



**Accommodation
Association
of Australia**

**Class 2 and Class 3 Building Classification –
Proposed Changes to the Guide**

**Submission of the
Accommodation Association of Australia**

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EXECUTIVE SUMMARY

- Given the magnitude of this issue for Australia’s accommodation industry, it remains the position of the Accommodation Association of Australia that a comprehensive economic analysis of the impact of the proposed changes to the Guide (to the National Construction Code) should be carried out.
- If there are to be changes to the Guide, they must not under any circumstances apply retrospectively. This is the only option that will ensure the cost of change to the accommodation industry is minimised.
- Subject to the results of the economic analysis, definitions of Class 2 and Class 3 buildings should be clarified to ensure that buildings used for short-term tourism accommodation are Class 3, subject to the following conditions:
 - The clarification must be made through a formal change to the BCA classifications; and
 - The changes must not apply retrospectively, i.e. they should only apply to new tourism accommodation developments.
- It is not acceptable for the trigger for the applications of any new definitions to be significant renovations to buildings, including renovations that require a development application (DA).
- The Association’s position on change being made to the BCA instead of the Guide is because of the high risk to businesses in our industry which would result from uncertainty created by changes to the Guide.
- Changing the Guide in preference to the BCA would create significant issues in Queensland – a high proportion of serviced apartments are located in that State and the legislative protections it has against change applying retrospectively covers the BCA but not the Guide.
- Changes to the definitions of Class 2 and Class 3 buildings which apply retrospectively would have a catastrophic impact on tourism accommodation businesses in Australia.
- This is because that in order for tourism accommodation businesses which currently operate in Class 2 buildings to conform to the extra requirements for Class 3 buildings would incur costs of tens of millions of dollars.
- Industry estimates are that in Queensland alone, 40 per cent of all tourism accommodation rooms could be impacted.
- In major tourism areas within Queensland, including the Gold Coast, the Sunshine Coast and Cairns, this percentage is significantly higher – in the vicinity of 80 per cent.
- For strata-titled buildings used for tourism accommodation, the proposed changes to the Guide would result in the additional compliance costs being borne by the body corporate of the buildings. Given the significant extra financial burden, there is a risk that body corporate committees could take the extreme step of ordering cessation of the provision of tourism accommodation, effectively closing serviced apartments.
- Australia-wide the proposed changes to the Guide would all but halt investment in serviced apartments used for tourism accommodation, jeopardising Tourism Australia’s goal of 40,000-70,000 new accommodation rooms in Australia by 2020.

INTRODUCTION

1. The Accommodation Association of Australia welcomes the opportunity to put forward the following formal submission to be considered by the Australian Building Codes Board (ABCB) as it deliberates on the issue of clarifying the use of Class 2 and Class 3 buildings in Australia.

ABOUT THE ACCOMMODATION ASSOCIATION

2. The Accommodation Association of Australia (the Accommodation Association) is the national industry body for the Australian accommodation industry.
3. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed-and-breakfasts, guest-houses, backpackers and timeshare establishments in metropolitan, regional and rural Australia across all states and territories.
4. The Association's membership base includes almost 2000 properties and more than 110,000 guest rooms.
5. The Association's members include major hotel chains, including Accor Hotels, Mirvac Hotels and Resorts, Hilton Hotels, Toga Hospitality, Mantra Group, Rydges Hotels, Amora Hotels, InterContinental Hotels Group and Quest Serviced Apartments.

TOURISM AND ACCOMMODATION – OVERVIEW

6. Tourism contributes \$34 billion to Australia's gross domestic product (GDP), a 2.6 per cent share.¹
7. Around 500,000 Australians are employed in the Australian tourism industry – 4.5 per cent of total employment.²
8. Employment within Australia's accommodation sector is 110,969.³
9. Tourism is Australia's leading services export and it is the sixth-largest total export earner.⁴
10. Tourism contributes \$23 billion or 9 per cent of Australia's total export earnings for all goods and services.⁵
11. There are 4279 tourism accommodation establishments in Australia.⁶
12. There are 227,320 tourism accommodation rooms within Australia and 640,454 bed spaces.⁷
13. Tourism's share of the Australian economy has been declining.

