

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: the recommendation is agreed in part and implementation is in progress.

Responsible agency: Department of Housing and Public Works (lead) supported by the Department of Tourism, Major Events, Small Business and the Commonwealth Games; Queensland Fire and Emergency Services; the Department of Infrastructure, Local Government and Planning; and Queensland Treasury.

In 22 October 2015 the Minister for Housing and Public Works and Minister for Science and Innovation; the Minister for Education and Minister for Tourism, Major Events, Small Business and the Commonwealth Games; the Minister for Police, Fire and Emergency Services and Minister for Corrective Services; the Deputy Premier, Minister for Transport, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade; and the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships responded:

The following administrative units ('relevant units') have consulted and agreed that improved education and awareness is required with regard to the operation of farmstays and the respective obligations on farmstay operators:

- Department of Housing and Public Works (DHPW) (through Building Codes Queensland (BCQ)) as lead agency
- Department of Justice and Attorney General through the Office of Fair and Safe Work Queensland (OFSWQ)
- Queensland Fire & Emergency Services (QFES)
- Department of Infrastructure, Local Government and Planning (DILGP)
- Department of Tourism, Major Events, Small Business and the Commonwealth Games (DTESB)

A farmstay is defined in the Macquarie dictionary as ‘a holiday spent on a farm, learning about life on the farm and taking part in farm activities.’ Section 216 of the *Building Act 1975* defines farmstay, for accommodation, as ‘accommodation at a farm for paying guests of the farm.’

There are strict fire safety requirements for tourist accommodation such as farmstays contained in the budget accommodation building provisions of the *Building Act 1975* and the classification system of the *Building Code of Australia* (BCA). However, there may be scope for clarification regarding the definition of a BCA class 3 building as it applies to farmstays. At the moment that definition refers to class 3 buildings being used by unrelated persons. It may be appropriate to extend that definition to also clearly cover situations where such buildings are used by related persons. This would then assist to ensure that farmstay accommodation buildings housing more than 12 people who may be related are correctly classified, thus affording more stringent fire safety protection to occupants. This issue will be considered as part of the Review of the *Building Act 1975* and Building Certification in Queensland which is currently being conducted by DHPW. The review will also consider the appropriateness of the penalties for using a building in a way that is not in accordance with its classification.

Local government has primary responsibility for enforcement of building codes, including the BCA. It also has the responsibility of assessing material change of use applications made under its planning scheme with respect to land use, and ultimately, local government has the responsibility of ensuring compliance with its planning scheme. The *Local Government Act 2009* contains a mechanism for oversight of local laws. Similarly, state oversight of a local government’s compliance with the appropriate planning and building legislation is already the subject of detailed mechanisms within the governing legislation. In this respect, any additional oversight of these matters is not deemed necessary.

A key issue is that farmstay operators may need assistance to understand and comply with relevant obligations associated with the operation of a farmstay. To facilitate this process, OFSWQ, DHPW, DILGP, QFES and DTESB will consult to prepare a guideline for farmstay operators, to be promoted through the Local Government Association of Queensland (LGAQ). OFSWQ will use various methods to identify and survey farmstay operators to gather relevant information about the scope of guidance required for farmstay operators in Queensland. At this stage the relevant units consider that the survey questions would be general in nature in order to encourage frank responses.

The proposed guideline will emphasise that farmstay operators are required to seek relevant approvals under state and local government laws which regulate changes in the use of land or buildings. The guideline will further address the identification and management of likely fire risks and hazards in the context of farmstays, and provide advice on the safe use and appropriate housing of generators. In a general sense, OFSWQ regularly provides guidance material and alerts across industry to assist businesses operate safely. Within the context of the proposed guideline, OFSWQ will clarify the intent of the *Work Health and Safety Act 2011* and the role of OFSWQ with respect to

undertakings such as farmstays. It is anticipated that this guideline will be completed and released directly to farmstay operators, and more widely to the general public, by the end of 2015.

Overall, it is envisaged that the proposed guideline for farmstays will support operators by making them more aware of fire safety issues in operating farmstays and the need to comply with relevant laws, with a view to bringing them into the regulatory system. Fire safety improvements amongst operators in this particular type of tourist operation may also have a positive effect on tourist and visitor safety in Queensland more generally. However, as the coroner's report states, where a local government is unaware of the existence of a property, or an unapproved farmstay operating out of a property, authorities are understandably unable to assess or regulate any aspect of the operation, including fire safety. The relevant units may therefore consider the feasibility of the state sharing information it gains about farmstay operations with local governments.

Future action required to progress implementation of this recommendation includes:

- OFSWQ will undertake a survey of farmstay operators.
- OFSWQ, DHPW, DILGP, QFES and DTESB will consult and assist with the development of the proposed guideline for farmstay operators. The proposed timeframe to prepare, publish and disseminate the guideline is end of 2015.

Relevant outcomes from the Review of the *Building Act 1975* and Building Certification in Queensland will be considered further when this information is available.

The Queensland Government updated:

The Office of Industrial Relations (OIR - previously OFSWQ) distributed a draft survey instrument to other relevant units (DHPW, QFES, DILGP and DTESB) for comment. The survey contains questions relevant to the operation of farmstays with respect to work health and safety, building legislation, fire safety, planning and development, and tourism accreditation.

