



A Performance-Based Building Code on Statutory Maintenance: Exploring the Translation of Policy to Practice for Multi-Storey Residential Buildings in Australia - Phase 2

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New South Wales

In New South Wales (NSW), ESMs are required to be maintained and be fit for purpose.

An annual fire safety statement is required to be completed and submitted by the owner of a building that has a BCA classification of 2 through to 9.

NSW government have created a competent fire safety practitioner for two areas, the first is for the design of fire safety systems and the second is for carrying out of maintenance work on fire safety systems

Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

[2021-689]



New South Wales

Victoria

Buildings that are subjected to ESMs are divided up into three categories depending when they were constructed, altered or extended, these are;

- Buildings built prior to 1 July 1994
- Buildings built between 1 July 1994 and 1 May 2005
- Buildings built after 1 May 2005

There are no mandatory reporting provisions requiring a building owner to submit to any authority that the buildings fire safety systems have been maintained for the preceding year.

Authorised Version No. 017

Building Regulations 2018

S.R. No. 38/2018

Authorised Version incorporating amendments as at
3 August 2022

Pyrenees Shire Council v Day

Eskimo Amber Pty Ltd v Pyrenees Shire Council

Case number

M57/1996

M59/1996

A recent High Court decision means that Australia's local authorities are now more likely to be found liable for failing to exercise their discretionary statutory powers.

In *Pyrenees Shire Council v Day; Eskimo Amber Pty Ltd v Pyrenees Shire Council*, the High Court found a local authority liable of failing to exercise a discretionary power even though there was no public expectation that the power would be exercised and the person affected did not rely on the local authority to do so.

Justice William Gummow found that the council had breached its duty of care by failing “*to take steps in the further exercise of its powers which were required by the circumstances*”. He emphasised the fact that the council was aware that if the situation was not remedied the possibility of fire was great and there was significant risk of damage.

Justice Michael Kirby found that the council did have a duty of care which it had breached, even though the resources and personnel to exercise the discretionary powers were limited. He came to this conclusion based on:

- the dangers to human life and property which the council was aware of from its inspection;
- the substantial risk of harm if the fireplace was not repaired;
- the latent nature of the danger; and
- the inability of the tenant, the owner and the adjoining owner to detect the danger and protect themselves from it.

The NEO 200 fire occurred on the corner of Spencer and Little Bourke Street Melbourne on the 4 February 2019, confirmed the majority of the buildings ESMs (ESPs) were either not working or not maintained and over 40% of fire alarms and smoke detection systems in the apartments were not operable.



cladding safety fund were set up in 2020. Five years on we have got a report from Victoria University that says:

Almost 90 per cent of apartment buildings across Victoria have failed fire safety standards ...

according to new research. Ninety per cent have failed safety standards. It continues:

The Victoria University study comes amid a push to build more multi-storey developments, to help fix the state's housing woes.

Victoria University researcher Dr Stephen Scimonello found of the almost 964 buildings inspected across the state, only 13 per cent had been maintained and continued to comply with fire safety standards.

Thirteen per cent. That is five years on from the cladding issue, and you have got a report to say we have still got buildings with issues at a time when the government has got this whole creation of activity centres, building sky towers right throughout Melbourne. Yet only 13 per cent passed the actual fire safety standards. You would hope that the government actually get their act together, because this is a huge warning. We have had a warning already with buildings catching fire. We have

Fire safety shock on apartments

EXCLUSIVE
Rachel Edlin
State politics editor

Almost 90 per cent of Victoria's multi-storey apartment buildings do not meet fire safety standards because property owners struggle to maintain increasingly complex systems, leaving residents at risk.

The extent of the statewide problem was revealed in a survey of every building inspection undertaken by councils over a year, which showed that just 13 per cent had been maintained and continued to comply.

The survey casts doubt on the safety of the types of homes that Victorians increasingly live in, and which are central to the state government's signature policy to increase housing density.

Building surveyor Dr Stephen

Scimonello, who examined the problem as part of his PhD at Victoria University, found that maintaining fire safety for apartment buildings had become so intricate that owners, often unaware of their obligations, were unable to maintain standards.

"It's not a big issue until it is a big issue," said Scimonello, the professional development manager of the

Continued Page 4

'Not an issue until it is': Most apartment blocks in state

From Page 1
Australian Institute of Building Surveyors.

He said apartments were increasingly constructed with fewer robust "passive" safety mechanisms, such as fire-proof walls or fire-rated doors, to cut costs. Instead, they were more reliant on intricate, expensive "active" systems of sprinklers and alarms that must be maintained for the life of the building, which added costs and complexity down the track.

"Unfortunately, some systems that are being installed by developers that allow them to reduce construction costs of buildings are also outside the scope, expertise and technicalities of building owners and maintenance managers," he said.

The national Building Confidence report by the federal government made similar findings in 2018.



Building surveyor Stephen Scimonello. Photo: Penny Stephens

HOW MANY MULTI-STOREY APARTMENTS COMPLY WITH FIRE SAFETY STANDARDS?			
	Number of buildings inspected	Number found to be compliant	Percentage compliant
Victoria	964	127	13.2%
NSW	612	220	35.9%

the responses from 34 councils to quantify the scale of the problem for the first time.

Those 34 councils did a combined 864 fire safety inspections of multi-storey apartments in 2023. Just 117 of the inspections - 13 per cent - found the buildings continued to be compliant. In NSW, 36 per cent of the 612 buildings inspected over 12 months were compliant.

Under Victorian law, building

regulation Fire Brigade Commander Mark Carter later told an industry function that most of the building's fire and safety systems were dysfunctional.

