



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

Consultation Paper 2025

Health (Public Buildings) Regulations 1992



Contents

Contents	2
Glossary and terms	3
Agency self-assessment	3
Better Regulation Unit (BRU)	3
Council of Regulators	3
Deemed-to-satisfy (DTS) solution	3
Performance solution	3
Streamline WA	3
Acronyms	4
Consultation on public buildings regulation – call for comment	5
Introduction	7
1. Matters raised by the 2018 Consultation Paper	8
2. Department actions following the 2019 Consultation Summary Report	12
3. Policy context	15
4. Comparison of public buildings regulations with other legislative provisions	16

Glossary and terms

Agency self-assessment

A tool provided by the Better Regulation Unit to assist agencies to determine whether a proposed regulatory change would have a significant adverse economic impact on any stakeholder, including government.

Better Regulation Unit (BRU)

The Better Regulation program guides the development, design and implementation of regulatory proposals in Western Australia and is the Cabinet-approved replacement for the Regulatory Impact Assessment program.

Council of Regulators

The Council of Regulators plays a stewardship role in regulatory reform. It works with the Streamline WA Steering Committee to ensure a free exchange of ideas about opportunities for improvement. The Council is guided by a Charter, the objectives of which are to:

- ease the administrative load on businesses and government
- support digital transformation and improve online service delivery for stakeholders
- improve and modernise the legal framework
- strengthen cross-sector collaboration and assist cultural change within agencies.

Deemed-to-satisfy (DTS) solution

A solution using the deemed-to-satisfy provisions to demonstrate compliance with the NCC.

Performance solution

A method of complying with the performance requirements of the NCC, other than by a deemed-to-satisfy solution.

Streamline WA

Streamline WA is a whole-of-government initiative to improve regulation and regulatory practice. Streamline WA reforms focus on improving and modernising the legal framework, strengthening cross-sector collaboration, easing the administrative load on businesses and government, and improving systems and processes.

Acronyms

ABCB	Australian Building Codes Board
BCA	Building Code of Australia (Volume 1 and 2 of the NCC)
BRU	Better Regulation Unit, Department of Treasury
DEMIRS	Department of Energy, Mines, Industry Regulation and Safety
DFES	Department of Fire and Emergency Services
DRGL	Department of Racing, Gaming and Liquor
EHO	Environmental Health Officer
NCC	National Construction Code

Consultation on public buildings regulation – call for comment

You are invited to provide feedback on the Department of Health's second (and most recent) consultation paper on regulatory reforms that manage the public health risks associated with public buildings in WA.

The regulatory environment for public buildings includes the operation of the National Construction Code (NCC) and WA legislation in building regulation.

This consultation paper on the *Health (Public Buildings) Regulations 1992* invites stakeholders to comment on whether federal and state building regulations adequately ensure public safety in public buildings.

Have your say

Stakeholder input is critical in helping to minimise the public health risks associated with public buildings and ensures any impacts to consumers, businesses and government are considered.

Your feedback helps identify whether the 'repeal without replacement' of health regulations represent a public health risk while helping to avoid any direct overlap of legislative provisions covering public buildings,

When considering the *Health (Public Building) Regulations 1992* against the relevant provisions of the NCC and other Western Australian building legislation, the department requests that you clearly identify the public health risk that may remain if the current health regulations were repealed without replacement.

The table in section 4 makes it easy to compare the current Public Buildings regulations with other legislative instruments.

The department welcomes relevant evidence-based research, including examples of legislative shortfalls or practice that demonstrates a regulatory gap.

In addition, you are encouraged to provide any examples where your experience demonstrates that the identified risk is the responsibility of public health.

Feedback can be submitted by completing the template or via an individual submission addressing aspects of the consultation paper that you have a particular interest in.

Submission guidelines

If you work in local government, your submission needs to be authorised by your Chief Executive Officer.

If you are responding on behalf of an organisation, ensure your submission has been endorsed and authorised by your organisation.

You need to allow enough time for your organisation to approve the submission to meet the deadline.

All submissions are part of a public consultation process and may be quoted in the final report. If you don't wish for this to occur, please outline this in your submission. It is also important to note submissions may be subject to release under *the Freedom of Information Act 1992*.

