



Government of **Western Australia**
Department of **Health**

Managing housing health risks in WA

Discussion paper
September 2019



1 Contents

2	Executive summary	3
3	Introduction	6
3.1	Why are we reviewing management of housing risks to health?	6
3.2	What is the purpose of this consultation paper?	7
3.3	How will any proposed changes impact on remote aboriginal housing?	7
3.4	Exclusions	8
4	Risks to public health	8
4.1	Inadequate or non-functioning facilities	8
4.2	Hoarding and squalor	9
4.3	Poor air quality	10
4.4	Overcrowding	10
4.5	Risk assessment	12
5	Current management	15
5.1	What is the role of authorised officers?	15
5.2	Health (Miscellaneous Provisions) Act 1911 (Part V)	15
5.3	Health local laws	16
5.4	<i>Health (Laundries and Bathrooms) Regulations 1971</i>	16
5.5	<i>Sewerage (Lighting, Ventilation and Construction) Regulations 1971</i>	16
5.6	National Construction Code	17
5.7	Residential Tenancies Legislation	17
6	Future management	19
6.1	Option A: Retain status quo	20
6.2	Option B: Repeal without replacement and use the general public health duty	21
6.3	Option C: Develop new, updated regulations under the <i>Public Health Act 2016</i>	22
6.3.1	Proposal 1: Provisions for unfit housing	24
6.3.2	Proposal 2: Define habitable building	25
6.3.3	Proposal 3: Maintenance of habitable buildings	26
6.3.4	Proposal 4: Overcrowding	29
7	How would the proposed changes affect me?	31
7.1	Members of the public	31
7.2	Industry	31
7.3	Local government	31
7.4	State government	32
8	Appendix 1 – Regulatory tools under the Public Health Act 2016	33
9	Appendix 2 – Risk assessment methodology	34
10	References	37

2 Executive summary

Housing is a basic need to survive, a fundamental component of modern life and forms the basis for the ways in which we interact with society. Appropriate housing not only protects people from disease, but encourages good physical and mental health and economic participation.

Having a minimum standard for housing is not aspirational or ambitious – it merely describes the basic requirements for living in a safe, secure and healthy environment, one which all Western Australians are entitled to. There should be mechanisms in place to remediate uninhabitable buildings before allowing people to live there.

In regard to housing requirements, the Department of Health (DOH) administers legislation which is enforced by local governments. Local governments have also developed their own local laws to manage housing risks to health.

The DOH is involved in housing through the following pieces of legislation:

- *Health (Miscellaneous Provisions) Act 1911* Part V, Division 1 (Houses unfit for occupation)
- *Health (Laundries and Bathrooms) Regulations 1971*
- *Sewerage (Lighting, Ventilation and Construction) Regulations 1971*

With the implementation of the *Public Health Act 2016*, these pieces of legislation must be reviewed and the housing risks to health examined. The DOH must determine how to manage these risks into the future, and this paper will discuss the options of retaining status quo, repealing the regulations without replacement and developing new regulations.

Community input is now sought on the proposed methods of management, and the DOH is seeking comments on how the proposals may impact you. We welcome your input on this important issue.





How to make a submission

This document contains a series of questions related to the ideas outlined. You are not required to comment on all of the questions, and can provide feedback that may not be related to any of the questions.

Please explain the reasons behind your suggestions, and where possible use evidence (such as statistics).

Online survey

Complete the online survey, which may be accessed at

<https://consultation.health.wa.gov.au/environmental-health-directorate/housing-survey>

Written submissions

Submissions must be received by **5:00pm (WST), Thursday 12 December 2019**. Late submissions unfortunately cannot be considered.

Written submission lodged by email (preferred) can be sent to publichealthact@health.wa.gov.au

Hard copies can be posted to:

Housing review
Environmental Health Directorate
Department of Health
PO Box 8172,
Perth Business Centre
WA 6849

Preliminary consultation

Consultation is occurring across WA and is open to all members of the public. The following groups have been identified as key stakeholders and will be contacted directly to advise of the release of this paper:

- All Western Australian local governments;
- State Government agencies; and
- Representatives of a group of people or industry that may be affected by the proposed changes.

How will the input be used?

Your responses will contribute to the DOH's understanding of how the proposals may impact stakeholders. Responses will be analysed and collated into a consultation summary document, including recommendations from the DOH on the best way forward. The DOH must then complete the Better Regulation Unit's Regulatory Impact Assessment process, including further research and cost benefit analysis.

3 Introduction

The United Nations defines 'adequate housing' as a basic human right [1]. This term captures more than just basic shelter and includes privacy, space, security, lighting, ventilation and basic infrastructure [2]. It reflects the research confirming that the structure, facilities, and uses of human shelter have a strong impact on the state of people's physical, mental and social well-being [3-5].

Poor housing conditions have been proven to contribute to ill-health, and may include inadequate facilities for, or improper use of facilities for:

- washing;
- cooking;
- plumbing or drainage;
- ventilation;
- waste disposal;
- sound insulation; and
- heating and cooling [3, 4, 6],

as well as structural issues and overcrowding.

In a study of housing risks to health amongst lower-income Australians, the presence of more risks corresponded with worse physical, mental and self-assessed health as well as the pronounced prevalence of clinical depression [7]. There is strong evidence of a relationship between health-adverse housing and poorer health in this group [7].

Adequate and appropriate housing conditions on the other hand, not only protect people against health hazards but also help to promote robust physical health, economic productivity, psychological well-being and social vigour [5]. Adequate housing provides protection against

exposure to agents of communicable and atopic disease.

In WA the Department of Health (DOH) has been involved in managing the risks to health associated with housing for over a century through the *Health Act 1911*, now the *Health (Miscellaneous Provisions) Act 1911* (the Health (MP) Act). Over time the risks have changed significantly.

A survey of all Australian local governments recently revealed that over half of all respondents had concerns with the physical quality of the housing stock in their local government area. In WA the results were even more damning, with 60% of respondents indicating they were moderately, very or extremely concerned about the quality of housing stock in their area [8].

3.1 Why are we reviewing management of housing risks to health?

In the lead up to stage 5 of implementation of the *Public Health Act 2016* (the Public Health Act) the DOH is required to review the content of the Health (MP) Act and all regulations adopted under it.

At present, the Health (MP) Act and a number of its subsidiary regulations are involved in the management of housing risks to health, including the:

- Health (MP) Act Part V Division 1,
- *Health (Laundries and Bathrooms) Regulations* (the Laundries and Bathrooms Regulations); and the
- *Sewerage (Lighting, Construction and Ventilation) Regulations 1971* (the Sewerage (LVC) Regulations).



These regulations and the relevant provisions in the Health (MP) Act must be reviewed as part of this process.

The review must determine whether the associated public health risks should continue to be regulated under the new regulatory framework, or whether they can be effectively managed through a guideline, local law or other legislation instead. If it is not appropriate for them to continue to be managed by the DOH, they will be repealed.

3.2 What is the purpose of this consultation paper?

The DOH has researched housing risks to public health and presents here a number of options for the continuing management of these risks. The purpose of this paper is to seek feedback from the community on which options are preferred and identify the potential impacts.

This paper is concerned with the management of housing risks to health, currently covered under the Laundries and Bathrooms Regulations, Sewerage (LVC)

Regulations, local laws and a number of provisions under the Health (MP) Act. The paper will detail current management and present a number of options for future management.

The DOH must complete the Regulatory Impact Assessment process as required by the Department of Treasury. This paper forms part of the process and will ensure that any proposed regulatory changes have undergone consultation, with stakeholders given the opportunity to detail any impacts.

3.3 How will any proposed changes impact on remote aboriginal housing?

It is widely understood that many members of WA's remote aboriginal communities live in poor quality housing. This is an issue of national importance and requires a multi-faceted, ongoing effort to solve.

The Public Health Act binds the Crown, that is, the Act covers land held or administered by the Crown and its authorities. Because many dwellings in aboriginal communities are owned by State or State-connected

agencies, this Act and its regulations will apply to all dwellings¹ in Western Australia.

However it should be noted that State agencies may not be required to comply immediately with the Act, as they are able to apply for an exemption from immediate compliance and will be able to put into place a public 'improvement plan' to demonstrate how they will achieve full compliance over a stated time period.

The proposals in this paper will support the push for better standards of housing in remote aboriginal communities; however it is not the sole purpose of the paper and it is not suggested that the proposed measures alone can resolve the complex issues.

