

**Draft**

**LGNSW Submission on Draft Cladding  
Regulation and Explanation of Intended Effect -  
regarding minor external building alterations  
(cladding and decorative work) as exempt  
development**

February 2018

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks the Department of Planning and Environment (DP&E) for the opportunity to make a submission on the following documents in relation to regulation of combustible cladding:

- *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017*, referred to as the Draft Cladding Regulation; and
- Explanation of Intended Effect (EIE) proposing amendments to State Environmental Planning Policies (SEPPs) concerning the proposed use of cladding as exempt development.

LGNSW recommends the DP&E notes carefully the comments of our fire safety and building colleagues in councils as these practitioners are best placed to comment on the detailed technical aspects and practical implications of the draft regulation.

This submission is in draft form until it is considered by the LGNSW Board. Any revisions made by the Board will be forwarded in the form of an updated submission.

## Introduction

LGNSW welcomed the establishment the Fire Safety and External Wall Cladding Taskforce (the Taskforce) and has been pleased to support the Taskforce by engaging councils, facilitating briefings and sharing information. LGNSW supports the position adopted by the Taskforce that it is the responsibility of building owners to investigate and confirm whether their building is affected by combustible cladding. However, LGNSW has also advocated for the NSW Government to deliver a coordinated and consistent approach to guide how State and local governments respond to and manage this important issue across NSW.

## LGNSW comments

### 1. Draft Cladding Regulation

LGNSW understands this Draft Regulation will introduce a legal obligation on building owners to have their buildings registered and assessed if they have combustible cladding. Specifically, the Draft Cladding Regulation will require building owners to:

- register with the NSW Government if their building has combustible external wall cladding; and
- undertake a fire safety assessment if needed.

The regulation does not apply to residential buildings under two storeys and non-residential buildings under three storeys.

General comments on the Draft Regulation are provided below, followed by a table which contains some specific comments in relation to individual provisions and clauses.

**a. General intent and objective of the Draft Regulation - Supported**

Councils are generally supportive of the broad object of the Draft Regulation to require building owners to identify whether their building contains combustible cladding, register their building details and provide a cladding statement.

**b. Development of guidance documents – recommended**

LGNSW supports the requirement for provision of a cladding statement by building owners as described in clause 186V. However, there is insufficient detail to ensure the information provided by owners and the reports and cladding statements submitted are accurate, consistent and will properly address the relevant risks to occupant safety.

LGNSW recommends the Regulation be accompanied by supporting material - ideally referenced in the Regulation - which would consist of detailed guidelines for building owners, councils and those professionals assessing and preparing cladding statements. Such a resource package should include basic information to assist building owners to register their properties, as well as guidance on the assessment process, cladding statements, penalty notices, orders, remedial strategies and timeframes for such remediation. Development of a resource package would help to provide a comprehensive and consistent response across the State-wide.

**c. Communication and education strategy – recommended**

The onus will be on building owners to register and provide details of their building and its cladding material and to follow up with a cladding statement if necessary. The requirements proposed in the Draft Regulation may appear onerous and confusing to members of the public (i.e. building owners) who may be unfamiliar with the Building Code of Australia (BCA) or terms like 'building classification' and 'combustible cladding'. Unless these requirements are well-publicised and simply explained, there may be a low rate of compliance which will undermine the overall effectiveness of the Draft Regulation.

It is therefore essential that an effective communication strategy and education campaign be conducted to ensure building owners are aware of, and fully comprehend their statutory obligations under this proposed legislation.

**d. Specific comments on proposed provisions in the Draft Regulation**

<b>Regulation area of change</b>	<b>LGNSW Comment/Recommendation</b>
<p><b>1) Owners to provide building details</b></p> <p>CI 186T</p>	<p>If building owners are expected to comply and to accurately complete the information required under cl 186T (2), the on-line 'form' on the NSW Planning Portal needs to be simple and clear.</p> <p>For example, cl 186T (2) (c) requires the building owner to specify the building classification under the BCA. This assumes the owner understands the BCA and the building classification system. However, in many cases, the average building owner will not have this knowledge. Similarly, the requirements under (2) (e) &amp; (f) also rely on a level of technical knowledge.</p> <p>To encourage high rates of compliance/completion by building owners, LGNSW recommends the DP&amp;E provide detailed explanatory information.</p>
<p><b>2) Provisions for councils to direct owners to provide cladding details of</b></p>	<p>CI 186U contains provisions for councils and authorised fire officers to direct building owners to provide details of their building and its cladding, however similar powers in relation to providing a follow-up cladding statement (as per cl 186V) are not included. LGNSW recommends the Draft Regulation be</p>

