

Queensland



**BUILDING AND OTHER
LEGISLATION AMENDMENT
ACT 2002**

Act No. 7 of 2002

Queensland



BUILDING AND OTHER LEGISLATION AMENDMENT ACT 2002

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Queensland



**Building and Other Legislation Amendment
Act 2002**

Act No. 7 of 2002

An Act to amend the *Building Act 1975*, the *Fire and Rescue Service Act 1990* and the *Local Government Act 1993*

[Assented to 19 April 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Building and Other Legislation Amendment Act 2002*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF BUILDING ACT 1975

3 Act amended in pt 2

This part amends the *Building Act 1975*.

4 Insertion of new pt 2A

After part 2—

insert—

‘PART 2A—FIRE SAFETY FOR BUDGET ACCOMMODATION BUILDINGS

‘Division 1—Interpretation

‘12A Definitions for pt 2A

In this part—

“BCA” means the Building Code of Australia.

“budget accommodation building” see section 12B.

“development application” see schedule 10 of IPA.

“development approval” see schedule 10 of IPA.

“fire safety management plan” see the *Fire and Rescue Service Act 1990*, section 104FC.

“fire safety standard” see section 12C(1).

“fire safety system”, for a building, means the building’s features, and procedures established for the building, providing for all or any of the following—

- (a) warning the building’s occupants about a fire emergency;
- (b) safe evacuation of the building’s occupants;
- (c) extinguishing or restricting the spread of fire in the building.

“IPA” means the *Integrated Planning Act 1997*.

‘12B Meaning of “budget accommodation building”

‘(1) A “budget accommodation building” is a building that—

- (a) has bathroom and sanitary facilities, other than a laundry, shared by the occupants of the building; and
- (b) provides accommodation of a following type for 6 or more persons—
 - (i) boarding house, backpacker hostel or similar type accommodation;
 - (ii) hotel accommodation;
 - (iii) accommodation for persons who have an intellectual or physical disability and require full time or part time care.

‘(2) However, each of the following is not a budget accommodation building—

- (a) a motel;
- (b) a building that is, or forms part of—
 - (i) a corrective service facility established under the *Corrective Services Act 2000*; or

- (ii) a detention centre established under the *Juvenile Justice Act 1992*;
- (c) a building used for providing aged care under the *Aged Care Act 1997* (Cwlth);
- (d) a building classified as a class 1a, 2 or 9a building under the BCA.

‘Division 2—Fire safety standard

‘12C Fire safety standard

‘(1) A regulation may prescribe a standard (the **“fire safety standard”**) for ensuring that all the occupants of a budget accommodation building may be safely evacuated in the event of a fire in the building.

‘(2) Without limiting subsection (1), the fire safety standard may provide for all or any of the following for the building—

- (a) the allowable number of occupants;
- (b) the provision and maintenance of fire safety systems;
- (c) training programs for occupants and persons employed in the building about—
 - (i) fire management and prevention; or
 - (ii) emergency evacuation.

‘12D Guidelines for fire safety standard

‘(1) The chief executive may issue guidelines about ways of complying with the fire safety standard.

‘(2) Before issuing the guidelines, the chief executive must consult with any entity the chief executive considers appropriate.

‘12E Public notice of guidelines

‘(1) After issuing the guidelines, the chief executive must give notice of the guidelines.

‘(2) The notice must—

- (a) be published in a newspaper the chief executive considers appropriate; and
- (b) state the places where copies of the guidelines may be inspected or bought.

‘12F Access to guidelines

‘(1) The chief executive must keep a copy of the guidelines and any document applied, adopted or incorporated by the guidelines available for inspection—

- (a) without charge, during normal business hours at the department’s head office; and
- (b) on the department’s web site on the internet.¹

‘(2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the guidelines.

‘(3) The fee decided by the chief executive must be not more than the chief executive’s reasonable cost of producing the copy.

