



Guideline

Meaning of class 2 building classification under the Building Code of Australia

A guide to assist interpretation of the Building Code of Australia Part A3 for the classification of class 2 buildings

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Preamble

The Department of Infrastructure and Planning (DIP) has received numerous submissions from both industry and members of the community expressing concern about class 2 buildings being approved or used as holiday or business apartments, hotels, motels and similar short term or transient accommodation. DIP is aware that there are various interpretations within the industry and community relating to this matter.

The building classification system, established under the Building Code of Australia (BCA), groups buildings into different classifications according to their use and risk. It is essential that the correct classification is selected for a building or part of a building to ensure that the technical requirements most appropriate to its use and risk are applied. In addition, building occupants have expectations that buildings will be used in accordance with their approved classification.

This guideline is made under section 258 of the *Building Act 1975*. Section 258 provides for guidelines to be made to help achieve compliance with the *Building Act 1975*. It is recommended that the information given in this guideline be followed, however strict compliance with this guideline is not mandatory under the *Building Act 1975*.

If there is any inconsistency between this guideline and the *Guide to the BCA* published by the Australian Building Codes Board, this guideline prevails to the extent of the inconsistency. Unlike the *Guide to the BCA*, which has no statutory recognition, this guideline is made under the *Building Act 1975*. Further, the *Guide to the BCA* states that it in no way overrides the approval processes in any jurisdiction.



Table of contents

Purpose	4
Scope	4
Background	4
Legislation	6
Interpretation	6
Existing buildings and uses	10
Appendix A—BCA definitions	12



Purpose

The purpose of this guideline is to clarify the intended meaning of the term 'class 2 building' under the BCA in Queensland to achieve the purposes of the *Building Act 1975*. This guideline provides advice to building certifiers, local governments, government agencies, building owners and other stakeholders on the difference between class 2 and class 3 buildings and information regarding building use, assessment and enforcement.

Scope

The scope of this guideline is limited to clarifying the intended meaning of the term 'class 2 building'. While comparisons to other building classifications such as class 3 buildings are made, this guideline is not intended to cover other building classifications or uses. The examples provided in this guideline are not absolute or exhaustive and do not take into account every possible situation.

This guideline has been developed by the Department of Infrastructure and Planning to help achieve compliance with the *Building Act 1975* and should be taken into account when determining matters that relate to class 2 buildings.

Background

BCA clause A3.2 provides that a class 2 building is 'a building containing two or more sole-occupancy units each being a separate dwelling' (emphasis added).

The inclusion of the word 'dwelling' in the BCA definition of class 2 buildings is important. The word 'dwelling' is also included in the BCA definition of class 1a and 4 buildings, but not in the BCA definition of class 1b and 3 buildings. This indicates a distinction between class 1a, 2 and 4 buildings, compared to class 1b and 3 buildings. Although the BCA does not define the meaning of dwelling, the fourth edition of the *Macquarie Dictionary* defines a dwelling as 'a place of residence or abode; a house; continued or habitual residence'. The definition of the term 'reside' includes 'to dwell permanently or for considerable time'.

The *Standard Building By-Laws 1975* (repealed), which preceded the BCA in Queensland, included the term 'dwelling units' in the definition of a class 2 building and required a dwelling unit to be suitable for use as a separate domicile. The dictionary definition of domicile includes 'a place of residence; an abode; a house or home; a permanent legal residence'.



Although the BCA definition of a class 3 building allows for long-term living, the BCA provides that a building can only be class 3 if it is **not** class 1 or 2. Therefore, if a building is used as a dwelling, it **cannot** be class 3 (even though it is used for long-term living) because a dwelling can only be a class 1a, 2 or 4 building. The allowance for long-term living in the BCA definition of a class 3 building is intended to account for **non-dwelling** residential buildings that are used for long-term living, such as the residential part of a detention centre.

The BCA deemed-to-satisfy provisions for class 2 buildings assume that class 2 buildings will **not** be used as a place of short-term or transient living, but that they will be used as permanent dwellings (consistent with a class 1a building use). The BCA offers concessions for class 2 buildings in recognition that the occupants are therefore likely to be familiar with the building and are likely to have different expectations in certain areas. These concessions can include the following:

- less stringent fire resistance requirements in some cases
- no access or facility requirements for persons with disabilities
- self-contained smoke alarms permitted with no requirement for a full smoke detection system
- no requirement for fire alarm monitoring system connected to a fire station or fire station dispatch centre (unless fire sprinklers are required)
- less stringent requirements provided in AS 1657–1992 for fixed platforms, walkways, stairways and ladders
- additional exit sign exemptions
- sound systems and intercom systems for emergency purposes not required unless the building is more than 25 m high
- less stringent energy efficiency requirements, based on the assumption that the buildings will be used as permanent dwellings (consistent with a class 1a building use) and that the occupants will pay the electricity bills.

In addition, the BCA acknowledges that the occupants of class 2 buildings require certain basic services and amenities due to the nature of their occupancy. For example, class 2 dwellings require self-contained laundry and food preparation/cooking facilities and also require natural lighting to all habitable rooms (not just bedrooms).