Anonymous submissions and submissions that address matters outside the scope of this consultation paper will not be accepted.

Written submissions can be sent to eh.stakeholderengagement@health.wa.gov.au

Submissions close **18 April 2025**

Introduction

This paper is the second consultation paper released by the Department of Health (the department) for comment on the review of the *Health (Public Buildings) Regulations 1992* (the regulations), established under the *Health (Miscellaneous Provisions) Act 1911*, as part of the implementation of Stage 5 of the *Public Health Act 2016*.

The public health risks associated with public buildings have been regulated by local governments and the department by virtue of the regulations.

From a public health perspective, public buildings should:

- be appropriately and safely designed for the activities being undertaken there
- have safe access and egress for all patrons and emergency services at all times
- contain regularly maintained emergency equipment
- have appropriate plans in place for risks and emergencies of all kinds.

Since the release of the first consultation paper *Managing public health risks in public buildings in Western Australia* in 2018 (the first consultation paper) and the publication of the consultation summary in 2019 (the first consultation summary), the department has liaised with government agencies and monitored federal and state developments on building and construction legislation, including amendments to the NCC. The NCC is a performance-based code that sets the minimum level for the safety, health, amenity, accessibility and sustainability of certain buildings. The Australian Building Codes Board, on behalf of the Australian Government and each State and Territory Government, produces and maintains the NCC.

This second consultation paper will:

1. summarise matters raised by respondents to the first consultation paper and consultation summary and the response considered at that time
2. provide an update on legislative and departmental developments since 2019
3. call for comment on whether there is a need for regulation in addition to Western Australian building legislation and the NCC that sets the safety standards and protocols for building construction.

When considering the public building regulations against the provisions of the NCC and State building legislation, the department requests that you clearly identify the public health risk that may remain if the current health regulations were repealed without replacement.

As the Commonwealth's 2018 report into building confidence stated, 'The public is entitled to a presumption that the buildings in which they live, work and receive services are safe.'¹ This consultation paper considers which method of regulation is best placed to deliver this outcome in the context of public health.

A note on building standards in Western Australian legislation: Regulation 31A of the *Building Regulations 2012* outlines that applicable building standards for all types of buildings ('except to the extent that regulations 31BA, 31C, 31D and 31HA otherwise provide') are in the Building Code (which is comprised of Volumes 1 and 2 of the NCC).

¹ Australian Government Department of Industry, Science and Resources (2018.) *Building confidence*, 9.

1. Matters raised by the 2018 Consultation Paper

The first consultation paper canvassed issues relating to the regulation of public buildings for the purposes of managing public health risks. As part of this, it asked for feedback on 28 questions, dealing with general perceptions about the need for regulation to specific feedback on 9 regulatory change proposals.

The first consultation paper was circulated to more than 1,100 stakeholders, including local governments, public sector contacts, industry stakeholders and subscribers to the department's environmental health mailing list. From this, the department only received 68 submissions - a 6 per cent response rate.

The total number of submissions was lower than other external online consultations, which typically averaged a response rate between 10 to 15 per cent. Nearly 70 per cent of submissions received were from local government environmental health officers or authorised officers dealing with building-related matters.

Responses to the matters raised in the first consultation paper were released in the 2019 Consultation Summary, along with the actions undertaken as a result of stakeholder feedback.

Regulatory repeal or replacement

There were 2 broad options put in relation to the *Health (Public Buildings) Regulations 1992*, which were made under the *Health (Miscellaneous Provisions) Act 1911*.

The first option was to repeal the *Health (Public Buildings) Regulations 1992* without replacement.

The majority of respondents did not support this option, expressing concerns including:

- self-regulation may decrease public health standards
- the NCC does not cover ongoing operation of the building or health risks/issues
- the knowledge and experience of authorised officers would be lost
- the need for proactive responses
- the possible failure of self-regulation.

The second option was to provide new updated regulations under the *Public Health Act 2016*.

This option was preferred by 84 per cent of respondents, of which 77 per cent were from local government. The perceived benefits of this proposed option were:

- protection of public health
- consistency and certainty
- maintaining corporate knowledge
- ensuring accountability by owners and occupiers.

