

14 November 2012

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**Re: Submission on Fire Safety in Aged Care Facilities**

Thank you for the opportunity to provide feedback on the proposed changes to Fire safety in residential aged care facilities.

**Environmental Planning & Assessment (Fire Sprinkler Systems) Regulation 2012**

1. The legislation must better define the type of facilities that will be the subject of the mandated sprinkler upgrade program. The legislation needs to encompass reference to residential aged care facilities that are operated by all type of Providers, including State and Local Govt.

The legislation needs to very clearly separate out general aged care housing and group homes that could be caught up in current interpretations of the SEPP changes, particularly in relation to the SEPP (Housing for Seniors or People with a Disability) 2004.

Reference to SEPP SL for definition of residential aged care in this regard creates various ambiguities.

2. The amendments to the EP & A Regulation need to permit issue of Interim and or Final OCs for the sprinkler installation works – the sprinkler system installation and commissioning can be done under an Interim OC whilst other residual and ancillary matters (generally relevant to a DA) can be addressed under a final OC.

There should be no restriction of issue an IOC to the Implementation Committee when the sprinkler system works are completed, however other non-essential works that need to be completed as a direct result of the upgrade works (i.e. complete landscape reinstatement, etc.) may remain outstanding. These works would be encompassed under the Final OC.

3. The options of the 18 month -v- the three (3) year installation concept does not seem to draw any benefits to the Provider in selecting the more stringent time frame – I can foresee most Providers will commit to the three (3) year program to ensure any unforeseeable delays do not create a problem.

Appeal mechanism for further extensions of time needs to be described. Appeal to Implementation Committee if powers granted to this committee to rule on appeal.

To exercise caution, and in the absence of any incentive to adopt the 18 month program, most Providers will be opting for the three year program to ensure they do not get caught short due to unforeseen situations such as Councils, market supplies etc.

4. The Regulation needs to ensure the Implementation Committee has sufficient authority to grant extensions of time in excess the new legislation to accommodate the Providers who have existing residential aged care stock that are scheduled for redevelopment, substantial alterations or demolition in accordance with a masterplan concept. This may necessitate an extension of, say 4-5 years at which time the facility is demolished or substantially rebuilt. Hence installation of a sprinkler system beforehand within the period nominated by the Regulation would be a fruitless exercise at considerable cost to the Provider.
5. Amendments to Clause 186I of the Regulation – the Regulation needs to clarify (sub clause (a)), whether an existing sprinkler system in an existing residential care facility needs to be compliant with the sprinkler system types nominated in the draft Fire Sprinkler Standard. Otherwise, an existing sprinkler system in an aged care facility, which by virtue of sub clause (a) is permitted to remain in place, will potentially receive fire Orders from Local Govt if the existing sprinkler system is not in accordance with the Standards prescribed in the new legislation – this issue needs to be clarified accordingly.
6. Amendments to Clause 186R of the Regulation – the Regulation needs to nominate a minimum qualification and or experience criteria for design consultants and installers for sprinkler systems. In the absence of such prescribed criteria or minimum prerequisite benchmarks, the outcome of system designs and installations may be catastrophic.

The legislation needs to impose requirements for design and installation consultants / contractors to be registered, accredited and or member of a recognised Association or be an Accredited Certifier – building hydraulics compliance Category C14 or achieve the specialty qualifications listed in the BPB Accreditation Scheme, with appropriate experience in the design / installation inspection of Automatic Fire Suppression systems.

7. The Regulation should use the term *fire suppression system* – not sprinkler system. The upgrade strategy and legislation is affording option of performance-based design options. These may involve appropriately justified *suppression system* which is not deemed to be sprinkler systems – terminology throughout all the related proposed Standards, Regulations and SEPPs is important in this regard.
8. The penalty provisions need to clearly outline what constitutes an offence – for example does failure to strictly adhere to any of the statutory or Provider-committed milestones constitute an offence for which a penalty would apply?