More than 40 per cent of fire alarms and smoke detectors within apartments weren't operating, which increased evacuation times, and maintenance schedules were found to be too complex or nonexistent. The Age contacted the Neo 200 building manager but didn't receive a response.

The state government's focus on the housing crisis has been in an encouraging more apartment living and higher density, particularly in its "activity centres" next to transport corridors.

Last week Premier Jacinta Allan proposed to strengthen the powers of the Victorian Building Authority and announced the Department of Transport and Planning would consult on whether buildings should

have their own manuals. Some developers already do this, Mirvac circulation details to owners corporations, and all of its apartments have a fixed QR code manual inside "valuing critical information to be passed on to future owners and/or occupiers of our properties", a spokeswoman said.

Wayne Liddy, the national president of the building surveyors institute and a Victorian board director, said building manuals were an important step as long as they didn't have "unnecessary and complex planning and architectural details".

"If it's too complex, people just don't do it," he said.

Liddy said Scimonello had quantified the extent of the problem in his PhD and the serious findings "should be a wake-up call for all apartment owners and residents".

"This is a life-safety problem," Liddy said. "Those consulting on and providing essential safety measures

State Building Surveyor Steven

advice should be regulated via a registration and licensing scheme with an auditing and compliance mechanism to ensure their work meets appropriate standards."

The Municipal Association of Victoria said it was aware of the challenges and local governments had been calling for building reform, but the state needed to invest in training qualified inspectors.

"Put simply, there are not enough qualified inspectors in the state to fulfil the role required," a spokeswoman said.

Bass said his office provided councils with expertise and advice on their enforcement role and responsibilities regarding essential safety measures.

"The Victorian government has introduced a suite of reforms to protect home buyers which will improve safety for the increasing number of people living in residential apartment buildings," Bass said.

Strata Community Association general manager Rhana Chandler said strata managers supported owners corporations to meet their obligations.

"Fire safety is a key priority for the strata sector, and we recognise the challenges that come with managing complex building safety requirements," Chandler said.

"However, greater clarity around reporting requirements and enforcement mechanisms would help improve compliance rates and ensure safer outcomes for residents."

State Building Surveyor Steven

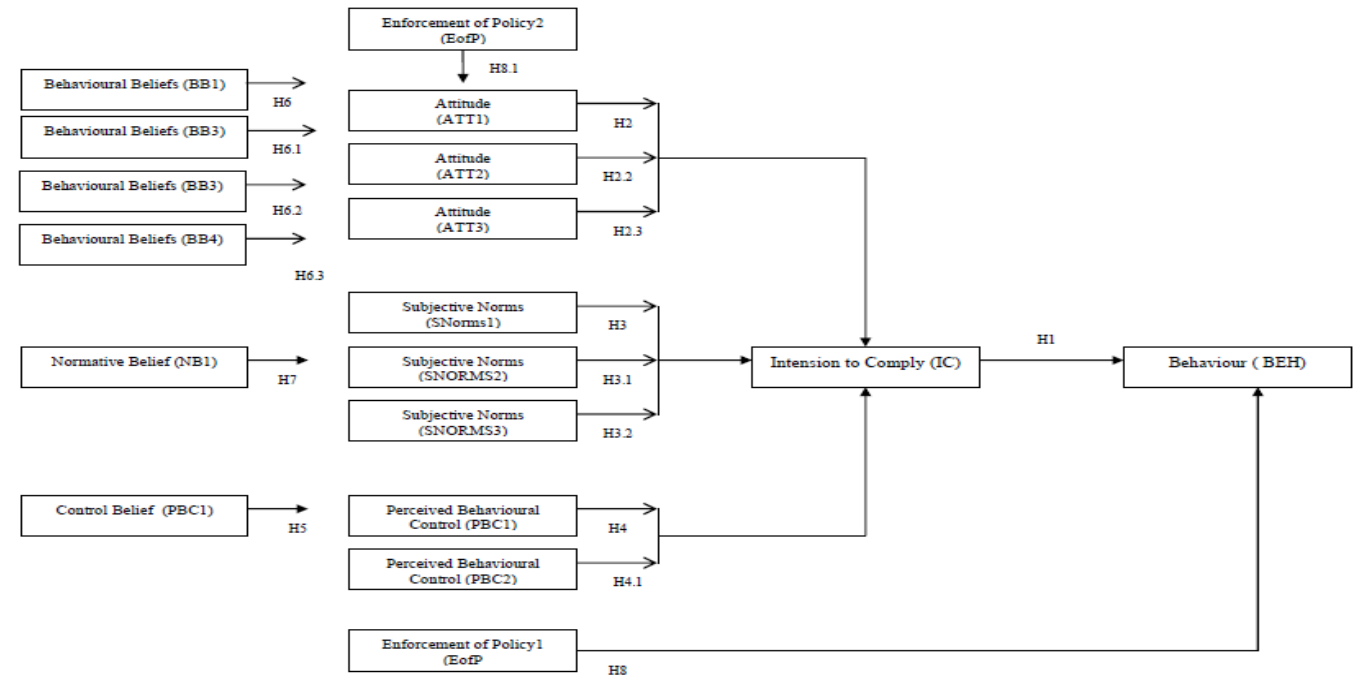
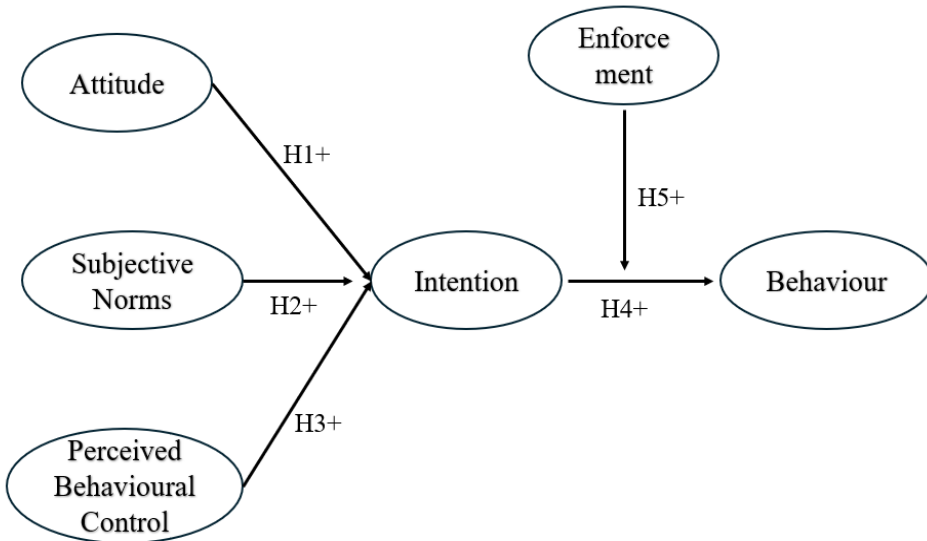
Victorian apartment buildings failing fire safety standards, new research reveals

