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AED Project Team
Department for Health and Wellbeing
Adelaide, South Australia 5000

Health.AutomatedExternalDefibrillators@sa.gov.au

Dear Minister Picton,

The Property Council welcomes the opportunity to provide feedback on the *Draft Automated External Defibrillators (Public Access) Regulations 2024*.

The Property Council of Australia is the leading advocate for Australia's largest industry – property.

Our industry represents 13 per cent of Australia's GDP and employs 1.4 million Australians. Property Council member organisations are investors, owners, developers, builders, and managers of real estate across all major asset classes including commercial, office, residential, retirement communities, purpose-built student accommodation, industrial, hotels and more.

This Act and the subsequent Regulations will directly impact our members and the assets they have a stake in across South Australia.

Ensuring the obligations imposed by these regulations are clearly understood and practical to enable compliance with the intent of this legislation is critical.

Our internal member working group, who considered these regulations, consists of representatives from retail, commercial, office and industrial property. They reviewed both the Regulations and the Best Practice Guide.

We offer this feedback in a spirit of collaboration and thank you for your consideration of this submission.

A handwritten signature in black ink, appearing to read "Bruce Djite".

Bruce Djite
SA Executive Director,
Property Council

Feedback on the Draft Regulations

Explanatory Guide

In providing feedback to the *Automated External Defibrillators (Public Access) Regulations 2024*, our members engaged with the “Explanatory Guide” as a user-friendly means to engage with the Regulations and the obligations they seek to enforce. Our commentary chiefly references that document.

General

Members of the AED Project Team may recall that shopping centre owner members with large-format retail tenants raised concerns in relation to the practicality of compliance with the Act, or being held responsible for compliance with the Act. This was because of the strict leasing arrangements in relation to access within tenancies. Their concerns related to compliance in relation to access, installation and maintenance of these devices within stores.

As the Bill has now been enacted and will be in force for private landlords from 2026, the owners of these assets would like the regulations to clarify whether AED Devices that may already be installed and are being managed within some of these tenanted spaces (by the tenant and not the landlord) would contribute to the overall count required to satisfy the requirements of the Act and Regulations.

Members do not support a situation where a tenant’s devices do not contribute to the overall count of devices in each building. They would like to see tenant’s devices included towards the overall count in meeting the compliance thresholds of a building that falls under the legislation. This will go some way to reducing the burden imposed by the Act for these members and avoid unnecessary duplication.

Proposed Regulation 4

The Property Council supports the exclusion for carpark. The rationale given for their exclusion is “due to the transient nature of a carpark.” Members asked for more clarity on what this precisely means and questioned whether any other property classes may qualify as being considered “transient” for the purpose of the Regulations and may need to be considered for exclusion. It was noted that often people find themselves alone in a car park and whether this factor was considered.

Proposed Regulation 5

As this draft regulation relates to vehicles, members of the Property Council have no comment.

Proposed Regulation 6

Members of the Property Council did not raise any comments or objections to this proposed Regulation.

Proposed Regulation 7

In relation to this proposed regulation, members did raise some concerns.

In relation to the meaning of 'relevant areas' expressed in Regulation 7a(i), members expressed issue with the ability to easily, practically and accurately calculate 'floor space' in stairwells and lift shafts. From 7a(ii) they questioned whether it was practical or necessary to include external balcony and verandah space in the calculated areas as well as internal locked storage rooms, toilets and lifts.

External shopping strips on high streets were also raised. It would be useful to get clarity whether shops like these are included. Often, they are adjoined to one another but may have disaggregated ownership structures.

7b refers to the exclusion of gardens, pathways and driveways. Property Council members support this and indeed in the case of broadacre retirement facilities this is a sensible carve-out.

A Retirement Living member raised whether a pergola in a garden, which is an undercover area would need to be calculated as part of a retirement facility's building or whether it is deemed as a structure that pertains to the garden/outdoor area and therefore would be excluded. We would advocate for garden pergolas to be excluded from calculations.

Proposed Regulation 8

Retirement Living members queried whether spaces within a retirement village that are dedicated to recreation or may be dedicated some of the time to activities that involve 'physical exertion' fall under this regulation, and whether these spaces would be defined as a 'prescribed sporting facility.'

Proposed Regulation 9

Property Council members have no comment in relation to this Proposed Regulation.

Proposed Regulation 10

The Property Council supports a scale of maximum devices to apply for brackets of publicly accessible floor area. This is a positive development.

One asset class worthy of special consideration is large warehouse storage facilities where people rent spaces to store their private goods. The public do have access to these buildings as customers but are unlike a retail store or shopping centre with high frequency foot-traffic given the nature of their business. It is reasonable to question whether the volume of AED devices required by the Act/Regulations for these buildings is vastly disproportionate to the risk.

While a discount rate to the number of AED devices that scales with the applicable area is certainly welcome, the Property Council questions whether the volume of AED devices required in this type of building/business is warranted given the risk profile. Again, if tenants of these facilities already

have devices installed, we suggest these should count towards the number of devices required to comply with the Act and Regulations.

