

To: Review of the Emergency Services Act
PO Box P1174
Perth
Western Australia 6844

29th July 2014

REVIEW OF THE EMERGENCY SERVICES ACT

The Property Council of Australia welcomes the opportunity to submit comments on 'Chapter 6: Emergency Services in the Built Environment' of the *Review of Emergency Services Act*.

The Property Council of Australia is the leading advocate for Australia's property industry. It counts the bulk of the nation's major investors, property owners and developers – as well as the industry's professional service and trade providers – amongst its members.

The Property Council strongly supports measures that ensure the protection and safety of building tenants, the public and emergency services personnel. As a result, the Property Council strongly supports the advisory role played by the Department of Fire and Emergency Services in the built environment and the proposals put forth in the Emergency Services Act Review for it to retain that role.

The Property Council does NOT support any measures contained in Chapter 6 that expands the current powers of DFES in the built environment beyond that advisory role. Please find below the Property Council's position on each section of Chapter 6.

6.1 FES COMMISSIONER'S POWERS AT THE BUILDING PERMIT APPLICATION STAGE

The Property Council supports the preferred option in the concept paper that DFES continues to have an advisory only role. There are concerns, however, that the Property Council has regarding the terminology used.

As stated in Ch. 6.1 of the concept paper, 'DFES uses the detailed plans to offer advice and provide an assessment of compliance with DFES operational requirements.'

Using the terms 'compliance and 'requirements' in this situation are exceptionally misleading and may cause confusion.

As the 'operational requirements' are advice only, they should be referred to as guidelines. They cannot be 'requirements' if there is no requirement to follow them. To suggest that plans are 'non-compliant' with 'requirements' generates a misleading impression for tenants, purchasers and even developers themselves.

Further, issuing a statement that the building plans and specifications are 'non-compliant' during the process of the Certificate of Design Compliance being signed is destined to lead to confusion and misunderstanding.

Where a judgment is made by the DFES that the plans and specifications of a building do not meet the operational *guidelines* of DFES, there should be an avenue open to appeal this decision to an independent arbitrator or facilitator.

6.2 REQUIREMENT FOR FES COMMISSIONER APPROVAL PRIOR TO THE ISSUE OF AN OCCUPANCY CERTIFICATE

The Property Council supports the preferred option in the concept paper, that the FES Commissioner is not able to prevent the issue of an occupancy certificate. There are sufficient requirements set out in the *Building Code of Australia* and the Western Australian *Building Act 2011* and *Regulations 2012* that already must be met for the issuing of an occupancy certificate, which ensure the safety of the wider community and fire crews.

6.3 THE FES COMMISSIONER'S POWERS OF INSPECTION

The Property Council does NOT support the preferred option that the FES Commissioner may inspect premises and take certain action if there is potential danger to life or property from a hazard that DFES is responsible for or due to a failure to meet DFES operational requirements.

It is not appropriate for the FES Commissioner to be able to use a failure to meet DFES's operational guidelines as a justification for inspecting premises and taking certain actions.

The test for whether or not the FES Commissioner may inspect premises should be 'where in the reasonable opinion of a qualified fire engineer, there is potential danger to life or property from a hazard that DFES is responsible for.'

The FES Commissioner should be required to provide at least three days' notice of an inspection.

6.4 REQUIREMENTS FOR OWNER/OCCUPIER TO TAKE CERTAIN STEPS

The Property Council does NOT support the preferred option that the FES Commissioner has the power to require the owner/occupier of premises to prevent or mitigate the effects, or potential effects, of any incident.

Should there be certain requirement necessary to prevent or mitigate the effects, or potential effects, of any incident, DFES should move to have these requirements be included in the *Building Code of Australia* or the Western Australian *Building Act 2011* and *Regulations 2012*.

While it is appropriate for DFES to be able to make recommendations for owners/occupiers to take certain steps, it is not appropriate for DFES to be empowered to enforce requirements for buildings that go beyond what is required in the *Building Code* and other existing legislation.

6.5 POWERS OF EVACUATION, CLOSURE AND USE OF FORCE

The Property Council does NOT support the preferred option of granting to the FES Commissioner or an authorised officer the power to evacuate, close and use force in the event of a potential danger to life or due to failure to meet DFES operational requirements.

Enabling the FES Commissioner or an authorised officer to evacuate, close or use force due to a failure to meet DFES operational requirements would be completely unacceptable and firmly move DFES from its advisory role in this space. Non-statutory guidelines should not be grounds on which it is possible to evacuate, close or use force on premises.

Regardless of the motivation behind granting such powers to the FES Commissioner and their authorised officers, it would be creating a situation far too open to improper use, and engender a significant degree of mistrust towards the FES Commissioner in the property industry.

The Property Council supports the FES Commissioner retaining their current powers of evacuation and closure in respect of public buildings only, as set out in Section 33A of the *Fire Brigades Act*.

6.6 PUBLICATION OF DFES OPERATIONAL REQUIREMENTS

The Property Council supports the preferred option to publish a document of operational requirements (guidelines not set in legislation).

The publication of DFES's operational requirements (which should be referred to as guidelines) is absolutely essential.

Members of the Property Council have indicated that in their conversations with representatives from DFES, there seems to be a lack of consistency as to what the guidelines actually are. Having a publication that sets out what those guidelines are will remove the confusion that currently exists as to what DFES actually expects.

COMMENTS NOT RELATED TO A CONCEPT PAPER OPTION

The Property Council recommends the establishment of the registration of fire engineers in Western Australia to provide the certification of fire safety. DFES would have a role in auditing these specialists, but its advisory role in the building permit and occupancy certificate stages would no longer be required.

The registration of fire engineers would enable the certification of a building or tenancy's fire safety by a qualified specialist, who possesses the necessary skills to make a professional judgment.

Fire engineers are highly qualified, specialists with post graduate training in fire engineering and possess the expertise necessary to make informed judgments on fire safety design.

The Property Council thanks you again for the opportunity to make comment on the policy. If you would wish to discuss this further, please contact our Policy Advisor Rebecca Douthwaite on 9426 1203 or at rdouthwaite@propertyoz.com.au.

Yours sincerely,



Joe Lenzo
Executive Director

Property Council of Australia

Ground Floor Parmelia House
191 St Georges Terrace
Perth WA 6000

P: +61 (8) 9426 1200

F: +61 (8) 9226 2865

ABN 13 008 474 422

E: wa@propertyoz.com.au

www.propertyoz.com.au