¹ Tourism Industry Facts & Figures (at a glance), Department of Resources, Energy and Tourism/Tourism Research Australia, May 2011, Page 44

² Ibid, Page 44

³ Ibid, Page 55

⁴ Ibid, Page 45

⁵ Ibid, Page 45

⁶ Ibid, Page 55

⁷ Ibid, Page 55

14. The number of domestic overnight trips taken by Australians has fallen by 1.1 per cent on average each year over the period 2001-2010.⁸

15. The total number of domestic visitor nights fell by 1.2 per cent on average each year between 2001-2010.⁹

16. Tourism has a number of unique characteristics in comparison to other industries. These include:

- It is highly labour intensive;
- It requires the input of many service providers into a single “product” to the end consumer;
- It is dominated by a significant number of small businesses;
- Tourism competes against all other discretionary expenditures for the “hearts and minds” expenditure of the consumer; and
- Tourism businesses operate in a highly complex environment requiring significant compliance skills and costs.

⁸ Ibid, Page 26

⁹ Ibid, Page 26

CLASS 2 AND CLASS 3 BUILDING CLASSIFICATION – BACKGROUND

17. At present, Class 2 buildings are defined within the BCA as a building which contains two or more sole occupancy units with each being a separate dwelling. Serviced apartments that can be used for both private residential purposes or short-term/holiday/business accommodation are currently defined as Class 2 buildings.
18. Class 3 buildings are currently defined within the BCA as being buildings which are only used for the purposes of short-term tourism accommodation, including hotels, motels, backpackers accommodation and hosted accommodation, including guest-houses, bed-and-breakfasts and cottages.
19. The Productivity Commission examined the issue of differences in standards applying to buildings being used for similar purposes in its report of August 2010, “Annual Review of Regulatory Burdens on Business: Business and Consumer Services” (which was released in October 2010).
20. The commission determined that:

“Serviced apartments are increasingly competing with hotels in the short-stay tourist accommodation market, but are classified differently within the BCA (Building Code of Australia) and are therefore subject to different standards, for example in relation to disabled access and fire safety. The Australian Building Codes Board should consider whether the current variation in standards is appropriate where the buildings are used for similar (especially tourist accommodation) purposes.”¹⁰
21. In 2011, the ABCB sought comment from stakeholders about the impact of different classifications within the BCA on tourism accommodation in Australia through a low-level questionnaire.
22. To guide this process, the ABCB released a Discussion Paper dated 11 July 2011.
23. In our submission, the Accommodation Association stated:

“The ABCB should explore the need for reform by undertaking a comprehensive study of the application of the BCA to buildings that are used for tourism accommodation. As part of such a study, clear and concise data about tourism accommodation businesses should be obtained. The study should involve a comprehensive economic assessment of the impact of the BCA on investment in tourism accommodation businesses within Australia.”¹¹
24. The ABCB forwarded fresh correspondence to stakeholders dated 6 August 2012 seeking comments on proposed commentary to the Guide, a “companion manual”¹² to Volume One of the National Construction Code (NCC).
25. The ABCB has stated that the Guide is intended as a reference book for people seeking clarification, illustrations or examples of sometimes complex provisions. Further, the ABCB stipulates that Volume One of the NCC and the Guide should be read together. However, the

¹⁰ Annual Review of Regulatory Burdens on Business: Business and Consumer Services – Research Report, Productivity Commission, August 2010, Chapter 5, Page 183

¹¹ Building Code of Australia Review, Submission of Accommodation Association of Australia, 19 August 2011

¹² Proposed commentary for the Guide, Australian Building Codes Board, 6 August 2012

comments in the Guide should not be taken to override the NCC. Unlike the NCC, which is adopted in legislation, the Guide is not called up into legislation.¹³

26. Specifically in relation to the Guide, the ABCB stated:

“As its title suggests, it is for guidance only.”¹⁴

INVESTMENT IN TOURISM ACCOMMODATION INFRASTRUCTURE

27. Tourism Australia’s “2020 Tourism Industry Potential”, which was publicly released in November 2010, outlined an ambitious set of goals to promote long-term, sustainable growth of Australia’s tourism industry.