This needs to be transparent, clear and concise.

Mechanism for appeal against a penalty notice is to be clarified?

9. Clause 186K (c) – Sub clause (i) should read ‘describe any works *to be* completed for the purposes of the installation.....’

This clause relates to the 18 month program and hence the required Notice is unlikely to require a summary of works completed by 1 August 2013.

10. Clause 186O(2) may require the Implementation Plan to provide advice on the status of fire and life safety within the existing facility, assessed against BCA, as at the date of submission of the implementation plan(s).
11. Clause 186P should not require the ‘Notice’ display or web site upload if the Provider elects to implement the 18 month program.
12. Clause 186Q Implementation Committee – the Dept may need to give consideration as to how the future Implementation Committee will in fact be able to account for all the non-sprinkler protected facilities – is there a register?
13. Amendments to Clause 186R of the Regulation – What is the purpose of requiring issue of hydraulic calculations for a CDC or CC application? Most accredited certifiers would have little to zero technical understanding of such information or detail. Instead reliance is put on receipt of qualified design certification from appropriate an consultant.

This will end up as a superfluous document / information with the CC/CDC package that is unlikely to be assessed in detail. This will in essence transfer liability to certifying authorities whom are obligated to receive the sprinkler system hydraulic calculations however do not have the expertise to fully understand or decipher such technical information.

This issue again reiterates the importance of ensuring the design consultant and installer are appropriately recognised companies in terms of qualifications and experience.

The legislation needs to impose requirements for design and installation consultants / contractors to be registered, accredited and or member of a recognised Association or be an Accredited Certifier – building hydraulics compliance Category C14 or achieve the specialty qualifications listed in the BPB Accreditation Scheme, with appropriate experience in the design / installation inspection of Automatic Fire Suppression systems.

14. The amendment legislation should impose minimum critical stage inspections for PCA, including inspection of concealed space services before covering, inspection of smoke and fire stopping systems and completion of works. A systems commissioning test should also be witnessed by the PCA.

These requirements need to be imposed to ensure consistency and thoroughness of PCA involvement for the upgrade works.

15. Clause 190A will create a lot of confusion for the industry in terms of definition of residential care facility.

There should be no reference to the definition of residential care for seniors from the SEPP.

The term “residential aged care” is to be very clearly and consistently defined throughout all the new (amended) related Standards, Regulations and SEPP. Reference to BCA and or the Aged Care Act is recommended. The present draft legislation presents a lot of ambiguity over the term residential aged care and hence which aged care accommodation facilities are relevant to the sprinkler upgrade program.

The definition needs to capture residential aged care facilities that are operated by various providers including:-

- Crown (State Govt)
- Local Govt
- For profit organisations
- Not for profit organisations
- Facilities certified under the Aged Care Act
- Facilities not certified under the Aged Care Act

Reference to accommodation for Seniors as is presently proposed will result in much confusion with independent living facilities, Group Homes, class 1b facilities and the like. A clear method of defining which facilities this applies to, such as a copy of the letter from the Government department advising the facility that these regulations apply to their facility is a quick and easy way that the accredited certifier can be assured that this legislation is applicable to the particular facility.

16. In the very few and unfortunate instances where a DA may be required for the works, the legislation should impose a requirement for the DA to be process within a regulated time frame (e.g. 21 days) and require the consent authority to focus on the application with respect to the sprinkler system only.

Any such DAs should be prohibited from imposing conditions in relation to such issues as:-

- Payment of levies and contributions to Council
- Other matters not directly related to the sprinkler installation works
- Traffic management plans, , landscaping, carparking upgrades, etc.

## **State Environmental Planning Policy Amendment (Fire Sprinkler Systems) 2012**

1. It is essential that the amendments to the Codes SEPP for the sprinkler system upgrade program permit relaxation of the general limitations of the SEPP as listed in Sections 1.17A or 1.19.