Legislation

The following legislation is referred to in this guideline:

Acts Interpretation Act 1954—section 14A

Building Act 1975—sections 61, 111, 112, 257, 258

Fire and Rescue Service Act 1990

Integrated Planning Act 1997—section 4.3.11

Residential Tenancies Act 1994

Standard Building By-Laws 1975 (repealed)

Standard Building Law (repealed)

Standard Building Regulation 1993 (repealed)

Interpretation

Section 14A of the *Acts Interpretation Act 1954* provides that, in interpreting a provision of an Act (including statutory instruments made under an Act), the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation.

Buildings (or parts of buildings) used, or intended to be used, as holiday or business apartments, hotels, motels or other similar short-term or transient accommodation should **not** be classified or approved as class 2 buildings. Such buildings (or parts) should be classified as class 3.

It is important that buildings are classified according to their intended use. For example, it is **not** appropriate to classify or approve a building as class 2 simply because it meets the requirements for a class 2 building, such as self-contained laundry and food preparation/cooking facilities. When considering applications under the *Building Act 1975*, building certifiers and local government officers should ensure they obtain confirmation from the owner about the proposed use of the building before they decide the classification. The confirmation should ideally be in writing, or written notes should be kept if only verbal confirmation is provided. Obtaining such confirmation should be a standard practice because there may be more than one possible use for the building. This practice will assist in making a more informed decision by allowing both the design and the intended use to be taken into account.



If an owner or developer is uncertain about whether a building will be used as permanent dwellings or as holiday or business apartments, hotels, motels or other similar short term or transient accommodation after its completion, or if they wish to maximise the flexibility of the building's use, BCA clause A3.4 allows for buildings or parts of buildings to have more than one classification. For example, a building could be dual classified as class 2 and 3, provided that it complies with all relevant requirements for both classifications. If there is any conflict between the requirements for the different classifications, the more stringent requirements will apply.

Similarly, BCA clause A3.3 allows different parts of a building to have different classifications, although the '10% rule' in the BCA (refer Appendix A) does not apply where the minor use is a class 2, 3 or 4 part.

Examples of class 2 use

Buildings used, or intended to be used, under one or more of the following circumstances would generally be class 2:

- An owner-occupier using the dwelling exclusively as their own residence. The owner-occupier's mail would typically be delivered to the building.
- An owner-occupier using the dwelling exclusively for their own weekend or holiday accommodation.
- A tenant occupying the dwelling on a long-term basis (e.g. six weeks or more) under a residential tenancy agreement under the *Residential Tenancies Act 1994*.

Note: The 'six weeks or more' example used in this guideline is based on section 21 of the *Residential Tenancies Act 1994*. Under this section, a right to occupy premises given for six weeks or longer is taken **not** to be given for holiday purposes unless the contrary is proved.



Examples of class 3 use

Buildings used, or intended to be used, under one or more of the following circumstances would generally be class 3:

- A person occupying the building (or part) on a short-term or transient basis, such as holiday or business accommodation that is frequently let for short periods (e.g. less than six weeks). The occupant may book the accommodation over the internet or from a booking/travel agent. The occupant would typically bring their own personal items such as a supply of clothes and sanitary items, but not items such as white goods and furniture. The building (or part) may be self-contained or it may be fully or partly serviced. The occupants would usually have their permanent place of residence elsewhere.

Example of dual key accommodation

Dual key accommodation typically consists of a small common entry lobby with two doors leading off it, each separately keyed and providing access to an accommodation unit. One unit would typically be self-contained, including laundry and food preparation/cooking facilities, while the other unit generally would not be.

The classification of each unit would depend on their intended use. The self-contained unit would be class 1a or 2 if it was used as a dwelling. However, if it was used as a holiday or business apartment, hotel, motel or other similar short-term or transient accommodation, it would be class 3. Alternatively, it could be dual classified, such as class 2 and 3, provided that it complies with all relevant requirements for both classifications. This would help to maximise the flexibility of the unit's use.

The non-self-contained unit would be class 3 if it was used as a holiday or business apartment, hotel, motel or other similar short-term or transient accommodation. However, if it was used as a dwelling and combined with the self-contained unit to form a single dwelling unit, it could be class 1a or 2 as appropriate.

Example of change of classification

An existing class 2 building built in 1995 is 17 storeys high. The building was built in compliance with the BCA deemed-to-satisfy requirements of the time. Three unit owners on the 10th storey now want to lease their units for short-term holiday and business accommodation (class 3). The '10% rule' in the BCA does not apply as the minor use will be class 3. Approval must therefore be obtained for the proposed change of classification to the building.

The proposed change of classification can only be approved if the building, as changed, complies with the building assessment provisions, including the BCA and Queensland Development Code. This can affect different parts of the building, including areas outside of the units proposed to be converted to class 3. For example, areas typically affected could include:

- the units proposed to be converted to class 3
- the common areas on the 10th storey
- the passenger lifts
- the common areas on the ground floor and carpark
- the car park
- unique features and services, such as a recreation area, TV room, eating area, public viewing platform etc.
- other areas accessible or intended to be used by the occupants of the short term holiday and business accommodation
- fire safety systems in other parts of the building, such as smoke detection systems, fire alarm monitoring systems and exit signs may need to be provided or upgraded.