OIR expects to administer the survey to farmstay operators and provide survey results to the relevant agencies before the end of January 2016.

Based on the survey results, all relevant units will draft relevant parts of the guideline for farmstay operators. The proposed timeframe to prepare, publish and disseminate the guideline is July mid-2016.

It is proposed that DHPW will address the following as part of the proposed changes to the *Building Act 1975* and building certification system:

- clarification regarding the definition of a BCA class 3 building as it applies to farmstays
- the appropriateness of penalties for using a building in a way that is not in accordance with its classification.

OIR will undertake a survey of farmstay operators by end January 2016 and share the results with DHPW and other relevant agencies in order to develop and disseminate the guideline.

The Queensland Government updated:

DHPW distributed a proposed outline of the draft guideline for farmstay operators to relevant agencies in February 2016 for comment and input.

In April 2016 the full text of the guideline was put out to all departments/agencies for final review.

The guideline was finalised and approved by the Director-General of the Department of Housing and Public Works for publication in July 2016.

DHPW continues to progress the proposed changes to the *Building Act 1975* which will consider, among other things, the following matters:

- any appropriate action relating to the Building Code of Australia definition of a class 3 building as it applies to farmstays
- the appropriateness of penalties for using a building in a way that is not in accordance with its classification.

On 16 November 2017 the Minister for Housing and Public Works and Minister for Sport responded:

The role of the supporting agencies has been fulfilled with the publication of the guideline for farmstay operators.

The Local Government Association of Queensland was provided with a link to the published guideline to assist where possible in disseminating the guideline to local governments across Queensland.

The issue of the appropriateness of the current building classifications under the National Construction Code was referred to the Australian Building Codes Board (ABCB) for consideration. The ABCB has considered the matter and has provided their views as to why no change is required.

DHPW has investigated the penalties relating to using a building in a manner that was not in accordance with its certificate of classification. It was found that these penalties are already equivalent to those for other higher order offences throughout the *Building Act 1975*.

The department will consider whether any further consultation or action is required to address the coroner's recommendation.

Recommendation 2

Relevant state and local government bodies consult with a view to introducing a compulsory rural numbering system throughout the whole of regional Queensland for emergency response purposes. Mandatory signage at the entrance of farmstays should also be considered. It is suggested that relevant bodies may include: Department of the Premier and Cabinet; Department of Housing and Public Works; Department of Local Government, Community Recovery and Resilience; Queensland Fire and Rescue Service; and Queensland Ambulance Service.

Response and action: the recommendation was not implemented.

Responsible agency: the Department of Infrastructure, Local Government and Planning.

In 22 October 2015 the Deputy Premier, Minister for Transport, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade responded:

Consultation occurred between the former Department of Local Government, Community Recovery and Resilience (now the Department of Infrastructure, Local Government and Planning) and the Department of Natural Resources and Mines. It was considered a compulsory mandatory numbering system and signage was not the approach to take. An awareness campaign aimed at local governments, residents and service providers of the importance of a well-managed rural numbering system was considered to be a better approach.

Officers of the Department of Local Government, Community Recovery and Resilience liaised with officers of the Department of Natural Resources and Mines about the mandatory status of rural numbering. Whilst local governments are responsible for implementing rural addressing in Queensland, the Department of Natural Resources and Mines with the support of the Queensland Spatial Information Council has responsibility for coordinating and supporting the implementation of rural addressing by local governments. The Department of Natural Resources and the Queensland Spatial Information Council provide technical advice and have encouraged and monitored rural addressing across the state.

The approach to implementation of rural addressing to date has been to encourage and support local government, rather than impose a mandatory requirement on local governments. This approach has proved successful in the past. The latest published *Rural addressing status report* dated August 2009 illustrated a high degree of success reporting there was a 100% take up of rural addressing by all local governments where rural addressing was applicable. At that time, over 70% of local governments had completed full implementation and were in the maintenance phase with only six local governments below 40% implementation. The Department of Natural Resources and Mines and the Queensland Spatial Information Council are continually working with local governments to improve rural addressing and is achieving a high degree of success.

Enforcement of a mandatory approach would be problematic in that full practical implementation of the system relies on rural address posts being installed and maintained in accordance with Australian Standard 4819:2003. To ensure universal and permanent compliance, a local government would need to continuously conduct inspections of all roads in its areas on a regular basis to ensure all address posts are always in place and then either require property owners to replace missing or damaged posts or incur the replacement costs itself.

To raise the profile of rural addressing, DNRM proposed an ongoing Queensland Spatial Information Council facilitated communication and awareness campaign to highlight to local government, residents and service providers, the importance of maintaining and using a well-managed rural addressing system. To re-invigorate the awareness campaign Queensland Spatial Information Council and the Department of Natural Resources and Mines have undertaken the following actions:

- Promoted addressing at the 2014 Local Government Association of Queensland Annual Conference
- Commenced visiting local governments in selected regional areas in 2015 to promote addressing issues.

It is the view of both departments that the current approach should be re-invigorated and that a mandatory approach is unlikely to achieve higher rates of implementation by local governments.

To raise the profile of rural addressing, the Department of Natural Resources and Mines has proposed an ongoing Queensland Spatial Information Council facilitated communication and awareness campaign to highlight to local governments, residents and service providers, the importance of maintaining and using a well-managed rural addressing system.