These limitations, if imposed, would immediately prevent a high number of existing residential aged care facilities located in foreshore areas, environmentally sensitive areas, sites that don't have or are unable to procure a copy of DA consents for the building/use, sites containing acid sulphate soils and unsewered land, from being able to utilise the CDC process.

We would predict these limitations could have impact on as many as 80+ (13%) or higher as it is unknown as to the number of sites that don't have or are unable to obtain previously issued DA consents, these residential aged care facilities that would need to default to a formal DA process as a result of land constraints and

situations that have little to zero bearing on whether a sprinkler system is to be installed.

The reality is that the existing aged care facilities will have to implement the upgrade and provision of sprinkler systems irrespective of the location of the site, irrespective of the DA consent for the use or whether the land has acid sulphate soils or the facility is located on unsewered land, and thus the intent and objectives of Sections 1.17A and or 1.19 of the SEPP are superfluous and can be dealt with in more appropriate and relevant ways.

2. Proposed amendments to Clause 22 of the SEPP SL imply that installation of a sprinkler system in an existing facility may only be carried out with the consent of the consent authority.

This clause is unclear as it implies that DA consent is required for the sprinkler installation works.

This clause needs to be clarified to ensure the CDC process is available to most, if not all, existing facilities in this regard.

3. Does the provisions for new Clause 55 of the SEPP SL, where Council issues a DA consent, preclude the Provider from compliance with the Regulation in terms of time frames, implementation plans etc? This needs to be clarified.
4. The specified scope for complying development needs to be expanded and made clearer to ensure all ancillary works including (but not limited to) the erection of new/modified fire walls, modification of existing services etc in order to accommodate the new sprinkler system can be carried out under the CDC.
5. The new development standards (General) for complying development include:

(a) *The current use of the premises must be a lawful use.*

There will be a number of situations where existing aged care providers cannot provide the relevant and necessary documentation and approvals to verify that the current use of an existing care premises is lawful. This process, as experience has shown, can remain unresolved and unable to be satisfied for CDC applications due to a lack of information for older building (facilities).

There needs to be mechanisms in place to address this issue, including possible provisions to ensure the *certifying authority takes all reasons steps to investigate and ascertain that the current use is lawful*. Or by the applicant providing evidence of the facility being a “residential aged care facilities” by the provision of a letter from the implementation committee or provision of other documentary evidence that they are a residential aged care facilities as defined.

6. The new development standards (General) for complying development include:

(e) *The development must not contravene any condition of consent.....*

There will be a number of situations where existing aged care providers cannot provide the relevant and necessary documentation and DA consent for an existing facility.

This process, as experience has shown, can remain unresolved and unable to be satisfied for CDC applications due to a lack of information for older building (facilities).

There needs to be mechanisms in place to address this issue, including possible provisions to ensure the *certifying authority takes all reasons steps to investigate and ascertain that the development will not contravene any condition of an existing development consent .....*

It should also be noted that location of permissible fire water tanks and other such infrastructure is likely to displace existing landscape areas – this will evidently potentially contravene relevant conditions of an existing development consent. As such there needs to be measures in place to ensure no conflict arises between the required permissible works and the prescriptive conditions of an existing DA consent. It requires some specifications as to locations, no reduction in the number of car spaces for the provision of tanks or infrastructure, set out hours of works similar to existing codes SEPP, etc, rather than relying on the provision of existing conditions of consent.

7. Development Standards (water storage tanks) (sub clause (c)(ii)) needs to differentiate between setbacks from 3m from a *Public Road*, given many aged care sites have various internal private roads which may be deemed to present compliance contravention with this draft requirement.
8. Development Standards (external pump houses and fixed on site fire pump sets) (sub clause (b)) should only require a new pump house or enclosure to have external wall finish that is the same colour palette as the existing building, if and only if the pump house or enclosure is visually evident from a public place.