In relation to the risk profile more generally, members asked Property Council to prosecute and put on the record the question as to whether medical experts were consulted in formulating the legislation. Whilst the Property Council supports the intention of the Act, members questioned whether there was a consensus medical expert view on whether the compliance requirements of the Act are proportionate to the risks that the new law seeks to mitigate.

Proposed Regulation 11

Members queried whether the exclusion of schools from the ambit of the definition of a *relevant designated building or facility or prescribed building* also extends or extends in part to other educational buildings (childcare, private educational institutions, technical colleges, universities etc). The reason given for the exclusion is “to ensure all schools apply the obligations of the Act in a consistent manner.” Is the consistency of application something the Department and Minister sees as being important in other educational settings? Clarity on this point is welcome.

Proposed Regulation 12

The proposed regulations in relation to placement, accessibility and installation of an AED are clear. It will be important to provide several illustrative examples and visual case studies to support this regulation in the Best Practice Guide.

Proposed Regulation 13

This proposed regulation underlines that so long as the AED device has a degree of permanence to its location or placement then it is deemed to be compliant with the Regulation. This seems reasonable and clear to the members we consulted including that the Regulation allows for instances of movement when the device needs to be moved if it is required for use. Members did pose the question as to whether moving the *device for the purposes of training* may also need to be considered in the Regulations and would support that.

Proposed Regulation 14

As this proposed regulation relates to vehicles members of the Property Council have no comment.

Feedback on the Best Practice Guide

General

Feedback in this section will refer to page numbers from the draft Best Practice Guide.

Page 3

Under Section 1.1 “Who does the Act apply to?”, the table refers to ownership types/categories in the left-hand column.

The top left box should probably be labelled as “ownership type” instead of a reference to Section 3 of the Act. The reference to Section 3 should be in the general text above to help explain the table below which should enlighten building owners as to their obligations.

Members commented that the third column should have more examples and be those that are commonly understood. Not all owners of buildings may understand what category of ownership they fall into. To help owners understand if their land is unalienated or alienated from the Crown by grant or not in fee simple there needs to be written into the guide some way to access that information for the common reader so they can determine the ownership structure their building falls into. This language, while legally accurate may, not be accessible to everyone who owns a commercial building that falls under the Act and Regulations. Any effort to simplify or unpack this jargon would be most welcome. Perhaps a case study would assist in this regard?

Page 4

Under Section 2.1 “Designated Buildings or Facilities”, members offered the following comments.

Members felt that the examples provided in the right-hand column in some cases were quite obscure and a more exhaustive list of common building uses or types would help a greater number of asset owners. For example, an “off-track betting shop/venue” may be relevant but are there better examples that could be used to explain the requirements for gambling venues?

The *example* used for retirement villages in this table is really an *exemption*. We strongly recommend a column be added for exemptions so that owners can quickly see whether they do or do not fall in the Act or whether any carve-outs apply given the unique aspects of their building. For instance, the Fringe tent is an *exemption* and should be not in an *example* column either.

There was some confusion as to whether the inclusion of schools was meant to be in the table given proposed regulation 11. If it is meant to be included, the Department should address the confusion this causes in the document. The confusion stems from the proposed regulations exclusion of schools from the ambit of the definition, yet it appears in this table as an inclusion which sets out the designated buildings or facilities under Section 4 of the Act.

Page 6

Members pointed out the second blue call out box, that explains the meaning of publicly accessible floor area in the context of a building or facility on land used for commercial purposes. The opening

paragraph goes on to explain that unobstructed access includes access...*"obtained by payment of money."* This is distinguished from a "public building or facility" as outlined on page 5 where public accessibility is defined as to include access "whether or not admission is obtained by payment of money." While the distinction between building types is clear, the guide could better lay out these checkpoint questions or have a table that compares the two kinds. A visual layout that assists an owner to be sure what category they fall into and what their obligations are would be helpful. We acknowledge the flow chart on page 12 attempts to address this. However, members felt this flow chart could be brought forward in the document. We will elaborate on the flow chart later in this submission and how we think it could be improved.

Pages 7 and 8

Section 2.7 of the guide contains a table across pages 7 and 8 that outlines buildings or facilities that fall outside the scope of the Act. The last row exempts *"A building or facility where the entire building or facility is not accessible to the public (this does not apply to a designated building or facility)."* The examples include warehouses (where access is restricted to only employees/contracts) and abattoirs.

Given the above, members have posed that certain industrial and manufacturing facilities should be included here too. Members queried why abattoirs specifically were used as an exemption example, and we suggest a more generic or common land use would better capture the intent.

We also question whether delivery drivers were considered contractors. This opens the question as to whether a contractor in this context refers to someone who a supplier of contracted services and works principally on the site or could be someone (like a logistics contractor) who may have access to the site but only enter and leave the premises to receive or take delivery of goods or services.

