



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

Consultation Summary Report

**For the discussion paper –
Managing housing health risks in Western Australia.**

March 2020

Contents

Summary	2
Methodology	3
Consultation findings	3
Findings on regulatory options	4
Potential for bias	4
No preference provided	5
Option A: Retain the status quo.	5
Option B: Repeal without replacement and use the general public health duty.	7
Option C: Develop new, updated regulations under the <i>Public Health Act 2016</i> .	9
Overall recommendation:	11
Additional Proposals	12
Proposal 1: Do you support the retention of the provisions for unfit housing?	12
Proposal 2: Do you support the proposed changes to the definition of a habitable building?	14
Proposal 3: Maintenance of habitable buildings	16
Proposal 4: Do you support the proposals to prevent overcrowding?	19
Further Issues and considerations	21
Next steps	22
Appendix 1 – Consultation submission list	23
Appendix 2 – Citizen Space online survey questions	24
Appendix 3 – Comparison of current housing overcrowding measures across selected jurisdictions	25

Summary

This report summarises the information received by the Department of Health (DOH) in regard to its consultation on future options to manage the public health risks related to housing. It summarises the responses of stakeholders as well as the intended next steps for the DOH. It is not possible in a summary report to represent every view, so this report attempts to capture the main issues and themes raised and the key points of contention.

In September 2019 the discussion paper '[Managing housing health risks in WA](#)' was released for a twelve week comment period. The paper provided three options:

- Option A retain the status quo;
- Option B Repeal without replacement and use the general public health duty; or
- Option C Develop new, updated regulations under the *Public Health Act 2016*.

The purpose of this consultation was to inform the implementation of the *Public Health Act 2016* and associated review of existing legislation as follows:

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

The DOH sought to gain a better understanding of the potential impacts on and opinions of industry, local government, other government agencies and members of the public associated with the management of public health risks associated with housing.

The DOH received a total of 55 responses during the comment period. There was strong support (74.5%) for Option C, to develop new updated regulations under the *Public Health Act 2016*. Option A gained 12.7% of the preferences and Option B gained 9.0% of the preferences.

The DOH recommends that 'Option C: Develop new, updated regulations under the *Public Health Act 2016* is adopted.

It is the intention of the DOH that the new housing regulations do not propose any duplication of the National Construction Code (NCC) as they seek to serve a different purpose, which is the ongoing management of public health risks associated with houses.

The comments in this document represent the views of respondents only, and should not be taken as the views of the DOH. Recommendations by the DOH have been provided in italics.

Methodology

The objective of this review is to ensure appropriate measures are in place to minimise public health risks associated with housing in WA. While no significant concerns with the existing legislation have been raised, an opportunity exists as part of the implementation of the *Public Health Act 2016* to consider emerging practices and improvements that could be made to the system to streamline and reduce the potential regulatory burden on both industry and enforcement agencies.

The discussion paper was circulated to a total of 137 local governments, 13 State agencies as well as a range of industry contacts (>450). The list of industry contacts includes

Backpacker establishments	Health care and social assistance agencies
Short stay and tourist accommodation	Banks
Housing industry associations	Mining companies
Construction industry associations	Remote aboriginal communities/corporations
Retirement living estates	Regional service providers

The paper was also circulated to (>400) subscribers of the DOH Environmental Health list server which includes local government staff and members of the general public. The consultation was advertised on the Environmental Health Directorate's webpages and also on the DOH's Consultation Hub website.

Stakeholders were asked to read the DOH's discussion paper '[Managing housing health risks in WA](#)' (available on the DOH website) and provide comment via:

1. the online citizenspace survey;
2. emailing publichealthact@health.wa.gov.au; or
3. mailing a hard copy response to the Environmental Health Directorate.

Consultation findings

The DOH received a total of 55 responses.

Stakeholder	Responses
State government	6
Local government	39
Industry representatives	6
General public	3
Other	1
Total	55

In total, the 55 responses were received via:

- the online Citizen Space consultation survey = 40
- written submissions received via email = 15

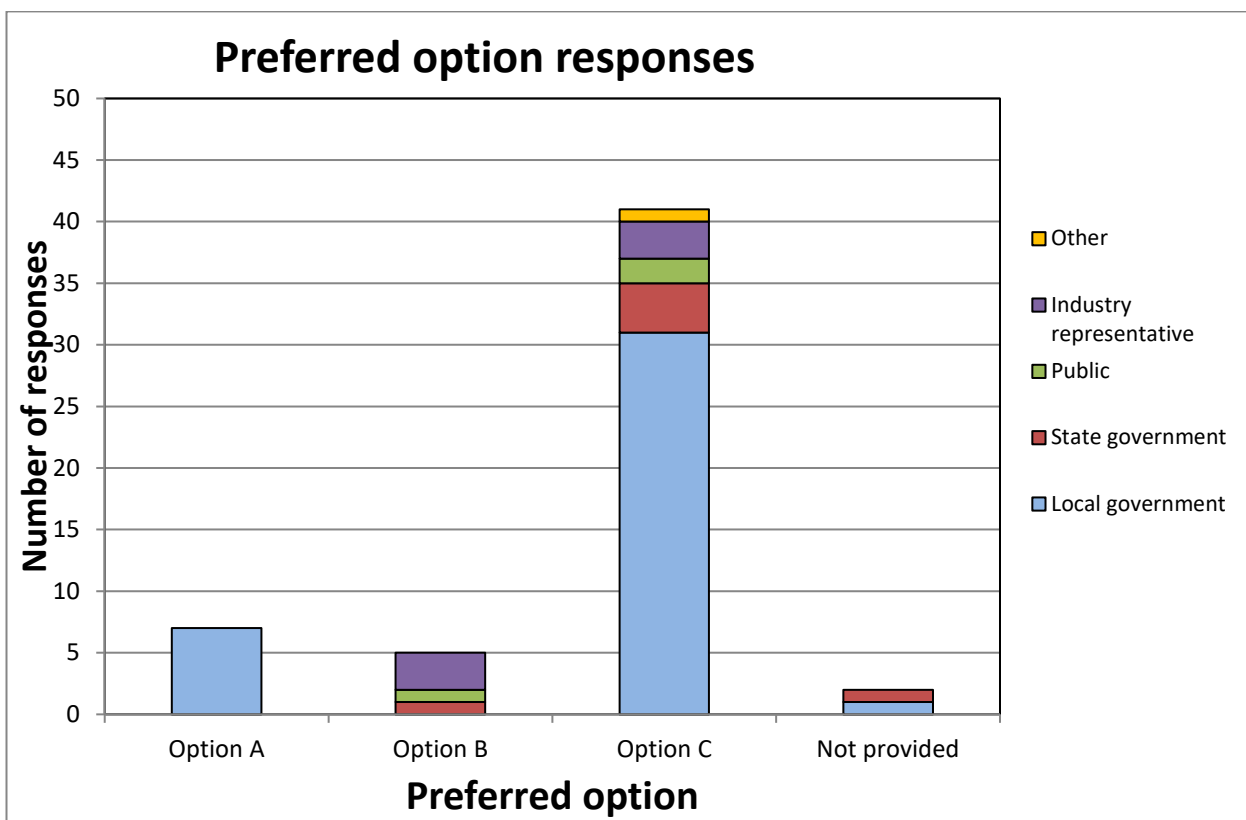
Findings on regulatory options

Respondents were asked to nominate their preferred option out of three proposed options consisting of:

- 1) Retain the status quo, that is, to replicate the existing legislation as far as practicable (Option A);
- 2) Repeal without replacement and use the general public health duty (Option B); and
- 3) Provide new updated regulations under the *Public Health Act 2016* (Option C).

From the 55 respondents:

- 3.8% of respondents choose not to provide a preferred option;
- 12.7% of respondents supported Option A;
- 9.0% of respondents supported Option B;
- 74.5% of respondents supported Option C;



Potential for bias

70.9% of stakeholders that responded to the discussion paper are representatives of the group “Local government”. This representation has a potential to create a particular bias in the results obtained as well as within the comments that have been received. It is noted however that there is a balanced distribution of the remaining group representations (State government, Industry representatives, General public and Other) between Options B and C, which represent de-regulation and continued regulation respectively. This distribution suggests that the bias of the group “Local government” is not in direct opposition to any other particular group.

