

**AGED CARE INDUSTRY COUNCIL (NSW & ACT)  
BUILDING COMMITTEE**

**Submission to the Productivity Commission**

**Inquiry into Caring for Older Australians**

Jill Pretty  
Chief Executive Officer  
Aged & Community Services Association  
of NSW & ACT Inc  
PO Box 3124  
RHODES NSW 2138

Charles Wurf  
Chief Executive Officer  
Aged Care Association Australia  
- NSW  
PO Box 7  
STRAWBERRY HILLS NSW 2012

The ACIC (NSW & ACT) Building Committee is an initiative of the Aged Care Industry Council (NSW & ACT) comprising the Aged & Community Services Association of NSW & ACT (ACS) and Aged Care Association Australia-NSW (ACAA-NSW). Together the two industry associations represent over 90% of residential aged care services in NSW.

The purpose of the Committee is to provide technical advice to the Aged Care Industry Council (ACIC) on the Building Code of Australia, Australian Standards, planning considerations and associated building and planning instruments relevant to residential aged care and retirement villages and to advise on the provision of training and education in the area of building work.

The membership of the Committee comprises:

- Four industry representatives (two each from ACS and ACAA-NSW).
- Six experts from architectural, building or planning backgrounds.
- Two Departmental representatives (Australian Government Department of Health and Ageing and NSW Department of Planning).

The Committee was formed in 1998 in response to the certification requirements of the *Aged Care Act 1997*. The Committee has been very proactive in informing the Department of Health and Ageing (DoHA) on issues affecting the building of residential aged care nationally, as it is the only Committee in Australia with the specific building expertise.

DoHA has sought the advice of the Committee in the review of the certification instrument in 1999 and the changes introduced in 2008. The Committee was also very proactive in the introduction of the Building Code of Australia (BCA) 9C classification.

The cost of building residential care has increased over the past 12 years due to increased requirements by the Federal Government and increased expectations of consumers.

The Committee requests that the Productivity Commission consider the following points which they believe would improve the efficiency and reduce costs in future building of residential aged care.

### **Certification**

Certification of buildings was introduced in 1997 under the *Aged Care Act 1997* and formed part of the requirements for providers to obtain full accreditation. The Committee has strongly voiced its concerns about this instrument continuing as its purpose to upgrade all buildings and improve fire safety and privacy and space requirements has been achieved. The Committee believes that Certification has run its course and is no longer valid. The building requirements for residential aged care should default to the BCA.

Another concern about the certification instrument is that it is now inconsistent with the environmental sustainability initiatives, for example the instrument is very prescriptive about cooling and heating. The use of air conditioners is weighted more heavily than open windows at a time when the Government is considering reducing carbon emissions and the cost of electricity is predicted to increase by 40% to 60% over the next few years. This is inappropriate.

We have recently been informed by DoHA that it has accepted and now intends to action the recommendation by the Productivity Commission in their review of regulatory burdens and end the dual regulation of aged care buildings by both the Department, through Certification, and the Building Code of Australia. The substance of the change would be to include the privacy and space requirements into the BCA and thus do away with the need for a separate Certification process.

DoHA is seeking any advice on this matter which could inform their Proposal for Change to the Australian Building Codes Board including:

- Specific benefits that could be achieved
- Other possible benefits
- Any costs or problems that may need to be factored in.

The ACIC Building Committee has provided the following advice which it wishes to bring to your attention with a recommendation that the Productivity Commission reinforces the requirement to end this dual regulation.

The concept of removing the Certification Instrument and inserting provisions pertaining to Privacy and Space into the BCA certainly has merit and would remove a lot of the inconsistencies, subjective interpretations and other evident problems the industry presently faces under the current Commonwealth Aged Care Certification regime.

It makes sense, especially for new buildings which currently need to comply with both the BCA and the Aged Care Certification Instrument which are often at odds with each other.

The primary concerns at this point in time with the proposal to transfer the current (mandatory) Privacy and Space provisions from the 2008 Instrument to the BCA is the possibility that DoHA's fundamental objectives of such provisions may be lost in the application of the BCA during the design, certification and construction stages of any aged care development.

To elaborate on this point it is necessary to understand a few characteristics of the BCA:

1. The BCA is, first and foremost, a *performance based document*. This means that the Code contains primary performance requirements to achieve the BCA objectives for the various sections of the Code. To comply with the BCA in this regard you can *either* satisfy the 'prescriptive' deemed-to-satisfy requirements *or* otherwise prepare an 'alternative solution' to the deemed-to-

satisfy (DTS) requirements which demonstrate compliance with the primary performance requirements.

The current (mandatory) Privacy and Space requirements in the Certification Instrument are prescriptive with respect to maximum number of residents per room and minimum ratio requirements for toilets and showers. The reality is that it would be unlikely for most new aged care facilities to be designed and constructed outside these prescriptive Privacy & Space parameters purely from a community expectation and marketing perspective. The fact however is once these requirements are written into the BCA, they become subject to performance assessment. In other words an Approved Provider, architect, certifier, builder or the like could prepare an 'alternative solution' to the DTS provisions of the BCA with respect to the Privacy and Space requirements if they consider that, say three residents per bedroom or five residents to a single WC, as an example, was acceptable and met the relevant BCA Performance Requirements based on an argument formulated in this regard. The alternative solution would be determined by the certifier and, if accepted, could result in residents' bedroom numbers and residents:amenity ratios being provided outside the prescriptive limitations imposed under the current Instrument. This would potentially result in erosion of the fundamental objectives of DoHA in imposing prescriptive restrictions on items such as number of residents per room and maximum ratios for toilets and showers.