3.4 Exclusions

The following topics, while classified as housing risks to public health, are being addressed separately and will not be covered as part of this paper:

Lodging houses: Management of lodging houses will be covered in a separate discussion paper, although some provisions may intersect with those in this paper.

Asbestos: Management of asbestos will be examined during the review of the *Health (Asbestos) Regulations 1992*.

Clandestine laboratories: Extensive work has already been done on this topic and the DOH issued a 2018 [guideline on remediation of clandestine laboratories](#) in WA.

Water: Water quality will be examined during the reviews of the provisions related to water supply and wastewater under the Health (MP) Act.

¹ dwelling is taken to mean a residence, place of residence, place of habitation, home, house, accommodation, lodging place.

4 Risks to public health

The critical role of housing in public health has long been recognised in Australia. Elimination of housing slums and provision of household sanitation were some of the earliest public health interventions at the beginning of the 20th century, and contributed to drastically reduced mortality rates [9].

While the quality of housing in Australia is generally good, sub-populations such as long-term tenants, sole supporting parents, persons with a disability, refugees and aboriginal Australians are particularly vulnerable to the health effects of housing [7]. The current approach to housing standards for non-home owners relies on the ability of customers to 'shop around' and refuse properties that are not of an adequate standard [10].

However, a nation-wide inadequate supply of affordable housing often leaves tenants with little choice and landlords with no legal or economic pressure to improve living conditions. Many of the provisions for dwellings and lodging houses in the original 1911 version of the Health (MP) Act are still in the current version of the Act. However the scope and type of housing risks to health have changed dramatically since 1911 [9]. This section will examine risks from a current perspective as addressed by authorised officers.

4.1 Inadequate or non-functioning facilities

Hygienic sanitation facilities are crucial for public health, with poor sanitation resulting in an estimated 280,000 deaths globally each year [11].

Health hardware such as a functioning toilet, hand basins and a shower or bath are necessary for people to conduct basic

health practices such as bathing and washing hands.

Contact with human waste

Contact with human waste is associated with a range of bacterial, viral and parasitic illnesses, from diarrhoea and tapeworm to hepatitis [12]. Such diseases can be spread directly, through people coming into contact with human waste if plumbing is not functioning correctly, or indirectly when people come into contact with carriers such as flies, cockroaches or pets. Health hardware must be maintained to avoid:

- pooling of effluent
- uncovered or broken septic tanks or pipes
- blocked and overflowing toilets
- poor placement of septic tanks resulting in contaminated water supply [12]

all of which expose people to human waste.

Domestic hygiene

Aside from the risks presented by contact with human waste, poor hygiene can cause additional illnesses, such as trachoma, skin infections, gastroenteritis and pneumonia [12].

Good domestic hygiene requires the ability to wash hands, hair, body, clothing and bedding frequently. This requires access to appropriate health hardware for washing, and a consistent hot and cold water supply.

Ability to prepare food

Healthy dwellings provide facilities for the safe preparation and storage of food, so that householders can employ sanitary food-handling practices [5].

Not only is nutrition considered one of the most powerful determinants of health and related to a person's resistance to disease,

but safe and healthy food storage reduces the risk of bacterial, viral, protozoan and helminthic vectors which can be transmitted through contaminated food.

4.2 Hoarding and squalor

Hoarding and squalor are often referred to interchangeably. They frequently co-exist, though not always, and are very distinct states.

Squalor is an unsanitary environment that has arisen from extreme and/or prolonged neglect. The premises pose substantial health and safety risks to people or animals living there, as well as the community [13].

A hoarding situation is where a person has collected and retains a large number of items in their home. The three key elements of hoarding are that:

- the hoarder keeps a large number of possessions that seem to be of limited value
- living spaces are so cluttered they can't be used for their original purpose
- excessive attachment to possessions, such that removal of them causes distress [13].

Hoarding and squalor both present health issues for the residents of the property, and also affect surrounding areas. Properties in such poor condition may:

- prevent occupants from using functioning health hardware and increase the risks of poor domestic hygiene
- breed microorganisms and attract insect and rodent pest vectors, which then spread disease
- present a fire hazard due to the high volume of combustible material – only 1% of house fires occur in the

homes of people with a hoarding problem, however they make up 25% of house fire related deaths due to limited access and egress [14]

- restrict the ability of social services to attend the property due to occupational health and safety risks, worsening physical and mental health of the occupants
- restrict the ability of emergency services to enter and evacuate people, as well as presenting an unacceptable risk to their personnel in the event of an emergency
- create odours, which can be harmful to health and can significantly impact the amenity of surrounding areas.

Authorised officers have been dealing with cases of hoarding and/or squalor for many years using existing health legislation. Cases are usually very complex and require the involvement of multiple agencies, and anecdotal evidence from local government in WA suggests that the number of known cases appears to be increasing over time.

This is supported by data collected in South Australia in 2009 which tracked the annual number of hoarding and severe domestic squalor complaints received by local governments from 2004 – 2009. This showed a steady increase in the number of complaints and those found to be substantiated, with a 77% increase in substantiated cases between 2004 and 2009 [15].

4.3 Poor air quality

Respiratory health is one of the main health outcomes shown to be related to housing [16]. This can be significantly affected by the quality and moisture content of the indoor air.

Dampness and inadequate ventilation have a strong negative effect on the quality of indoor air [17]. Poorly ventilated and damp conditions can lead to:

- the accumulation of toxic or irritating substances, such as those emitted by heating and cooking devices if they are inadequately ventilated [5]
- proliferation of dust mites, which are a potent allergen [18, 19] and
- mould growth.

Evidence suggests that poor indoor air quality in developed nations is a cause of allergies, other hypersensitivity reactions, airway infections and cancers [20].

Dwellings should be adequately ventilated and damp-free to avoid the creation of unhealthy air conditions inside the home.

4.4 Overcrowding

Overcrowding of housing, especially in conjunction with poverty and inadequate facilities:

- increases the transmission rates of communicable disease, with outbreaks more frequent and severe [5, 21]
- can make it more difficult for occupants to access and maintain health hardware such as hot water and washing facilities [22]
- has been associated with mental health problems and psychiatric morbidity, particularly in children [17]
- may be associated with unauthorised changes to the use of the dwelling, impacting ventilation, provision of facilities, or electrical safety
- in lodging house situations, overcrowding intensifies the risk of death or injury in an emergency situation.

While the public health risks of overcrowding are well understood, it is a complex issue which can't always be solved by providing more housing. For example in an aboriginal Australian context, cultural factors come into play such as the desire to live in larger, multi-generational households, cultural obligations to family and a general lack of culturally appropriate housing [22].

An emerging issue is the overcrowding of dwellings in metro areas, particularly by recent migrants and other vulnerable groups with limited housing options. While this phenomenon is well-documented in cities around the world including Melbourne and Sydney, there are still limited provisions to protect occupants in WA.

Authorised officers in WA have reported seeing [23]:

- unauthorised conversion of outbuildings, bathrooms, laundries or cupboards into sleeping areas
- showers moved outdoors in order to use a bathroom as a sleeping area
- a single bedroom being used to contain up to six members of a family, plus all electrical devices including cooking appliances
- windows being sealed up to create rooms on the other side.

Such situations not only lead to poorer physical and mental health outcomes but can put all occupants and first responders in significant danger in an emergency.

This private rental property located in regional Western Australia, was inspected in 2018. Three children and three adults were living in the house at the time of inspection. A number of critical issues were identified by officers:

- The pipe leading from the septic tank to the house had a bend in it where wastewater escaped. There was considerable evidence of toilet paper and wastewater pooled in the surrounding area on the back patio floor.
- The toilet was in poor condition, with a broken seat bound by electrical tape. The open cistern was mounted to a piece of timber, and the toilet was known to self-flush.
- The bathroom had no ventilation or lighting, displayed signs of rising damp and the flooring was not adequately waterproof. The shower floor had dropped below the grate.

While there is a perception that housing quality is not an issue in a place such as Western Australia, many people across the state are living in substandard conditions that are exposing them to significant hazards, such as open sewage.



4.5 Risk assessment

The Public Health Act implements a modern, flexible, pro-active risk-based framework that can be applied to regulate any given risk to public health. Regulations under the Public Health Act will be made in circumstances where the nature of the public health risk is such that regulations are required, and those regulations will apply and build upon the framework provided by the Public Health Act.