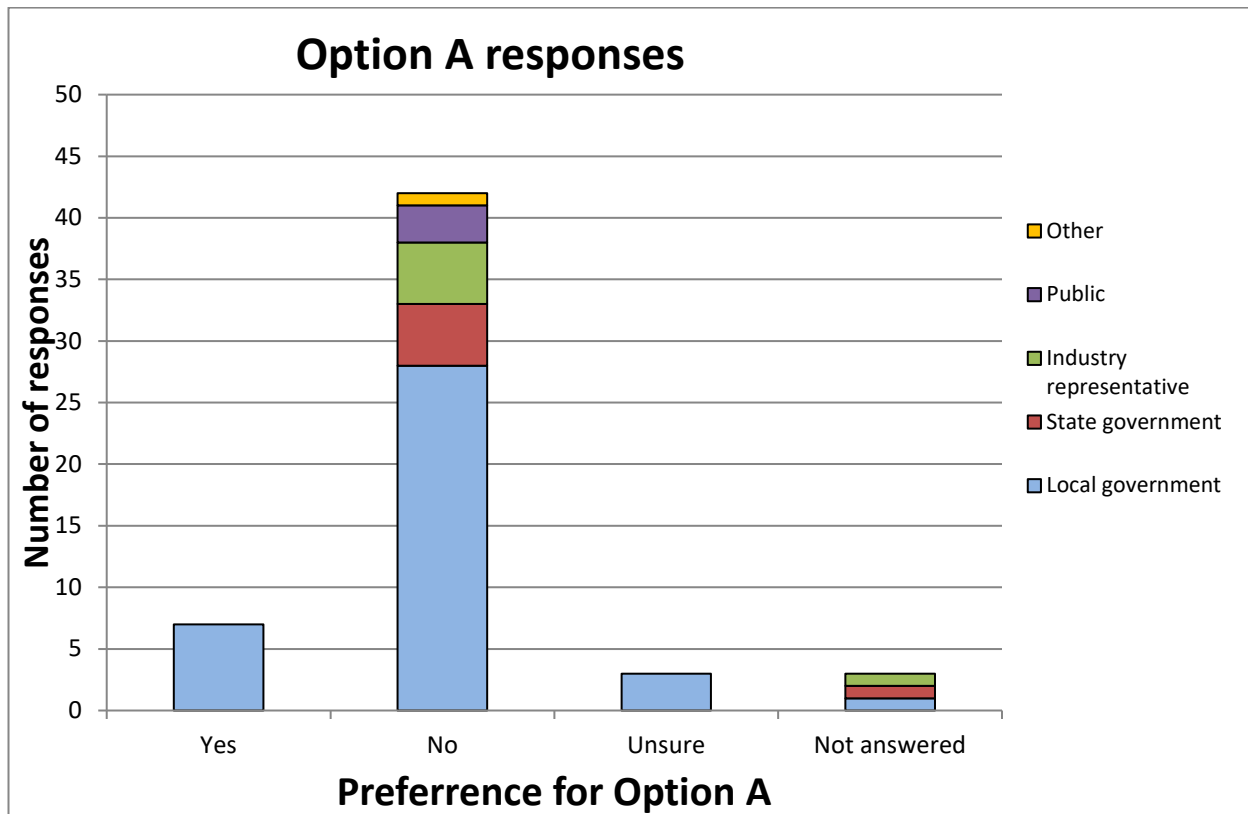
It is also noted that the issues presented in the discussion paper relating to housing and public health risks are highly important and central to the role of the Authorised Officer, as seen in the very high representation of local government responses in the two options that recommend continued regulation.

No preference provided

3.8% (2 respondents) did not select a preferred option out of the three proposed options explored in the consultation paper. Of these, one was from local government and one was from a State government organisation. Neither respondent stated reasons for not choosing a preferred option.

Option A: Retain the status quo.

12.7% (7 respondents) supported retaining the status quo. All of the respondents who supported Option A were from local government.



Of the seven respondents that stated they supported Option A, to retain the status quo; the following reasons were included:

- Anything less will be a weakening of existing controls. The new regulations to be produced under Option A should be strengthened to enable quick and inexpensive resolution of non-compliances;
- To maintain current standards and to keep costs down. To ensure the regulations remain prescriptive and not changed to risk based non-prescriptive;
- Is the most relied upon legislation that allows the EHOs to protect the community with all housing issues. It is direct and to the point and not ambiguous. The most pro-active piece of legislation we have left.
- The existing regulations have important provisions, i.e. the SLVC regulations require a WC (toilet) be operational in a dwelling;
- Not adequately covered under the National Construction Code (NCC);

Comments from other respondents that related to Option A were summarised and grouped into broad themes as follows:

Reasons to change to new legislation

- Health legislation overlaps with building regulations – which creates duplication;
- Current legislation is too old and archaic, too prescriptive and too restrictive;
- Current standard of housing has modernised and needs modern legislation. Enforcement tools should match modern provisions in other legislation;
- There is too much ambiguity and some contradiction in existing housing laws;
- Needs a standardised approach that doesn't rely on local laws, which can be interpreted differently from council to council;
- Need a risk-based approach to public health to allow flexibility and provide risk management enforcement tools;
- Need to consolidate structural requirements that relate to housing.

Reasons to retain existing requirements

- The current legislation is suitable and contains the minimum regulatory requirements;
- The current approach keeps the costs down;
- Changes towards risk based non-prescriptive could cause issues in requiring compliance, especially from Crown responsibility;

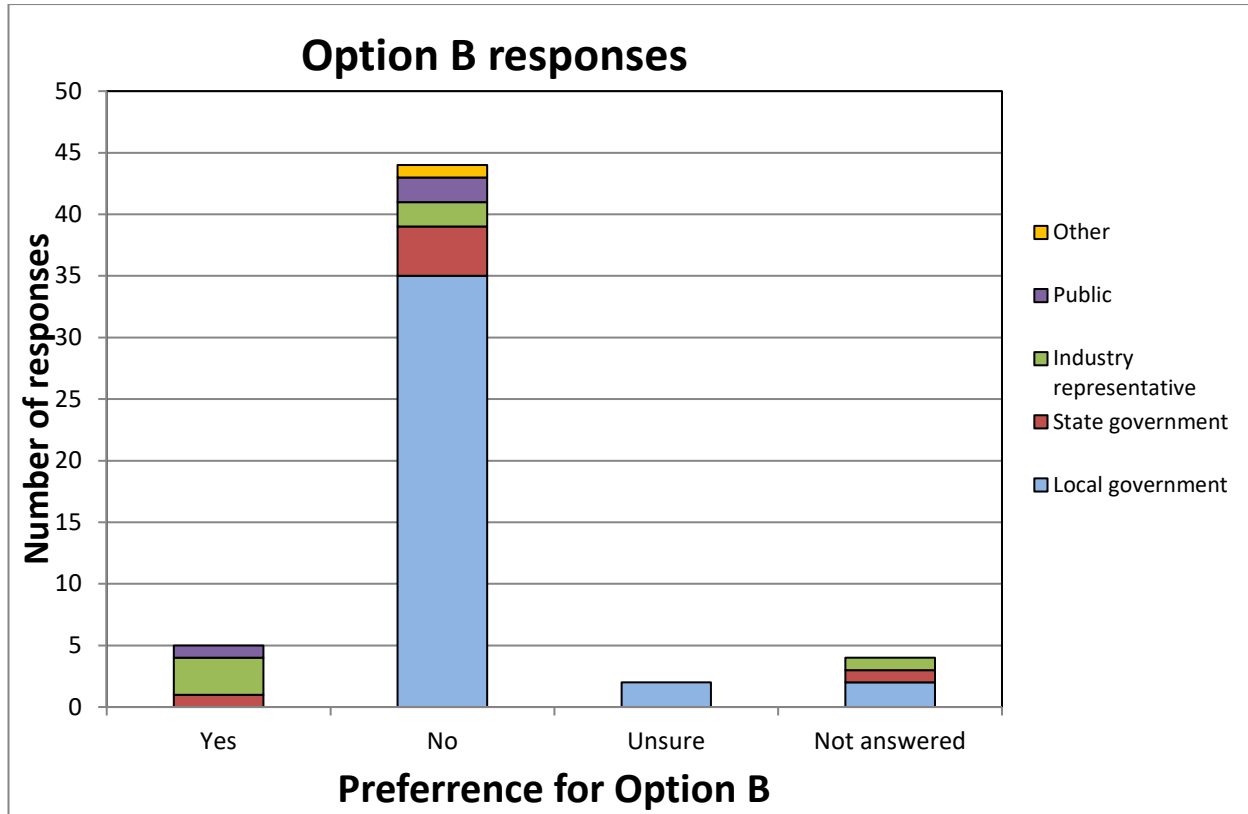
Suggestions to improve legislation

- Health regulations should be written so that building standards are not any different from the Building Code of Australia (BCA);
- Health regulations should not be seeking any additional health approval for new buildings;
- Health regulations should identify minimum basic standards for a dwelling assuming that it was originally built to comply with the BCA;
- Health regulations should only be used when a building is unhealthy, falls into disrepair or does not have the essential facilities (toilet, potable water, cooking facilities etc).