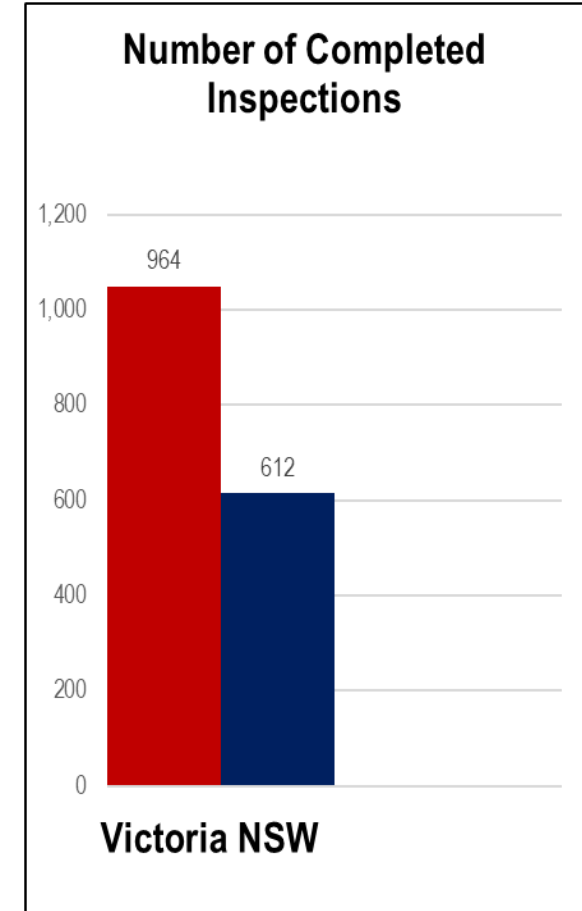
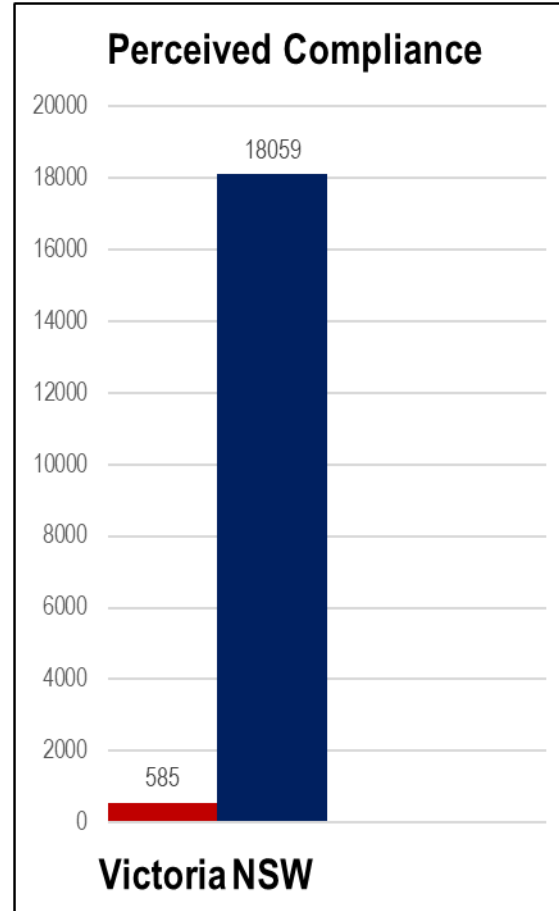
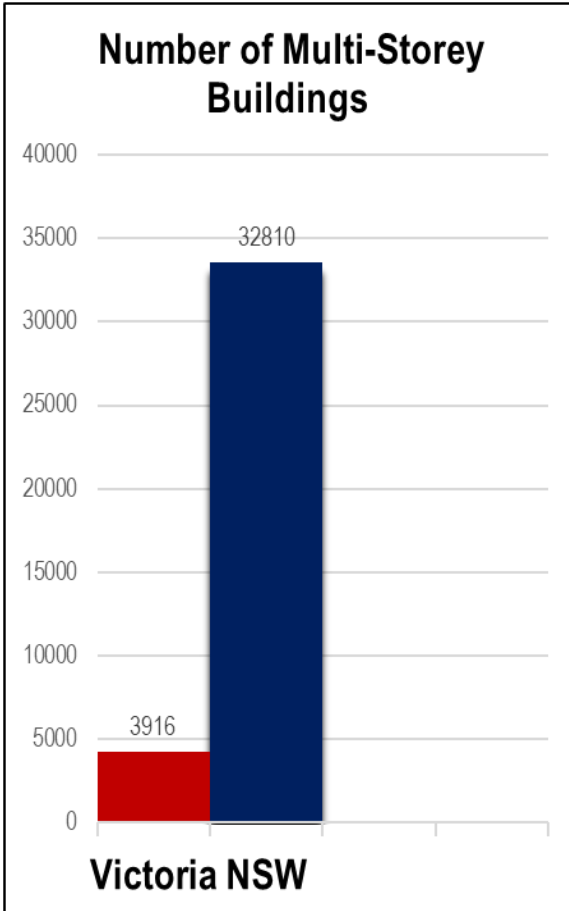
By Eleanor Wilson | 10:23pm Mar 10, 2025

