

Legal perspectives on putting buildings right post-Grenfell: what went wrong and how can it be put right?

The Australian Experience

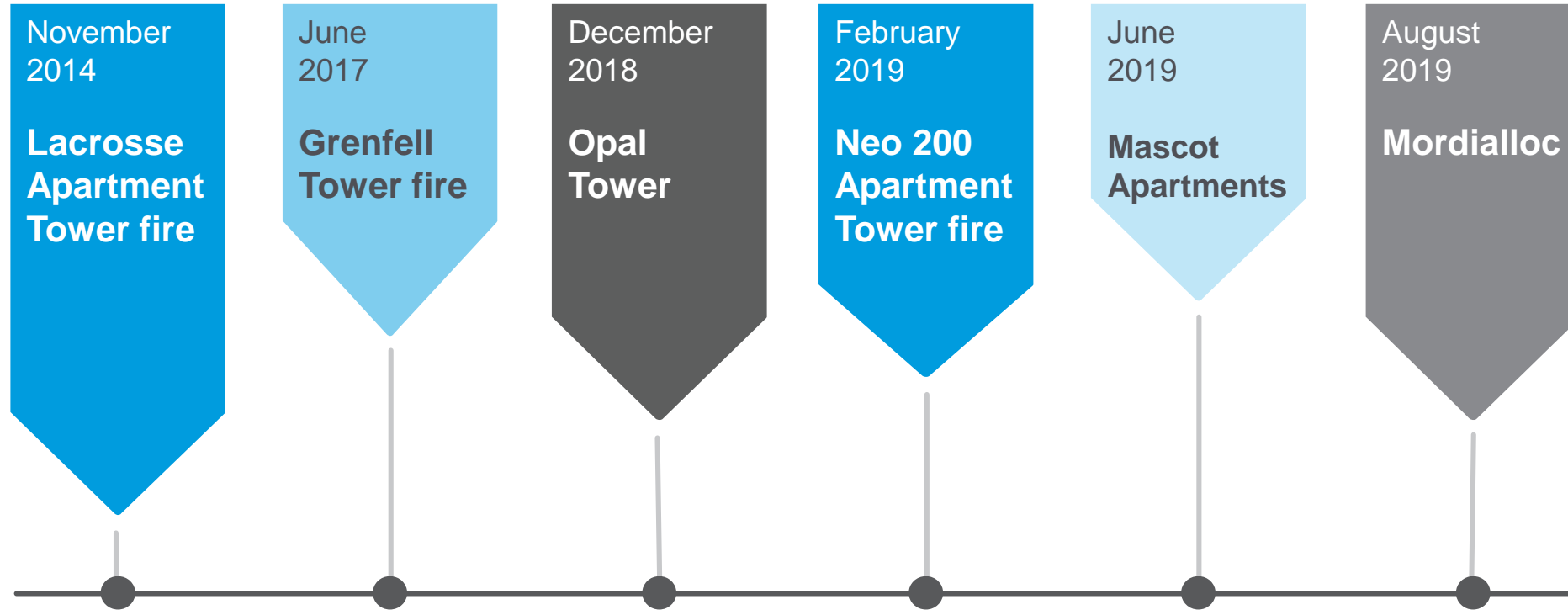
Jeanette Barbaro, MinterEllison Partner

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MinterEllison

Roadmap

- The impacts on Australia's journey
- Challenges for Australia
- What have we learnt
- How Australia is tackling the combustible cladding problem
- Field of Solutions



The Lacrosse Fire

- Fire occurred early in the morning of 25 November 2014
- All building occupants safely evacuated

Metropolitan Fire Brigade concluded the fire:

Fire was accidental

Started on the balcony of apartment 805

Was ignited by a discarded cigarette

Quickly spread down to level 6 and up to level 21

Was exacerbated by the use of ACPs



Neo 200 media reports

“Body corporate chair Rona Gowans confirmed **additional smoke alarms had been installed in the ninth unit on each floor – those closest to the cladding** – at the request of Melbourne City Council.” – SMH