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

9.0% (5 respondents) supported repealing the existing regulatory regime without replacement. Support for Option B was provided across three categories including:

- State Governments Departments – 1 respondent;
- Industry representation – 3 respondents;
- Public – 1 respondent;



Those who supported Option B perceived the key benefits as follows:

- The NCC contains nationally applicable requirements for facilities, ventilation, light, air quality, structural and fire safety, wet area requirements, energy efficiency and a range of other matters that addressed the health and safety of buildings. For NCC 2019, there are additional provisions incorporated for condensation management, which requires management of condensation risks, additional ventilation and ducting requirements and roof space ventilation;
- There is no need for additional requirements being prescribed through health legislation;
- Provisions for the NCC apply nationally and include additional health-related construction provisions. Health requirements over and above the current requirements specifically for WA is unnecessary, unless there is a demonstrated need to do so, and this is supported at a national level by a positive cost benefit analysis;
- Further work is underway for enhanced condensation and energy efficiency provisions for NCC 2022, which provides further evidence that local government or health-based requirements that would apply on top of the NCC, are not necessary and create additional regulatory burden and potential confusion for industry.

Two themes in particular emerged from respondents' comments to Option B:

Reasons to continue regulation

- Housing problems will continue to exist and cause complaints into the future. The public expect government to attend to community housing issues using similar methods to those existing today;
- Maintaining housing standards is one of the most important areas managed by EHOs;
- There is limited legislation that would otherwise adequately address the risk to public health. The use of the *Building Act 2011* is not adequate in many instances and the current legislation should remain;
- Core health requirements should be prescribed to improve clarity around expectations. There is a requirement for specific legislation and regulation;
- EHOs require authority to declare houses unfit for habitation;
- There needs to be a consistent approach across jurisdictions. The housing health enforcement powers should be simplified and improved for consistency.

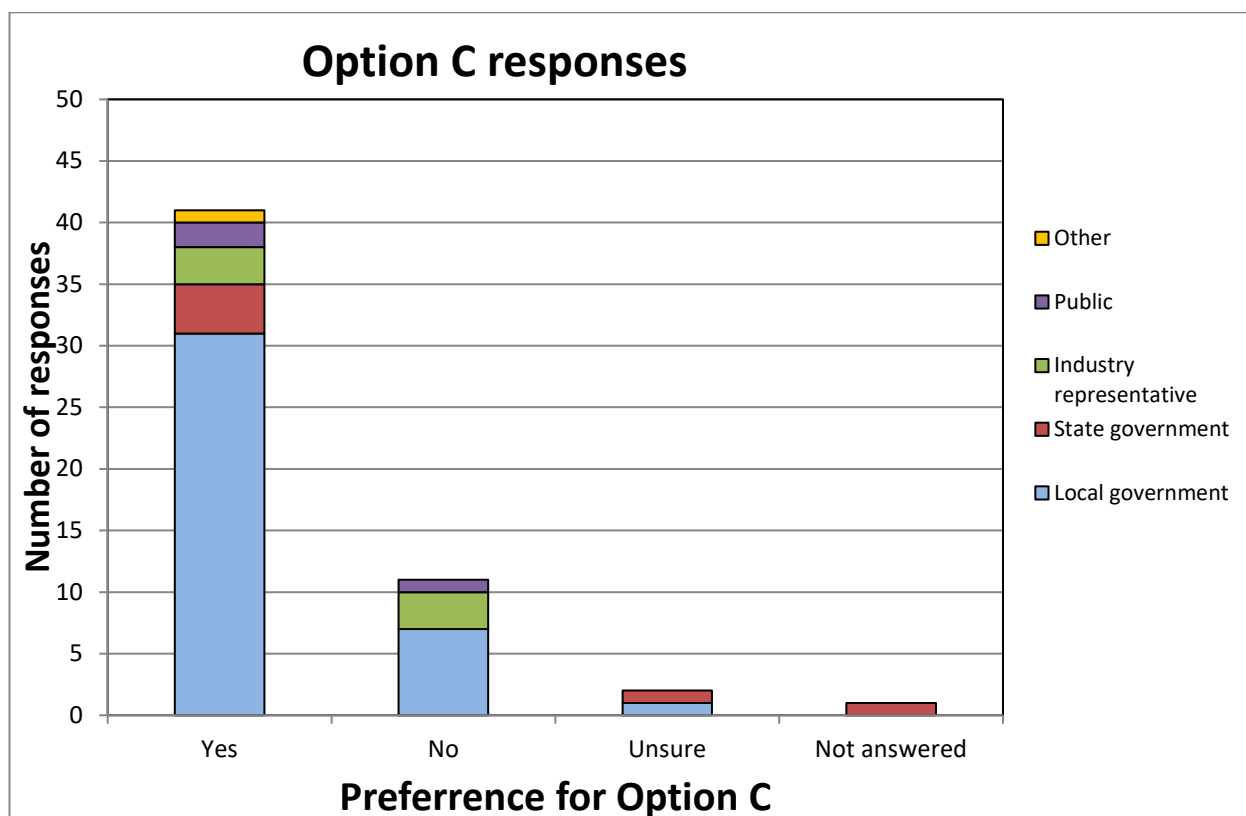
Concerns about de-regulation

- General public health duty will not provide the legislative empowerment needed to deal with poor housing standards. It is too broad to use for cases of housing unfit for habitation;
- De-regulation may result in a lowering of housing standards;
- De-regulation creates an absence of tools to effectively manage public health.
- De-regulation would make it more difficult to respond in a timely manner to risks;
- De-regulation would result in many different local laws potentially creating inconsistencies in housing standards enforcement;
- De-regulation is shifting the burden onto another industry other than local government when local government already has the expertise to deal with these matters.

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

Overall, 74.5% (41 respondents) stated that they preferred Option C to provide new, updated regulations under the *Public Health Act 2016*. Support for Option C was evident across all organisation categories including:

- State government departments – 4 respondents;
- Local governments – 31 respondents;
- Industry representation – 3 respondents;
- General Public – 2 responses; and
- Other respondents – 1 response.



Support for Option C including the general comments regarding this option have been summarised into themes as follows:

Roles and responsibilities need to be clarified under the new legislation

- Existing powers afforded to local government authorities need to be retained. This retains responsibility with local government authorised officers who have traditionally covered this role.
- Health regulations create better options for working with owners/ occupiers to clean up and maintain properties. Better legal outcomes will result.
- Local government authorities need the power to act upon properties in default and charge the owner with the power to place the unpaid costs as a charge against the property.
- The State government needs to be aware of its responsibilities to maintain residential premises belonging to the Crown and to ensure that their tenants are looking after properties.

There is a need for minimum standards and contemporary legislation

- Health regulations need to be contemporary. Health regulations need specific provisions available to address both emerging and current health issues in housing. There is also a need for specific guidance and control measures to manage the risks.
- The current system does not adequately reflect the importance of the issues of health and the influence of housing conditions. Housing should be appropriate for the local climate conditions and fit for people to live in and remain healthy.
- Health regulations will provide greater confidence in enforcement activities. WA needs a modernised format with improved enforcement tools. This will provide the opportunity to consider new advancements and technology etc.
- Updated health legislation incorporating a risk-based approach will enable deficiencies and inconsistencies in existing legislation and standards to be rectified.

