

## Ethics is not enough

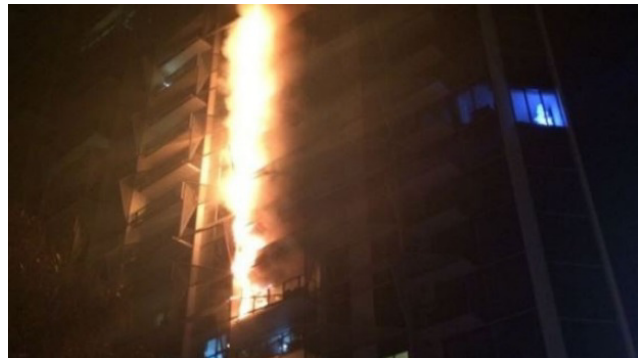


One of the slow burning issues in Australia (and globally) is the flammable cladding used in lieu of the specified non-flammable cladding on many hundreds of high-rise buildings. As a consequence, many of these buildings do not comply with the Building Act and expensive remediation works are required. In Melbourne, there are more than 85 properties where non-compliance with National Construction Code rules around the use of building materials has been made public knowledge, it is estimated there may be up to 2500 buildings affected in the Greater Sydney region, and similar problems have been identified in Queensland and WA at least.

The people confronted with the problem are the current owners of the units in non-compliant buildings; but they had no part in the chain of events leading up to the current situation. These people are in an invidious position, trapped by a regulatory system that has failed them and that will now hold them accountable for the building's non-compliance (not to mention issues with re-sale prices and insurance). This debacle is a major failure of both policy and governance affecting many thousands of people.

There appears to be four parts to the problem.

- Chinese manufacturers and Australian importers passing off flammable cladding as compliant with the National Building Code; the cladding should be Non-combustible tested to AS 1530.1; not non-flammable tested to AS 1530.3. However, there is no import restrictions on non-compliant materials, statements of compliance and any testing are done by the importer.
- Decisions by Australian building companies (knowingly or otherwise) to use cheaper imported products. Alucobond, meets Australian Building Code (ABC) specifications for high-rise projects, the Chinese manufactured Alucobest cladding used on the Lacrosse Apartments among others is not compliant (but you would need to be really 'awake' to pick the different name). Buying decisions could easily have been made by purchasing clerks based on superficial checks of documents and claimed conformance. Furthermore, if the builder received documentation from the importer purporting to show the cladding complied with the Code their liability may be limited - the question of reasonable reviews is difficult.
- A regulatory system where the builder pays a building surveyor to issue compliance certificates based on documentation provided by the builder. Typically, a builder does not pay the building surveyor to make the builders life difficult and make 'unnecessary' tests and inspections. If the builder provided the surveyor with documentation that showed compliant cladding had been installed how responsible is the surveyor? But conversely how useful is the certificate of compliance issued by the surveyor that future purchasers rely on??



- The direct link between the current owners and the builder is typically a development company set up for the specific purpose of constructing that one project and once the project is complete the 'special purpose company' is liquidated. The developer specifies the work required from the builder, pays real estate agents to do the selling to the owners, provides the agents with information to use in the sales process and is liquidated as soon as the sales process is complete.



Until the law was changed some 20 years ago, the job of certifying building compliance was managed by the various local authorities around Australia. The process may have been relatively slow and expensive but the surveyors issuing the compliance certificates needed for building occupation were paid to make sure the building complied with the laws for the public good.

Under the current regime, the various certificates required for occupancy are

issued by a private building surveyor (mostly with limited insurance and assets), the builder pays for a service that is in the builder's interests, not the public's and focuses on minimising both the cost of the service and any inconvenience (if a surveyor did a thorough job they probably would not be asked to work again!). However, there's no guarantee a more independent survey would have picked up the problem.