Respondents who did not support this option stated that:

- the *Building Regulations 2012* administered by the Department of Energy, Mining, Industry Regulation and Safety (DEMIRS) already allow for maintenance inspections
- proposed changes to the regulations may not adequately address the issue of duplication of building legislation

- new regulations may introduce red tape and cost to owner occupiers
- local governments in regional areas have a low number of high-risk premises which self-manage effectively and meet the requirements of the NCC.

At that time, it was considered that updated regulations were desirable.

Previous proposals

In addition to the 2 broad proposals above, input was sought on 9 specific proposals.

The following section provides:

- a summary of 2019 respondent comments
- the response at the time
- subsequent developments, where relevant.

1. Definition of Public Building

There was a proposal to amend the definition of a public building to allow for risk-based management of public buildings.

The feedback on the proposed amendment was broad and conflicting. It was considered that the NCC definition of an assembly building would be more appropriate.

Developments since 2019

The department notes that in 2019, the definition of public buildings was included in the NCC's deemed-to-satisfy provisions, which details how public buildings must comply with requirements such as additional exits, goings and risers, handrails to ramps, flights and landings, artificial lighting and fixed seating.

2. Requirement for registration of public buildings

The proposal to register public buildings was proposed to replace the certificate of approval process currently in place.

Three quarters of respondents supported the change to increase the information provided to local governments. A point was raised that the registration process would be a duplication of the current occupancy permit process under building legislation. It was proposed that building legislation be amended to consider public health factors, provide occupancy numbers and eliminate the need for a second assessment.

In response to this feedback, it was considered at the time that registration could be part of ongoing monitoring of public health risks.

Developments since 2019

Matters relating to the assessment of the safety of public buildings are now considered to be adequately addressed by the requirements of State building legislation and the NCC.

Examination of safety measures are required for changes in occupancy and usage under legislation, such as sections 43 and 49 of the *Building Act 2011* and under the *Building Regulations 2012*. The *Building Act 2011* and *Building Regulations 2012* contain enforcement powers enabling authorised persons to issue building orders, exercise powers of entry and direct people to leave the building.

Higher risk venues that serve alcohol are regulated by the Department of Racing, Gaming and Liquor (DRGL) under the *Liquor Control Act 1988*. Under the *Liquor Control Regulations*

1989 plans and specification of the building must be assessed and a maximum accommodation number is applied by DRGL. Liquor licensed premises are subject to conditions and policies set by DRGL, including fire safety measures in licensed premises policy, and management plans for harm minimisation.

The DRGL conducts inspection of licensed premises on an average 5-year cycle. Premises are inspected for compliance with the *Liquor Control Act 1988* and the conditions on the liquor licence, including minimum standards for emergency exits, emergency lighting, evacuation plans, core doors, smoke alarms, fire extinguishers, fire blankets, secondary exits, electrical safety and obstructions.

In addition, high-risk buildings in the metropolitan area are assessed and regularly inspected by the Department of Fire and Emergency Services (DFES).

Finally, the *Building Regulations 2012*, made under the *Building Act 2011*, require all buildings to conform to Volumes One and Two of the NCC, unless the Building Commissioner has approved the non-application of standards under section 39 of the *Building Act 2011*.

3. Requirement for an annual or other fee

The first consultation paper suggested requiring an annual or other fee to enable local government to recover costs in administering the Regulations. However, while there was agreement among over 80 per cent of respondents, there was no agreement on the fee structure or frequency of fees.

The first consultation summary noted that section 294 of the *Public Health Act 2016* provides that:

An enforcement agency that is a local government may impose and recover under the *Local Government Act 1995* Part 6 Division 5 Subdivision 2 a fee or charge for the performance of a function as an enforcement agency under this Act, including a fee or charge for the provision of information.

Because local governments are already empowered to seek cost recovery, no legislative amendment is required.

4. Amend risk management plan requirements

Regulation 4(b) requires that risk management plans are required 'in respect of a building or place or part of a building or place where 1,000 or more persons may assemble for religious, entertainment, recreational or sporting purposes.' It was proposed that the number was changed instead to a risk threshold. This was accepted in principle.