Definitions need to be clear and duplication needs to be avoided

- Clarifying definitions relating to habitable buildings will provide an opportunity to improve the regulatory process.
- There is a need for a definition of 'overcrowding'. There also needs to be a definition of what a dwelling is, and the minimum fixtures and fittings required to foster comfortable healthy living conditions (i.e. a minimum habitable standard).
- New legislation needs to avoid duplication. It needs to consolidate various health housing regulations into one set of regulations.

The National Construction Code (NCC) can reduce duplication

- Building construction requirements should be contained in the NCC thus reducing duplication and confusion of having requirements across different legislation.
- The NCC is regularly maintained and developed nationally by the Australian Building Codes Board (ABCB) through an Intergovernmental Agreement. This allows the construction requirements to be monitored and kept up to date in accordance with the Council of Australia Governments Best Practice Regulation.

Other general comments

- Poor quality housing is often related to affordability considerations. Disadvantaged groups, for example, long-term tenants, people with disability and Aboriginal people may be left with a choice of housing that includes significant maintenance requirements.
- WA should follow the European example if there is general agreement that there is no increased risk to health by allowing washing machines in kitchens and removing the requirement for separate laundries.

Overall recommendation:

The DOH recommends that 'Option C: Provide new, updated regulations under the Public Health Act 2016' is adopted.

The new housing regulations will not propose any duplication of the NCC. The DOH has obtained advice from the State Solicitors Office that any new legislation must be consistent with and not duplicate any existing Federal and State Legislation. As the Building Act 2011 covers the construction of residential dwellings, the DOH cannot impose additional regulation as this will be an unnecessary duplication.

As per the comments received, there are several matters that will be included in the new housing regulations. These include:

- *The definition of a habitable building to align with the Residential Design Codes (R-codes) definition: "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."*
- *The inclusion of a provision similar to Section 144 of the Health (MP) Act which requires that no building or mobile structure is to be used as a dwelling without the approval of the local government.*
- *The definition of a basic minimum habitable standard. All buildings should comply with the BCA when they are constructed but cannot be forced to retrospectively comply. Provisions that describe the minimum standards required in housing will be included.*
- *Provisions related to the declaration of a property as unfit for human habitation will be retained.*
- *Overcrowding provisions.*
- *A provision for a minimum cubic air space for every person.*

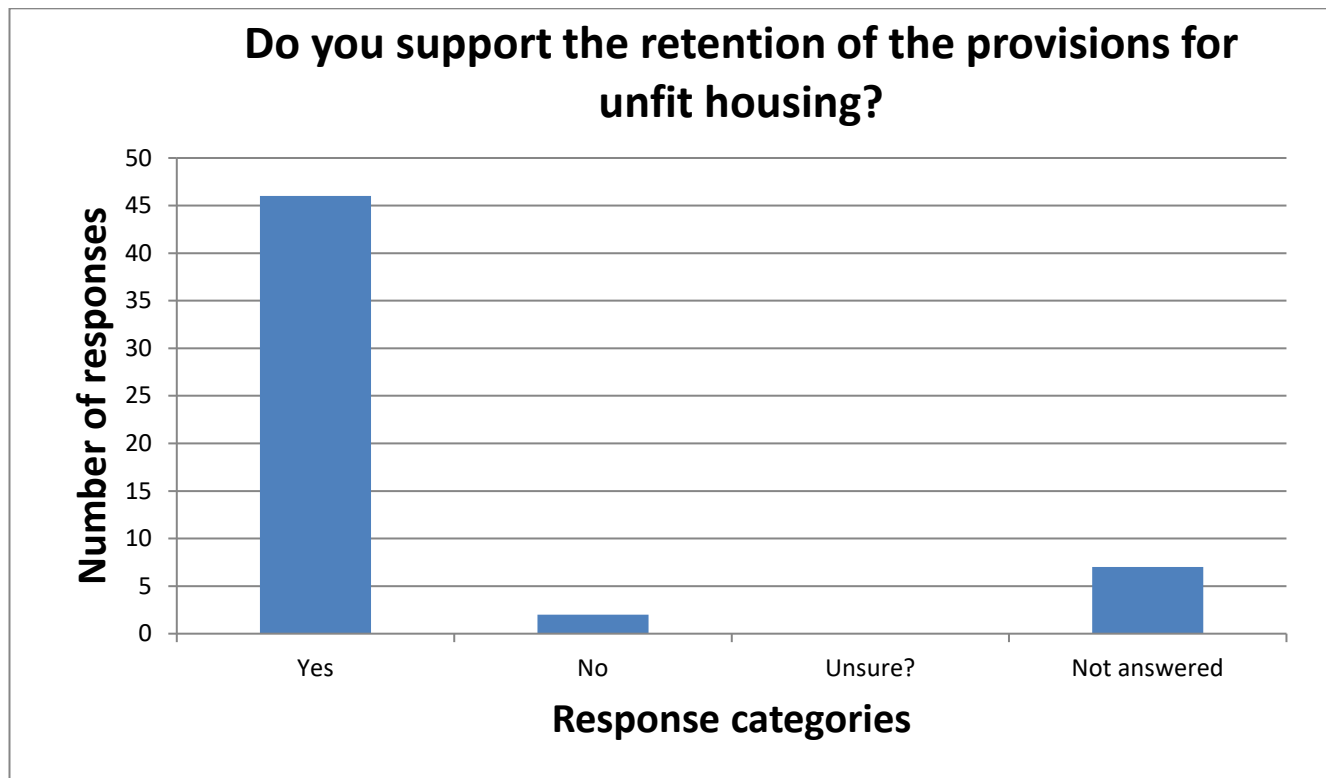
The DOH will provide guidance to assist with interpreting new provisions of the regulations. The DOH will also provide guidance to assist with interpreting enforcement requirements for Crown land habitation issues to clarify responsibilities between local government and State government under the new health regulations.

In addition to this, the DOH will make a submission to the Australian Building Codes Board for the inclusion of the requirement for floor wastes in the NCC.

Additional Proposals

Respondents were asked to provide their opinion and/ or support for four proposals for inclusion in new regulations, assuming that option C was supported. A summary of the results across these proposals have been detailed individually below.

Proposal 1: Do you support the retention of the provisions for unfit housing?



46 (83.6%) of the 55 respondents supported Proposal 1 to retain the provisions for unfit housing with minimal responses against the proposal (3.6%).

Two broad themes were identified from the comments that were provided for Proposal 1 including:

Enforcement considerations

Comments from respondents indicated that houses unfit for human habitation are often long on-going and un-resolved matters for local government. Whilst rarely used, the provisions for unfit housing are utilised when other avenues have been exhausted and there is a risk to public health and safety. The existing provisions allow for authorised officers to have a means of action to prevent public health nuisance/ deterioration by providing enforcement action for remediation. Buildings impacted by neglect may start to fall into disrepair and be dangerous to persons who enter if the premises are not repaired to an acceptable standard.

Local government respondents stated that they need these provisions in order to issue improvement notices or enforcement orders if required. Local government respondents believed they needed to have simplified and improved enforcement powers. Local governments would prefer that they undertake the works if an improvement notice or enforcement order is not complied with and the cost of the works to be placed as a memorial on the title for local government to recoup. One respondent felt that the ability to recover costs may affect local government decision making in relation to declaring a house unfit and related enforcement activities as the local government may choose to leave houses abandoned if their budgets do not have capacity to proceed with costly clean-up expenses. For example, an increase in the

number of aged asbestos houses being abandoned due to asbestos removal costs or simply the age of the building, has led to many unfit for habitation buildings.

Inclusion of a provision to determine a building unfit for habitation gives local government officers the opportunity to provide a formal direction that people should not inhabit an unsafe building. Several respondents considered that owners of affected properties should be given an opportunity to repair prior to an order to demolish. A suggestion was put forward that any house declared unfit for habitation should require an improvement plan for the property to return to a habitable state prior to any demolition work being undertaken.