A risk assessment has been undertaken in accordance with the risk assessment model provided by the 2011 Health Risk

Assessment (Scoping) Guidelines, Department of Health WA (further information on this method is provided in appendix 3). Figure 1 below details application of the risk assessment model.

Note: The severity is based upon the percentage of the at-risk population requiring treatment for chronic health consequences. This is difficult to quantify in this instance, so likelihood has been estimated per one average member of the population, per one incident.

Figure 1: Public health risk assessment of risks associated with poor housing

Risk	Cause	Who is at risk?	Severity*	Likelihood**	Risk level***	Legislative control in place	Resultant risk level#
Contact with human waste	Flushing toilet not provided in habitable building, or inappropriate/illegal disposal (such as in the backyard)	Inhabitants, visitors, soil (contamination), water (contamination), downstream persons who come into contact with contaminated soil or water	Major	Possible	Medium	National Construction Code (NCC) Health (MP) Act Sewerage (LVC) Regulations	Very low
	Flushing toilet not maintained: <ul style="list-style-type: none"> Blocked/overflowing or pipes broken, leading to pooling Not functioning Septic tanks broken or uncovered 	Inhabitants, visitors and communities	Major	Possible	Medium	Residential Tenancies Act (limited) and Laundries and Bathrooms Regulations Health (MP) Act	Medium/low
Inability to carry out health	Inadequate facilities or health hardware provided, including lack of hand basins, baths or showers, food preparation and	Inhabitants and visitors	Moderate	Possible	Low	NCC	Very low

Risk	Cause	Who is at risk?	Severity*	Likelihood**	Risk level***	Legislative control in place	Resultant risk level#
maintenance routines	cooking facilities (for permanent dwellings), or lack of accessible facilities						
	Facilities not maintained, blocked, not working, overcrowded or otherwise compromised	Inhabitants and visitors	Moderate	Likely	Medium	N/A Residential Tenancies Act (limited)	Medium
	Inadequate supply of hot and cold water	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act (local laws) Plumbing Code of Australia Residential Tenancies Act (limited)	Very low
	Hoarding leading to accumulation of matter and blocking of key services or home functions	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act	Low
	Overcrowding leading to inadequate access to health hardware	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act (local laws)	
Contact with indoor air contaminants	Inadequate ventilation for cooking appliances, heating and cooling devices	Inhabitants and visitors	Moderate	Likely	Medium	NCC, however does not require ventilation to outside air	Low
	Mould growth due to: <ul style="list-style-type: none"> Inadequate ventilation in wet and other areas Water penetration or rising damp Inadequate lighting Inhabitant usage practices 	Inhabitants and visitors	Moderate	Likely	Medium	NCC N/A for inhabitant practices	Low
Contact with pest vectors	Poor maintenance of and failure to repair structure leading to pest entry	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act (limited) Residential Tenancies Act (limited)	Low
	Accumulation of domestic waste through hoarding or squalor, or poor food storage or	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act	Low

Risk	Cause	Who is at risk?	Severity*	Likelihood**	Risk level***	Legislative control in place	Resultant risk level#
	cleaning practices including failing to clean food remnants						
	Pooling and poor drainage of surface water	Inhabitants, visitors, neighbouring properties	Moderate	Possible	Low	NCC Health (MP) Act	Low
Risk to physical safety	Inadequate ventilation for toilet, wet areas and other areas of the premises	Inhabitants and visitors	Moderate	Possible	Low	NCC Sewerage Regulations (LVC)	Very low
	Inadequate lighting provided increasing chance of accidents as well as mould	Inhabitants and visitors	Moderate	Possible	Low	NCC	Very low
	Building structurally unsound	Inhabitants and visitors	Major	Possible	Medium	NCC Health (MP) Act	Very low
	Inadequate ventilation or insulation resulting in inadequate temperature control	Inhabitants and visitors	Moderate	Possible	Low	NCC	Low
	Hoarding or other accumulation creating slip, trip and fall hazards or fire hazards	Inhabitants and visitors	Moderate	Likely	Medium	N/A Lodging houses: Health (MP) Act	Medium
Negative mental and social effects	Inability to adequately maintain personal hygiene causing social stigma and decreased job capacity	Inhabitants	Minor	Likely	Low	N/A	Low
	Negative mental health effects related to unpleasant environment, lack of agency etc	Inhabitants	Moderate	Likely	Medium	N/A	Medium
	Overcrowding	Inhabitants	Moderate	Likely	Medium	Health (MP) Act	Medium
	Hoarding and squalor reducing access to home & community services and causing isolation from community	Inhabitants	Major	Likely	High	N/A	High

* Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA (refer to appendix 1)

** Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA (refer to appendix 1)

*** Uncontrolled risk rating from the risk matrix (refer to appendix 1)

Final risk rating takes into account legislative controls to estimate new risk level

5 Current management

Housing risks to health in dwellings are currently managed under a number of pieces of legislation, including the:

- *Health (Miscellaneous Provisions) Act 1911* (Part V, Division 1);
- *Health Act (Laundries and Bathrooms) Regulations*;
- *Sewerage (Lighting, Ventilation and Construction) Regulations 1971*;
- *Building Act 2011* which requires new builds to comply with the National Construction Code (NCC) (including the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA)); and the
- *Residential Tenancies Act 1987* and the *Residential Tenancies Regulations 1989*

5.1 What is the role of authorised officers?

Authorised officers have powers and responsibilities under health legislation. In regard to housing, their role may include:

- assessing the plans of new developments for compliance with health requirements;
- investigating complaints about poor housing conditions, including mould, dampness, hoarding, squalor and overcrowding, and applying health legislation.

5.2 Health (Miscellaneous Provisions) Act 1911 (Part V)

The Health (MP) Act is the key Act under which other health legislation related to dwellings has been made. A number of sections in the Act contain provisions relevant to dwellings.

Part V Division 1 – Houses unfit for occupation

In accordance with Part V Division 1, authorised officers can:

- declare a house unfit for habitation;
- require a condemned building to be amended or removed and the clean-up of land after it has been removed;
- where an owner fails to comply with a notice, act in default;
- prevent conversion of buildings into dwellings; and
- order a house or its contents to be cleansed.

These provisions may be enacted in situations of abandoned or derelict housing, and frequently in cases of hoarding and squalor where conditions pose a significant risk to the occupants.

Part VII – Nuisances and offensive trades

Part VII of the Health MP Act makes it an offence to create a nuisance. A nuisance includes any of the following health risks to housing if they are in such a state to be offensive or injurious or dangerous to health:

- sanitary conveniences, drains, drainage systems or other water receptacles;
- chimney smoke;
- an accumulation or deposit; and
- a house or premises, including if it harbours rats or is overcrowded.

Division 3 of Part VII also gives local governments the power to make local laws in respect to preventing overcrowding (199(7)).

5.3 Health local laws

Most local governments have requirements for dwellings as part of their health local laws. These provisions generally include:

- provision of a toilet, bathroom and laundry
- a kitchen with cooking facilities including mechanical ventilation, food preparation area and a sink
- adequate hot and cold water
- that the building be maintained, including sound working non-hazardous condition of roofs, foundations, footings, walls, verandas, steps, floor, masonry work, flashings, ventilators, ceilings, fixtures, fittings, doors, windows, plumbing, electrical wiring, gutters, downpipes etc.
- prescribed natural lighting free from obstruction
- disposal of rainwater
- prevention of overcrowding and
- proper ventilation and sub-floor ventilation of housing in accordance with the building code and/or an Australian Standard

Requirements vary and are applied differently between local governments, however many of these requirements are the same having been taken from the *Model By-Laws Series "A"*.

5.4 Health (Laundries and Bathrooms) Regulations 1971

The Laundries and Bathrooms Regulations were adopted in August 1971 under the Health (MP) Act. These regulations prescribe requirements in regard to the provision, location and maintenance of laundry facilities and details relating to bathrooms. These regulations however only apply to those districts and parts of districts that are specified in Schedules 1 and 2 of

the Regulations. As a result, some areas of the state are not captured, particularly dwellings in very remote locations.

Specifically the regulations require that in a dwelling:

- a laundry and a bathroom must be provided;
- bathrooms must be of a prescribed minimum width;
- wash troughs must be provided of a prescribed capacity;
- bathrooms must have a wash basin and either a shower or bath;
- laundries must have an adequate hot and cold water supply;
- laundries must be separate from the kitchen;
- disposal of laundry wastewater must occur in a permitted manner;
- clothes must not be washed where food is prepared; and
- soiled clothing and bedding must not be stored where food is stored, prepared, served or consumed.

