

Inquest into the death of Nicholas Peter Johnson

Mr Johnson died on 31 July 2011 from smoke inhalation arising from a fire after attempting to refuel a petrol generator. The generator was used as a secondary source of power for the farmstay accommodation where Mr Johnson and his family and friends were staying.

The fire was caused either: as a result of Mr Johnson spilling fuel on the generator allowing fluid or vapours to contact the hot engine block and exhaust; or by static discharge igniting fuel vapours due to the build up of static charge caused by the movement of Mr Johnson's fleece and polyester jacket and the movement of a large quantity of fuel through a plastic funnel into the generator tank.

Coroner John Hutton delivered his findings of inquest on 7 February 2014.

The departments named in this response will provide implementation updates until the recommendation is delivered. Further information relating the implementation of recommendations can be obtained from the responsible minister named in the response.

Recommendation 1

Relevant state and local government bodies consult with a view to considering regulating tourist accommodation such as farmstays from a fire safety perspective. A specific focus should be on ensuring that regulation is not limited by the number of guests, by the way in which accommodation is booked, or the relation of the guests to each other. Specific consideration should also be given to ensuring that where a property is powered by the use of a portable or fixed generator, the generator is housed appropriately and there are adequate safety systems in place where guests are expected to operate them. It is suggested that relevant bodies may include: Department of the Premier and Cabinet; Department of Housing and Public Works, Department of Tourism, Major Events, Small Business and the Commonwealth Games; Department of Local Government, Community Recovery and Resilience; Workplace Health and Safety Queensland; and Queensland Fire and Rescue Service. It is suggested that the Department of Housing and Public Works be the lead agency.

Response and action: Agreed and implemented.

Responsible agency: Department of Energy and Public Works (Former lead department: Housing and Public Works)

On 20 September 2022, the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement responded:

On 12 November 2020 the Building Legislation and Policy division within the former Department of Housing and Public Works (DHPW) transitioned to the newly established Department of Energy and Public Works (DEPW).

The former DHPW had consulted with relevant state and local government bodies, as recommended, with a view to considering regulating tourist accommodation from a fire safety perspective. During the consultation, some parties raised that further consideration of the wording of the Class 3 building classification definition in the Building Code of Australia (BCA) within the National Construction Code (NCC) may be warranted.

The NCC groups buildings and structures by the purpose for which they are designed, constructed or adapted to be used, rather than by the function or use they are put to, assigning each type of building or structure with a classification. The building classifications are labelled “Class 1” through to “Class 10”. Some classifications also have sub-classifications, referred to by a letter after the number (e.g. Class 1a).

The classification dictates the requirements the building must adhere to. The particular categories of building and their definitions, as written in the NCC, that were considered in responding to this recommendation include:

- Class 1a – a single dwelling being a detached house or one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit
- Class 1B – this can be either:
 - (1) A boarding house, guest house, hostel or the like with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the Class 1b and in which not more than 12 persons would ordinarily be resident; or
 - (2) 4 or more single dwellings located on one allotment and used for short-term holiday accommodation.
- Class 3 – a residential building, other than a building of Class 1 or 2, which is a common place of long term or transient living for a number of unrelated persons, including
 - (a) a boarding house, guest house, hostel, lodging house or backpackers accommodation; or
 - (b) a residential part of a hotel or motel; or
 - (c) a residential part of a school; or
 - (d) accommodation for the aged, children or people with disabilities; or
 - (e) a residential part of a health-care building which accommodates members of staff; or
 - (f) a residential part of detention centre.
- Class 10a – a non-habitable building being a private garage, carport, shed or the like.
- For reference, although not directly relevant to this matter, a Class 2 building is a building containing two or more sole-occupancy units with each sole-occupancy unit being a separate dwelling.

The Australian Building Codes Board (ABCB) assesses any changes to the NCC using the Council of Australian Governments’ principles of best practice regulation. The former Department of Housing and Public Works had sought advice from the ABCB Office on whether the Class 3 building classification definition may require review or amendment to improve fire safety for large *related* groups of people in light of the Coroner’s findings.

