



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: PropEPD:DHgl1438286

14 February 2018

Director, Environment and Building Policy  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam,

**Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017 (“Draft Regulation”)**

The Law Society of NSW appreciates the opportunity to comment on the Draft Regulation. The Law Society’s Property Law and Environmental Planning and Development Committees have contributed to this submission.

**1. Definitions**

In clause 186S, building with combustible cladding is defined as:

any building that has combustible cladding applied to any of its external walls or to any other external area of the building, other than a roof.

We note that there can be significant issues with internal combustible cladding installed in buildings, which is not dealt with by the Draft Regulation.

We note that combustible cladding is defined in clause 186S as:

any cladding comprised of materials that are capable of readily burning (such as timber, polystyrene, vinyl or polyethylene) and includes any cladding system that incorporates elements that are capable of readily burning (such as combustible framing or insulation behind the surface cladding).

Determining whether or not cladding on a building is combustible cladding may not be a matter within the expertise of many owners, typically owners corporations. We envisage that an expert assessment may be required to answer this threshold question.

If there is combustible cladding, there is an obligation to provide an expert’s cladding statement (or in some cases a progress report) within 7 months of clause 186V commencing.

It is unclear whether there will be a sufficient number of experts available across NSW to allow every owner to meet this timetable. Anecdotal evidence suggests that where an owner is currently investigating the cladding status it can take many

months before a report becomes available. This problem may be even more acute in regional areas. We also understand that the experts conducting such investigations have experienced significant increases in their insurance premiums. We are concerned that this may further limit the pool of experts.

We suggest that a definition of a 'properly qualified person' is required to assist owners to engage an appropriate expert.

### **3. Creation of a Register (clause 186W)**

Clause 186W of the Draft Regulation allows for the possible establishment and maintenance of a register of buildings with combustible cladding. We note that the proposed register may be an information source for, among others, councils. We also note that the register may be accessible to the public via a website. If the register is established, the consequences for conveyancing practice, and for the conveyancing regulatory framework, will need to be carefully considered. We would be pleased to discuss the operation of the register and its implications for conveyancing practice with officers from your Department.

### **4. What if cladding is found?**

The Draft Regulation is silent on the consequences of combustible cladding being identified on a building. Important practical issues need to be addressed, including:

- (1) The role of councils and owners once made aware of the combustible cladding.
- (2) Who bears the cost of remediation?
- (3) The power to take action against a predecessor in title to the current owner, a problem relating to building defects more generally.

These issues must be addressed by Government to remove the existing uncertainty for industry and building owners.

If you have any questions in relation to this submission, please contact Gabrielle Lea, Policy Lawyer, by email at [Gabrielle.Lea@lawsociety.com.au](mailto:Gabrielle.Lea@lawsociety.com.au) or on (02) 9926 0375.

Yours sincerely,



Doug Humphreys OAM  
**President**