5.5 Sewerage (Lighting, Ventilation and Construction) Regulations 1971

The Sewerage (LVC) Regulations were also adopted in August 1971 under the Health MP Act. They are a similarly prescriptive form of legislation for the purpose of managing water closets.

The Sewerage (LVC) Regulations contain requirements for:

- provision of water closets, their construction, privacy and location of their entrances;
- airlocks, their construction, lighting and ventilation;
- provision of natural and mechanical ventilation and their construction, louvres and quality of ventilation; and

- shower compartments and their construction.

The Sewerage (LVC) Regulations do not include requirements relating to the connection to sewer, on-site wastewater provision or treatment of wastewater, which will be discussed in a separate discussion paper as part of the wastewater review.

5.6 National Construction Code

The National Construction Code (NCC) sets out the minimum requirements for design, construction and performance of buildings throughout Australia. This is administered by the Building and Energy division (formed by the merge of the Building Commission and EnergySafety) through the *Building Act 2011* and *Building Regulations 2012*. The NCC includes requirements for new residential buildings or amendments, including sanitary facilities and laundries.

The NCC includes requirements for:

- provision of facilities, such as sanitary facilities and cooking and cleaning facilities
- ensuring the structural integrity of buildings;
- appropriate stormwater drainage;
- prevention of water ingress and water/damp proofing, including in toilet areas;
- natural and artificial lighting; and
- natural and mechanical ventilation.

Historically, there have been duplications between construction requirements in the NCC and health legislation for public buildings. The DOH and Building and Energy have agreed that construction requirements should be the domain of Building and Energy, while health legislation should be concerned with the operation and ongoing maintenance of a building.

However, it is recognised that a number of authorised officers have reported NCC-compliant buildings that may still pose a risk to public health (e.g significant water ingress or poor circulation of air). For this reason the DOH may need to retain a number of construction requirements, and will continue to liaise with the Building Commission to determine what those may need to be.

5.7 Residential Tenancies Legislation

The *Residential Tenancies Act 1987* and *Residential Tenancies Regulations 1989* (Residential Tenancies legislation) regulate the relationship of owners and tenants under residential tenancy agreements, which covers private tenants and sub-tenants as well as those in social housing. Under the Residential Tenancies Legislation, the property must be in a 'reasonable state of cleanliness and a reasonable state of repair having regard to its age and character' (s42 (2a)).

In 2012, Consumer Protection (now part of the Department of Mining, Industry Regulation and Safety) began investigating the need for new regulation of the boarding and lodging industry in WA. They released a [Consultation Regulatory Impact Statement \(C-RIS\) for boarders and lodgers](#) for public comment in 2016.

As a result of this consultation, their project has been expanded to include a review of the Residential Tenancies legislation as a whole. Consumer Protection are currently reviewing this legislation and intend to consult on minimum standards of housing. The DOH and Consumer Protection will continue to work together to ensure that minimum housing standards are consistent, do not duplicate and are addressed under the correct legislation.

New South Wales

Legislation: *Residential Tenancies Amendment (Review) Act 2018; Public Health Regulation 2012*

The Residential Tenancies Amendment Act prescribes seven minimum standards for rental properties:

1. Structurally sound
2. Adequate lighting
3. Adequate ventilation
4. Supply of electricity and gas
5. Adequate plumbing and drainage
6. Connected to a water supply
7. Contains bathroom facilities

The Public Health Regulation prescribes it to be an offence for any sleeping accommodation to have a floor area of less than 5.5m² per person (for long term accommodation) or less than 2m² per person in any other case.

Queensland

Legislation: *Housing Legislation (Building Better Futures) Amendment Act 2017; Residential Tenancies and Rooming Accommodation Regulation 2009; Building Act 1975.*

In 2017 Queensland passed an Act that amended multiple pieces of housing legislation and made it possible to prescribe minimum standards under the *Residential Tenancies and Rooming Accommodation Act 2008*. These standards are currently under development.

Victoria

Legislation: *Residential Tenancies Amendment Act 2018, Residential Tenancies (Rooming House Standards) Regulations 2012*

The Residential Tenancies Amendment Act includes the requirement to comply with prescribed rental minimum standards. Standards are currently under development but are proposed to include a functioning toilet, adequate hot and cold water connections, a functioning kitchen, functioning heating, window coverings and a vermin-proof rubbish bin.

Minimum standards are already in place for rooming houses, or buildings where one or more rooms are available to rent. This includes minimum sizes for bedrooms dependent on whether the stay is less or more than 31 days.

South Australia

Legislation: *Housing Improvement Act 2016 & Housing Improvement Regulations 2017*

South Australia has had minimum standards in place for all residential properties since the introduction of the *Housing Act 1940*.

The South Australian Housing Authority may enforce rent control on housing which does not meet the minimum standards, and list them on a public register.

South Australia is also the only state to have adopted squalor policy into legislation. The South Australian Public Health (Severe Domestic Squalor) Policy 2013 exists under the *South Australian Public Health Act 2011*.

Tasmania

Legislation: *Public Health Act 1997, Residential Tenancy Act 1997*

Under the Public Health Act environmental health officers can declare an unhealthy premises, and issue a rectification notice. A closure order can be made by the council on receipt of a certificate from the environmental health officer and a report from a building surveyor.

The *Residential Tenancy Act 1997* also contains minimum standards for all rental properties, including for sound structural condition, cleanliness, good repair, bathrooms and toilets, kitchen facilities, water supply, electricity, heating, window coverings, ventilation and locks.

6 Future management

The DOH aims to reduce public health risks and support the residents of Western Australia to become healthier. The risks of poor housing are well-understood (outlined in section 5.6) and are currently managed under the Health (MP) Act in combination with local laws.

All provisions under the Health (MP) Act must be repealed as part of the implementation of the Public Health Act. Any local laws which have been made under the Health (MP) Act must also be repealed, but new local laws can be made under the *Local Government Act 1995*.

The DOH's preferred option to protect public health involves continuing to manage housing risks to health under the Public Health Act.

The Public Health Act

The Public Health Act is risk-based and managing public health risks under this Act involves a paradigm shift away from previous approaches. A key component of this Act is the general public health duty, the provisions of which allow authorised officers to take action to protect public health in a broad range of circumstances. This means that subsidiary legislation does not need to make provision for mitigating every possible risk.

The Public Health Act provides a number of tools to manage both known and emerging risks to public health:

1. regulatory tools that are available to be applied in a proactive manner, before a public health risk has arisen e.g. public health planning and public health assessments
2. regulatory tools that can be applied in a reactive manner e.g. enforcement powers and offence provisions and
3. regulatory tools that can be applied in either a proactive or reactive manner e.g. improvement notices and powers of inquiry.

The general public health duty

The general public health duty captured under Part 3 of the Public Health Act forms the spine around which these tools are organised.

The general public health duty requires a person to take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by that person. As a result, personal responsibility and self-regulation are emphasised under the Public Health Act's framework.



6.1 Option A: Retain status quo

This option would involve attempting to replicate the current regulatory system as far as practicable under the new Public Health Act.

In their present form, the regulations are prescriptive, whereas the new Public Health Act takes a risk-based approach and uses different tools to achieve outcomes. The Health (MP) Act and the Public Health Act are very different types of legislation and existing requirements do not translate directly across.

Under this option, requirements for declaring housing unfit (Part V Division 1) would be carried over from the Health (MP) Act. If local government health local laws have been made under the Health (MP) Act, they would need to be repealed and reinstated under the *Local Government Act 1995*. Local laws already made under the *Local Government Act 1995* could remain as is.

The majority of the construction provisions of the Laundries and Bathrooms and Sewerage (LVC) Regulations are now contained in the NCC. To retain such requirements would cause regulatory overlap and be at odds with the agreement that construction requirements are the realm of Building and Energy. However, requirements which are not duplicates or exist where the NCC is considered ineffective to protect public health could be retained or transferred to the NCC with the agreement of the Minister for Commerce and Industrial Relations.

