

# **Building Amendment Bill 2005**

## **Explanatory Notes**

### **General Outline**

#### **Objectives of the legislation**

To clarify the existing definition of budget accommodation building (BAB) to ensure that it is consistent with the original intention of Parliament.

#### **Reasons for the Bill**

Following the Palace Backpackers Hostel fire in Childers on 23 June 2000, the *Building and Other Legislation Amendment Act 2002* amended the *Building Act 1975* to require the upgrading in fire safety of budget accommodation buildings (BABs) built prior to 1992. One of the amendments was the insertion of a new definition of a BAB.

The definition is critical to the effective operation of the amendments. Only buildings caught by the definition are required to undertake fire safety upgrades.

Parliament's original intention was to exclude certain types of buildings within the definition of a BAB. Legal advice indicates this intention has not been clearly achieved as the definition of BAB has been credibly interpreted to cover buildings meant to be excluded.

#### **Ways in which the objects are to be achieved**

The objective of the Bill is to be achieved by amending the existing definition of budget accommodation building in s 12B of the *Building Act 1975* to better reflect Parliament's original intention.

#### **Why this way of achieving the objectives is reasonable and appropriate**

Interpretation and application of s 12B has caused uncertainty regarding the scope of the definition of a BAB. An amendment to the Act to clarify

this definition is the most certain, clear and effective way of resolving these issues.

### **Alternatives to the Bill**

An amendment is the only method of restoring Parliament's original intention.

### **Administrative cost to government of implementing the Bill**

The amendments are minor clarifications. They will not involve any extra administrative cost to government.

### **Consistency with fundamental legislative principles**

There is consistency with one minor modification. The intent of the Bill is to narrow the existing definition of those buildings intended to be captured as a BAB. The Bill is predominantly consistent with this intent, however, as a result of implementation, local governments and the QFRS have identified an issue which has the potential to capture a small number of additional buildings.

The existing definition requires buildings to have both shared bathroom and sanitary facilities to be included as a BAB. However, some BAB owners installed separate bathroom or sanitary facilities (ie they may have installed either a toilet or handbasin in a bedroom). They were exploiting an unforeseen loophole, namely the requirement to have shared bathroom **and** sanitary facilities, rather than just a shared bathroom **or** sanitary facilities. It was always intended that these buildings would be captured.

### **Consultation**

The following State agencies were consulted about the policy position reflected in the Bill:

- Department of Housing
- Department of Premier and Cabinet
- Queensland Treasury
- Department of Tourism, Fair Trading and Wine Industry Development
- Disability Services Queensland

- Department of Communities
- Department of Justice and Attorney-General

## **Explanation of purpose and intended operation of each clause**

### **Short title**

Clause 1 provides the short title of this piece of legislation, namely the *Building Amendment Act 2005*.

### **Act amended**

Clause 2 identifies which piece of legislation is being amended by this amendment Act, namely the *Building Act 1975*.

### **Amendment of s 12B (Meaning of *budget accommodation building*)**

Clause 3 contains a replacement section (which contains amendments) to s 12B of the *Building Act 1975*. This is the only section of the *Building Act 1975* being amended. Whilst this whole section has been replaced, there are a limited number of provisions that have been amended.

Budget accommodation buildings (BABs) are generally those that provide low budget accommodation to a range of people including tourists, backpackers, itinerant workers, people on low incomes and those with disabilities. This type of accommodation is typically rented on a “per bed” basis and has shared facilities. This type of accommodation does not involve the renting of self-contained accommodation. There are two other features common to BABs: they have a higher density of occupation, and they tend to be in older buildings.

Given the nature of occupation, building construction, building age and lack of fire safety facilities, the risk of injury or loss of life from fire is a high risk in a significant proportion of BABs.

Section 12B(1)(a) states that a BAB has shared facilities. The purpose of the reference to shared facilities is to capture a central feature of BABs, namely the existence of shared facilities. The existence of shared facilities is usually associated with high occupant density. Commonly, accommodation is available on a “per bed” basis rather than a “per room” basis. The high occupant density means an increased risk for occupants in

the event of a fire, as it may take longer to evacuate all people from the building.

The amendments clarify that occupants must have access to either a shared bathroom or shared sanitary facilities. It is not necessary that occupants have access to both shared bathroom and sanitary facilities.

This provision has also been amended to refer to “shared by all or any occupants of the building”. This was inserted to clarify that a building, which contains both of the following, is a BAB:

- (a) ensuite accommodation (where the occupants have exclusive access to bathroom or sanitary facilities); and
- (b) accommodation where guests share facilities (backpacker style).