A separate issue was raised regarding the role of authorised officers in requesting, viewing or assessing Risk Management Plans and the potential liability taken on when doing so, as well as the powers for enforcement. However, this is a matter for local government administration, rather than a matter requiring legislative change.

5. Improve the transparency of performance solutions

A proposal to require adequate provision of information on BCA Performance Solutions and ensure these are captured under the conditions of the certificate of registration was considered to be covered under the *Building Regulations 2012*, and therefore did not require amendment.

6. Requirements for temporary structures

A proposal to prescribe threshold of approval for temporary structures was considered desirable by two thirds of respondents.

However, following consultations with DEMIRS, other government and key industry stakeholders, the regulation of temporary structures such as tents, marquees, tiered seating, and enclosures is considered to be more appropriately dealt with under separate event regulations and management rather than the public buildings regulations.

7. Should electrical requirements be repealed from the Public Buildings Regulations?

Regulation 10 provides for certification of a public building following electrical work. This was supported by three quarters of respondents. The first consultation paper noted that this requirement is a direct duplication of the certification provided to local governments as part of building permit approval and recommended the repeal of the regulation.

8. Repeal requirements adopted into the NCC 2019 and 9: Repeal various other requirements

The first consultation paper canvassed the repeal of a range of matters that had been adopted into the NCC and other miscellaneous regulations that were outdated or covered by other legislation or Australian Standards.

The majority of respondents agreed with these repeals.

Developments since 2019

Schedule 11 of the NCC refers to WA-specific construction requirements, and has incorporated matters raised by the department.

In addition, as discussed below, the department has liaised with DEMIRS in relation to regulation of matters concerning public buildings.

2. Department actions following the 2019 Consultation Summary Report

In response to the consultation summary of the first consultation paper, the department proposed the following actions:

1. seek further advice on risk management plans
2. hold consultations with DEMIRS to review comments made by respondents about ongoing concerns with building safety
3. develop a preliminary impact assessment as part of the regulatory impact assessment process.

The department also sent out a letter to stakeholders in May 2019, seeking further specific feedback on public health risks.

The key information sought was as follows:

The consultation indicated that there is widespread [in] principle support for the removal of all construction requirements from the Regulations and deference to the NCC. However, this was not supported by all respondents and there are anecdotal concerns with the NCC being applied in ways which may not support public health, particularly using performance solutions to affect exit paths and reduce facilities.

The department needs to determine what requirements will go into future legislation. As such, the seriousness of these concerns will be examined with the severity and frequency of such instances. We are requesting information from Principal Environmental Health Officers regarding any instances in your local government where performance solutions have been used in public buildings in a manner that does not adequately consider public health.

Feedback received indicated a general acceptance that the NCC was appropriate.

There was a view that the ability to inspect and enforce compliance should be retained.

However, section 34 of the *Public Health Act 2016* provides for a general public health duty. This 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 the person.' Section 35(2) provides that 'a failure to comply with the general public health duty may constitute grounds for action to be taken under this Act, including 'the issue of an improvement notice or enforcement order.'

Action 1: Risk Management Plans

The department made enquiries about the desirability of retaining the requirement for risk management plans under new regulations.

The *Work Health and Safety Act 2020* (WHS Act) and its associated Regulations (collectively referred to as the WHS laws) commenced on 31 March 2022. These laws set out the requirements for providing a safe and healthy work environment.

The management of risk is foregrounded in the WHS Act. Section 3(1)(a) provides that its main object is 'to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces' by 'protecting workers and other persons against harm to their health, safety and welfare *through the elimination or minimisation of risks arising from work*' (emphasis added).

Section 17 provides for the management of risks and imposes a duty '(a) to eliminate risks to health and safety, so far as is reasonably practicable; and (b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.'

The guide to new WHS laws provided by DEMIRS states that the primary duty holder is the 'person conducting a business or undertaking' (PCBU) which is intended to capture a broader range of contemporary workplace relationships.²

Section 19(3) provides that 'a person conducting a business or undertaking must ensure, so far as is reasonably practicable — (a) the *provision and maintenance of a work environment without risks to health and safety*; and (b) *the provision and maintenance of safe plant and structures*' (emphasis added).