Roles and responsibilities need to be clarified with DOH guidance material

Many respondents stated that there was a need for training and DOH guidance for EHOs in regard to dealing with hoarders, squalor and people with mental health illness. DOH guidance was also felt to be an important aspect of considering unfit for habitation provisions involving Aboriginal people living in rural and remote communities where alternative housing arrangements are often limited.

Respondents suggested that an enforcement approach is often ineffective as a long-term solution for persons prone to hoarding or living in squalor. Respondents also considered that issuing a notice that prevents the occupation of a dwelling may have other consequences, particularly where there are repercussions of homelessness. There was some respondent concern that Aboriginal people seeking alternative housing arrangements could be forced off country or to leave their community in order to seek habitable accommodation.

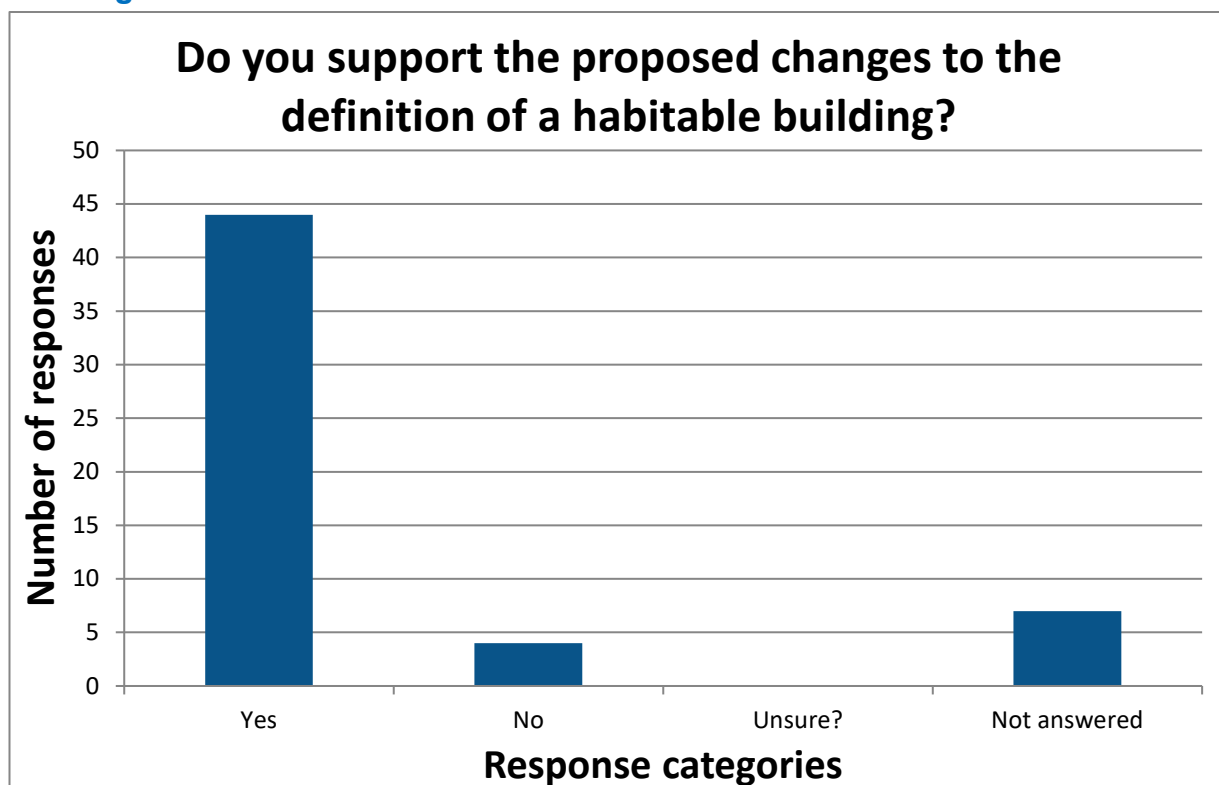
Recommendation:

The DOH recommends that this proposal be adopted. The DOH supports the retention of the existing provisions for unfit housing with 83.6% of respondents also supporting the proposal.

The Public Health Act 2016 provides that a local government may recover a fee or charge for the performance of any function under the Act under the Local Government Act 1995, Part 6, Division 5, Subdivision 2. This will include any fees or charges in relation to the performance of functions under the regulations.

The DOH will provide guidance to assist with interpreting and enforcing the provisions of the regulations.

Proposal 2: Do you support the proposed changes to the definition of a habitable building?



44 (80%) of the 55 respondents indicated that they supported the proposed changes to the definition of a habitable building to align with the Residential Design Codes (R-codes) definition “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” with minimal opposing responses (7.3%).

Two broad themes were identified from the comments that were provided for Proposal 2 including:

Habitable buildings and temporary accommodation

The definition of a habitable dwelling was generally supported to apply to the typical scenarios that are encountered by local government officers. Typical scenarios may include habitation of commercial buildings as well as habitation of temporary buildings such as sheds or garages.

There were contrasting comments from respondents about the definition of a habitable building or dwelling and whether to exclude buildings not originally intended for human accommodation such as sheds, residential converted sea containers, small houses, and other outbuildings. A valid question was submitted “What is a habitable building in the modern context?” It was felt that consideration must also be given to other facilities used for habitation such as caravans, park homes, camper vans, and tents etc., which are also used for the purposes of habitation but are not buildings as defined under the *Building Act 2011*. These were generally considered to fall under the grouping of temporary accommodation. While temporary accommodation provides a mechanism for human habitation, it currently exists outside of the housing regulatory infrastructure and planning models. Due to this public health infrastructure requirements such as wastewater removal, drinking water provision and solid waste disposal must all be considered for temporary accommodation so that these risks will be adequately managed.

Several respondents highlighted the importance of maintaining a provision similar to Section 144 of the Health (MP) Act which requires that any building not erected as a dwelling is not to be converted into one without the approval of the local government. One respondent indicated

that use of Section 144 currently allowed their local government to permit the temporary habitation of a shed as “temporary accommodation” during the construction of a house.

Reservations about the Residential Design Codes (R-codes) definition (for habitable building)

There was some discussion that the R-codes definition appeared to be restrictive if you had a situation with more than six persons who did not comprise a single family. There was also a consideration that the number of occupants of the habitable building was not relevant to the definition. It was also felt that the R-codes definition was not in fitting with the proposal that the definition needed to cover both permanent and temporary scenarios.

Recommendation:

The DOH recommends that the proposed change to the definition of a habitable building to align with the R-codes definition for a habitable building is adopted, but shortened to avoid restriction. It is intended that the definition used will be, ““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”.