Section 12B(1)(b) contains a list of types of accommodation that are included in the definition of BAB. It also requires that accommodation must be for 6 or more people. This refers to the number of people in the building. There are no exclusions for family members or other types of people being accommodated. All persons being accommodated are counted.

Section 12B(1)(b)(i) has been amended to include guesthouses. This category is intended to cover buildings that house people for short terms in low budget accommodation and for people who pay for board or lodging such as itinerant workers or other travellers. Hostels have been included as a general category to refer to accommodation provided as a community service (such as boarding houses run by the Salvation Army or other charitable group). This category also includes buildings providing board or lodging only during the day.

Section 12B(1)(b)(ii) has been amended to clarify that, as well as hotels, bed and breakfast and farmstay accommodation are included in the definition of BAB. Farmstay accommodation has been defined later in s 12B.

Section 12B(1)(b)(iii) refers to supported accommodation and has not been amended.

Section 12B(2) contains a list of buildings which are excluded from the definition of BAB. The list of exclusions has been increased to ensure that Parliament’s original intention is reflected in the legislation. The following are types of buildings that are not BABs.

*Single dwelling houses and sole occupancy units* – Section 12B(2)(a) clarifies buildings **used** as dwelling houses (classified as Class 1a under the

Building Code of Australia - BCA) or sole occupancy units (classified as Class 2 under the BCA) from the definition of BAB. The use of a building will determine its classification by virtue of section 106 of the *Standard Building Regulation 1993*.

Class 1a (BCA) buildings are conventional family residences and could refer to a situation where one or two boarders live with the family. In contrast, a family house with a larger number of boarders would be a Class 1b BCA or a Class 3 BCA (the number of boarders will dictate whether it is a Class 1b BCA or a Class 3 BCA). Therefore the definition has been changed to make it consistent with the terminology used by the BCA.

The Class 1a BCA exclusion would also apply to farmstay buildings that are rented as a whole. In this situation, these buildings would be classified and used as a Class 1a BCA and the exclusion would apply.

The Class 2 BCA exemption applies only whilst a building is used as a Class 2 BCA building (i.e. single occupancy units). The exemption will not apply where a building is used in such a way that it is no longer a Class 2 BCA building (by virtue of section 106 of the *Standard Building Regulation 1993*). For example, a landlord may rent out a block of units on a per bed basis, rather than renting out the units as a whole. In this situation, it would be a BAB, when the landlord rents out this building (or part of the building) on a per bed basis.

*Hotels* – Section 12B(2)(b) excludes from the definition of a BAB, hotels which do not provide accommodation to paying guests. For example, this could apply to a hotel which is used to house a large family and no paying guests. As soon as the owner of the hotel accepts any paying guest, and provided the criteria in s12B(1) are met, the exclusion in s12B(2)(b) would not apply.

*Motels* – Section 12B(2)(c) excludes from the definition of a BAB, motels in which guests may only let individual beds, rather than whole rooms. For example, a motel would be a BAB if it contained bunk beds in a room that were rented on a “per bed” basis, and the criteria in s12B(1) are met.

*Buildings let as a whole* – Section 12B(2)(d) excludes buildings from the definition of a BAB that provide accommodation where the guest may only let the whole building.

This exemption refers to types of buildings such as cabins at caravan parks, farmstays, holiday houses or campgrounds. If a guest is able to rent a bed rather than the building at one of these establishments, the exception does not apply. Provided the criteria specified in section 12B(1) were met, the building would be a BAB.

*Employer provided accommodation* – Section 12B(2)(e) excludes accommodation provided by an employer from the definition of BAB. More specifically, s 12B(e) excludes accommodation provided by an employer to an employee as part of the package of employment. The exclusion applies if the employer or the employer’s spouse or relatives also stay in the accommodation.

The types of situations this would cover include nurses’ quarters, shearers’ accommodation and dongas for mine workers. However this exclusion does not apply where accommodation is provided or arranged by an employer for backpackers or fruit-pickers. Provided the criteria specified in s 12B (1) are met, accommodation in a building provided by an employer to a fruit-picker or a backpacker would be a BAB. The reason fruit picker and backpacker accommodation has been excluded, is that in most instances, the accommodation is the primary reason that individuals are staying in a particular building, the employment part of the arrangement is incidental to the accommodation. Whereas for nurses and the other type of workers, the work is the primary part of the relationship and the accommodation provided is incidental to the work.

The term “fruit pickers and backpackers” was deliberately used. It is broad enough to include other types of workers such as vegetable pickers and seasonal workers, as these types of workers will usually also be backpackers.