While the purpose of the legislation is work health and safety rather than public health, the requirement to provide and maintain a safe working environment by necessity includes matters included in risk management plans under the public building regulations. In addition, the penalties for non-compliance are significantly higher – see for example sections 31 to 33 of the WHS Act, which outlines the penalties for failure to comply with the health and safety duty.

Therefore, there is an overlap of subject matter in the public building regulations and the WHS laws in relation to risk management plans. Given that the penalties are significantly higher in WHS laws for non-compliance, and that WHS laws produce the same outcome, there would appear to be little benefit to public health that would arise from additional regulation.

Action 2: Consultation with the Department of Energy, Mining, Industry Regulation and Safety

Since the release of the first consultation summary, the department has liaised with key agencies such as the Department of Fire and Emergency Services, the Department of Local Government and the Department of Energy, Mining, Industry Regulation and Safety (DEMIRS) on the legislative scope of Acts administered by these agencies to protect public safety.

In November 2023, DEMIRS provided a submission to the Department identifying those areas covered by the NCC, the *Building Act 2011* and *Building Regulations 2012*. This has been used as the basis of the commentary in part 3 of this second consultation paper.

It is acknowledged that the NCC, where it covers the same subject matter as public health regulation, may not have the same purpose. The NCC does not prescribe health requirements, ongoing maintenance requirements, or compliance inspections. However, given the variation in practice in different local government authorities, and the ability for local government authorities to invoke the general public health duty for high-risk public buildings, evidence has not been received that the requirements above remain necessary for the protection of public health.

² See DEMIR's Overview of Western Australia's Work Health and Safety Act 2020 at https://www.DEMIRS.wa.gov.au/sites/default/files/atoms/files/overview_wa_whs_act_0_0.pdf

Action 3: Preliminary Impact Assessment

In relation to action 3, from 2021 the BRU updated the process of regulatory assessment. Agencies are now required to complete an Agency Self-Assessment of any new regulatory proposals to determine whether a regulation is likely to create a significant adverse economic impact. There is no requirement to conduct a regulatory impact assessment if the proposed regulatory amendment is unlikely to create a significant adverse economic impact.

The department has met with agencies such as DFES and DEMIRS on the legislative scope of acts administered by these agencies which protect public health.

In addition, in 2022 the department joined the Council of Regulators, which is committed to streamlining and reducing the administrative burden on businesses and government.

3. Policy context

Better regulation principles

Agencies are required to consider the Better Regulation Principles when contemplating the need for legislation. Better Regulation Principles include a range of considerations for agencies when contemplating introducing regulations, including ensuring that regulations complement, support and streamline rather than duplicate or conflict with existing regulations. Agencies are required to take a risk-based approach to regulation, focusing on where there is a great risk of harm, while applying a light regulatory touch for issues that are low risk. In this model, regulation must have identifiable outcomes.

The BRU of the Department of Treasury assists agencies in assessing regulatory proposals.

Streamline WA

Established in 2022, Streamline WA is a government whole-of-government initiative make it easier to do business in WA by improving regulation and regulatory practice.

Streamline WA suggests that agencies ensure that:

- Western Australians are confident that risks are well managed
- regulatory requirements are clear and easy to understand
- decision-making addresses risks and focuses on outcomes
- decision-making is timely and transparent
- regulation is applied consistently, reducing overlap and duplication
- a customer-focused approach to service delivery is adopted
- Government information, applications and processes are available online for maximum efficiency.

Drafting principles

Cabinet must not be asked to pass legislation, including delegated legislation such as regulations, unless it is necessary. In particular, legislation should not be proposed where a desired policy outcome can be achieved administratively.

It is in this policy framework that any proposals to introduce new regulations under the *Public Health Act 2016* must be considered. The following section in table format details the current provisions under the *Health (Public Buildings) Regulations 1992* and provides a commentary on which provisions of the NCC cover the matters currently regulated under health regulation.

4. Comparison of public buildings regulations with other legislative provisions

Below is a table containing the *Health (Public Buildings) Regulations 1992* and commentary from the department on whether other legislation or the NCC appears to adequately cover the field.