<b>Regulation area of change</b>	<b>LGNSW Comment/Recommendation</b>
<b>buildings</b>  CI 186U	<p>amended to include a similar clause giving powers for building owners to be directed to provide a cladding statement.</p> <p>Clause 186U (4) requires that owners who have been directed to provide details of their building and cladding must do so within 14 days of the direction/notice. In practical terms, given the complexity of the task and availability of suitably qualified persons, this may be impossible and a longer period (say 28 days) may be more reasonable.</p>
<b>3) Properly qualified person</b>  CI 186V	<p>Clause 186V (2) calls on a cladding statement to be provided by a 'properly qualified person'. It is recommended that clause 186V be amended to specify that the cladding statement must be provided by either a Building Professionals Board (BPB) accredited Fire Safety Engineer or other suitably qualified and accredited person.</p>
<b>4) Timeframes</b>  CI 186V	<p>Some councils have expressed concern that the timeframes in cl 186V(5) for submission of the cladding statement may create a 'bottleneck' where there may not be enough appropriately qualified persons available to meet the demand from building owners for these statements in the required timeframes. Too- tight timeframes and not enough qualified people could result in very high costs to building owners to have these statements prepared on time. LGNSW recommends the timeframes specified in the Draft Regulation be reviewed and other options considered to minimise any cost imposts due to heavy demand.</p>
<b>5) Follow-up action</b>  CI 186U CI 186V	<p>In addition to the issue of a penalty notice for a breach of cl 186U or cl 186V, the Draft Regulation should also be amended to include provisions to identify what action may be taken (by the relevant Government agency) if the owner fails to provide a cladding statement (or provides an inadequate cladding statement). For example, this could include provision to issue further periodic-based penalty notices and an Order which directs the owner to provide the required cladding statement (which carries a further penalty if not complied with).</p>
<b>6) Schedule 5 Penalty notice offences</b>	<p>In councils' experience, the proposed penalties (\$1,500 for individuals and \$3,000 for corporations) for each offence are insufficient to incentivise building owners to do the right thing. LGNSW recommends the penalties for non-compliance with the provisions (of clauses 186T, 186U and 186V) must be significantly higher than what is proposed in the Draft Regulation.</p>

## 2. Proposed Amendments to the State Environmental Planning Policies – Exempt & Complying Development

LGNSW supports the general intent of the EIE to amend certain SEPPs to prevent cladding being installed as exempt development on certain high-risk buildings and on external walls as specified under the following SEPPs:

- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008,
- State Environmental Planning Policy (Infrastructure) 2007,
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017,
- State Environmental Planning Policy (Three Ports) 2013,
- State Environmental Planning Policy (Affordable Rental Housing) 2009,
- State Environmental Planning Policy (Mining, Petroleum, Production and Extractive Industries) 2007,

- State Environmental Planning Policy (Western Sydney Parklands) 2009,
- State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007.)

### 3. Next steps: Further comment by LGNSW and councils

Local government and other stakeholders must be consulted extensively in the development of guidelines, practice notes and transitional arrangements to support the proposed Cladding Regulation.

Councils are required to implement these new provisions and are well-placed to clarify and understand all the practical implications of these new provisions. LGNSW urges the DP&E to specifically consult council building and fire safety practitioners before finalising the regulation and the associated guidance material.

## Conclusion

LGNSW hopes its comments are of assistance and looks forward to continuing to contribute to achieving a robust and trusted building regulatory framework in NSW. We encourage the NSW Government to further engage and consult with local government professionals who are well placed to provide more detailed technical input on this issue.

LGNSW acknowledges that this draft regulation is in specific response to the outcomes of the Grenfell fire in London. However, we also await further progress on the wider reforms to building regulation which were promised in the Government's announcement in September 2016 in response to the independent review of the *Building Professionals Act 2005* conducted by Michael Lambert (the Lambert Report). The Lambert Report included findings about the problems with building regulation which have been identified in a number of related reviews dating back to 2002.

We look forward to on-going involvement with the NSW Government on this and other reform priorities within the response to the recommendations of the review of the *Building Professionals Act 2005*.

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