‘Division 3—Budget accommodation buildings built, approved or applied for, before 1 January 1992

‘12G Application of div 3

‘This division applies to a budget accommodation building only if—

- (a) construction of the building started before 1 January 1992; or
- (b) construction of the building was—
 - (i) approved, under this Act, before 1 January 1992; and
 - (ii) started on or after 1 January 1992; or
- (c) an application for approval to construct the building—
 - (i) was made, under this Act, before 1 January 1992; and
 - (ii) the approval was given on or after 1 January 1992.

¹ The department’s head office is at 41 George Street, Brisbane 4000 and its web site on the internet is www.dlqp.qld.gov.au.

‘12H Owner must ensure building conforms with fire safety standard

‘The owner of a budget accommodation building must ensure the building conforms with—

- (a) the provisions of the fire safety standard about emergency lighting and early warning systems within—
 - (i) 1 year after the standard commences; or
 - (ii) the longer period approved for the building under section 12I; and
- (b) the remaining provisions of the standard within—
 - (i) 3 years after the standard commences; or
 - (ii) the longer period approved for the building under section 12I.

Maximum penalty—165 penalty units.

‘12I Approval of longer period for conformity with fire safety standard

‘(1) The owner of a budget accommodation building may make written application to the local government to approve a period for the building under section 12H(a)(ii) or (b)(ii).

‘(2) The local government may—

- (a) consult with any other entity the local government considers appropriate in deciding the application; and
- (b) grant the application only if the local government is satisfied undue hardship would be caused to the building’s occupants if the application were refused.

‘(3) The local government may grant the application with or without the reasonable conditions the local government considers appropriate.

‘(4) Within 20 business days after receiving the application, the local government must—

- (a) decide the application; and
- (b) give the owner written notice of the decision.

‘(5) The notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under IPA; and
- (c) if an appeal is made, the appeal must be made within 20 business days after the owner receives the notice.

‘(6) The owner must comply with each condition imposed on the approval.

Maximum penalty for subsection (6)—165 penalty units.

‘12J Advice as to conformity with fire safety standard

‘(1) The owner of a budget accommodation building may make written application to the local government for advice as to whether the building conforms with the fire safety standard.

‘(2) Within 20 business days after receiving the application, the local government must—

- (a) decide if the building conforms with the fire safety standard; and
- (b) give the owner written notice of the decision.

‘(3) If the local government decides the building does not conform with the fire safety standard, the notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under IPA; and
- (c) if an appeal is made, the appeal must be made within 20 business days after the owner receives the notice.

‘(4) The notice must also state what must be done by the owner to make the building conform with the standard.

‘(5) The owner must comply with the notice.

Maximum penalty for subsection (5)—165 penalty units.

‘(6) Subsection (3) does not limit the power of the local government under sections 22 and 23.²

² Sections 22 (Enforcement notices) and 23 (Specific requirements of enforcement notices)

‘12K Appeals about conformity with fire safety standard

‘(1) This section applies if the owner of a budget accommodation building is dissatisfied with—

- (a) a local government decision on an application made by the owner under section 12I(1) or 12J(1); or
- (b) the lack of a decision mentioned in paragraph (a) within 20 business days after the local government received the application (the “**decision period**”).

‘(2) The owner may appeal to a tribunal under IPA.

‘(3) The appeal must be started within 20 business days after—

- (a) notice of the decision is given to the owner; or
- (b) if a decision is not given within the decision period, the last day of the decision period.

‘12L Stay of operation of local government decision

‘The lodging of a notice of appeal about a local government decision mentioned in section 12K(1)(a) stays the operation of the decision until—

- (a) the tribunal, on the application of the local government, decides otherwise; or
- (b) the appeal is withdrawn; or
- (c) the appeal is dismissed.

‘12M Local government decisions

‘(1) This section applies to a decision made, or written notice of which is given, by a local government, after the period stated in section 12I(4) or 12J(2).

‘(2) The decision is not invalid merely because it was made, or the notice was given, after the period.

‘Division 4—All budget accommodation buildings**‘12N Application of div 4**

‘This division applies to a budget accommodation building regardless of when it was, or is, built.

‘12O Obligation about fire safety management plan

‘(1) This section applies if—

- (a) the owner of a budget accommodation building prepares a fire safety management plan, under section 12Q(2), for a development application for the building; and
- (b) a development approval is given for the application.