The department is aware that there is not a direct overlap of regulatory provisions. However, the department invites your input on whether the repeal without replacement of aspects of the regulations might represent a public health risk, given the other legislative provisions that cover public buildings.

<i>Health (Public Buildings) Regulations 1992</i> and commentary on whether other legislation or NCC adequately covers the field	
Provisions of the <i>Health (Public Buildings) Regulations 1992</i>	Commentary
<p>3. Terms used</p> <p>(1) In these regulations, unless the contrary intention appears —</p> <p>AS/NZS 2293 means Australian/New Zealand Standard AS/NZ 2293 — Emergency Evacuation Lighting in Buildings;</p> <p>AS/NZS 4360 means Australian/New Zealand Standard AS/NZS 4360:1999 — Risk Management;</p> <p>Building Regulations means the <i>Building Regulations 2012</i>;</p> <p>cinema means a public building used for the projection of motion pictures;</p> <p>drive in means a public building used for the purpose of viewing motion pictures from parked vehicles;</p> <p>emergency lighting system includes the exit signs required for such a system under these regulations and power source of the system;</p> <p>large licensed premises means licensed premises having a floor area of more than 850 m²;</p> <p>lecture theatre means a public building used for lectures;</p> <p>licensed premises means —</p> <p>(a) premises in respect of which a cabaret licence as defined by the <i>Liquor Control Act 1988</i>² has been granted under that Act; or</p>	<p>AS/NZS 2293 is provided for in the NCC E4D4 which concerns design and operation of emergency lighting and E4D8 which concerns the design and operation of exit signs.³</p> <p>Class 9b buildings under the Building Code of Australia are assembly buildings in which people may gather for social, theatrical, political, religious or civil purposes. They include schools, universities, childcare centres, pre-schools, sporting facilities, night clubs, or public transport buildings.⁴</p> <p>Emergency Lighting System is provided for in NCC E4D2.⁵</p> <p>Class 6 buildings under the Building Code of Australia are used for the sale of goods by retail or the supply of</p>

³ [Part E4 Visibility in an emergency, exit signs and warning systems | NCC \(abcb.gov.au\)](#)

⁴ [Part A6 Building classification | NCC \(abcb.gov.au\)](#)

⁵ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/e-services-and-equipment/part-e4-visibility-emergency-exit-signs-and-warning-systems>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field	
Provisions of the Health (Public Buildings) Regulations 1992	Commentary
<p>(b) premises in respect of which a tavern licence, a hotel restricted licence or any other kind of hotel licence as defined by the <i>Liquor Control Act 1988</i>² has been granted under that Act; or</p> <p>(c) a cabaret, hotel or tavern —</p> <p>(i) in respect of which a special facility licence as defined by the <i>Liquor Control Act 1988</i>² has been granted under that Act; and</p> <p>(ii) in respect of which paragraph (a) or (b) does not apply;</p> <p>supply authority means —</p> <p>(a) a supply authority as defined in section 5 of the <i>Electricity Act 1945</i>; or</p> <p>(b) the Electricity Networks Corporation established by section 4(1)(b) of the <i>Electricity Corporations Act 2005</i>; or</p> <p>(c) the Regional Power Corporation established by section 4(1)(d) of the <i>Electricity Corporations Act 2005</i>;</p> <p>theatre means a public building used for performing of any of the performing arts.</p> <p>(2) For the purposes of these regulations electrical installation and electrical work have the same meaning as is given to those terms in the <i>Electricity (Licensing) Regulations 1991</i>.</p>	<p>services direct to the public. These include</p> <ul style="list-style-type: none"> • An eating room, cafe, restaurant, milk or soft-drink bar. • A dining room, bar area that is not an assembly building, shop or kiosk part of a hotel or motel. • A hairdresser's or barber's shop, public laundry, or undertaker's establishment. • A supermarket or sale room, showroom, or service station.⁶

⁶ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-two/a-governing-requirements/part-a6-building-classification>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

Part 2 — Administration

This part of the Regulations is entitled Administration, and the matters below concern the administration of the Regulations in relation to the construction of public buildings.