Otherwise aged care Providers will be put to great expense in erecting structures of specific materials for effectively no benefit or logical achievement.

9. Development Standards (fire mains and pipes and booster connections) (sub clause (a)) may need to be re-worded to clarify that only fire mains pipework is required to be internal. I note that a number of Providers are interpreting this requirement to apply to any pipework associated with the sprinkler system installation – I assume this is not the intent.

Retrospective installation of a sprinkler system can sometimes include running of pipes below eaves etc when there is limited opportunity to carry out such works in roof spaces (i.e. restricted access, asbestos etc).

In addition, there may also be occasions where the fire mains cannot be underground for the extent prescribed in the draft SEPP requirement. The regulation should indicate that all reasonable efforts should be made to place such mains pipes below ground and where above ground level, concealed in landscape or the like. The draft wording will need to be changed accordingly.

10. Part 4A Division 2 – sub clause (1) – the word appropriate should be inserted as follows:-

*“...in any loss of monitoring service continuity unless appropriate fire watch measures are....”*

This word will impose discretion on the PCA to ensure the appropriate measures, which are likely to vary in different cases, are implemented. Also a clear definition as to what Fire Watch measures are, as this is unclear as to what this is. Some clear guidelines as to what this entails is required so that an assessment can be made as to what is required, as there is no clear guidelines as to what performance is being achieved for this “watching”.

## **State Environmental Planning Policy Amendment (Fire Sprinkler Systems) 2012**

1. The legislation must better define the type of facilities that will be the subject of the mandated sprinkler upgrade program. The legislation needs to encompass reference to residential aged care facilities that are operated by all type of Providers, including State and Local Govt.

The legislation needs to very clearly separate out general aged care housing (i.e. independent living units, retirement village accommodation and group homes) which could be caught up in current interpretations of the SEPP changes, particularly in relation to the SEPP (Housing for Seniors or People with a Disability) 2004.

At present there is many different assumptions be circulated in the industry as to exactly what type of aged care facilities the upgrade program relates to – reference to SEPP SL definitions and the like only further complicates this matter.

## **Fire Sprinkler Standard**

1. The term “residential aged care” needs is to be very clearly defined. Reference to BCA and or the Aged Care Act is recommended. The present draft legislation presents a lot of ambiguity over the term residential aged care and hence which aged care accommodation facilities are relevant to the sprinkler upgrade program.

The definition needs to capture residential aged care facilities that are operated by various providers including:-

- Crown (State Govt)
- For profit organisations
- Not for profit organisations
- Facilities certified under the Aged Care Act
- Facilities not certified under the Aged Care Act

2. The definition of ‘new facility’ should include refurbishments within an existing facility.
3. Section 2.2 of the draft Standard references situation of CDC or CC applications being made before 1 May 2014 to enable use of AS2118.4 – 1995 or 2012. It is considered this is an error as we understand BCA2013 proposes to introduce AS2118.4-2012 and hence this clause should state 1 May 2013 (*not 2014*). What happens if this new standard is not referenced in BCA 2013? A statement should be made to the effect that “should the BCA not reference AS 2118.4-2012 then the systems is to comply with ...”.
4. Section 3.3/3.4 of the draft Standard requires a mandatory Part 4A compliance certificate for alternative solution options (OC stage). This option is not sustainable or realistic. The mandatory application of requirements for Compliance Certificates was

implemented in the Building Professions Act and has since been removed due to creation of monopolised sectors of the industry.

5. The requirements of Section 3.4 (a) and (b) need to be separated by the word **OR** – not the word *and*.
6. The provisions of Sections 3.3/3.4 should, as a minimum, require each proposed alternative solution pertaining to sprinkler installation, for the purposes of the proposed Standard, require any such alternative solution to be subject to a peer review by an independent C10 fire safety engineer.

The same clause is to require the original fire engineering report to be prepared by an accredited C10 fire safety engineer.

