POLICY CONTENT INTENDED TO REFER TO ACP CLADDING.

FERM'S SUGGESTED DEFINITION IS:

"ACP is any cladding or cladding system comprising metal composite panels, including aluminium, zinc and copper, that is applied to any of a building's external walls, insulation and sarking, or to any other external area of the building."

HOW COMBUSTIBILITY THRESHOLDS APPLY IN DIFFERENT JURISDICTIONS:

Two states have varied minimum levels of combustibility; others have zero tolerance.

	ACT	NSW	Qld	SA	Tas	Vic	WA	NT
ALL PE CORE CONTENT IS DEEMED COMBUSTIBLE	■		■	■	■		■	NO LEGISLATION
ACP WITH A CORE OF 30% OR MORE PE IS BANNED		■						
ACP FABRICATED WITH A CORE OF MORE THAN 30% PE IS BANNED						■		

DIFFERENT LEVELS OF COMBUSTIBILITY EXPLAINED

ACP cladding is manufactured with varying amounts of highly combustible PE in their cores, bonded together as a panelling system.

Testing is required to determine the levels.

The degree of ACP combustibility that creates a potential fire risk ranges from:

- Aluminium products that are readily combustible – 30%-100% PE cores can melt at low temperatures and are highly flammable.

- Aluminium products with combined cores of mineral fibre and 15%-30% PE – less combustible but not fire resistant.
- Aluminium products with cores of almost all mineral fibre plus a small amount of 1%-15% PE – classed as fire resistant but may have limited combustibility unless appropriate internal fire suppression and protection systems exist to reduce the risk.

Inflammability is a serious concern to underwriters due to the rapid spread of fire that can engulf buildings when combustible ACP is ignited.

BENCHMARK CATEGORIES FOR RISK MANAGEMENT ARE INCONSISTENT.

The following table shows inconsistencies across the states' legislation to protect against the increased risk from fire spread when ACP cladding is installed or proposed for new projects.

The Australian Building Codes Board's National Construction Code considers type of construction (A, B, C) and number of storeys. Usage classifications are classes 2 to 9 commercial. Class 1 residential is not considered by current legislation

Construction types: Applies to types A and B for all states and the ACT, except NSW which has different rules for type B construction.

BUILDING USE	CLASS	NUMBER OF STOREYS						
		Qld	NSW	Vic	ACT	SA	Tas	WA
Apartments	2	3+	2+	3+	2+	2+	2+	3+
Hotels; motels; hostels; student accommodation	3	3+	2+	3+	2+	2+	2+	3+
Non-residential sections of residential buildings	4	3+	No ref	No ref	2+	No ref	No ref	3+
Office facilities for tenants, eg government entities, architects, lawyers, accountants, medical, GPs	5	3+	3+	No ref	2+	No ref	3+	No ref
Retail; dining; hairdressers; funerals; showrooms; shopping centres	6	3+	3+	No ref	2+	No ref	3+	No ref
Carparks; warehouses; storage buildings	7	3+	3+	No ref	2+	No ref	3+	No ref
Factories; workshops; services	8	3+	3+	No ref	2+	No ref	3+	No ref

DO ANY STATES OR TERRITORIES SUPPORT BUILDING OWNERS WITH LEGISLATED RECTIFICATION SCHEMES?

	DESCRIPTION
Victoria	Cladding rectification agreements are three-way voluntary agreements between owners or owners' corporations, lenders, and councils to fund cladding rectification works. A lender loans funds to an owner or owners' corporation and loan repayments are made over time through council rates systems.
All other states/territories	No reference to funding support.

LEGAL ISSUES FOR INSURED'S RECOVERY ACTION

States and territories have legislation that makes builders, their sub-contractors and consultants liable with warranty periods on construction.

Court action was taken after the Lacrosse fire against the builder, its consultants and the certifier. That resulted in successful proportional damages recoveries.

LEGISLATION AND FACT SHEETS

ACT www.planning.act.gov.au/topics/current_projects/building-cladding-review

NSW www.planning.nsw.gov.au/Policy-and-Legislation/Buildings/Combustible-cladding
www.legislation.nsw.gov.au/2018-499.pdf
www.claddingregistration.nsw.gov.au/
 Register at www.claddingregistration.nsw.gov.au/

Qld www.legislation.qld.gov.au/view/pdf/published.exp/sl-2018-0110

SA www.saplanningportal.sa.gov.au

Tas www.legislation.tas.gov.au/view/pdf/asmade/sr-2017-104

Building Act 2016:

https://www.cbos.tas.gov.au/_data/assets/pdf_file/0009/408276/Tasmanian-Aluminium-Composite-Panel-Audit-Summary-2018.pdf

Vic www.vba.vic.gov.au/cladding

www.legislation.vic.gov.au

WA www.legislation.wa.gov.au

NT www.nt.gov.au/property/building-and-development/health-and-safety/non-conforming-building-products

MESSAGE FROM FERM'S CEO

Ferm Engineering was established in 2001 and offers consultancy services for all aspects of fire engineering, building services, mechanical engineering design, and fire risk management.

It delivers services nationally and internationally, and works with clients to help them solve complex challenges in today's fire safety regimes and reduce the risk of fire hazards.

Ferm conducts a broad range of appointments, including for buildings, mine sites, transport infrastructure, marine terminals and other facilities.

The highly experienced Ferm team's insurance services include:

- ⊕ Building fire safety audits
- ⊕ Fire system testing and research
- ⊕ Fire-engineered product design and testing
- ⊕ Professional testimony
- ⊕ ACP cladding risk assessments
- ⊕ Hard-to-place risk assessments
- ⊕ Fire protection and detection

Ferm's experienced personnel have risk management, construction, system design and commissioning experience. The combination of practical implementation and extensive expertise adds value to all appointments.

Ferm follows Engineers Australia's Society of Fire Safety cladding guidelines and code of ethics for professionalism, sustainable design, and chain of custody in its testing.

It has direct access to test labs and fire-testing facilities and KPIs focused on meeting reporting deadlines.

Ferm Engineering's three-step ACP cladding solution develops fire safety reports nationwide to meet all regulations.



IDENTIFY IF A BUILDING
CONTAINS CLADDING



DETERMINE CLADDING'S
COMPOSITION



FIRE SAFETY REPORTING –
RISK STRATEGY

Ferm's cladding service can help you negotiate your risk portfolio knowing you have the latest information and solutions available.

Globally there are thousands of building fires but those involving external cladding fire spread were fewer than 60 in the past 10 years.

Every property presents a different fire spread risk and has to be categorised and potential consequences understood by insurers, intermediaries, occupants, stakeholders and authorities.

Establishing real risk is not occurring and new regulations are creating a pendulum swing of change without industry balance or consideration of insurance impact.

Ferm's mission is to return the balance and advocate with the industry for better outcomes for building owners and others affected by the legislative and associated changes through better research, testing and engineered solutions.

Stephen Burton

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