Pages 8 and 9

Section 2.8 defines that an AED should be equipped with two sets of defibrillation pads, shears and a razor. Members queried whether shears and razors were standard inclusions. Based on our interactions with a large device manufacturer who spoke to their product only, we understand that their distributors are responsible for this and that distributor packages usually included shears and razors. Page 9 refers to signage. Members also asked whether signage indicating the location of an AED generally comes with product. We note that page 9 provides a link to the SA Health website saying, *"signage templates are available for optional use."*

Page 10

In Section 4.3 referring to placement and accessibility of AEDs when determining a location poses "a few questions to consider."

The first point is "What is the highest risk area?"

This question should be clarified. As it is currently written "highest risk" could be taken to mean an owner is charged with anticipating the mostly likely place an AED may be required for someone who suffers a cardiac arrest. Highest risk could also be taken to mean where there is greater risk to public safety in placing an AED. Members suggested this language needs to be clarified and potentially placed in the regulations themselves to ensure clarity and compliance.

Page 11

Notes that authorised officers have the power to require a person to produce documents for inspection. We assume this refers to Section 15C of the Act.

No clarity is given in the guide in terms of the requirement for a person to produce documents as to who that person is (we assume the owner/landlord), what timeframes apply in terms of the warning given to produce such documents, what these documents are and what constitutes “*force as is reasonably necessary to gain entry*,” where entry is refused. On a practical level, we assume that such documentation would need to be held by an owner or landlord since they are responsible for compliance. Where owners live interstate or indeed overseas a sensible solution must be arrived at to ensure this can be practically managed. Of course, tenants are the ones who usually occupy commercial premises. If they refuse entry to an authorised officer do the repercussions fall to the tenant or the owner?

This further highlights the Property Council’s issues with placing the onus on owners to install, maintain and comply with the Act rather than the tenant. Members would appreciate greater clarity in this part of the guide as we do anticipate issues. In commercial buildings, members are happy to comply with the regulations where it is a landlord-controlled area. Where leased by a tenant and within the leased premises, despite the legislation now in place, members have asked us to re-advocate that they feel it is more appropriately managed and controlled by the tenant.

Regarding authorised officers, more questions arise. Are authorised officers, ‘officers of the state’, or potentially outsourced contractors? The Act is low on detail in terms of the requirements for identification of an officer. Whilst an outlier probability, the opportunity for people to pose as officers fraudulently is a possibility. Given they are authorised to take photographs, films, audio, video or other recordings this is a concern. We would like to see stringent rules, which protect the privacy of landlords in terms of this documentation. We also assume there would be heavy penalties for impersonating an officer. We welcome clarity on this.

Members were keen to understand if there is any assistance available to help owners understand whether they are compliant and are applying the Act correctly in their sites. Is this the role of authorised officers? If an owner is compliant, is there a certificate or some kind of documented assurance or recognition to protect them. If they are not, but the erroneous application was made in good faith is there a window of time allowed to correct the defect/non-compliance?

Additionally, page 11 also speaks to the Minister’s powers to grant exemptions. Members would like some clarity as to how the process by which an owner seeks an exemption.

Page 12

The flowchart “determining how many AEDs are required” is an important part of the guide. As above we have argued that it should be brought forward in the document.

The first question, “is the building or facility considered a designated building or facility under Section 4 of the AED Act?” probably should be in a blue box for design consistency. The flow chart may be improved by also pointing readers as to how they can determine the answers to the questions in blue boxes with page references. These should lead to pages with visually clear processes that walk a reader through to a determination of the answer.

Provides numerous case studies. We applaud this and would encourage more examples across more asset classes. Of course, an exhaustive list would be impossible but insofar as possible as many different classes of buildings should be included. For example, Purpose-Built Student Accommodation, Retirement Villages, Hotels, Industrial and Logistics Facilities, Business Parks, Office buildings etc.

These could be written in a more consistent fashion so that the mental process of determining the application of the law for a site is clearer.

For example:

“Mary owns a retirement village. To determine whether the Act applies to her village, she has consulted her lawyer who has reminded her that the land ownership is land alienated from the Crown by grant in fee simple. Given the buildings and facilities of the land are privately owned, have a mix of shared amenity and private residences she determines (with reference to the table at 2.1) that her village is a designated building or facility and so she must install at least one AED. To figure out if she needs to install more AEDs she examines her site in detail. The retirement village is Xm2 in total area, consists of several privately licensed dwellings and houses a café and wellness centre where residents sometimes do physical activities as well as conduct activities such as book club and happy hour...etc.”

We also note this section in the shopping centre example says that “although not a mandatory requirement, where practicable, consideration should be given to even distribution throughout the complex.” Without understanding the departments rationale for this position, members expressed that the regulations should probably require devices to be distributed evenly where possible otherwise the intent of the legislation is undermined.

Closing

The Property Council thanks the Department for the opportunity to be consulted on the draft Regulations and supporting documents. We are more than willing and able to assist with any queries to improve the legal framework moving forward given the high touch impact the legislation and regulations will have on our membership.