Advantages

- would most closely reflect the current framework, therefore authorised officers and other

agenices would be confident in continuing to apply the legislation

- little additional training required
- continued management of public health risks associated with dwellings
- little change in regulatory requirements for industry

Disadvantages

- would still require changes to the existing requirements (for example, duplications of the NCC must be excluded)
- current regulatory framework does not align with the new Act
- requirements remain prescriptive rather than risk-based
- existing issues would be carried over
- missed opportunity to reduce the public health risk and streamline the legislation

Question 1: Do you support the adoption of **Option A: Retain status quo**? Why or why not?

6.2 Option B: Repeal without replacement and use the general public health duty

Without action, Part V of the Health (MP) Act, the Laundries and Bathrooms Regulations and the Sewerage (LVC) Regulations would be repealed without replacement as part of the implementation of the Public Health Act.

If local government health local laws have been made under the Health (MP) Act, the provisions relating to dwellings would also be repealed but could be reinstated under the *Local Government Act 1995*.

All buildings would continue to be required to comply with the Building Regulations and the NCC, including requirements for fire safety equipment.

The rights of tenants, boarders and lodgers will all be increased under proposed changes to the Residential Tenancies legislation being led by Consumer Protection. Consumer Protection would likely increase their responsibility in dealing with poor dwelling and lodging house condition.

If an issue was identified or reported, authorised officers would have the power to take on a reactive role and manage risks to public health using the general public health duty. However they would no longer have the power to declare a dwelling unfit or associated land to be amended in the same manner as the current legislation.

In instances of hoarding and squalor (which occur primarily in owner-occupied homes, which would not be covered by Residential Tenancies legislation), authorised officers would only be able to take action under the general public health duty. The Hoarding and Severe Domestic Squalor guideline

would be updated to support authorised officers.

Advantages

- the general public health duty allows authorised officers to act to protect public health in a broad range of circumstances, including responding to new and emerging threats as well as known issues
- reduced administrative burden and responsibility for local government

Disadvantages

- this area has historically been regulated by the health portfolio, so deregulation may introduce industry confusion
- more difficult to proactively respond to emerging risks

Question 2: Do you support the adoption of **Option B: Repeal without replacement?** Why or why not?

6.3 Option C: Develop new, updated regulations under the *Public Health Act 2016*

Under this option, new regulations covering housing public health risks would be developed using the risk-based framework provided by the Public Health Act.

As demonstrated, housing risks to public health can have a significant impact on the population. Continuing regulation would assist in maintaining a high standard of health, take a new look at the current public health risks and the modern strategies available to manage them and ensure that authorised officers have immediate powers to deal with issues.

In continuing regulation, authorised officers would remain responsible for enforcement. Authorised officers would not be required to assess development applications against these regulations as they will not contain any construction requirements.

If a complaint or issue arose, authorised officers would have a number of options under the Public Health Act, including issuing improvement notices, enforcement orders and/or commencing prosecution. The DOH would provide guidance documents for authorised officers on how to apply the general public health duty.

Penalties would be significantly higher than those able to be imposed under local laws, which may encourage greater compliance. Regulations under the Public Health Act could also provide for infringement notices to be issued for specified offences.

If this option is adopted, a number of changes are proposed in order to reflect current health risks and challenges.

Proposed changes include;

- carrying over the current housing unfit for human habitation provisions
- defining 'habitable building'
- making provision for the condition and maintenance of all habitable buildings
- requiring compliance with requirements in the NCC and PCA for new builds or amendments to existing dwellings
- including provisions to prevent overcrowding
- repealing existing prescriptive requirements

Advantages

- safety of occupants maintained at a consistently high standard
- consistency between local governments in the management of housing health risks
- powers for authorised officers to issue infringement notices to achieve timely compliance and resolution
- enforcement remains with authorised officers with existing expertise in this area
- guidance documents may be produced to assist authorised officers in the application of the regulations

Disadvantages

- will require familiarisation with new legislation, including provision of information and training to those impacted

- maintains the current level of regulatory burden

Question 3: Do you support the adoption of **Option C: Develop new, updated regulations**? Why or why not?

Question 4: Do you have any suggestions for alternative options that have not been considered?

The following key changes are proposed if **Option C: Continue to regulate habitable buildings under the *Public Health Act 2016*** is chosen.

These proposals are a non-exhaustive list of suggestions for what could be included in a new regulation, based on preliminary research and the identified public health risks. It should be noted that any proposed new legislation cannot duplicate existing legislation.

Please note that offences, penalties and powers for authorised officers have not been discussed in this paper in full, as they are provided for by the Public Health Act. This includes powers of entry, inspection and seizure which are outlined in Part 16.

Proposal summary

Proposal 1: Provisions for unfit housing

- Retain provisions to:
 - Declare a house unfit for habitation
 - Require an unfit building to be removed or amended
 - Require land to be cleansed
 - Order a home to be cleansed or repaired

Proposal 2: Define habitable building or dwelling

- Redefine habitable building or dwelling to capture any permanent or temporary place designed for people to live and/or sleep

Proposal 3: Maintenance of habitable buildings

- All habitable buildings to be:
 - Structurally sound, waterproof, windproof and weatherproof
 - In safe and sanitary condition
 - In good repair
- All fixtures, fittings etc to be maintained in safe, sanitary, good working order.
- Habitable buildings must comply with the NCC, including for the provision of facilities
- Habitable buildings must have an adequate supply of hot and cold water as per the PCA
- Provision of floor wastes to be submitted to the Australian Building Codes Board as a proposal for change

Proposal 4: Overcrowding

- A room that is not a habitable room is not to be used for sleeping purposes
- A habitable room to be used for sleeping purposes must comply with the NCC requirements for ventilation
- A habitable room shall exclude a garage or shed.

Proposal summary:

- Retain provisions to:
 - Declare a house unfit for habitation
 - Require an unfit building to be removed or amended
 - Require land to be cleansed
 - Order a home to be cleansed or repaired

6.3.1 Proposal 1: Provisions for unfit housing

In situations of severe domestic squalor, hoarding, or other extremely poor housing conditions where the health and safety of the occupants, neighbours or community is at risk, authorised officers may be required to intervene.

Usually an authorised officer will work with the owner (and/or occupant) and a number of other organisations to attempt to remedy the state of the premises before using the powers in the Health (MP) Act. The owner may be issued with a Section 139 notice which requires them to clean or repair the house within a certain timeframe.

If this is not achieved, and other avenues have been exhausted, the authorised officer may issue a Section 135 notice, which is declaring the house (or any part of it) unfit for habitation. No person is allowed to occupy such a dwelling until the situation has been remedied.

The tools which authorised officers can use include the power to:

- require a home to be cleansed or repaired
- declare a house unfit for human habitation
- require an unfit building to be amended or removed
- require land to be cleaned up (whether or not the premises has been the subject of a housing unfit notice)

It is proposed that these powers are retained in new legislation. Authorised officers require legislative backing in order to motivate owners and other agencies to remedy poor housing conditions.

Declaring a house unfit for human habitation

The Health (MP) Act contains the power for a local government to declare a house or any part of a house unfit for habitation. The notice may require that such housing must not be occupied by any person.

Exercising this power is a last resort, and occurs when housing conditions are so poor that the physical health and safety of the occupants or people in surrounding areas is in danger and other options have been exhausted.

It is proposed that authorised officers retain this power and that the determination of whether a house is unfit for habitation occurs in the same manner as it does currently, when a justifiable threat to public health is present and impinges on the right of others for quiet enjoyment of their residence.

Unlike the current Health (MP) Act, the Public Health Act includes options for improvement notices to require an improvement plan and other measures aside from simply declaring a house unfit for habitation.

Requiring an unfit building to be amended or removed

The Health (MP) Act contains the power for a local government to ensure that a house that has been declared unfit for human habitation must be fixed or removed.

This is to ensure that remedial action is taken once a house has been declared unfit, and that it does not sit empty in a hazardous condition.

It is proposed that this provision be carried over into new legislation.

Requiring land to be cleaned

The Health (MP) Act states that any person who dismantles a house (whether it has been declared unfit or not) or any other structure, shall clean the land to the satisfaction of the local government.

The purpose of this provision is to avoid accumulated matter and debris remaining on a site and attracting vermin, creating a fire hazard or similarly causing other public health issues.

It is proposed that this provision be carried over into new legislation.

Ordering a home to be cleansed or repaired

The Health (MP) Act contains the power for a local government to declare a house unfit for human habitation and request cleaning or repairs to any house which has been deemed unfit for human habitation.