2. *BCA is not intended as a retrospective document.* Therefore if there are any existing aged care facilities that, due to whatever circumstances, do not comply with the Privacy and Space requirements as proposed for the BCA, there would need to be other suitable statutory mechanisms in place to cause necessary retrospective upgrade works to be done to meet the minimum Privacy and Space requirements.

Buildings are required to comply with the BCA that was relevant at the time they gained approval - and as most aged care facilities now comply with the Privacy & Space requirements of the instrument, there should be no real issues. But if unexpected upgrades for older buildings were required, such as retro-fitting sprinkler systems over the years, it is unclear under the BCA how this would be addressed.

The move to replacing the Certification instrument would also result in cost savings, as currently there is a need to have a BCA consultant and a certification consultant. Under this process there would only be a need for one consultant..

Since the introduction of certification there has been an increased need to explain to the stakeholders why an approved provider chooses to lose some certification points - 100/100 is often thought to be the result of a new building certification process and questions are raised as to why this does not happen. This would not be necessary if the BCA was used and the building deemed compliant.

The other benefit is that the aged care industry could introduce innovative ways of keeping residents comfortable without losing points as is now the case for not having individually controlled air conditioners.

### **Recommendation**

That the BCA code determines the requirements for building of aged care facilities and consumer demand determines the space and privacy requirements. It is important that a transfer to BCA is subject to the recognition of the issues raised in this submission

### **Disability Access**

The Australian Standard for disability access has recently been reviewed. The code only relates to people up to the age of 65. There is no access code for people over the age of 65. It is suggested consideration be given to including an access definition for people over the age of 65 in the BCA, rather than developing another Australian Standard. As the BCA overrides the Australian Standard this would be an easier option. It is also highlighted that the access code for people under 65 was inappropriate for aged care facilities which they are currently required to comply with as there are additional cost for the requirement of engineered solutions. Examples are the position of the toilets and handrails.

### **Recommendation**

That the BCA contains a definition that excludes access requirements for residents of aged care buildings (or parts of such buildings) which are subject to operational and function practices that ensure staff assistance is provided to residents as may be required.

### **Council Levies**

In all States and Territories, local government imposes charges on new developments for the additional use or supply of infrastructure such as roads, use of parks, library and other community services. Examples of these charges in NSW are \$500,000 in the Tweed for a 41 bed extension on an existing facility, Bankstown \$400,00 on a new 140 bed development and \$500,00 on a new 100 bed facility in Maitland. These costs show there is little consistency in these levies in relation to the size of the development. In NSW, local governments have the option to waiver these charges, but this rarely occurs and as demonstrated in the examples add considerable costs to the building of aged care facilities. Some aged care facilities have introduced sustainability actions such as recycling of water and there has been no recognition of these initiatives by a reduction in the levies due to reduced use of the infrastructure. Frail older people make very little use of local community services once they require the level of care provided in a residential facility. Concern has been raised that this was becoming purely a revenue raising exercise by local government authorities.

### **Recommendation**

That consideration is given to excluding aged care facilities from these levies or they are greatly reduced and there is some consistency in the charges across local government areas and the States and Territories.

### **Increasing Cost of Utilities**

The increased cost of water, electricity and gas are well recognised as areas which significantly impact on the increasing cost of living. In aged care these increases have not been recognised by Government in the indexation of care subsidies. There

is also an added burden of increased cost on rural and remote facilities. For example in NSW if you are able to access electricity from Integral Energy in the Sydney region the cost is 4.26c per kilowatt hours, but through rural approved providers it costs 9.16 cents per kilowatt hours, double the price.

Inconsistency in cost of water also imposes added costs to rural approved providers. For water consumption of 6300KI in a quarter, the cost in the Hunter NSW is \$3,024, in Wyong NSW \$11,214 and in the ACT for the same consumption \$24,570. The funding in each area is identical and there has been no recognition of these varying costs by the Government. These are a few examples of the hidden cost burdens on approved providers.

#### **Recommendation**

That the Commission highlights these irregularities with a view to standardising costs for residential aged care or providing additional subsidies to meet these varying costs especially in rural and remote areas.

#### **Residential Aged Care is Deemed an Essential Service**

Over recent years, there have been several environmental disasters such as severe floods in Queensland and NSW, and bushfires in ACT and Victoria. Residential aged care is not deemed as an essential service and therefore has no priority to emergency services. With an ageing population and the increased frailty and dependency expected with increasing age in the future, serious consideration needs to be given to deeming aged care facilities as an essential service allowing them equivalent recognition and access to emergency services as well as a priority to the restoration of electricity and like services when these have failed.

#### **Recommendation**

That Residential Aged Care is deemed an essential service.