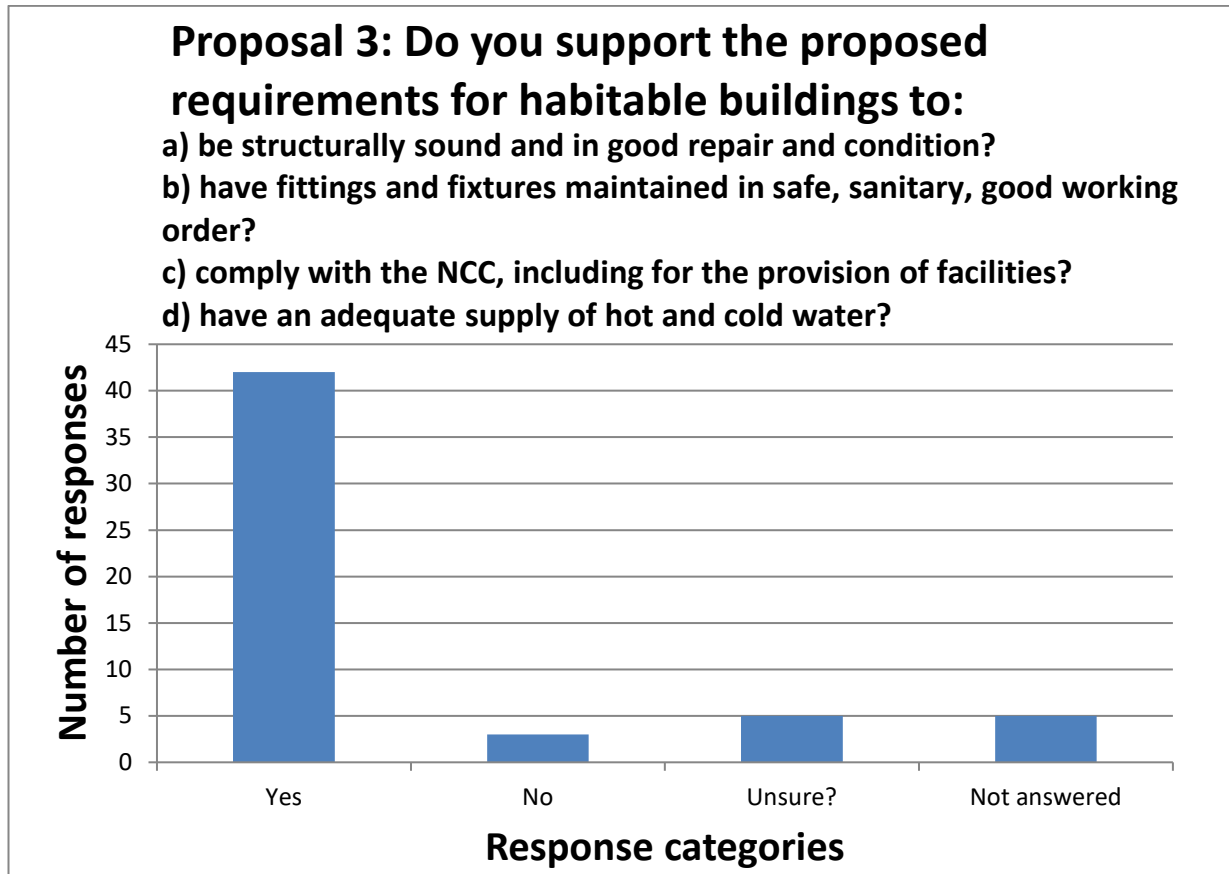
The DOH also recommends that a provision similar to Section 144 of the Health (MP) Act which requires that a building or portable structure is not to be converted into a dwelling without the approval of the local government, be included. This provision will provide some flexibility for temporary accommodation to be considered where the local government has determined that the public health risks are minimal, wastewater disposal is suitable and access to required facilities is suitable. This provision will provide local government with flexibility to issue a permit with regard to the temporary habitation of a building or portable structure.

Proposal 3: Maintenance of habitable buildings

The proposal for maintenance of habitable buildings was presented in the discussion paper as three separate questions that have been detailed below as Proposal 3a, Proposal 3b and Proposal 3c.

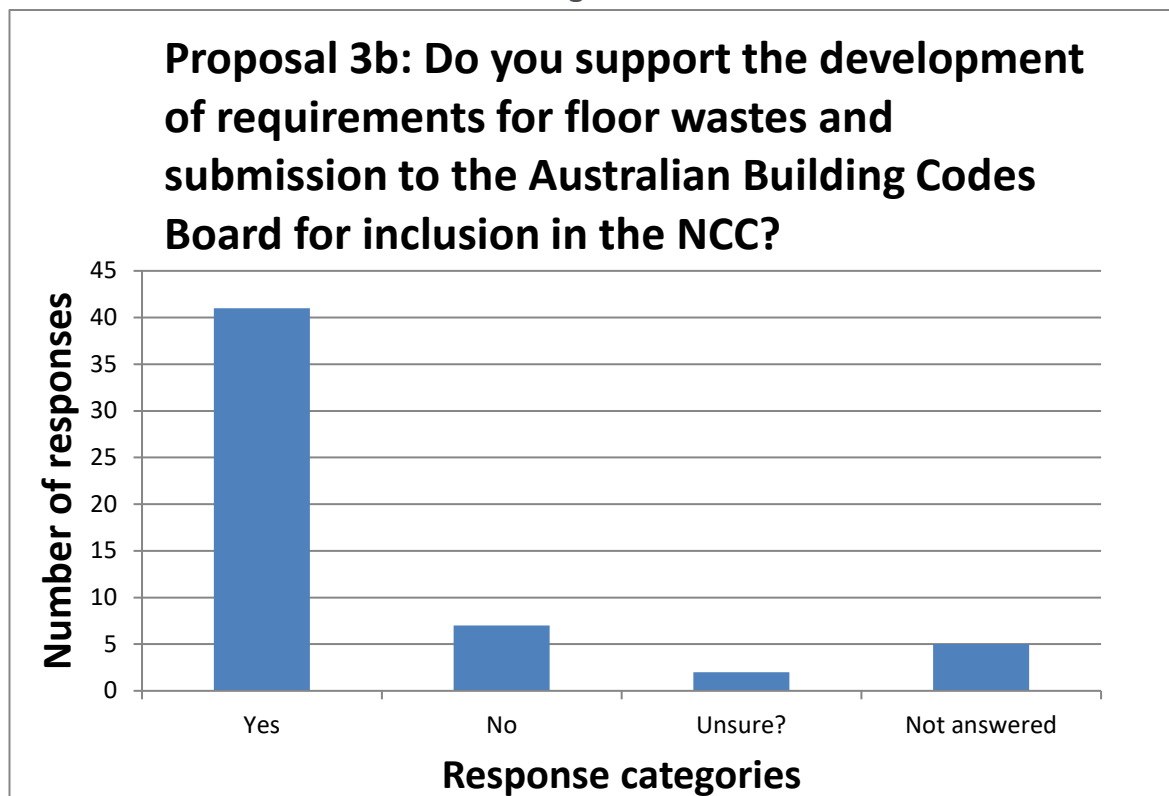
Proposal 3a: Do you support the proposed requirements for habitable buildings to:

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



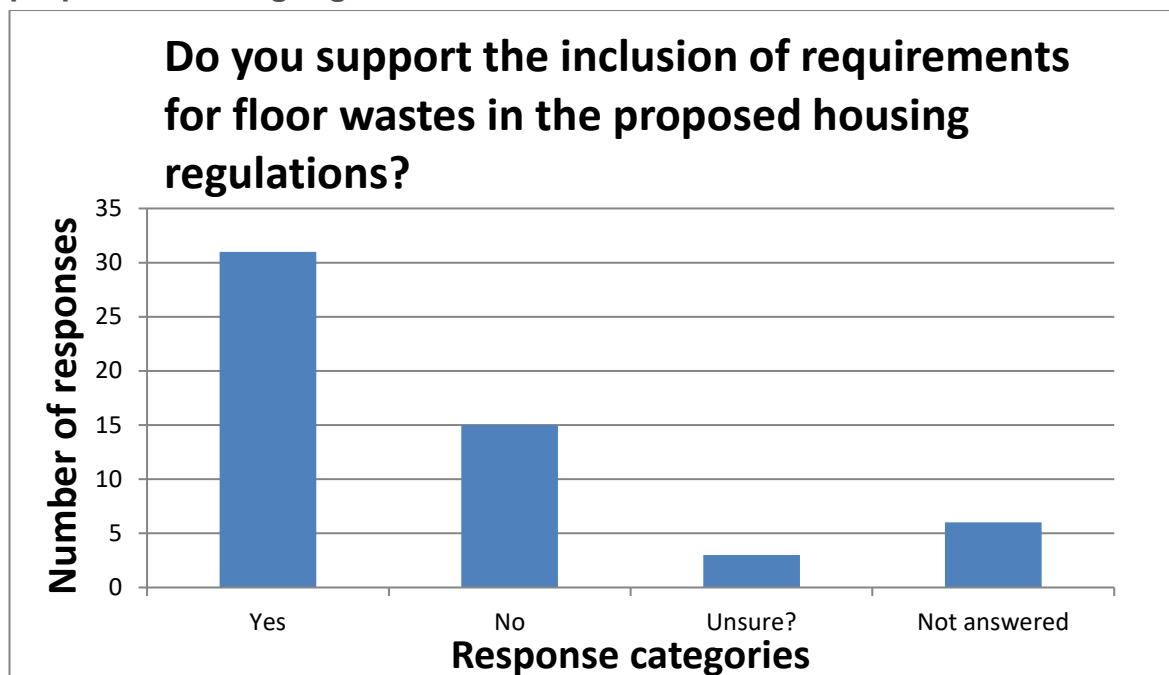
42 (76.3%) of the 55 respondents stated that they supported the proposed requirements for habitable buildings with 3 respondents not in favour (5.5%).