‘(2) The owner must ensure the fire safety management plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances affecting the plan’s compliance with the fire safety standard.
Maximum penalty for subsection (2)—100 penalty units.

‘(3) A change in circumstances mentioned in subsection (2) includes, for example, a change in the fire safety standard.

‘(4) The owner must ensure the current fire safety management plan is implemented.

Maximum penalty for subsection (4)—100 penalty units.

‘12P Accessing fire safety management plan

‘The owner of a budget accommodation building must ensure a copy of the building’s current fire safety management plan is kept in the building and is available for inspection, free of charge, by occupants and other members of the public whenever the building is open for business.

Maximum penalty—20 penalty units.

‘12Q Development approval for building work for budget accommodation buildings

‘(1) This section applies to a development application for a budget accommodation building that is made after the commencement of this section and involves building work.

‘(2) A fire safety management plan is a mandatory requirement in addition to the requirements stated in section 3.2.1(3)(a)³ of IPA for the application.

‘(3) Chapter 5, part 3⁴ of IPA does not apply for the application if it is for building work required to ensure the building conforms, under section 12H, with the fire safety standard.

‘(4) For the part of the application relating to building work for a budget accommodation building—

- (a) section 3.5.13(4)⁵ of IPA does not apply; and
- (b) the assessment manager must refuse the part of the application if the assessment manager is satisfied—
 - (i) the development does not comply with the applicable code and compliance with the code can not be achieved by imposing reasonable conditions; or
 - (ii) the fire safety management plan does not comply with the *Fire and Rescue Service Act 1990*, section 104FC,⁶ and compliance with the section can not be achieved by imposing reasonable conditions.

‘12R Annual inspection of buildings for which development approval is given

‘(1) This section applies to a budget accommodation building if—

- (a) a development approval is given for building work for the building after the commencement of this section; and

3 IPA, section 3.2.1 (Applying for development approval)

4 IPA, chapter 5 (Miscellaneous), part 3 (Private certification)

5 IPA, section 3.5.13 (Decision if application requires code assessment)

6 *Fire and Rescue Service Act 1990*, section 104FC (Content of fire safety management plan)

- (b) the building work involves an alternative solution, within the meaning of the BCA,⁷ that includes fire safety management procedures as a condition of the use and occupation of the building.
- ‘(2) The local government must inspect the building annually—
- (a) to monitor compliance, by the owner of the building, with this part; and
- (b) to inspect the records required, under this Act, to be kept by the owner for this part.

‘Division 5—Miscellaneous

‘12S Obligations of entities about guidelines for fire safety standard and fire safety management plans

‘(1) In carrying out a function or power conferred on an entity under this Act or another local government Act, the entity must have regard to—

- (a) for a matter relating to the fire safety standard—the information in the fire safety standard guidelines; or
- (b) for a matter relating to the fire safety management plan—the information in the fire safety management plan guidelines.

‘(2) In ensuring a budget accommodation building conforms with the fire safety standard, the owner of the building must have regard to the information in the fire safety standard guidelines.

‘(3) In preparing a fire safety management plan for a budget accommodation building, the owner of the building must have regard to the information in—

- (a) the fire safety standard guidelines; and
- (b) the fire safety management plan guidelines.

‘(4) In this section—

⁷ BCA, part A1 (Interpretation), section A1.1 (Definitions)—

“**Alternative Solution**” means a *Building Solution* which complies with the *Performance Requirements* other than by reason of satisfying the *Deemed-to-Satisfy Provisions*.

‘**“fire safety management plan guidelines”**’ means the guidelines made under the *Fire and Rescue Service Act 1990*, section 104FD.⁸

“fire safety standard guidelines” means the guidelines made under section 12D.

“local government Act” means a local government Act within the meaning of the *Local Government Act 1993*, section 3.⁹.

5 Amendment of s 17 (Advice as to compliance)

Section 17—

insert—

‘(5) Subsection (3) does not limit the power of the local government under sections 22 and 23.’.

6 Amendment of s 52 (Regulation-making power)

Section 52(2)—

insert—

‘(ba)the records required for this Act; and’.