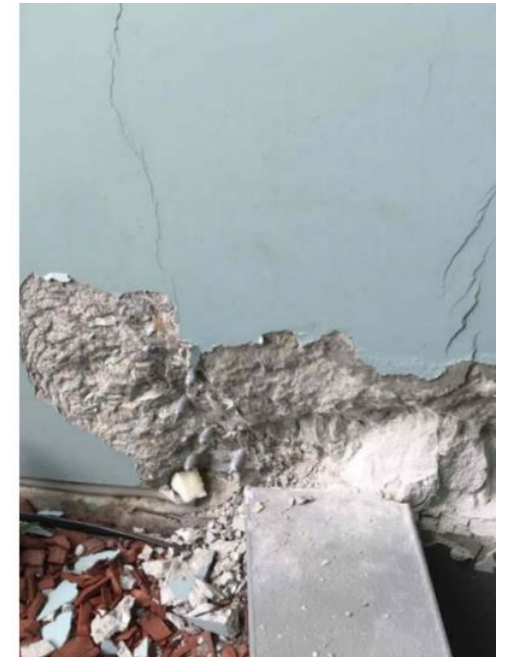
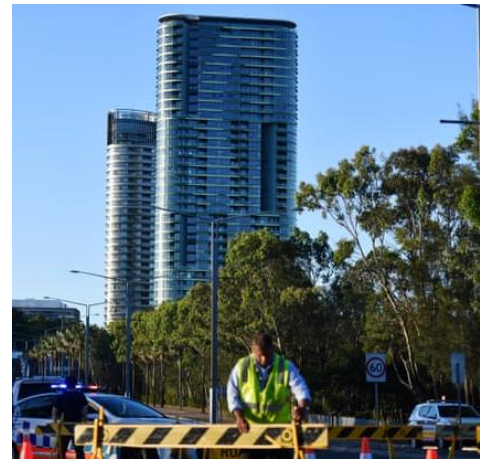
“... **every apartment had four smoke alarms and the new alarms had been placed ‘closer to a window, to the balcony, rather than in the middle of the room.’**” – SMH

“Mr Bhasin, who is the general manager of Roscon, said it appeared **the building's fire plan had worked "perfectly"**. "The fire occurred, the **sprinklers** came on and, assisted with the MFB, the fire was doused.” – ABC

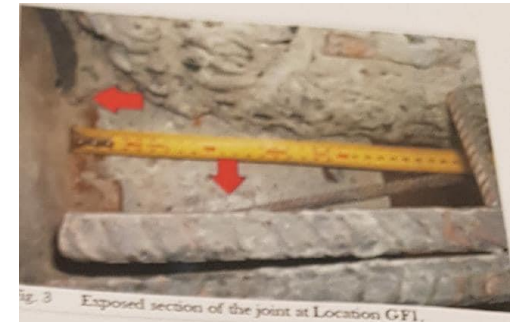
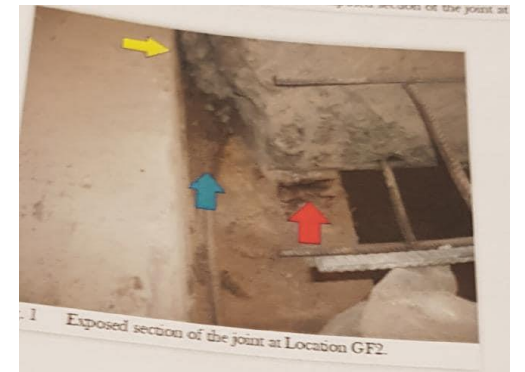
“Trent Curtin, the assistant chief officer of the brigade, said **sprinklers had activated** on four of the floors and contained the fire to the balcony and apartment... Curtin said crews had already identified potential fire safety issues with the building, including that some residents had covered their smoke alarms with plastic. **“One of those issues is that occupants have been covering smoke alarms with plastic to stop them going off from cooking or false alarms,”** he said. **“There’s potentially others [fire safety issues] but we’re unclear at this stage.”** - The Guardian