The purpose of this is similarly to ensure that action is being taken to fix the situation once a house has been declared unfit. It can also be used for support in instances where clandestine laboratories have been discovered.

It is proposed that this provision be carried over into new legislation.

Proposal summary:

- Redefine habitable building to capture any permanent or temporary place designed for people to live and/or sleep

Question 5: Do you support the retention of the provisions for unfit housing? Please detail any positive or negative impacts on you or your organisation.

6.3.2 Proposal 2: Define habitable building or dwelling

Every person has the right to live and sleep in a safe and healthy environment.

It is proposed that for the purposes of the proposed housing legislation, habitable buildings should be defined to broadly apply to any building for the purpose of people living and/or sleeping, including commercial and non-commercial (such as shelters or temporary worker accommodation) places of accommodation as well as private dwellings.

The Residential Design Codes (R-codes) define habitable building as: "A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family."

It is proposed that for the purposes of the proposed new housing regulations, this definition or similar be adopted and adapted to capture all buildings that are used for human habitation, whether permanent or temporary.

Question 6: Do you support the proposed changes to the definition of a habitable building? Please detail any positive or negative impacts on you or your organisation.

6.3.3 Proposal 3: Maintenance of habitable buildings

The Health (MP) Act, Bathrooms and Laundries Regulations and Sewerage (LVC) Regulations contain requirements for a basic level of facilities in dwellings. These requirements are largely considered superseded by the NCC, however there is no regulation requiring the ongoing provision and maintenance of such facilities.

Building and Energy and the DOH have agreed that the ongoing management of buildings is the responsibility of the DOH, with all construction requirements in the Building Regulations.

Proposal summary:

- All habitable buildings to be:
 - Structurally sound, waterproof, windproof and weatherproof
 - In safe and sanitary condition
 - In good repair
- All fixtures, fittings etc. to be maintained in safe, sanitary, good working order.
- Habitable buildings must comply with the BCA, including for the provision of facilities
- Habitable buildings must have an adequate supply of hot and cold water as per the PCA
- Provision of floor wastes to be submitted to the ABCB as a proposal for change

It should also be noted that under the current review of the Residential Tenancies legislation, it is likely that minimum standards will be introduced for residential tenancies with separate provisions for boarding and lodging arrangements, which

will ensure an additional level of protection for vulnerable occupiers.

General condition

It is proposed that new regulations for housing condition adopt a number of requirements for general maintenance.

This includes that the following general standards should apply:

- The habitable building and any fixtures, fittings or other facilities provided with the habitable building:
 - must be in sound condition and good repair
 - must not present a health hazard
 - must be wind, water and weatherproof
- and the fixtures, fittings and facilities must be:
 - properly installed
 - fit for the purpose for which those fixtures, fittings or facilities are intended or ordinarily used and
 - in good working order, including appropriately plumbed.

The proposed requirements are not aspirational. They are considered to be the basic facilities and standards of health that all people are entitled to in the place that they live or stay.

Compliance with the NCC

The NCC is the standard for construction requirements in WA, including the provision of facilities, and health legislation cannot duplicate existing requirements for provision of facilities.

The NCC requires that Class 1, 2 and 4 buildings (see figure 2 below for information about classifications) must be provided with:

- a kitchen sink

- food cooking and preparation facilities
- a bath or shower
- a closet pan and a washbasin
- clothes washing facilities comprising at least one washtub and space in the same room for a washing machine (in Class 2 and 4 buildings these may be part of the unit or the wider building)

and Class 3 buildings (with the exception of residential care facilities):

- a bath or shower
- a closet pan
- a washbasin

for each 10 residents for whom private facilities are not provided.

Classification	Building type
Class 1a	Single houses and attached dwellings (not located above or below any other dwelling)
Class 1b	A boarding house, guest house, hostel or the like with the total area of all floors not exceeding 300m ² , and where not more than 12 people reside (not located above or below any other dwelling)
Class 2	A building containing two or more sole-occupancy units which are each a separate dwelling (such as apartment buildings)
Class 3	Residential buildings other than Class 1 or 2. Places of long term or transient living for a number of unrelated people (eg boarding house, hostel), or care-type facilities
Class 4	A residence within a building of a non-residential nature

Figure 2: Non-exhaustive summary of relevant building classes from NCC

It is proposed that all habitable buildings are required to comply with the NCC, including for the provision of facilities. The NCC is rarely used for the ongoing maintenance of buildings in WA as they relate to health risks, and as such it is critical that Public Health Act authorised officers retain the ability to enforce this once the property has been constructed. This provision allows authorised officers to require compliance if a public health issue arises.

Water supply

Maintaining the provision of quality drinking water has long been the responsibility of environmental health.

At present, most local government health local laws contain a number of requirements for the connection of water supply to a habitable building.

It is proposed that the regulations include a requirement for the provision of adequate hot and cold water to all fittings for the provision of water in all habitable buildings, in addition to the requirements outlined in the NCC (under Part 3, the Plumbing Code of Australia).

The owner of a habitable building must ensure that it is connected with an adequate, separate and independent water supply from the mains of a licensed water service operator or a water supply to the satisfaction of the local government.

Ventilation

Authorised officers in the metropolitan area see a steady stream of complaints relating to condensation, dampness and associated mould, particularly in multi-storey buildings. Tenancy WA have indicated that of all requests for legal advice they receive regarding tenancy repairs, 46% of these are related to mould. Data provided by

Consumer Protection indicates that from 2013 – 2018 the proportion of tenancy enquiries related to mould rose by 250%.

The Australian Building Codes Board (ABCB), who is responsible for developing the NCC recognises the seriousness of the issue and has conducted a large body of work on condensation and mould in residential buildings. As a result, the NCC 2019 introduces new provisions for condensation management, including in relation to discharge of exhausts, ventilation of roof spaces and permeable and water control membranes.

In addition to this, the Standing Committee on Health, Aged Care and Sport conducted a national inquiry into mould in 2018, recognising the scale and importance of the issue. The report recommended that the Australian Government work with the states and territories to conduct further research into the adequacy of current building codes and standards related to the prevention and remediation of dampness and mould in buildings. This work has not yet been undertaken, however it should be noted that there are measures being taken on a national level to address the issue.

It is the DOH's view that ventilation is primarily a construction and use issue, with construction to be dealt with under the NCC and use difficult to combat in people's private dwellings. The DOH has published the Guidelines for Managing Mould and Dampness Related Public Health Risks in Buildings which authorised officers can use to assist when confronted with issues.

Drainage of wet areas

The NCC requires floor wastes to be provided in the following situations:

- In a shower area

- In a room containing a urinal or
- In a Class 2, 3 or 4 part of a building, where a bathroom or laundry is located above a sole occupancy unit or public space.

This means that floor wastes are not required in all wet areas with the potential for overflow, such as laundries or bathrooms with a bath only, although many local governments combat this with provisions in their local laws.

For example, Joondalup Health Local Law 1999 states that: *“the owner of every premises shall ensure that the floor of every bathroom, ensuite, laundry, toilet and any other ablution area within the building is properly surfaced and graded to a floor waste approved by the local government.”*

South Australia has an amendment to the NCC (Vol 2 for Class 1 and 10 buildings) in regard to floor wastes:

SA3.1 Floors in bathrooms, or rooms containing a shower or a sanitary fixture, must be installed in a manner that will prevent accumulation of water on the surface which could create unhealthy or hazardous conditions.

The acceptable construction practice for this performance provision is:

SA3.2.2 Unless exempted, the floor of a wet area, room or area containing a vessel must be graded to a floor waste. This is not necessary if all vessels have in-built overflow protection or a permanent open trapped connection to the waste system (such as a WC pan) or the floor drains without ponding to a floor waste within the shower area.

The DOH believes this issue should be addressed in building legislation. It is recommended that this be proposed for inclusion in the next iteration of the WA Appendix to the NCC, and failing its inclusion, included in public health legislation, as many local governments already require this through local laws.

Question 7: Do you support the proposed requirements for habitable buildings to:

- a) be structurally sound and in good repair and condition?
- b) have fittings and fixtures maintained in safe, sanitary, good working order?
- b) comply with the NCC, including for the provision of facilities
- c) have an adequate supply of hot and cold water?

Please detail any positive or negative impacts on you or your organisation.

Question 8: Do you support the development of requirements for floor wastes and submission to the ABCB for inclusion in the NCC?