28. For industry, realising this potential, according to Tourism Australia, would:

- Double overnight expenditure from \$70 billion in 2009 to as high as \$140 billion in 2020;
- Increase tourism’s contribution to GDP to up to 3 per cent in 2020; and
- Increase tax revenues from tourism from \$9.3 billion in 2009 to as high as \$14.5 billion in 2020.

29. To achieve the goals in the 2020 Tourism Industry Potential, Tourism Australia estimates between 40,000-70,000 new accommodation rooms will be needed in Australia (at occupancy rates of 75 per cent). These new rooms will be needed mainly in capital cities, with improvements on quality, rather than quantity being the focus for regional Australia.

30. It is critical that any increases in room inventory are not overly detrimental to existing tourism accommodation businesses.

31. The number of new accommodation businesses which have been developed (new builds) in Australia in the past decade is extremely low and for the accommodation rooms target in the 2020 Tourism Industry Potential to be reached, significant investment incentives will be required. For example, it took until October 2011 for the first new five-star hotel in (or around) the Sydney CBD since the 2000 Olympics to be built.

32. On 2 May 2012, the Federal Government launched two documents which, together with a strategic partnership between Tourism Australia and Austrade, are designed to lift the level of investment in tourism accommodation infrastructure in Australia.

33. The documents are the Australian Tourism Investment Guide and the Tourism Investment Monitor.

¹³ Ibid

¹⁴ Ibid

BROAD IMPACT OF REGULATORY CHANGE

34. It is the submission of the Accommodation Association that any form of regulatory change which directly impacts on buildings that are used for tourism accommodation in Australia has significant cost implications.
35. In addition, regulatory change which directly impacts on buildings that are used for tourism accommodation raises serious doubts about achieving the goals contained in the 2020 Tourism Industry Potential because of the risk that it would stifle investment in existing tourism accommodation product.
36. It is imperative that the ABCB – including its constituent committees – the Federal Government, State/Territory governments and local governments recognise the significant financial consequences for the accommodation industry of any form of regulatory change which directly impacts on buildings that are used for tourism accommodation. Such regulatory change could include amendments to the BCA, the NCC, the Guide or any other legislation, regulation, guideline or advice which directly affects the classification of buildings that are used for tourism accommodation.

ACCOMMODATION ASSOCIATION POLICY POSITION

37. Given the magnitude of this issue for Australia's accommodation industry, the Accommodation Association restates its position that a comprehensive economic analysis of the impact of the proposed changes to the Guide should be conducted.
38. A focus of the economic analysis must be accurate costs and benefits of the timing of implementation of any change. There must be quantification of the costs of the changes applying to new tourism accommodation developments and to existing tourism accommodation businesses in time-frames including 20 years, 10 years, five years, one year and immediately.
39. It is the core position of the Accommodation Association that if there are to be changes to the Guide, they must not under any circumstances apply retrospectively. This is the only option that will ensure the cost of change to the accommodation industry is minimised.
40. Due to the significant financial consequences for our industry of the proposed changes, the Accommodation Association will take all reasonable measures to ensure that, in the event that they proceed, the new requirements do not under any circumstances apply retrospectively.
41. Subject to the outcomes of the economic analysis, it is the Association's position that the definitions of Class 2 and Class 3 buildings should be clarified to ensure that buildings used for short-term tourism accommodation are Class 3, subject to the following conditions:
 - The clarification must be made through a formal change to the BCA classifications; and
 - The changes must not apply retrospectively, i.e. they should only apply to new tourism accommodation developments.
42. It is not acceptable for the trigger for the applications of the new definitions to be significant renovations to buildings, including renovations that require a development application (DA).