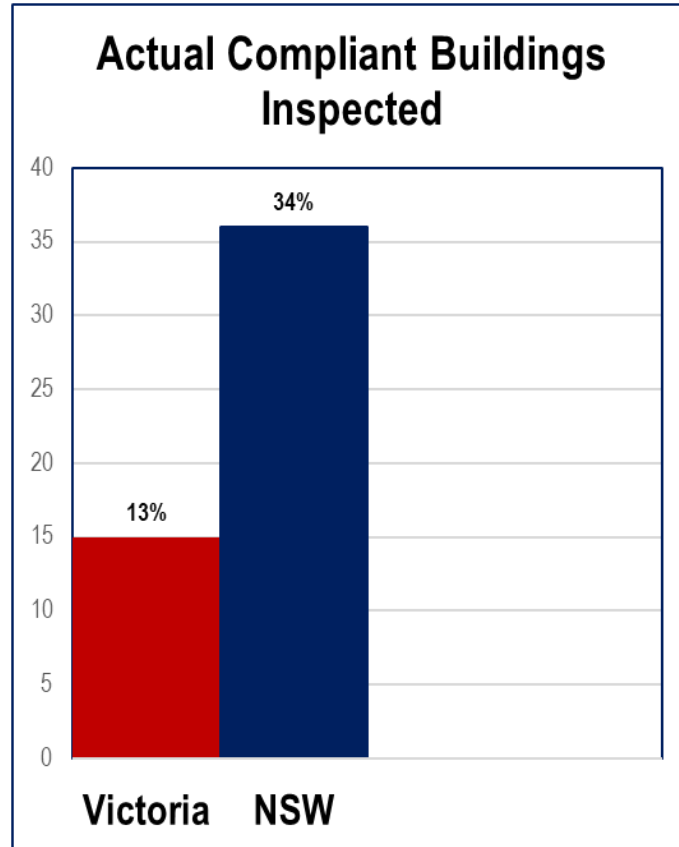
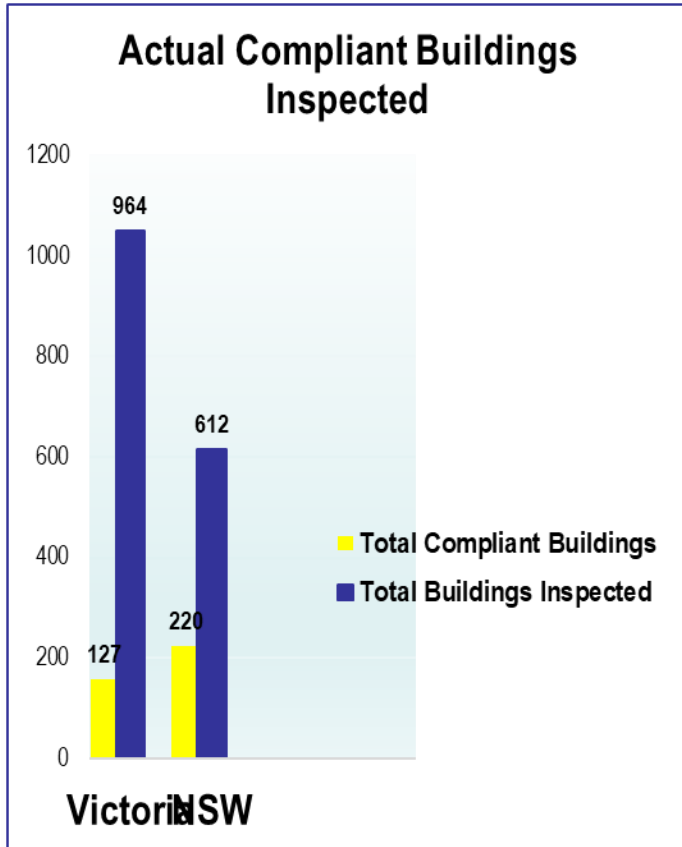


According to Ajzen (1991, p. 188),

“the more favourable the attitude and subjective norm with respect to a behaviour, and the greater the perceived behavioural control, the stronger should be an individual’s intention to perform the behaviour under consideration”.