PART 3—AMENDMENT OF FIRE AND RESCUE SERVICE ACT 1990

7 Act amended in pt 3

This part amends the *Fire and Rescue Service Act 1990*.

8 *Fire and Rescue Service Act 1990*, section 104FD (Guidelines for preparing fire safety management plans)

9 *Local Government Act 1993*, section (3) (Definitions)—

“local government Act” means an Act under which a local government may exercise the jurisdiction of local government, and includes, for example, this Act, the *Integrated Planning Act 1997*, *Water Act 2000*, chapter 3, a local law, a planning scheme or interim development control provisions.

8 Amendment of s 6 (Definitions)

Section 6—

insert—

‘ **“budget accommodation building”** see the *Building Act 1975*, section 12B.

“fire safety management plan” see section 104FC.

“fire safety standard” see the *Building Act 1975*, section 12C(1).’.

9 Amendment of s 55 (Powers of authorised officer for preventative or investigative purposes)

(1) Section 55(1)(b), ‘prevention measures’—

omit, insert—

‘prevention measures, including the implementation of a fire safety management plan as required under part 9A,¹⁰’.

(2) Section 55—

insert—

‘(2A) However, subsection (2)(a) does not apply to a budget accommodation building if the entry is made to investigate whether the owner of the building is implementing a fire safety management plan.’.

10 Replacement of pt 9A, div 2 heading (Duties of occupiers)

Part 9A, division 2, heading—

omit, insert—

‘Division 2—Obligations of persons for fire safety

‘Subdivision 1—Means of escape and prescribed fire safety installations’.

10 Part 9A (Building fire safety)

11 Insertion of new pt 9A, div 2, sdiv heading

Before section 104E—

insert—

‘Subdivision 2—Fire and evacuation plan’.

12 Insertion of new pt 9A, sdiv 3

After section 104F—

insert—

‘Subdivision 3—Fire safety management plan

‘104FA Obligation to prepare fire safety management plan

‘(1) This section applies to a budget accommodation building only if—

- (a) construction of the building started before the commencement of this section; or
- (b) construction of the building was—
 - (i) approved under IPA before the commencement; and
 - (ii) started on or after the commencement; or
- (c) an application for approval to construct the building—
 - (i) was made under IPA before the commencement; and
 - (ii) the approval is given on or after the commencement.

‘(2) The owner of the budget accommodation building must prepare a fire safety management plan for the building within 1 year after the commencement.

Maximum penalty—100 penalty units.

‘104FB Other obligations about fire safety management plan

‘(1) The owner of a budget accommodation building who is required, under section 104FA or the *Building Act 1975*, section 12Q(2),¹¹ to prepare

11 *Building Act 1975*, section 12Q (Development approval for building work for budget accommodation buildings)

a fire safety management plan for the building must ensure the plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances affecting the plan's compliance with the fire safety standard.

Maximum penalty for subsection (1)—100 penalty units.

‘(2) A change in circumstances mentioned in subsection (1) includes, for example, a change in the fire safety standard.

‘(3) The owner must ensure the current fire safety management plan is implemented.

Maximum penalty for subsection (3)—100 penalty units.

‘104FC Meaning of “fire safety management plan”

‘(1) A **“fire safety management plan”** for a building is a plan that states each of the following and complies with subsections (2) and (3)—

- (a) the allowable number of occupants for the building;
- (b) the proposed maintenance schedule for the building's prescribed fire safety installations;
- (c) the evacuation plan for evacuating the building's occupants, including occupants with an intellectual or physical disability, in the event of a fire in the building;
- (d) proposed training programs for occupants and persons employed in the building about—
 - (i) fire management and prevention; and
 - (ii) emergency evacuation;
- (e) a list of the building's prescribed fire safety installations, together with the brand name and model number of each installation, if applicable.

‘(2) The matters mentioned in subsection (1)(a) to (d) must comply with the fire safety standard.

‘(3) The fire safety management plan must have attached to it, or be accompanied by, a copy of the building plans, in a reasonable scale, identifying the location of the building's prescribed fire safety installations.