General commentary on Part 2: Section 37(1) of the *Building Act 2011* provides that the builder named on a building permit 'must ensure, on completion of the building or incidental structure to which the permit applies, that the building or incidental structure complies with each applicable building standard.' Penalties apply for failure to comply with the applicable building standard. In addition, section 37(2) provides that 'each owner of a building or an incidental structure in respect of which building work is done without a building permit being in effect for the building work must ensure, on completion of the building or incidental structure, that the building or incidental structure complies with each applicable building standard.' The onus is therefore on the builder and then the owner of the building or incidental structure to comply with building standards.

In addition, change of use is governed by sections 43, change in classification under 49(a) of the *Building Act 2011* and regulation 47 of the *Building Regulations 2012*.

Section 176 under the *Health (Miscellaneous Provisions) Act 1911* overlaps with building legislation, which may represent a regulatory burden on businesses and government. It is unclear the extent to which having separate regulation in public health legislation provides a benefit to public health.

4. Applications relating to construction etc. (Act s. 176)

(1) An application for the purposes of section 176 of the Act shall be made to the local government in writing in the form of Form 1 in Schedule 2 and shall be accompanied by the fee calculated in accordance with Schedule 1.

(2) An application for the purposes of section 176 of the Act that is in respect of a building or place or part of a building or place where 5 000 or more persons may assemble for religious, entertainment, recreational or sporting purposes shall also be accompanied by a risk management plan that has been developed in accordance with AS/NZS 4360.

Commentary: See note about the application of new WHS laws in section 2.

5. Application for certificate of approval (Act s.178)

An application for a certificate of approval shall be made in writing in the form of Form 2 in Schedule 2.

Commentary: By virtue of regulation 4 of the *Building Regulations 2012*, the Building Commissioner approves, among other things, 'the manner and form of an application for an occupancy permit or a building approval certificate.'

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

Sections 46 to 49 of the *Building Act 2011* deal with the requirements for applications for occupancy permits of various types. Sections 51 and 52 deal with applications for occupancy permits or building approval certificates for unauthorised work and for buildings with existing authorisation respectively.

This provision therefore overlaps with building legislation, which may represent a regulatory burden on businesses and government. It is unclear the extent to which having separate regulation for certificates of approval in public health legislation operates to protect public health.

6. Certificate of approval (Act s. 178)

(1) A certificate of approval for the purposes of section 178 of the Act shall be in the form of Form 4 in Schedule 2.

(2) Notwithstanding anything in regulation 7 or 7A(1), a certificate of approval shall not be issued for the accommodation of any number of persons that exceeds the number permitted under the Building Regulations with respect to sanitary facilities, exits and ventilation.

Commentary: As noted above, an occupancy permit must be obtained from a permit authority before a Class 2 to Class 9 building can be occupied. A permit is required for the following:

- occupying a completed new building or a new part of an existing building (section 46)
- occupying an incomplete building or part of a building on a temporary basis (section 47)
- modifying the current occupancy permit for additional use of a building on a temporary basis (section 48)
- occupying a building or part of a building that has undergone a permanent change of use or classification (section 49)
- authorising and occupying an unauthorised building or an unauthorised part of a building (section 51)
- authorising a building with existing approval with a new or replacement occupancy permit (section 52)

This provision ensures that an existing building complies with the relevant building standards and is safe to occupy. Therefore, it overlaps with building legislation.

7. Maximum number of persons for buildings other than large licensed premises

(1) Subject to this regulation and regulation 9A, the maximum number of persons that may be accommodated in a public building other than large licensed premises shall be ascertained in accordance with the Table to this subregulation. [See regulations for the table]

(2) The Executive Director, Public Health, may on application by the owner and after consulting the local government, vary the ratio for any standing viewing area of spectator accommodation to 0.3 m² per person.

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(3) Where no provision is made in the Table to subregulation (1) in relation to a particular public building or a particular class of public building other than large licensed premises the maximum number of persons that may be accommodated in the public building or a public building of that class shall be such number as is approved by the Executive Director, Public Health after consulting the local government.

(4) If, immediately before the coming into operation of the *Health (Public Buildings) Amendment Regulations 2002*¹ —

(a) a certificate of approval was in effect in relation to licensed premises having a floor area of 850 m² or less; and

(b) the maximum number of persons that the licensed premises could be used to accommodate was more than the new maximum number, the maximum number of persons that may be accommodated in those licensed premises is the number set out in that certificate of approval.