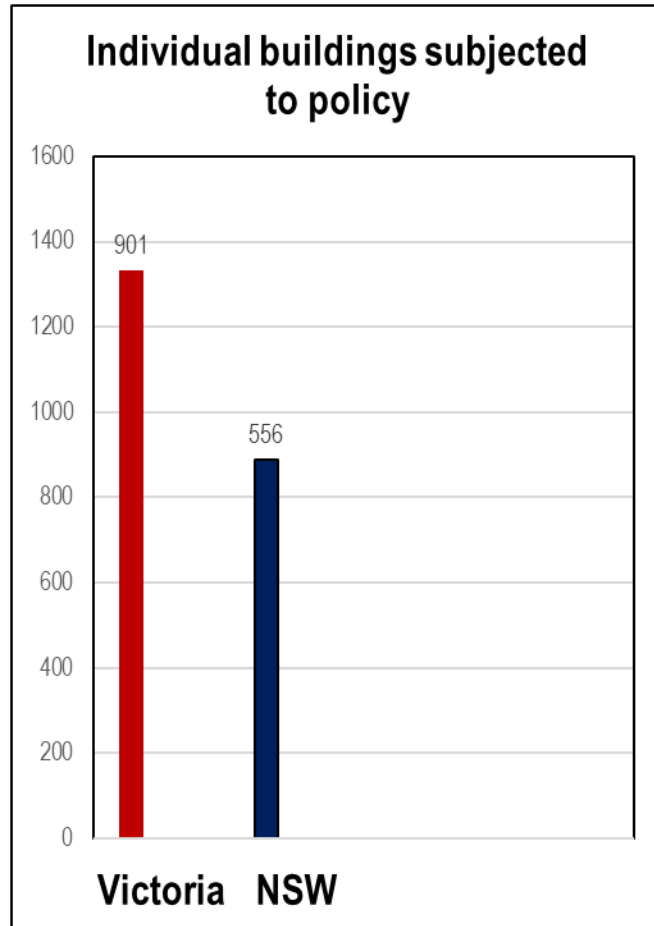






“Current system puts all the responsibility on the owners’ corp but no tools to implement the requirements and no expert help when you need it. Training for Strata Managers would be very helpful – whilst most of us use the services of external ESM contractors – more knowledge on the subject would be helpful to all.

I think fire policies can get too complicated and too expensive for owners’ corporation, especially with the new buildings”.



The majority of owners and strata managers advised that they are confident that they can carry out all of the maintenance requirements over the next 12 months!

The majority of owners and strata managers advised that they will be discouraged if they receive punitive punishment from the regulator for non-compliance.

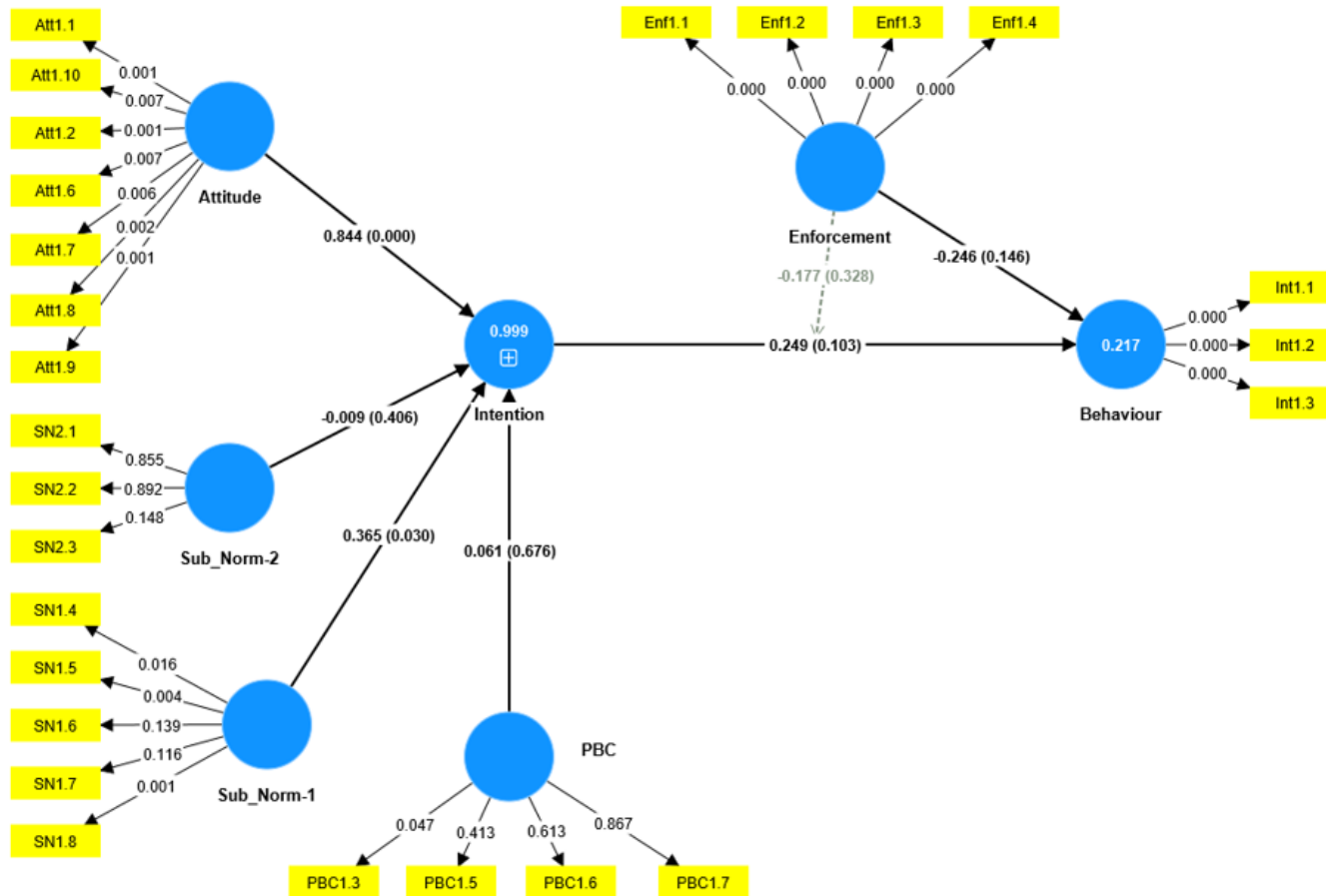
Feedback from Strata Managers include;

"In conversations with these regulators it seems they are not concerned with the building operations and ESM systems themselves but concerned that if something were to go wrong that they will have to file the coroner's report.