Question 9: Do you support the inclusion of requirements for floor wastes in the proposed housing regulations?

Enforcement

Local governments will not be required to undertake routine inspections of people's dwellings to ensure compliance with these provisions.

The purpose of the provisions would be to ensure that local governments are equipped with the appropriate power to assess and respond to risks to public health complaints and referrals.

6.3.4 Proposal 4: Overcrowding

Proposal summary:

- A room that is not a habitable room is not to be used for sleeping purposes
- A habitable room to be used for sleeping purposes must comply with the NCC requirements for ventilation
- A habitable room shall exclude a garage or shed

Most local governments have provisions for overcrowding in their local laws. It is proposed that these are adopted into the new legislation, which will provide broader enforcement powers and consistency across the state.

It is proposed that the owner or occupier of a house shall not permit:

- A room that is not a habitable room to be used for sleeping purposes
- A habitable room to be used for sleeping purposes unless it complies with the NCC requirements for ventilation.

Habitable room

As per the health local laws, a habitable room:

(a) includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, play-room, family room and sun-room; but

(b) excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, lobby, photographic dark room, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.

It is proposed that the definition of a habitable room is updated to specifically exclude garages and shed.

Question 10: Do you support the proposals to prevent overcrowding? Please detail any positive or negative impacts on you or your organisation.

8 How would the proposed changes affect me?

The intent of this discussion paper is to describe and seek feedback on options for managing housing risks to health into the future. The results of this consultation will influence the development of the reforms and so this section cannot catalogue effects in detail.

The following section describes some potential impacts of adopting the preferred option C, develop new regulations. It is only a broad overview of possible impacts, which will be examined in further detail once the future management approach is finalised. You are encouraged to provide details of any way you believe the proposals may affect you to help the DOH better understand the impacts.

8.1 Members of the public

Homeowners (including landlords) would be required to comply with the requirements for habitable buildings: that they be maintained in safe and sanitary condition, in good repair and in a structurally sound, waterproof, windproof and weatherproof state, have adequate facilities, adequate water supply and are not overcrowded.

There is no intention that private homes would be inspected pro-actively for non-

compliances. Similarly to the current regulations and local laws, these provisions would exist to support authorised officers with actions that may be required in the event of an incident or a complaint.

Generally, members of the public will be unaffected by the changes. Vulnerable people and people living in squalid conditions could expect to have better regulatory powers to support them in improving their situation.

8.2 Industry

The DOH has previously received a number of complaints in regard to the application of the Laundries and Bathrooms and Sewerage (LVC) Regulations. It is expected that industry would widely benefit from the proposed changes to repeal these regulations.

8.3 Local government

Local governments would continue to be responsible for ensuring that housing risks to health are addressed. Authorised officers would retain the power to declare a house unfit for occupation, however this would no longer be their only option – they would gain a broad suite of less drastic measures under the Public Health Act (such as issuing infringements or improvement plans) to assist with achieving compliance.

Ideally, local governments would use the introduction of new overarching regulatory provisions as an opportunity to repeal corresponding prescriptive local law requirements. However, this is at each local government's discretion and would not be determined by DOH.

Local governments would no longer be required to assess plans for compliance with the Laundries and Bathrooms Regulations or the Sewerage (LVC) Regulations. As such there may be updates required to templates and forms.

8.4 State government

The DOH would continue to act as a system manager for the legislation, developing guidance material as required. The DOH would be responsible for conducting periodic reviews of the new regulations.

The State government is also a provider of housing, through various agencies. The Public Health Act would bind the Crown – as such, this housing would become subject to the provisions of the proposed regulations. The State would have the option to implement an improvement plan to demonstrate how the requirements of the regulations will be met over time.

Question 11: Please describe any additional ways that stakeholders could be impacted.

Question 12: Do you have any further comments on the proposed regulatory changes?



9 Appendix 1 – Regulatory tools under the Public Health Act 2016

Once fully implemented, the *Public Health Act 2016* has a number of mechanisms to deal with public health risk management and offences under the Act. These include:

- General public health duty
- Infringement notices
- Improvement notices and enforcement orders
- Prosecution; and
- Registration and licensing.

General public health duty

The general public health duty requires that a person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person.

Where the general duty is to be applied, there must be some clear *harm* (or foreseeable harm) to public health. In cases where matters are a nuisance or amenity problem but no health effect can be proven, such as unsightly yards, neighbourhood disputes and inconveniences, the general duty will not apply.

Non-compliance with the general duty is not an offence in itself, but may lead to the application of improvement notices and enforcement orders under Part 14 of the Public Health Act. Guidelines may be used to clarify the application of the general public health duty and provide guidance as to the measures that may constitute compliance or non-compliance with the general duty.

Infringement notices

An infringement notice is a written notice that a person has allegedly committed a specified offence which requires the payment of a fine within a specified time or the election to have the matter heard in court. Infringement notices provide a cost effective and efficient method of dealing with some offences.

The Public Health Act is silent on the ability to issue infringement notices. However, as it is a prescribed Act under the *Criminal Procedures Act 2004*, it enables the making of regulations that prescribe offences for which an infringement notice can be issued.

Infringement notices can only be issued where prescribed by a regulation.

Improvement notices and enforcement orders

An improvement notice is an order that either requires or prohibits a person from taking specified action. There may be a specified period in which the person has to comply with the improvement notice. While an authorised officer may extend the period given to take action, once that period has elapsed an authorised officer may:

- Issue a notice of compliance if the officer is satisfied, after carrying out an appropriate assessment that the improvement notice has been complied with.
- Issue a notice that sets out the reasons why the officer is not satisfied that the improvement notice has been complied with; and
- Report the non-compliance to the enforcement agency with a recommendation to issue an enforcement order.

An enforcement order is an order that either requires or prohibits a person from taking specified action. A prohibition with respect to specified action may be limited, absolute or conditional.

An enforcement order can be issued by an enforcement agency if it reasonably believes that an improvement notice has not been complied with, or if the issue of the order is necessary to prevent or mitigate a serious public health risk. An enforcement agency may issue an enforcement order in respect of non-compliance with an improvement notice irrespective of whether the improvement notice was issued by a person who was an authorised officer of that or another enforcement agency.

Prosecution

In accordance with Part 18, section 280 of the Public Health Act, an enforcement agency may commence proceedings for an offence under the Act or its regulations. A prosecution is separate from action under Part 14 relating to improvement notices and enforcement orders. So prosecution can be commenced irrespective of any action being undertaken under that part.

Registration and licensing

Part 8 of the Public Health Act provides a framework for the registration and/or licensing of activities declared by the regulations to be public health risk activities. The regulations will prescribe who the appropriate enforcement agency is for each registrable and/or licensable activity. This may be the local government, the Chief Health Officer or both. Regulations may prescribe offences in relation to an activity and provide modified penalties for which an infringement notice may be issued.

10 Appendix 2 – Risk assessment methodology

Please note: Appendix 2 is relevant only to the internal risk assessment in this document. The following tools are not intended for use by authorised officers or applicants and there is no suggestion that these tools should be used to determine the risk level of a building or lodging house.

A number of risk assessment tools need to be used to determine the risk level for each identified public health risk. These tools include a health consequences table (table 2), a risk likelihood table (table 3), and a risk qualitative matrix (table 4).

These risk assessment tools are from AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines [25] and the Health Risk Assessment (Scoping) Guidelines [26].

The DOH has five public health risk levels (table 1), each requiring a varying degree of DOH involvement in their management.

Table 1 Definition of risk levels

Risk Level	DOH management requirements
Very Low Public Health Risk	No further assessment required
Low Public Health Risk	Some mitigation/management may be required – no detailed assessment of health hazards required but addressed with routine controls
Moderate/Medium Public Health Risk	Substantial mitigation/management required – assessment required of health hazards
High Public Health Risk	Not an acceptable risk. The DOH needs to be involved in the management of high public health risks.