In addition to the approvals required under the *Building Act 1975* for a change of classification, changing a building or part of a building from class 2 to class 3 may also involve a material change of use under the local government's planning scheme. This may require a separate development application to be made to the local government to enable the relevant planning issues to be considered.



Existing buildings and uses

Important note

The *Building Act 1975* allows for the relevant local government (and the Queensland Fire and Rescue Service (QFRS) for some matters relating to the use of a building) to undertake enforcement action and prosecution for certain non-compliances. The *Fire and Rescue Service Act 1990* also allows for the QFRS to undertake enforcement action and prosecution for certain non-compliances relating to fire safety.

This part of the guideline is intended to provide information for local governments and the QFRS to assist them with these functions. However, the responsibility for deciding whether or not to undertake enforcement action or prosecution rests with the relevant local government or the QFRS. The material within this guideline is provided for general information only on the understanding that enforcement agencies will form their own view regarding the application of the *Building Act 1975* or *Fire and Rescue Service Act 1990* on a case by case basis and for the particular matters relating to the compliance of existing buildings with respect to actual uses.

Section 4.3.11 of the *Integrated Planning Act 1997* provides for enforcement action by the assessing authority to direct the building owner to;

- stop using a building for an unauthorised use and bring the use of the building back to its existing approved use
- stop using a building for an unauthorised use and apply for a change of classification. The new use can only commence once a certificate of classification has been issued by a building certifier.

Where a class 2 building was constructed before 14 December 1993, section 112 of the *Building Act 1975* provides that a building certifier may approve a change of classification for the building (or part) without the building (or part) having to comply with the building assessment provisions, other than BCA parts E1 (fire fighting equipment) and E4 (emergency lighting, exit signs and warning systems). However, section 112 also requires certain structural and fire safety requirements to be met and requires a report from the QFRS if the building contains a special fire service.

Where a class 2 building was constructed on or after 14 December 1993, section 111 of the *Building Act 1975* provides that a building certifier cannot approve a change of classification for the building (or part) unless the building (or part) complies with the building assessment provisions. Section 111 also contains requirements that must be met for referral agency inspections before the approval can be given.



Section 61 of the *Building Act 1975* allows for alterations to safe existing work to be approved on basis of earlier building assessment provisions where the building certifier is satisfied the general safety and structural standards of the building would not be at risk if the alterations were to be carried out under earlier building assessment provisions. This could include the former *Standard Building By-laws 1975* (repealed), *Standard Building Law* (repealed) and the *Standard Building Regulation 1993* (repealed).

Under section 257 of the *Building Act 1975* individuals who are responsible for the management of a body corporate are deemed to be personally liable for any offence committed by the body corporate unless they can provide that they had no knowledge of the commission of the offence or could not have prevented its commission by the exercise of reasonable diligence.

DRAFT ONLY - FOR COMMENT



Appendix A

BCA definitions

Class 1: one or more buildings which in association constitutes:

- a) **Class 1a**—a single dwelling being:
 - i. a detached house; or
 - ii. 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.
- b) **Class 1b**—a boarding house, guest house, hostel or the like:
 - i. with a total area of all floors not exceeding 300 m² measured over the enclosing walls of the class 1b; and
 - ii. in which not more than 12 persons would ordinarily be resident

which is not located above or below another dwelling or another class of building other than a **private garage**.

Class 2: a building containing two or more **sole-occupancy units** each being a separate dwelling.

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
- e) a residential part of a health care building which accommodates members of staff; or
- f) a residential part of a detention centre.

Class 4: a dwelling in a building that is class 5, 6, 7, 8 or 9 if it is the only dwelling in the building.

Sole-occupancy unit means a room or other part of a building for occupation by one or joint owner, lessee, tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier and includes:

- a) a dwelling; or
- b) a room or suite of rooms in a class 3 building which includes sleeping facilities; or



- c) a room or suite of associated rooms in a class 5, 6, 7, 8 or 9 building; or
- d) a room or suite of associated rooms in a class 9c aged care building, which includes sleeping facilities and any area for the exclusive use of a resident.

Multiple classifications—‘10% rule’

Each part of a building must be classified separately, and:

- a)
 - (i) where parts have different purposes—if not more than 10% of the floor area of a storey, being the minor use, is used for a purpose which is a different classification, the classification applying to the major use may apply to the whole storey and
 - (ii) the provisions of (i) do not apply when the minor use is a laboratory or class 2, 3 or 4 part and
- b) Classes 1a, 1b, 7a, 7b, 9a, 9b, 9c, 10a and 10b are separate classifications and
- c) a reference to:
 - i. Class 1—is to Class 1a and 1b and
 - ii. Class 7—is to Class 7a and 7b and
 - iii. Class 9—is to Class 9a, 9b and 9c and
 - iv. Class 10—is to Class 10a and 10b and
- d) A plant room, machinery room, lift motor room, boiler room or the like must have the same classification as the part of the building in which it is situated.

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