If this process results in difference of opinion or disagreement between the report author fire safety engineer (C10) and the independent C10 fire safety engineer, then the accredited certifier may seek either response from Fire Rescue NSW or from a further independent C10 fire safety engineer or alternatively an independent A1 accredited certifier.

7. Section 4 of the Standard needs to reference staff numbers and staff availability as a criterion to be considered in assessment of any alternative solution for sprinkler type in aged care. The current BCA performance requirement (referenced in the draft Standard). One of the likely issues to come out of the Quakers Hill tragedy was the staff availability during certain shifts (i.e. during night shifts).

In addition the performance requirement should use the term fire suppression system – not sprinkler system. The performance requirement needs to present more latitude in performance options in this regard – some mist suppression systems may be acceptable from a performance solution perspective, however these are not sprinkler systems.

8. Section 5 of the Standard needs to permit use as AS2118.4 residential sprinkler systems in existing Class 3 and 9a aged care facilities. This sprinkler system is the most common and most cost effective sprinkler system used in residential aged care facilities. The Sprinkler Standard presently prevents use of AS2118.4 in existing Class 9a facilities.

The current wording of the draft Standard precludes reference to AS2118.4 for existing facilities. It is critical this is addressed.

The new Standard should also enable areas such as Class 9b communal/activity rooms, basement car park levels, etc, all being ancillary to an existing Class 3 or 9a aged care facility, to be protected throughout by an AS2118.4 residential sprinkler system if such system has been nominated for the Class 3 / 9a part. AS2118.4 permits other ancillary use areas (irrespective of classification) to be protected by the residential sprinkler system – it is presently only BCA that precludes such classifications from being protected by the AS2118.4 system. For the purpose of upgrade and permitting the cost-effective installation options, it would be beneficial for the new Standard to permit the Part 4 systems to be installed in the ancillary use areas.

9. Sub section 5.3 requires fire sprinkler systems to be connected to any staff communication device. This is ambiguous. The current BCA (DTS provisions) do not require internal staff communication devices such as pagers and or DECT phones to be connected to the fire safety systems. All aged care facilities will have these types of internal staff communication devices, however unless otherwise required by a current fire engineered solution, the new Standard should not require the staff communication systems to be re-programmed to incorporate the fire safety systems.



Note that some Nurse Call systems will not have the ability to interface with the FIP or ASE and as such apply for impost on the aged care provider to also upgrade their nurse call system (another \$100K). Clarification as to what this means specifically is required, to ensure that its implemented in the same way in all facilities.

10. Sub clause 5.6 should relate to existing facilities only.

AS2118.1 should not override the concessions/exemptions or requirements of AS2118.4 for new buildings or new building work.

The option for new building works should be addressed via a fire engineered alternative solution to substitute the less onerous concealed space sprinkler protection requirements outlined in AS2118.1 in lieu of complying with AS2118.4. .

11. Sub clause 5.8 needs to recognised that many RAC facilities have other building uses (i.e. hydrotherapy pool, community facilities, men's shed, chapel and the like) attached and incorporated within the main RAC facility. These uses, which can often draw a separate BCA classification (i.e. Class 9b), are not always detached as suggested by the draft Standard.

Subject to appropriate fire separation between sprinkler protected and non-sprinkler protected areas, the Standard should not:-

- (a) restrict sprinkler installation concessions to detached buildings only, and
- (b) restrict sprinkler installation concessions to non-habitable building (or part) only – whether the ancillary use (attached or detached) is habitable or non-habitable or irrespective and superfluous.

The focus of the upgrade program is not considered to relate to such ancillary use parts of an existing RAC.

It is considered that the Standard should focus on the need for sprinkler protection to resident care areas such as sleeping accommodation and the like.

Areas of primary care delivery where “primary care” also needs definition.

Please contact me if you would look more information or further feedback into any of the issues raised in this submission.

Yours sincerely



Jill Brookfield  
Executive Officer