“The ABC understands that the **City of Melbourne issued two show-cause notices in July and October last year to the property's owners over concerns the cladding was combustible.** Under the notices, owners were asked to prove why the cladding should not be removed.” - MSN.com

Opal Tower



Mascot Towers



Mordialloc



Combustible cladding evacuation



Mould damage



Challenges for Australia

- Current regulatory system promotes 'faster cheaper' construction
- Private building certifiers have liberal discretions
- Performance based building code
- Field of opinions
 - Federal government not responsible for building industry
 - 8 separate regulatory systems
 - No national model
- The change in who is building, what is being built and why?
- Impact on supply chain of globalisation



What have we learnt?

- Truly multi-dimensional problem
- Broken regulatory system
- Field of opinions
- Buck stops with building owners who may not have access to solutions
- Occupancy certificates do not evidence compliance
- The *Lacrosse* decision
- Combustible cladding is not the only issue
 - structural problems
 - mould
 - water ingress



How Australia is tackling the combustible cladding problem

- No one way same way – Field of solutions
- Common challenges:
 - Private building certifiers
 - Insurance
 - Registration and licensing
 - Education and consistency

Current Landscape in Australia

	VIC	NSW	QLD	WA	SA	TAS	NT	ACT
Cladding Audit	✓	✓	✓	✓	✓	✓		✓
Registration portal		✓	✓					
Regulatory action	✓	✓						
Cladding ban		✓						
Increased regulatory powers	✓		✓		✓			
Chain of responsibility legislation			✓					
Govt funded rectification scheme	✓							

Field of Solutions

COMMONWEALTH

- Cth Treasurer confirms that Cth will not help fund rectification of combustible cladding
- No national model
- Threatened national ban
- ABCB amendments to the Building Code

QLD

- 'Chain of Responsibility' legislation
- Mandatory registration of private buildings
- Increased powers of regulator (**QBCC**)
- Building certifiers' PI insurance may exclude combustible cladding

VIC

- State-wide audits and RPA assessment of risk
- MG14 mandates Building Appeals Board 'blessings'
- Building certifiers' PI insurance may exclude combustible cladding
- Increased powers of regulator (**VBA**)
- Minister's powers increased permitting bans
- **Cladding Safety Victoria (CSV)** established
- Govt declares \$600 million package to fix private buildings with combustible cladding
- Govt declares funding to fix govt buildings
- Low cost funding through CRAs introduced
- State Building Surveyor appointed

NSW

- NSW Cladding Ban
- Mandatory registration of private buildings
- **Building Commissioner** appointed to oversee licensing, auditing, disciplinary action, and legislative reform
- established a Cladding Support Unit to work with councils



The possibilities

- Statutory duty of care
- National cladding ban
- Building Minister's Forum – an attempt at National solutions
- Implementation of the Shergold and Weir recommendations



The possibilities (continued)

- Building Ministers' Forum agree in principle to:
 - **Ban** the unsafe use of **combustible cladding** on new construction
 - Support the existence of a **duty of care** to owners and subsequent purchasers of residential and some commercial buildings for small businesses
 - The **enforcement** of the NCC as a matter of priority
 - Where possible ensure reforms are nationally consistent
 - Continue to advance the **education** of building practitioners
 - Introduce a Technical Specification to fast track **labelling on ACPs**



The possibilities (continued)

- Key recommendations made in the 'Shergold and Weir Report':
 - Establish a **building information database** to retain design and construction documentation
 - Implement a robust **approval process** for **performance solutions**
 - Require independent **third party review** for particular components of designs and building types
 - Introduce **mandatory on-site inspections** of building work at certain stages
 - Require **fire safety practitioners** to design, install and certify the relevant safety systems required in commercial buildings
 - Establishment a **mandatory product certification system** for higher risk building products



Jeanette Barbaro
Partner

T +61 3 8608 2515

M +61 413 427 265

E Jeanette.barbaro@minterellison.com

MinterEllison