If the regulators care about the systems, then a process of education needs to be adopted, not a random inspection and issuance of an order that has no context or understanding of the current difficulties being faced on the site".

"Training for Strata Managers would be very helpful - whilst most of us use the services of external ESM contractors - more knowledge on the subject would be helpful to all".

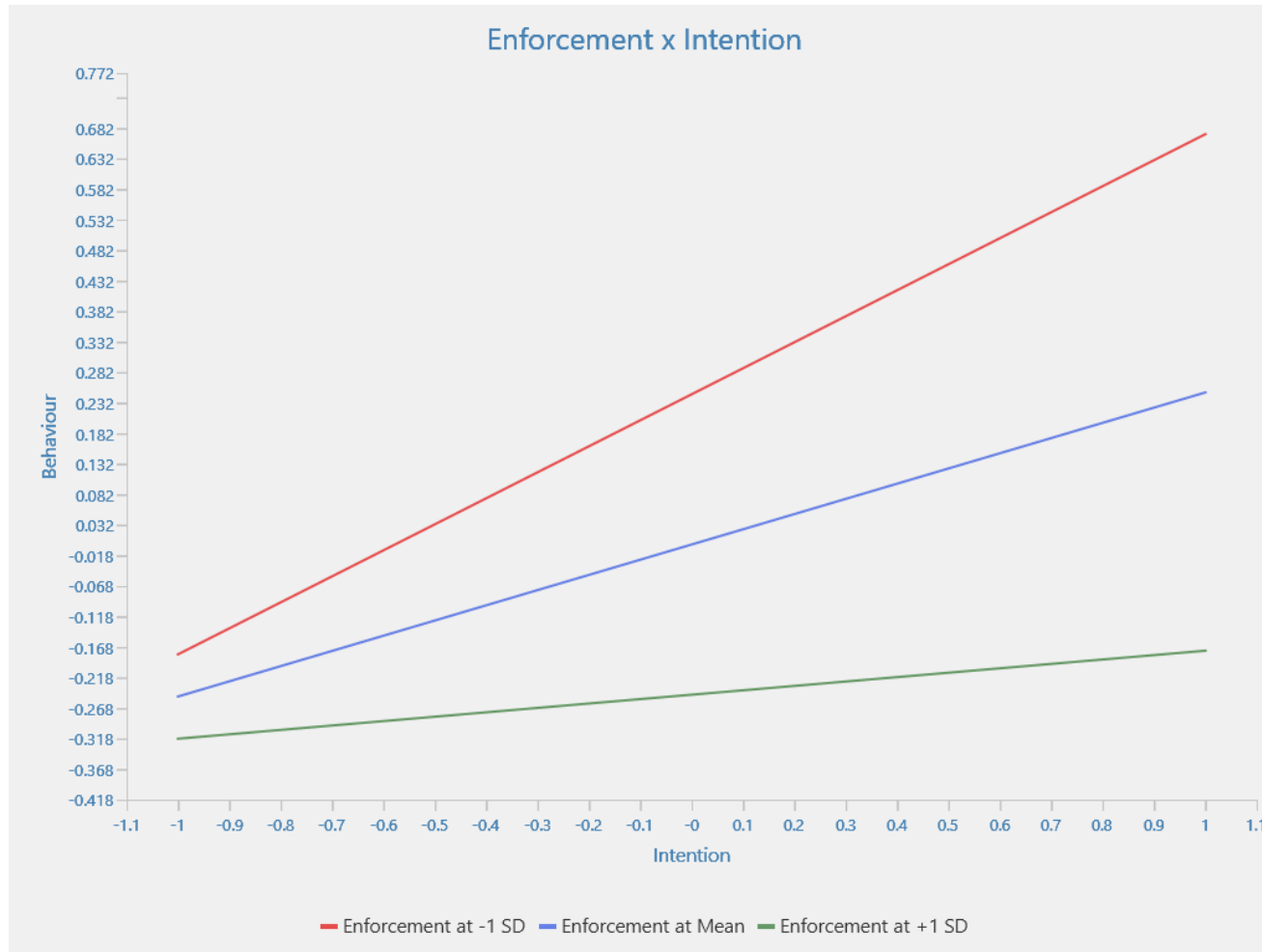
"Compliance is too expensive and time consuming and the workload without additional revenue is increasing each year".



The biggest unresolved issue around AFSS [annual fire safety statement] compliance in NSW is that the interpretation of the compliance regulations are reliant on the AFSS certification companies who self-certify and are commonly the organisation who conducts the expensive repairs after identifying the shortfalls they feel exist ... It is a trust system which is abused and Strata Plans feel they are over a barrel if works are not conducted as the certification is not independently audited or confirmed by any regulator.