Proposal 3b: Do you support the development of requirements for floor wastes and submission to the Australian Building Codes Board for inclusion in the NCC?



41 (74.5%) of the 55 respondents stated that they supported the development of requirements for floor wastes and submission to the Australian Building Codes Board for inclusion in the NCC. 7 respondents (12.7%) were not in favour.

Proposal 3c: Do you support the inclusion of requirements for floor wastes in the proposed housing regulations?



31 (56.4%) of the 55 respondents stated that they supported the inclusion of requirements for floor wastes in the proposed housing regulations. There were 15 respondents (27.3%) that were not in favour of the proposal.

Two broad themes were identified from the respondent comments that were provided across Proposals 3a, 3b and 3c including:

Enforcement considerations

Respondents considered that guidance material from the DOH would assist in the application of enforcement activities for facilities to be “in good working order”. There was overall support from respondents for provisions that ensure that the owner/ occupier retains a duty to maintain the property and to ensure facilities do not pose a risk to health.

Some respondents felt there was a need to ensure that legislation is not too onerous on owners who cannot afford to keep a dwelling fully maintained and that legislation should not be used just to improve the amenity of neighbourhoods.

Provisions with regard to basic minimum standards for habitation are important

Respondents considered that there was a need for basic minimum standards for habitation. It was noted by respondents that the NCC did not contain the requirements for the ongoing maintenance of the basic facilities in habitable buildings. It was also generally felt that new and existing habitable buildings must have an adequate supply of hot and cold water. There was support for legislation requiring the maintenance of all habitable buildings (new and existing buildings and dwellings), including that all habitable buildings be structurally sound, waterproof, windproof and weatherproof, in safe and sanitary condition, and in good repair. Respondents agreed that all fixtures and fittings should be maintained in safe, sanitary, good working order.

It was generally considered that wet areas ought to be provided with floor wastes to cater for the overflow of sinks, baths and other appliances. There was concern that without the provision of floor wastes, flooding can occur which may lead to other more serious issues.

The DOH acknowledges comments from several respondents about the housing quality and maintenance requirements of housing in remote aboriginal communities and the need for DOH to continue to work with State Housing Authorities and Aboriginal communities and service providers to ensure public health risks are minimised in these communities.

Recommendation:

The DOH recommends that this proposal be adopted. The DOH supports the proposed requirements for habitable buildings:

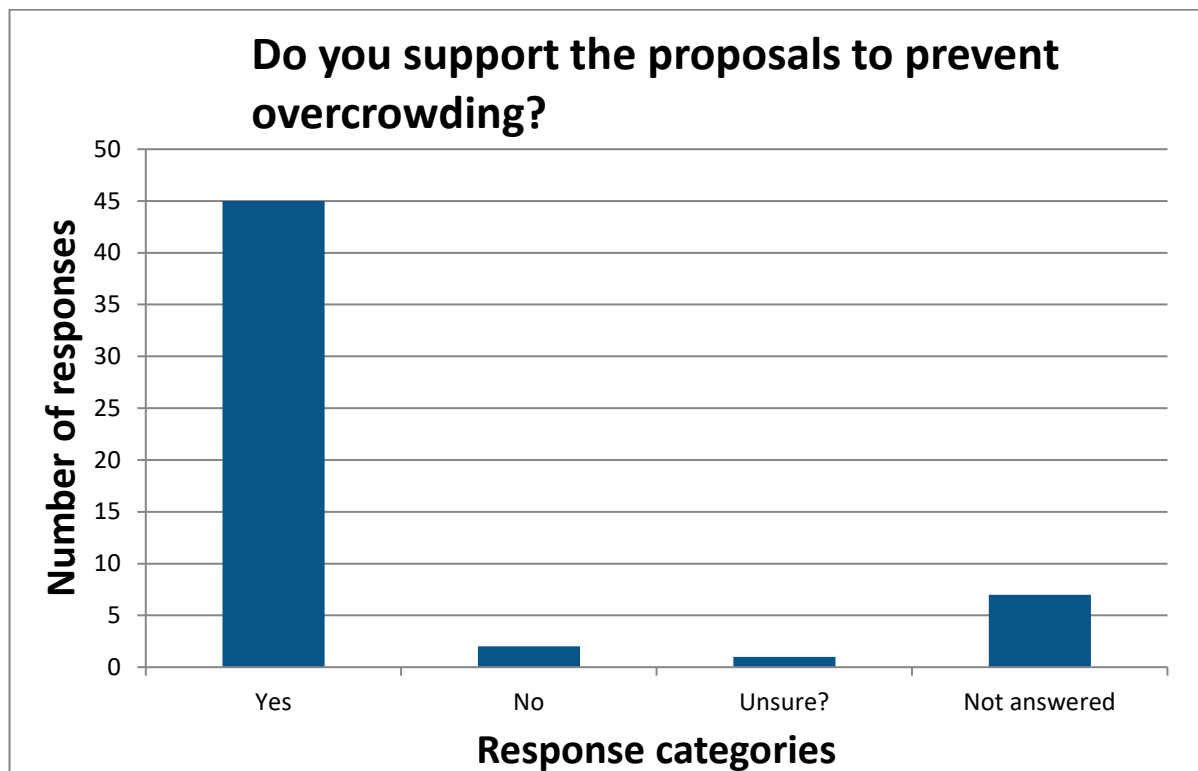
- *to be structurally sound and in good repair and condition;*
- *have fittings and fixtures maintained in safe, sanitary, good working order;*
- *comply with the NCC, including for the provision of facilities; and*
- *have an adequate supply of hot and cold water.*

As the requirement for floor wastes are a construction issue, the DOH will summarise the existing local laws and make a submission to the Australian Building Codes Board for inclusion in the NCC.

Basic minimum housing standards will be included in health regulations which will require all habitable buildings to be structurally sound, waterproof, windproof and weatherproof, in good repair and all fixtures and fittings to be maintained in safe, sanitary and good working order.

The DOH will provide guidance to assist with interpreting the new provisions of the regulations.

Proposal 4: Do you support the proposals to prevent overcrowding?



45 (81.8%) of the 55 respondents stated that they supported the overcrowding prevention proposals 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 and shall not permit a habitable room to be used for sleeping purposes unless it complies with the NCC requirements for ventilation. There was minimal opposition (3.6%) to this proposal.

Three broad themes were identified from the comments that were provided for Proposal 4:

Enforcement considerations

Respondents felt that the DOH should consider the cultural family systems of Aboriginal people and their communities, when proposing provisions on the issue of overcrowding.

Respondents supported the powers of authorised officers under the *Public Health Act 2016* to issue improvement notices and enforcement orders to landlords. It was strongly recommended that authorised officers receive appropriate training and hold the necessary qualifications, experience and knowledge in environmental health issues to make housing assessments, gather evidence, interpret legislation and to anticipate emerging risks.

A definition for overcrowding will require a minimum floor area per habitable room

Respondents suggested there was a need for a volume calculation of the maximum number of people for an identified minimum floor area, per habitable room. There was a recommendation to retain the quantity of cubic air space per person by age as detailed in the *Model Bylaws Series A* which was the main provision used to prevent inmates from overcrowding in prison accommodation.

Some respondents considered that ventilation requirements need to be specified to ensure minimum fresh air circulation. There was a suggestion that the application of the NCC ventilation requirements retrospectively was problematic.

Roles and responsibilities need to be clarified

There was general sentiment that the role of the State government needed to be clarified especially in regard to overcrowding issues on Crown land including within habitable buildings in remote Aboriginal communities. Respondents felt that clarification was needed about a local government's role in mitigation and control of overcrowding and the scope of enforcement responsibilities.