Risk Level	DOH management requirements
	Major mitigation/management (including offsets) may be required – assessment required of health hazards
Extreme Public Health Risk	Potentially unacceptable: modification of proposal required

Table 2 Health consequence table adapted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Category	Acute health consequences (per hazard or outbreak)	Chronic health consequences (per project lifecycle)
1 Catastrophic	<ul style="list-style-type: none"> • >1 fatality • OR >5 permanent disabilities • OR Non-permanent injuries requiring hospitalisation for 5 – 10 % of populations at risk • OR Acute health effect requiring hospitalisation for 5 – 10 % of populations at risk 	Chronic health effect requiring medical treatment for 10 – 15 % of population at risk
2 Massive	<ul style="list-style-type: none"> • 1 fatality • OR 2 – 5 permanent disabilities • OR Non-permanent injuries requiring hospitalisation for 2 - 5 % of populations at risk • OR Acute health effect requiring hospitalisation for 2 – 5 % of populations at risk 	Chronic health effect requiring medical treatment for 5 - 10 % of population at risk
3 Major	<ul style="list-style-type: none"> • No fatality • AND 1 permanent disability • OR Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk • OR Acute health effect requiring hospitalisation for 1 - 2 % of populations at risk • OR Evacuation is necessary 	Chronic health effect requiring medical treatment for 2 - 5 % of population at risk
4 Moderate/ Significant	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND Non-permanent injuries requiring hospitalisation for 1 – 2 % of populations at risk • OR Acute health effect requiring hospitalisation for 1 – 2 % of populations at risk • AND No evacuation 	Chronic health effect requiring medical treatment for 1 - 2 % of population at risk
5 Minor	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND Non-permanent injuries requiring hospitalisation for 1 – 5 persons • OR No Acute health effect requiring hospitalisation • AND No evacuation 	Chronic health effect requiring medical treatment for 0 - 1 % of population at risk

Category	Acute health consequences (per hazard or outbreak)	Chronic health consequences (per project lifecycle)
6 Negligible/ Slight	<ul style="list-style-type: none"> • No fatality • AND No permanent disability • AND No Non-permanent injuries requiring hospitalisation • AND No Acute health effect requiring hospitalisation • AND No evacuation 	No chronic health effect requiring medical treatment

Table 3 Risk likelihood table adopted from the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA

Likelihood	Expected or Actual Frequency	% Chance of chronic health effect during life of project
Almost Certain	More than once a year	Over 90%
Likely	Once in 1 to 3 years	61 – 90%
Possible/ Occasionally	Once in 3 – 5 years	31 – 60%
Unlikely	Once in 5 – 10 years	6 – 30%
Rare/Remote	Once in more than 10 years	Up to 5%

Table 4 Risk matrix (qualitative)

Likelihood	Consequences					
	Slight/ Negligible	Minor	Moderate	Major	Massive	Catastrophic
Almost certain	Low	Medium	High	Extreme	Extreme	Extreme
Likely	Low	Low	Medium	High	Extreme	Extreme
Possible	Very Low	Low	Low	Medium	High	Extreme
Unlikely	Very Low	Very Low	Low	Low	Medium	High
Rare/ Remote	Very Low	Very Low	Very Low	Low	Low	Medium

11 Appendix 3 – Question list

The following is a master list of all questions contained in this discussion paper. You are encouraged to respond to these questions through the online survey, which can be accessed using the link on page 6 of this document.

Question 1: Do you support the adoption of **Option A: Retain status quo**? Why or why not?

Question 2: Do you support the adoption of **Option B: Repeal without replacement**? Why or why not?

Question 3: Do you support the adoption of **Option C: Develop new, updated regulations**? Why or why not?

Question 4: Do you have any suggestions for alternative options that have not been considered?

Question 5: Do you support the retention of the provisions for unfit housing? Please detail any positive or negative impacts on you or your organisation.

Question 6: Do you support the proposed changes to the definition of a habitable building? Please detail any positive or negative impacts on you or your organisation.

Question 7: Do you support the proposed requirements for habitable buildings to:

- a) be structurally sound and in good repair and condition?
- b) have fittings and fixtures maintained in safe, sanitary, good working order?
- b) comply with the NCC, including for the provision of facilities
- c) have an adequate supply of hot and cold water?

Please detail any positive or negative impacts on you or your organisation.

Question 8: Do you support the development of requirements for floor wastes and submission to the ABCB for inclusion in the NCC?

Question 9: Do you support the inclusion of requirements for floor wastes in the proposed housing regulations?

Question 10: Do you support the proposals to prevent overcrowding? Please detail any positive or negative impacts on you or your organisation.

Question 11: Please describe any additional ways that stakeholders could be impacted.

Question 12: Do you have any further comments on the proposed regulatory changes?

12 References

1. U. N. Office of the High Commissioner for Human Rights, *Fact Sheet No. 21, The Human Right to Adequate Housing*. 2009.
2. UN Committee on Economic, S.a.C.R., *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*. 1991, UN Committee on Economic, Social and Cultural Rights (CESCR).
3. Bashir, S.A., *Home is Where the Harm is: Inadequate Housing as a Public Health Crisis*. American Journal of Public Health, 2002. **92**(5).
4. Thomson, H., M. Petticrew, and D. Morrison, *Health effects of housing improvement: systematic review of intervention studies*. BMJ, 2001. **323**(7306): p. 187-190.

5. World Health Organisation, *Health Principles of Housing*. 1989: Geneva.
6. Bonnefoy, X., *Inadequate housing and health: an overview*. Int. J. Environment and Pollution, 2007. **30**(3/4).
7. Baker, E., et al., *Is Housing a Health Insult?* Int J Environ Res Public Health, 2017. **14**(6).
8. Beer, A., et al., *Housing Locally: A report on the Local Government and Housing Linkage Project national survey*, in *Local Government and Housing in the 21st Century*. 2018.
9. Hetzel, S.G.D. and J. Glover, *Advocacy and action in public health: lessons from Australia over the twentieth century*. 2012.
10. Toohey, S. and J. Fritze, *A Future Focussed Housing Standard*. 2009, Victorian Council of Social Service.
11. World Health Organisation. *Sanitation Fact Sheet*. 2017; Available from: <http://www.who.int/mediacentre/factsheets/fs392/en/>.
12. enHealth, *Environmental Health Practitioner Manual: a resource manual for Environmental Health Practitioners working with Aboriginal and Torres Strait Islander Communities*. 2010.
13. Department of Health, *Hoarding and Severe Domestic Squalor: A background paper and suggested strategy*, D.o. Health, Editor. 2013.
14. Walker, A. *Australian hoarders falling between the gaps*. 2016.
15. Ageing, S.A.D.f.H.a., *A Foot in the Door: Stepping towards solutions to resolve incidents of severe domestic squalor in South Australia*, S.A.D.f.H.a.A.H.P. Programs, Editor. 2013.
16. Shaw, M., *Housing and public health*. Annu Rev Public Health, 2004. **25**: p. 397-418.
17. World Health Organisation, *Environmental health inequalities in Europe*. 2012.
18. Nicol, S., *The Relationship Between Housing Conditions and Health - Some Findings from the WHO LARES Survey of 8 European Cities*, in *ENHR Conference "Housing in an expanding Europe: theory, policy, participation and implementation"*. 2006: Ljubljana, Slovenia.
19. Battersby, S. and H.H. Clay, *Clay's handbook of environmental health*. 20 ed. 2011, Abingdon, Oxon: Spon Press.
20. Sundell, J., *On the history of indoor air quality and health*. International Journal of Indoor Environment and Health, 2004. **14**(7): p. 51-58.
21. Krieger, J. and D.L. Higgins, *Housing and Health: Time Again for Public Health Action*. American Journal of Public Health, 2002. **95**(5): p. 758-768.
22. Commonwealth of Australia, *National Indigenous housing guide: improving the living environment for safety, health and sustainability*, C.S.a.I.A. Department of Families, Editor. 2007: Canberra, ACT. p. 328.
23. Sewell, S., *Reflections of an EHO*. Journal of Environmental Health Australia, 2018. **24**(Summer): p. 2.
24. Barnes, M., *Inquest into the Palace Backpackers Hostel Fire*. 2006, Office of the State Coroner.
25. Standards Australia, *AS/NZS ISO 31000:2009 Risk management - Principles and guidelines*. 2009, Standards Australia/Standards New Zealand.
26. Government of Western Australia, *Health Risk Assessment (Scoping) Guidelines*, Department of Health, Editor. 2010: Perth, Western Australia.

**This document can be made available in alternative formats
on request for a person with a disability.**

© Department of Health 2019

Copyright to this material is vested in the State of Western Australia unless otherwise indicated. Apart from any fair dealing for the purposes of private study, research, criticism or review, as permitted under the provisions of the *Copyright Act 1968*, no part may be reproduced or re-used for any purposes whatsoever without written permission of the State of Western Australia.