POLICY POSITION – MITIGATING RISK TO BUSINESS

43. The Association's position on change being made to the BCA instead of the Guide is because of the high risk to businesses in our industry which would result from uncertainty created by changes to the Guide.
44. The uncertainty stems from the purpose of the Guide which, as outlined above, is for guidance only for people who are seeking clarification, illustrations or examples.
45. In addition, the Guide does not override the BCA. Therefore, the definitions in the BCA may or may not still apply, raising significant uncertainty.
46. This uncertainty is highlighted by a dispute over building classification involving a mining storage building where the Western Australian Supreme Court determined that it would be appropriate to have regard to the Guide when interpreting the BCA.
47. Uncertainty is heightened given the Guide is used by all levels of the bureaucracy – federal, state/territory and local government authorities – in their determinations about the use of buildings.
48. Changing the Guide in preference to changing the BCA raises the prospect of the classification changes applying retrospectively, which the industry is strongly opposed to.

IMPACT OF PROPOSED CHANGES TO THE GUIDE

49. Changes to the definition of Class 2 and Class 3 buildings which apply retrospectively would have a catastrophic impact on tourism accommodation businesses in Australia.
50. This is because that in order for tourism accommodation businesses which currently operate in Class 2 buildings to conform to the extra requirements for Class 3 buildings would incur costs of tens of millions of dollars.
51. The majority of this cost would be conforming to the different building fire safety requirements that Class 3 buildings have.
52. Industry estimates are that in Queensland alone, 40 per cent of all tourism accommodation rooms could be impacted.
53. In major tourism areas in Queensland, including the Gold Coast, the Sunshine Coast and Cairns, this percentage is significantly higher – in the vicinity of 80 per cent. This is due to the high numbers of tourism accommodation serviced apartments in these locations.
54. For strata-titled buildings used for tourism accommodation, the proposed changes to the Guide would result in the additional compliance costs being the responsibility of the body corporate of the buildings. Given the significant extra financial burden, there is a risk that body corporate committees could take the extreme step of ordering cessation of the provision of tourism accommodation, effectively closing serviced apartments.
55. Australia-wide the proposed changes to the Guide would all but halt investment in serviced apartments used for tourism accommodation and end any chance of achieving the goal in the 2020 Tourism Industry Potential of 40,000-70,000 new accommodation rooms in Australia within eight years.

56. Ensuring that any change to the Guide (or the BCA) is not retrospective would not compromise consumer safety. Evidence of this is that very few, if any safety issues have been raised about tourism accommodation businesses which currently operate in Class 2 buildings.

OTHER MAJOR IMPACT ON QUEENSLAND INDUSTRY

57. The other major impact of the proposed changes to the Guide in Queensland would be that they would effectively render as useless the provision in Queensland legislation that if there is an amendment to a BCA classification, the change would not apply retrospectively.
58. As the proposed changes to the Guide are not formal amendments to the BCA, this “existing use provision” under Queensland legislation would not apply to changes to the Guide.
59. This is another compelling reason why any change to building classification definitions should be pursued by amending the BCA and not the Guide.

CONSULTATION REGARDING CHANGES

60. On behalf of the accommodation industry, the Accommodation Association wishes to formally raise concerns about the consultation process for the proposed changes.
61. As stated above, change of this magnitude requires comprehensive and robust economic analysis, which we called for in our 2011 response to the ABCB. As far as the Association is aware, this hasn’t taken place.
62. Given the major ramifications for investment in tourism accommodation infrastructure in Australia, other relevant government agencies should be consulted on this proposed change, including Tourism Australia, Austrade and the Department of Resources, Energy and Tourism, among others.
63. In this context, it is worth reflecting on what took place in Queensland in 2008. At that time, the State Government attempted to introduce a similar guideline to the one which is currently being proposed, but chose not to proceed as a result of strong opposition from tourism industry stakeholders. Instead, the Queensland Government enshrined in legislation that classification change under the BCA would not apply retrospectively.

CONCLUSION

64. The Accommodation Association looks forward to further engagement with the ABCB (as well as other government stakeholders and agencies) on the issues raised in this submission which are of significant importance to Australia’s accommodation industry.

Date: 7 September 2012