The ABCB Office response noted that:

‘The Guide to NCC Volume One states that classification of buildings is a process for understanding risks and a means to categorise buildings of similar risk levels. The reference to ‘unrelated persons’ in the description of a Class 3 building is a recognition that there are additional risks associated with buildings where some occupants do not always have knowledge of, or control over, the actions of other occupants. For this reason, Class 3 buildings have additional fire safety features compared to a Class 1a building.

The ABCB Office response further advised that:

Considering that a Class 3 building can be for long-term living, like a Class 1a building, the determining risk factor between the two classifications becomes whether or not the occupants

are unrelated. The removal of this risk factor from the description of a Class 3 building would therefore blur the difference between these two classifications and create the possibility of buildings that have a similar risk profile to a Class 1a building being classified as Class 3. This could impose obligations and costs disproportionate to the level of risk'

The ABCB Office response also highlighted that:

'The tragic event described in the Coroner's report is unlikely to have been prevented if the accommodation building had been classified as Class 3, particularly considering that the event occurred in an outbuilding that would remain as a Class 10a regardless of the classification of the accommodation building.'

DEPW has reviewed the advice of the ABCB and, supplemented by the reasoning below, agrees that amending the Class 3 building classification definition is not warranted at this time.

DEPW notes that the use of a building is determined at the planning stage and the building is assessed based on the intended use of the building at the time. Any changes to the intended use of a building should be subject to a new planning approval and subsequently building approval in accordance with the change of use, which would capture changes to fire safety requirements correlating to the new use.

A farmstay falls under the use definition of 'short-term accommodation' as defined in the Queensland Planning Provisions. The building regulations applicable for farmstay buildings differ depending on the classification of the building and will likely be either a Class 1b (as set out above), including bed and breakfast style establishments with a total floor area not exceeding 300 metres squared and which does not accommodate more than 12 persons; or a Class 3 building (as set out above), which is a residential building providing long term or transient living for unrelated persons, including hotels, motels, boarding houses, staff or employee accommodation, guest houses and backpackers' accommodation.

For bed and breakfast style accommodation, existing houses are frequently adapted in order to provide paying accommodation for guests. An existing house is normally a Class 1a building (as set out above), and consequently the letting out of different rooms for different paying guests constitutes a change of use and requires a change of building classification, most likely to either a Class 1b or Class 3 building, according to the criteria set out for each above. The change of use and change to building classification can only occur if a building certifier, who is either a local government building certifier or a private certifier, has approved the change and the building, as changed, complies with the building assessment provisions of the new classification. This is in addition to obtaining a report from Queensland Fire and Emergency Services (QFES) on the suitability of a special fire service as defined in Schedule 2 of the *Building Act 1975* for that class of building if required.

For buildings other than Class 1a, the building occupier/owner has an obligation under the *Fire and Emergency Services Act 1990* to have a fire and evacuation plan and to provide general evacuation instructions. Evacuation diagrams must also be displayed in evacuation routes if the building is larger than 300 metres square. More general information can be found at <https://www.qfes.qld.gov.au/buildingsafety/Pages/owner-occupier.aspx>.

As outlined above in the Government's response to this recommendation, to assist farmstay operators to understand their obligations and improve the safety of farmstay guests, the former Department of Housing and Public Works, in conjunction with the former supporting agencies referred to in the recommendation, released a guideline for farmstay operators in July 2016 (<https://www.hpw.qld.gov.au/SiteCollectionDocuments/FarmstayAccommodationGuideline.pdf>). The guideline provides general information and advice about many of the obligations that farmstay operators need to be aware of, with a particular focus on those that ensure the safety of farmstay guests. Information for farmstay operators included in the guideline captures planning requirements, building regulations and building fire safety, fire safety (for accommodation buildings, outbuildings/sheds and plant and equipment), electrical and gas safety, child safety, running a farmstay business (including tourism licenses and permits, and industry associations), and useful links and contact information.

It is considered that the consultation undertaken by the lead and supporting agencies, and the production of the guideline for farmstay operators, adequately address the Coroner's concerns in this recommendation.