

Trim Reference: H17/7238

Date : 31/01/2017

To: Better Regulation Division, Department of Finance, Services and Innovation

We thank you for the opportunity to provide feedback on the Draft Environmental and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017.

NSW Health is supportive of the proposed changes aimed at strengthening fire safety requirements in new and existing buildings with the following comments:

The relevance of the proposed changes to Crown Authority (Health) projects is requested to be clarified:

The changes proposed in general are predominately relevant to the Complying Development Certificate (CDC), Construction Certificate (CC) and Occupation Certificate (OC) (Part 4A) process under the EP & A Act 1979. The Part 4A statutory process and requirements is NOT applicable to Crown projects, i.e. Construction and Occupation Certificates in particular do not relate to Crown developments.

The involvement of competent fire safety practitioners in certain specialist fire safety functions:

The Competent Fire Safety Practitioner guidance is supported but a clear description is necessary for the role, otherwise the introduction of a Competent Fire Safety Practitioner could see the certification process lose accountability and be performed by unsuitable person/s. This should be addressed in the short term and prior to the co-regulatory accreditation framework being prepared as the definition is still open to interpretation.

For example the current description that an accredited person under Building Professionals Board Accreditation (BPB) Scheme is not conclusive. Accreditation levels must be set as a prerequisite and also the requirement for accredited persons to disclose any limitations/restrictions they have on their accreditation should be mandatory. At present it is an expectation only by the BPB that accredited persons will disclose accreditation restrictions which is not consistent with current industry practice.

Fire Safety Managers (FSMs) and Fire Safety Officers (FSOs) are currently used by LHDs for assessment, inspections and issue of Annual Fire Safety Statement (AFSS). Whilst the reform [Clause 167A] has had a change within legislation, the responsibility of works is currently still nominated by the building owner (*“any person who, in the written opinion of*

the relevant building owner, is competent to perform the fire safety assessment functions under those Divisions is taken to be a competent fire safety practitioner”, see excerpt below). Currently, FSOs and FSMs have a mixed level of qualifications. It is understood a guide is being developed by Planning and Environment and detailed guidance is requested on how to ensure all FSOs and FSMs have a specified category of certificate or accreditation as necessary.

Department of Planning proposal (relevant sections highlighted): Under “[17]Clause 167A Insert after clause 167: **167A Competent fire safety practitioners** (1) The Secretary may, by order published in the Gazette, recognise a class of persons as **competent fire safety practitioners** for the purposes of this Regulation. (2) Without limiting the classes of persons who may be recognised, they may include: (a) a class of persons holding a specified category of certificate of accreditation under the Building Professionals Act 2005, or (b) a class of persons holding a specified category of certificate of accreditation under the Building Professionals Act 2005 and having some other characteristic or qualification, or (c) a class of persons being a member of a specified professional organisation or body or industry organisation or body. (3) In determining whether or not to make an order under this clause, the Secretary must have regard to any guidelines published by the Secretary about the steps that professional or industry organisations are to follow in order for their members to be considered for inclusion in such an order, including requirements about auditing and complaints handling. (4) Until an order is first published under subclause (1): (a) for the purposes of clauses 130, 136AA, 144A, 146B, 153 and 164B, any person who, in the relevant written opinion of the certifying authority or principal certifying authority, as the case may be, is competent to perform the fire safety assessment functions under those clauses is taken to be a competent fire safety practitioner, and (b) for the purposes of Divisions 4 and 5 of Part 9, any person who, in the written opinion of the relevant building owner, is competent to perform the fire safety assessment functions under those Divisions is taken to be a competent fire safety practitioner.”

Further clarification is requested on how the changes interact with the existing need to provide AFFS and whether or not any scope will remain for Crown Entities to retain any ability to assess their own system, provided they train a suitably qualified person per the legislation.

Requiring submission of plans and specifications for relevant fire safety system work relating to class 2 – 9 buildings:

The proposed changes should reduce the conflict / misinterpretation of the BCA requirements in relation to the class of building where the work is being carried out.

Any form of self or remote certification is not encouraged and is recommended that all certification is via the principal certifying authority (PCA). Various clauses: 153 (2A), (146B (2)). In rural LHDs certification is mostly conducted remotely and assurance that the PCA remains accountable and cannot transfer responsibility to any third party is requested.

With regard to plans and specifications to be kept on site as a mandated requirement, it is recommended this should include provision of electronic access of the specified documents as an option for compliance.

Limited exemptions from compliance with some Building Code of Australia (BCA) standards relating to relevant fire safety system work:

The flexibility that this reform gives around minor works is good and ensures that the works are not cost prohibitive because of significant alterations required to accommodate current fire protection standards. Limited exemptions from compliance to BCA are useful in certain capital work applications.

New critical stage inspections:

Critical stage inspections are supported as this area does not always get enough attention from consultants and builders during the final certification stages and can leave the principal with unwanted fire safety issues down the track.

A more appropriate method of measurement to determine minimum inspection requirements is required for critical stage inspections rather than to include services penetrations for minimum 20% of total floor area of a storey/level. The proposal allows for subjectiveness in calculating the 20% area and it is difficult to interpret for staged projects. Also, the 20% area subject to inspection may include minimal services compared to the balance of the floor area. The draft objective is comprehensive; however the proposed implementation will require further consideration to achieve the intended outcome. It is suggested that either all service penetrations are inspected or otherwise suitably recorded and certified in a register. There is no discussion on implications if the 20% area is not inspected such as preventing the issue of an OC. It is also recommended that a mandatory witness of holistic fire systems tests should be required at critical stage inspection.

It is anticipated that Inspections during construction and rectification works, will be more rigorous for class 2-9 buildings. Tightening of the inspections during construction phase of fire safety systems, can only be positive and should reduce the need of rectification works after construction. However additional inspections will increase project costs and additional costs will need to be factored in.

It is noted that there is no specific mention of Crown or Health land and/or acceptable exemptions i.e. in relation to the level of documentation that Health are required to provide to Council (see below) .

Department of Planning proposal (relevant sections highlighted):

“[27]Clause 190B Insert after clause 190A: **190BPlans and specifications for certain fire safety systems must be kept on site** (1)The principal contractor for building work must ensure that the most recently endorsed copy of the plans and specifications for any relevant fire safety system for the building: (a) are kept on the site of the building work, and (b) **are made available for inspection on request by** the certifying authority, consent authority, **council and Fire and Rescue NSW at the times during which the building work is carried out.**”

It is recommended that inspections need to be conducted by the PCA unless there is robustness around the qualification of a “Fire Safety Practitioner” to encounter any potential risk.

New inspections of fire safety system work relating to Class 2 and 3 buildings by Fire and Rescue NSW (FRNSW) before occupation certificates (OCs) are issued:

FRNSW involvement with inspections of fire safety systems is likely to result in completion / handover delays for projects unless a seamless statutory system can be introduced. The timeline for the need for FRNSWs involvement must be made known well before the 2 days after receiving application for OC is not deemed sufficient. The changes that require FRNSW to attend every site (as required) to inspect fire safety systems is prone to affect the FRNSW resources as well.

NSW Health would be interested to gain an understanding in the reasons behind this clause and particularly its application to Class 2 and 3 buildings.

Requiring fire safety certificates and statements to be in a form approved by the Secretary of the Department of Planning and Environment (DPE):

It is strongly supported that the AFSS be in one form approved by the Department of Planning and Environment.

We trust this submission shall assist in the reform proposal process and we look forward to the review. Please feel free to contact us if further information is required.

Sincerely,

Jan Schmidt

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Governance, Workforce and Corporate | Business and Asset Services | NSW Ministry of Health

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