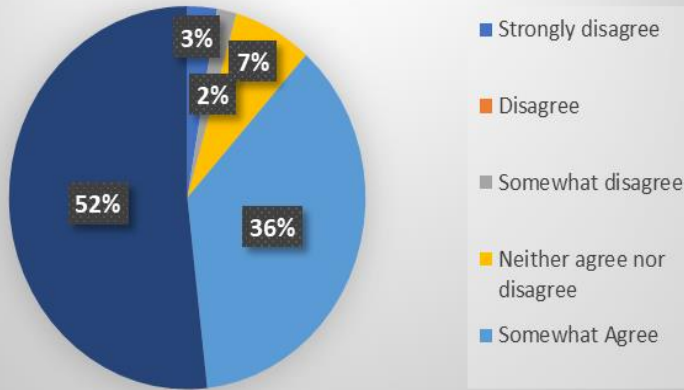
It is necessary, but sometimes it is too complex and especially for new buildings, we noticed a trend of those measures getting more complicated and it is a large ongoing running costs. It would be good to regularly check whether it is necessary for some fire measures to be there in the first place.

Slope Analysis of Intention and Behaviour with Enforcement as Moderator



This graph indicates that the relationship between intention and behaviour decreases at higher level of enforcement. In other words, with negative β , as the value of reinforcement increases the relationship between intention and behaviour to implement policy decreases.

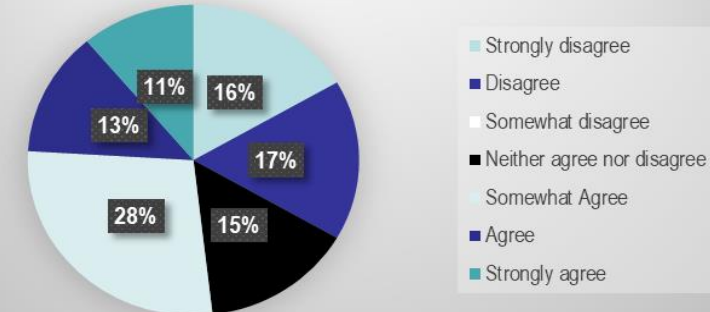
The policy is a good idea



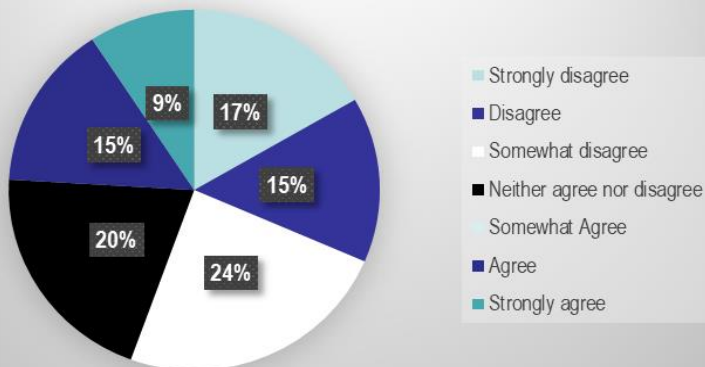
“Unless well-educated or involved in the policy, the community are generally oblivious. There is no social pressure by any means to comply with the policy. Compliance with the policy is legislated and has uptake from Council. This is not strongly driven by Council and is up to individual officers of the Council to drive and enforce ...

Better education is needed for property owners”.

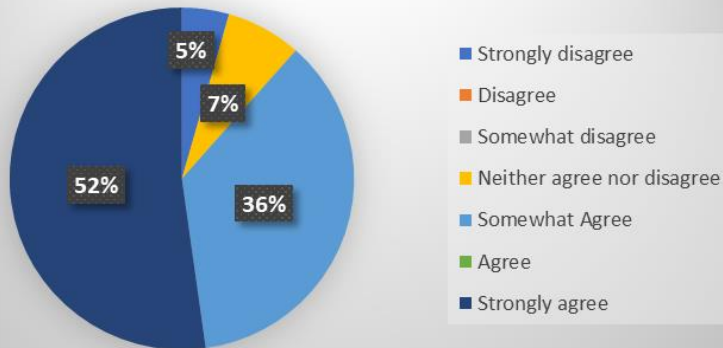
I will be discouraged to complete all ESM maintenance if I am punished in a court of law



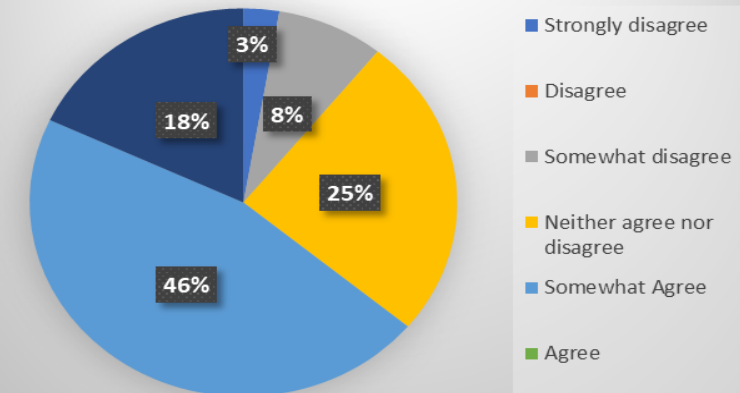
I will be discouraged to complete if I get fined by the regulator



The policy is worthwhile



I value the policy



No.	Hypotheses	Result Without Moderator	Result With Moderator
H1	A positive attitude toward maintaining fire and life safety provisions (through the policy) is positively related to behavioural intention to do so.	Supported	Supported
H2	Subjective norms (support from important referents being, family, friends and peers) is positively related to the behavioural intention to do so (to undertake the act).	Supported	Supported
H2.1	That support from the regulator is positively related to the behavioural intention of the act (to undertake the act).	Not supported	Not supported
H3	That perceived behavioural control is positively related to behavioural intention to do so (to undertake the act).	Not supported	Not supported
H4	A positive intention and ability to comply with the act is positively related to the behaviour to do so.	Supported	Not supported
H5	The association between intention and behaviour will be moderated by enforcement of the policy by the regulator such that the association will be significantly stronger when a high level of enforcement is present.	Supported	Not supported
H6	That the TPB is a good fit to establish compliance of the policy regarding ESM maintenance of multi-storey residential buildings.	Supported	
H7	The inclusion of demographic variables (age, education, gender) influences the prediction for compliance of the policy for owners of multi-storey residential buildings.	Supported	

“Unless well-educated or involved in the policy, the community are generally oblivious. There is no social pressure by any means to comply with the policy. Compliance with the policy is legislated and has uptake from Council. This is not strongly driven by Council and is up to individual officers of the Council to drive and enforce ...