Recommendation:

The DOH recommends that the proposal to prevent overcrowding be adopted as follows: 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 and shall not permit a habitable room to be used for sleeping purposes unless it complies with the NCC requirements for ventilation. As provisions for ventilation in houses and residential apartments are contained in the BCA, the DOH cannot include specific provisions relating to ventilation in the new health regulations.

The DOH will include a provision for a minimum cubic air space for every person per habitable room of a habitable dwelling in the new health regulations. This provision will align with World Health Organisation (WHO) recommendations for agencies to implement a measure for overcrowding. The DOH has compared selected jurisdictions with the cubic air space per person by age as detailed in the Model Bylaws Series A as has determined that the existing measures for overcrowding are suitable with these comparisons presented in Appendix 3. The minimum cubic air space requirements of By-law 33 of the Model By-laws Series "A" will be retained as follows such that for every person over the age of 10 years there is no less than thirteen cubic metres of air space, and for every person under the age of 10 years there is no less than eight cubic metres of air space. In calculating the total cubic space, deduction shall be made in respect of the space occupied with furniture, fittings, and projections of the walls into the room.

The DOH will provide guidance to assist with interpreting new provisions of the regulations. The DOH will also provide guidance to define the administrative and enforcement roles between local government and State government in guidance documentation under the new health regulations to assist with Crown land habitation issues.

Further Issues and considerations

Respondents were asked if they would like to make any additional comments. Two distinct topics were recognised outside of the proposals listed within the discussion paper.

Mould

Several respondents considered mould to be an issue of public health significance in dwellings. A few respondents recommended that health regulations should capture and include mould as a public health housing risk and include risk-based provisions to address mould, such as adequate ventilation or exhaust fans and provisions to require cleaning.

Other respondents' comments suggested that mould issues have been used by tenants as a reason to break leases. There was a suggestion that some very new houses have mould problems and complaints about mould may result in EHO's having to investigate construction-based issues.

The DOH notes that provisions for ventilation in houses and residential apartments are contained in the BCA. Performance requirements currently exist such as FP4.3 of the BCA that require that a space in a building used by occupants, to be provided with means of ventilation with outdoor air in order to maintain adequate air quality. Due to this, the DOH cannot include specific provisions relating to mould in the new health regulations.

Laundries

It was felt that the issue of laundry facility separation from kitchens had not been discussed adequately in the discussion paper. The general sentiment from respondents was to not support the continued construction requirement for the separation of laundries from kitchens.

Although there was some respondent concern that the separation of laundries and kitchens was not adequately considered by the NCC, several respondents suggested a repeal of all existing separation requirements for laundries to allow new developments to include space-saving measures. There was an opinion that the likelihood of a dwelling being constructed with a laundry trough next to a food preparation area would increase. It was considered that given the worldwide trend towards combining these functions within apartments, the DOH should give attention as to how this can be safely accommodated.

Some other respondents considered that allowing a laundry facility to be in the immediate area of food preparation surfaces would present an increased public health risk and that the separation of kitchen and laundry facilities should be maintained. One respondent commented that the NCC permitted laundries to borrow ventilation from habitable rooms and that potentially requiring all laundries to be provided with direct natural ventilation or mechanical ventilation may improve indoor air quality in this area.

The DOH has determined that any consideration for a laundry to be a separate room from a kitchen is a construction requirement related to NCC provisions. The NCC currently requires each Class 1 residence to be provided with at least one washtub in addition to the washtub used for food preparation and space in the same room for a washing machine. There is limited scientific evidence that supports a likelihood of domestic food contamination from having combined kitchen and laundry uses in the same room space. Laundry ventilation is also a construction requirement related to NCC provisions. Due to this, the DOH will not include specific provisions with regard to laundry facilities in the new health regulations.

Next steps

The information gathered in this consultation indicates that there is a majority preference for ongoing regulation of public health issues associated with housing under the *Public Health Act 2016*. The DOH will commence developing a Preliminary Impact Assessment for the Department of Treasury's Better Regulation Unit. This is required as part of the Regulatory Impact Assessment process.

For information on the DOH's Public Health Act regulation review program, visit the **WA Health website** <https://ww2.health.wa.gov.au/Improving-WA-Health/Public-health/Public-Health-Act/Regulation-review-program>; or sign up to the **Environmental Health Directorate newsletter** to be notified of any upcoming consultations <https://health.us7.list-manage.com/subscribe?u=bbc68d42eff51a06d25cb71db&id=618b4db23b>.

Appendix 1 – Consultation submission list

Submissions to this consultation were received from the following organisations (please note that some respondents elected to remain confidential and are therefore not included in this list):

State government	
Department of Communities	
Department of Education	
Department of Mines, Industry Regulation and Safety	
Department of Primary Industries and Regional Development	
Transport portfolio	
Local government	
City of Belmont	Shire of Leonora
City of Bunbury	Shire of Menzies
City of Cockburn	Shire of Merredin
City of Gosnells	Shire of Mundaring
City of Greater Geraldton	Shire of Murray
City of Joondalup	Shire of Narrogin
City of Kalamunda	Shire of Northampton
City of Kalgoorlie-Boulder	Shire of Serpentine-Jarrahdale
City of Nedlands	Shire of Three Springs
City of Stirling	Shires of Wiluna and Laverton
City of Swan	Shires of Meekatharra, Mount Magnet, Yalgoo and Cue
City of Wanneroo	Town of Cambridge
Shire of Boddington	Town of Victoria Park
Shire of Capel	
Shire of Chittering	WA Local Government Association
Shire of Cuballing	The Metropolitan Environmental Health Managers Group
Shire of Gnowangerup	Environmental Health Australia (WA)
Shire of Kojonup	
Industry	
Buildaspect	
Housing Industry Association	
Shelter WA	
Real Estate Institute Western Australia	
Aboriginal Health Council of Western Australia	
Other	
Women's Council for DFV services	

Appendix 2 – Citizen Space online survey questions

Question 1: What is your name?

Question 2: What is your email address?

Question 3: What is your organisation?

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?

Appendix 3 – Comparison of current housing overcrowding measures across selected jurisdictions

Country / Region	Source	Room standard / Space standard / Crowding index	Canada National Occupancy Standard (CNOS)	Persons	Minimum unit square area (m ²)	Model By-laws Series A minimum cubic air space (m ³)	Cubic equivalent per person (Assume 2.4m ceiling)	Cubic equivalent per person (Assume 2.7m ceiling)
Canada	Statistics Canada	Rules for households based on age, gender and marital status						
Australia	Australian Institute of Health and Welfare (AIHW) / Australian Bureau of Statistics (ABS) Using CNOS	Western Australia		1		>13 m ³		
		Western Australia		0.5		>8 m ³		
		* Victoria Public Health and Wellbeing Regulations 2009		1	>7.5 m ²		>18 m ³	>20.3 m ³
		# South Australian Housing Improvement Regulations 2017		1	>7.5 m ²		>18 m ³	>20.3 m ³
		** NSW Public Health Regulation 2012		1	>5.5 m ²		>13.2 m ³	>14.9 m ³
New Zealand	NZ Housing Improvement Regulations 1947			1	>6 m ²		>14.4 m ³	>16.2 m ³
	NZ Housing Improvement Regulations 1947			0.5	>4.5 m ²		^t >10.8 m ³	>12.2 m ³
UK	UK Housing Act 1985	110 sq. ft. or more		2	>10.2 m ²		>12.2 m ³	>13.8 m ³
	UK Housing Act 1985	90 sq. ft. or more but less than 110 sq		1.5	>8.4 m ²		>13.4 m ³	>15.1 m ³
	UK Housing Act 1985	70 sq. ft. or more but less than 90 sq		1	>6.5 m ²		>15.6 m ³	>17.6 m ³
	UK Housing Act 1985	50 sq. ft or more but less than 70 sq		0.5	>4.6 m ²		^t >11.0 m ³	>12.4 m ³
USA	US Census Bureau	American Crowding Index = the number of usual residents in a dwelling divided by the number of rooms in the dwelling						
Europe	Eurostat	Rules for households based on age, gender and marital status						

* applicable to "prescribed accommodation" only

applicable to "rooming houses" only

** applicable to "sleeping accommodation" only

^t values calculated for 0.5 person

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

© Department of Health 2020

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.