*Corrective services and juvenile detention facilities* – Section 12B(2)(f) excludes accommodation in corrective services facilities or juvenile detention centres from the definition of BAB. There is no change to this provision, other than renumbering.

*Aged care facilities* – Section 12B(2)(g) excludes accommodation in aged care facilities. The only amendment to this provision is the reference to a facility providing “residential care” rather than “aged care”. This terminology is consistent with the *Aged Care Act 1997* (Cwlth).

*Educational facilities* – Section 12B(2)(h) excludes from the definition of BAB, accommodation located on, part of, or provided by, an educational institution. Educational institution has been defined later in this section as one of the following: a State school; a non-State school; a TAFE; or a university. For example, accommodation provided in boarding schools or university colleges is excluded from the definition of BAB. This exclusion will apply to accommodation that is not necessarily on campus, but there must be some link between the accommodation and the educational institution. The exclusion will not apply to an independent operator who

happens to provide accommodation to students from a particular educational institution.

*Health care buildings* – Section 12B(2)(i) excludes health care buildings (classified as Class 9a under the BCA) from the definition of BAB. There are three types of health care buildings (a) hospitals, (b) nursing homes, and (c) clinics and day surgeries. The meaning of “nursing home” has the potential to overlap with supported accommodation (referred to in s12B (1)(b)(iii)). The intention is that supported accommodation is a BAB and that nursing homes are not BABs.

Supported accommodation is a service that provides accommodation (as a person’s main or principal place of residence) and also regularly provides a resident with a personal care service. In contrast, nursing homes provide both accommodation and attention to medical or health needs. In nursing homes, the focus is not so much on the provision of accommodation, as the provision of medical supervision. The provision of accommodation is a critical, but merely incidental, part of this.

Therefore section 12B(2)(i) excludes all Class 9a buildings *except where the building is used primarily to provide accommodation (not accommodation together with medical supervision) to persons with an intellectual or physical disability*. The effect of this is to exclude all health care buildings from the definition of a BAB, unless they primarily provide accommodation to persons with an intellectual or physical disability (i.e. supported accommodation).

*Women’s refuges* – Section 12B(2)(j) excludes women’s refuges or shelters from the definition of BAB. This exclusion applies to any building that contains a women’s refuge or shelter, whether or not the building is shared with other users.

*Accommodation for lifesavers* - Section 12B(2)(k) excludes from the definition of BAB, a building in which lifesavers (eg a lifesaving club) provides accommodation only to lifesavers. This is intended to cover the types of buildings that provide accommodation to lifesavers whilst they are on duty or for recreational purposes. If the building is used for accommodation for other users, the exclusion would not apply.

*Recreational camps for special groups* – Section 12B(2)(l) excludes from the definition of BAB, buildings that are used for recreational camps for special groups. These camp activities need to be recreational in purpose and undertaken by groups.

The groups to which this provision applies, is limited by the types of groups listed in the provision (namely, scouts, girl guides and school

groups). These special groups have been excluded partly because leaders usually supervise them. In the event of an evacuation during a fire, the members of the group will know one another and the leaders are more likely to ensure that everyone escapes from the fire.

The exclusion will apply if there are two or more different groups staying at the one time, however they must all fall into this type of group, i.e. groups of scouts, school children or any other group. Thus, a building that accommodates school groups and backpackers would not be excluded. However, where these camps provide accommodation at any time to guests who let individual beds, they would be included as a BAB.

Section 12B(3) contains definitions which are specific to section 12B.

*Bathroom or sanitary facilities*– this provision states that that the definition of bathroom or sanitary facilities relates to facilities that are either located **within** the building or **outside** the building. This means that just because accommodation has bathroom facilities such as an outhouse, it will not be excluded from the definition a BAB.

*Class 1a building* – this provision states that the definition of a Class 1a (BCA) building that is to be used for the purposes of the definition of a BAB, is the one that is current under the 2004 edition of the BCA.

*Class 2 building* - this provision states that the definition of a Class 2 (BCA) building that is to be used for the purposes of the definition of a BAB, is the one that is current under the 2004 edition of the BCA.

*Class 9a building* - this provision states that the definition of a Class 9a (BCA) building that is to be used for the purposes of the definition of a BAB, is the one that is current under the 2004 edition of the BCA.

*Educational institution* – Section 12B(3) defines an educational institution to be one of the following: a State school, a non-State school, a TAFE, and a university.

*Farmstay* – Section 12B(3) defines a farmstay to mean accommodation provided at a farm for paying guests. If a farm does not accommodate paying guests it will not be included in this definition.