Better education is needed for property owners”.

- ◆ Enforcement by the regulator with a focus on education and assistance to comply with the policy.
- ◆ Governance contributions
- ◆ Enhance Community Awareness and Social Pressure
- ◆ Improve Regulatory Support and Education for Owners
- ◆ Implement Comprehensive Building Manuals
- ◆ Enhance Professional Training and Oversight for Maintenance Personnel
- ◆ Adopt a Collaborative and Preventative Approach to Regulation

Training for Strata Managers would be very helpful – whilst most of us use the services of external ESM contractors – more knowledge on the subject would be helpful to all.

If the regulators care about the systems, then a process of education needs to be adopted, not a random inspection and issuance of an order that has no context or understanding of the current difficulties being faced on the site.

I think this is such a neglected industry there is no support or training and a lot of people know what they are doing and find it too hard.

Key Engagement Outcomes

- Research findings were presented to:
 - Victorian Building Authority
 - Fire Rescue Victoria
 - City of Melbourne

Common Feedback from Authorities

- A consistent theme was lack of internal resources to support or enforce current policy obligations.
- Notably, inner city Councils indicated they don't have the capacity to enforce compliance measures.
- No local government authorities have the resources to monitor or manage compliance for these high-risk buildings.
- No local government can advise how many multi-storey buildings are within their local government area.

Interpretation

- These responses reinforce that education and training are crucial for improved fire safety outcomes.
- The findings provide a call to action for government departments to consider.

NZ police lay manslaughter charges over Loafers Lodge hostel fire

The tragic 2023 Loafers Lodge fire in Wellington, New Zealand, which claimed five lives, has underscored the devastating consequences of neglecting fire safety. A two-year investigation concluded that failures in the building's fire safety systems contributed to the deaths, leading to manslaughter charges against those responsible for managing the property.

The incident has highlighted the critical importance of maintaining compliant and effective fire protection measures especially in accommodation housing vulnerable populations. As authorities noted, this tragedy was preventable, and lives depend on proactive fire safety management.

Clark, E. (2025, June 5). *NZ police lay manslaughter charges over Loafers Lodge hostel fire that killed five people*. ABC News. <https://www.abc.net.au/news/2025-06-05/nz-hostel-fire-charges-laid-building-safety-compliance/105379008>

NZ police lay manslaughter charges over Loafers Lodge hostel fire that killed five people

By Emily Clark Law, Crime and Justice

Thu 5 Jun



Home > News > Manslaughter charges for three people related to the Loafers Lodge fatal fire

Attribute to Detective Senior Sergeant Timothy Leitch – Wellington Area Investigations Manager:

Today, Police have charged three people with manslaughter in relation to the fatal fire at Loafers Lodge on 16 May 2023.

Two men aged 75 and 58, and a 70-year-old woman will appear in the Wellington District Court later today, each facing charges of manslaughter.

Police have spoken to a third man and expect to also charge him with manslaughter in the coming days.



Home > News > Fourth person charged with manslaughter over Loafers Lodge fire

Attributable to Detective Sergeant Olivia Meares:

Wellington Police have charged a fourth person with manslaughter in relation to the fatal fire at Loafers Lodge in 2023.

The 72-year-old Wellington man was arrested this morning and is due to appear in the Wellington District Court today.

It follows the arrest of two men aged 75 and 58, and a 70-year-old woman, late last week, all of whom are facing charges of manslaughter. Police allege all four individuals were responsible for aspects of the building's fire safety systems.

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Professional Development Safety in multi-storey buildings



Stephen Scimonello

Stephen is a highly experienced Building Surveyor - Unlimited with the Victorian Building Authority with over 25 years in the industry. He holds a PhD, Master of Engineering, Master of Social Science (Planning & Environment), and a Bachelor of Technology (Building Surveying).

Starting his career in the 1990s conducting fire safety inspections in Melbourne's tallest buildings, Stephen recognised the ongoing challenges in maintaining fire safety post-occupancy. He has since contributed to key government advisory panels, including the Victorian Cladding Taskforce and the Building Regulations Advisory Committee (VIA).

Understanding ownership and compliance responsibilities for fire safety in multi-storey residential buildings.

Strata managers and body corporates play a vital role in maintaining fire safety in multi-storey residential buildings. This training provides essential insights into the National Construction Code (NCC) compliance, essential safety measures, and legal responsibilities. Experts will cover key regulations, maintenance obligations, and legal liabilities, with real-world case studies, including the NEO 200 fire. Gain practical knowledge to navigate compliance challenges and ensure building safety. Ideal for strata managers, body corporate representatives, and property owners, this session offers expert guidance to help you meet fire safety obligations effectively.

| 1st Week of July, 2026

VU City Tower, Melbourne VIC 3000

8:30 am for a 9:00am start



REGISTER NOW BY EMAIL

(PLEASE LET US KNOW IF YOU HAVE ANY DIETARY REQUIREMENTS)

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