Whilst the cladding fires have been major news, poor building product compliance appears to be a major issue in Australia (and presumably globally), with evidence showing that the market penetration of non-conforming materials in key construction product sectors may be up to 50 per cent. According to Bob Baldwin, the Federal Government's Parliamentary Secretary for Industry "These faulty products are not meeting Australian standards and causing significant risk of fire or failing the most basic of stress tests".

No doubt the investigations and court cases around the non-compliant cladding will drag on for decades without solving the root cause of the problem..... The root cause is that every step in the current regime relies on organisations and their people putting ethical standards above profits, while at the same time there is very little incentive for upholding ethical standards – no one is paid to look after the interests of future purchasers. Ethical lapses of the type discussed above are particularly common when the people disadvantaged by the laps are remote from the people making the ethical decision. No one in the chain outlined above had any personal knowledge of the people who may suffer as a consequence of their decisions and the likelihood of any 'problem' could be assumed to be very remote - the pressure is to take the profit and assume the risks will not eventuate. Money talks!

Practical ethics suggests that to counteract the forces for poor ethical standards there needs to be a stronger force for high ethical standards (remembering tolerating poor process is an ethical issue in itself). This may be personal or company pride in doing the right thing, more pragmatically some systemic checks that ensure the right thing are done. Two of our posts, Practical Ethics<sup>1</sup> and Practical Ethics 2<sup>2</sup> have looked at similar problems - applying these ideas to the ones discussed in these posts suggests at least one option to solve the current crisis in the construction industry.

<sup>1</sup> See: <https://mosaicprojects.wordpress.com/2016/02/26/practical-ethics/>

<sup>2</sup> See: <https://mosaicprojects.wordpress.com/2016/03/10/practical-ethics-2/>



Consider how different the outcome of the various decisions may have been had the law required the developer of any building to provide future owners with non-retractable insurance cover for a period of 20 years, with the insurer warranting that the building is compliant with the relevant codes. Add a requirement that the insurers employ the building surveyor that will issue the occupancy certification etc, and to a large extent the root cause of sub-standard materials is resolved. The surveyors are now incentivised to make sure the building is fully compliant (it is in their paymaster's interest); and the builder is incentivised to develop a reputation for high quality work (to reduce its insurance premium). Add a 'for profit' government backed re-insurer to cover the possible default of any of the insurance companies and you have a system that is biased towards doing the right thing for the eventual building owners. Ethics will still be important but they are now being applied in situations where the pressures to do the right thing are significant<sup>3</sup>.

There will of course be howls of protest about the costs involved in this solution but what is better, to pay for a job done properly once or to pay for the cost of fixing problems years later?? The ethical answer to this quality dilemma is obvious, political answers require leaders to take a moral stand that places the good of society above short term company profits.



Downloaded from Mosaic's PMKI Free Library.

For more papers focused on **Ethics** see:

<https://mosaicprojects.com.au/PMKI-ORG-010.php>

Or visit our PMKI home page at:

<https://mosaicprojects.com.au/PMKI.php>



Creative Commons Attribution 3.0 Unported License.

<sup>3</sup> Since this article was written there have been a series of political and legal ramifications. Two of the more significant are:

1. Insurance companies refused to renew the professional indemnity policies for building surveyors forcing government action.
2. The court case for the building specifically discussed above concluded. The current building owners won the vast majority of the \$12 million in damages claimed (causing issue 1 above) but are still out of pocket, 33% of the award was against a French backpacker whose negligence actually caused the fire. The fire engineers and surveyors were found liable for the rest of the monies. The full judgement is at:

<https://www.vcat.vic.gov.au/sites/default/files/resources/Owners%20Corporation%20No.1%20of%20PS613436T%2C%20Owners%20Corporation%20No.%202%20of%20PS613436T%2C%20Owners%20Corporation%20No.%204%20PS613436T%20%26%20Ors%20v%20Lu%20Simon%20Builders%2C%20Stasi%20Galanaos%2C%20Gardner%20Group%20%26%20Ors%20%5B2019%5D%20VCAT.pdf>

