

Crisis of confidence

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In the first of four articles about building control in Australia, Mark Anderson discusses the legal issues raised by two apartment fires

Two fires, one in Sydney and one in Melbourne, have raised questions on the building control function, with the investigators appearing to imply that the regime is not working as it should.

Both private and local authority certifiers in Australia, who carry out the function of building control, must be registered and accredited by the State Building Board or Commission. So what issues have these fires raised?

Bankstown fire

The fire in Bankstown, Sydney, in 2012 trapped residents in their apartments forcing two students to jump from their five-storey window. One girl was killed, and the other badly injured.

At the inquest, the coroner commented:

'One of the more striking aspects of this case is that regulatory systems and processes ? intended to ensure that large residential buildings are constructed according to strict standards ? failed. In part, the failures were caused by the fact that the Bankstown City Council section responsible for following up safety orders was under-resourced.'

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The issues revolve around whether the internal courtyard was an atrium requiring sprinklers or whether it was not substantially enclosed at the top, making it a light well. Buildings less than 25m in height do not require sprinkler protection to be fitted.

The coroner continued:

'In this case, interpretation of statutes or legislation is not a formal field of specialist knowledge of the building experts. Even if their experience of using the [Building Code of Australia](#) (BCA) *prima facie* qualifies them in some fashion as experts in its interpretation, it does not disqualify me from exercising that function.'

'Expert opinion evidence is ultimately meant to be of assistance to the court. It is not permitted for it to displace the fact-finder, much less to displace the judicial officer as the decision-maker in relation to questions of law.'

Changes to the BCA and the regulatory accreditation schemes could result after this damning [report](#), with calls for sprinklers to be installed in all apartment buildings, whatever their height.

Melbourne fire

The Melbourne fire occurred in a residential block and was caused by an unextinguished cigarette on the balcony. The blaze ignited the external cladding and the combustible material in the panels contributed to a rapid spread of the fire up the vertical wall.

The [post-incident report](#) stated that:

'The fire behaviour on 25 November 2014 clearly demonstrated to all concerned that the elements installed to the external walls of this building did not avoid the spread of fire to the degree necessary.'

'An improved system and understanding for ensuring appropriate material selection, approval and installation is of major importance to the Metropolitan Fire Brigade.'

So why was the material allowed to be used in the construction? The properties of polythene core are thought to be a major factor, likely exacerbated by penetrations in the eighth-floor balcony for the air conditioning unit.

There is no requirement to break the lining at floor levels, so the fire could quickly spread to the top of the building. One possibility is the material was substituted by the builder without the certifier's knowledge, and did not meet the criteria for facade linings.

Alternatively, the interpretation of the certifier was flawed. For this type of construction, the wall must be non-combustible, and the lining must not impair its fire-resistant quality. So can laminate of this nature be considered non-combustible under such circumstances?

A combustible material can be used as a wall finish if it complies with the requisite fire hazard properties or is exempt. Linings considered exempt include an assembly like a ceramic tile attached to the wall or any other material that does not significantly increase the hazard of fire.

In hindsight, it could be considered that the material does increase the hazard of fire. Therefore due diligence is vital to ensure that all reasonable enquiry is made to determine the properties ? and of course sufficient experience is also vital to interpret the results.

However, the final interpretation will be down to the court.

Mark Anderson is a senior building certifier at [KPMG SGA](#)

Further information

- Related competencies include [Fire safety](#)
- This feature is taken from the RICS *Building control journal* (April/May 2016)