‘104FD Guidelines for preparing fire safety management plans

‘(1) The chief executive may issue guidelines for preparing fire safety management plans.

‘(2) Before issuing the guidelines, the chief executive must consult with any entity the chief executive considers appropriate.

‘104FE Public notice of guidelines

‘(1) After issuing the guidelines, the chief executive must give notice of the guidelines.

‘(2) The notice must—

- (a) be published in a newspaper the chief executive considers appropriate; and
- (b) state the places where copies of the guidelines may be inspected or bought.

‘104FF Access to guidelines

‘(1) The chief executive must keep a copy of the guidelines and any document applied, adopted or incorporated by the guidelines available for inspection—

- (a) without charge, during normal business hours at the department’s head office; and
- (b) on the department’s web site on the internet.¹²

‘(2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the guidelines.

‘(3) The fee decided by the chief executive must be not more than the chief executive’s reasonable cost of producing the copy.

‘104FG Accessing fire safety management plan

‘The owner of a budget accommodation building must ensure a copy of the building’s current fire safety management plan is kept in the building

12 The department’s head office is at Emergency Services Complex, corner Park and Kedron Park Roads, Kedron 4031 and its web site on the internet is www.fire.qld.gov.au.

and is available for inspection, free of charge, by the building's occupants and other members of the public whenever the building is open for business.

Maximum penalty—20 penalty units.

‘Subdivision 4—Obligations of entities about guidelines for fire safety standard and fire safety management plans

‘104FH Obligations about guidelines for fire safety standard and fire safety management plans

‘(1) In carrying out a function or power conferred on an entity under this Act, the entity must have regard to—

- (a) for a matter relating to the fire safety standard—the information in the fire safety standard guidelines; or
- (b) for a matter relating to the fire safety management plan—the information in the fire safety management plan guidelines.

‘(2) In ensuring a budget accommodation building conforms with the fire safety standard, the owner of the building must have regard to the information in the fire safety standard guidelines.

‘(3) In preparing a fire safety management plan for a budget accommodation building, the owner of the building must have regard to the information in—

- (a) the fire safety standard guidelines; and
- (b) the fire safety management plan guidelines.

‘(4) In this section—

‘**“fire safety management plan guidelines”** means the guidelines made under section 104FD.

“fire safety standard guidelines” means the guidelines made under the *Building Act 1975*, section 12D.¹³

‘Subdivision 5—Chief commissioner’s notice about occupier’s and owner’s obligations’.

¹³ *Building Act 1975*, section 12D (Guidelines for fire safety standard)

13 Amendment of s 104G (Notice by chief commissioner about occupier's obligations)

(1) Section 104G, heading, after 'occupier's'—

insert—

'or owner's'.

(2) Section 104G(1), after 'occupier'—

insert—

'or owner'.

**PART 4—AMENDMENT OF LOCAL GOVERNMENT
ACT 1993**

14 Act amended in pt 4

This part amends the *Local Government Act 1993*.

15 Amendment of s 1082 (Definitions)

Section 1082—

insert—

' "budget accommodation building" see the *Building Act 1975*, section 12B.'

16 Amendment of s 1098 (Approval of inspection program)

Section 1098(1), example 1, after 'fencing'—

insert—

'or a budget accommodation building'.

17 Amendment of section 1096 (Monitoring authorisations and notices and processing applications)

Section 1096(1)—

insert—

‘(d) to inspect a record required to be kept under the *Building Act 1975* for part 2A¹⁴ of that Act.’.

18 Amendment of s 1101 (Power of entry under approved inspection program)

(1) Section 1101(1), ‘An’—

omit, insert—

‘Subject to subsection (2), an’.

(2) Section 1101(2)—

omit, insert—

‘(2) For a building or other structure, or the part of the building or other structure, used for residential purposes, subsection (1)—

- (a) applies if entry is made to monitor compliance with the requirements for a budget accommodation building under the *Building Act 1975*, part 2A; but
- (b) otherwise does not apply.’.

14 *Building Act 1975*, part 2A (Fire safety for budget accommodation buildings)