- In subregulation (4) —

new maximum number means the maximum number of persons that may be accommodated in the licensed premises as ascertained in accordance with the Table to subregulation (1) immediately after the coming into operation of the *Health (Public Buildings) Amendment Regulations 2002*.

Commentary: The NCC determines the area per person according to use,⁷ and provides exit provisions in Part D2 with occupancy numbers being determined in accordance with table D2D18.⁸

7A. Maximum number of persons for large licensed premises

(1) Subject to subregulation (2) and regulation 9A, the maximum number of persons that may be accommodated in large licensed premises is 1 000 persons.

(2) If, immediately before the coming into operation of the *Health (Public Buildings) Amendment Regulations 2002*¹ —

(a) a certificate of approval was in effect in relation to large licensed premises; and

(b) the maximum number of persons that the licensed premises could be used to accommodate was more than 1 000 persons, the maximum number of persons that may be accommodated in those licensed premises is the number set out in that certificate of approval.

Commentary: The NCC determines the area per person according to use,⁹ and provides exit provisions in Part D2 with occupancy numbers being determined in accordance with table D2D18.¹⁰

⁷ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/5-new-south-wales/d2-provision-escape>

⁸ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d1-access-and-egress>

⁹ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/5-new-south-wales/d2-provision-escape>

¹⁰ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d1-access-and-egress>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

7B. Floor area, calculation of

To calculate the floor area of a public building for the purposes of regulation 7 and the definition of **large licensed premises** —

- (a) measurements shall be taken within the finished surfaces of the internal walls of the public building; and
- (b) measurements of any external areas of the public building shall only be taken of the parts of the external areas where people would normally be expected to assemble; and
- (c) areas occupied by lifts, lift wells, stairways, ramps, escalators, passages, hallways, corridors, lobbies, fixtures and similar areas shall not be included; and
- (d) kitchens, stages, sanitary areas, and staff areas, including staff areas behind counters, shall not be included.

Commentary: Floor area calculations for various purposes are defined in the NCC.¹¹ Therefore, this overlaps with building legislation provisions.

8. Certificate of approval to be displayed

(1) A certificate of approval shall be displayed in a conspicuous position in the main entrance of the public building in relation to which it is issued and so that it is easily legible to a person who enters the main entrance of the public building.

(2) If a certificate of approval is varied under regulation 9A, the reference in subregulation (1) to a certificate of approval is a reference to the certificate incorporating the variation that is current at the time of the display.

Commentary: Section 42 of the *Building Act 2011* requires that:

- (a) information about, or contained in, the occupancy permit is displayed in accordance with the regulations; or
- (b) information about, or contained in, the occupancy permit is otherwise brought, in accordance with the regulations, to the attention of the building's occupiers or other persons using the building.

Regulation 35 of the *Building Regulations 2012* provides that 'an occupancy permit must be displayed at or near the principal entrance to each part of the building to which the occupancy permit relates in a manner that is clearly visible to occupiers and other persons using the building —

- (a) the name or other description of the building;
- (b) the classification of the building;
- (c) the use authorised by the occupancy permit;
- (d) the name of the permit authority for the building.

Therefore, this provision overlaps with building legislation.

¹¹ See <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/1-definitions/glossary>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

9. Application to vary certificate of approval

- (1) Where a certificate of approval has been issued in relation to —
- (a) a public building, a person may apply to the local government that issued the certificate to vary the purposes for which the public building may be used;
 - (b) a public building other than licensed premises, a person may apply to the local government that issued the certificate to vary the maximum number of persons that the public building may be used to accommodate.
- (2) An application under subregulation (1) —
- (a) shall be made in the form of Form 3 in Schedule 2;
 - (b) shall be accompanied by the fee calculated in accordance with Schedule 1.
- (3) Where a certificate of approval has been issued in relation to large licensed premises (including premises referred to in regulation 7A(2)), a person may apply to the local government that issued the certificate to use a measurement unit of 0.85 m³ per person to increase the maximum number of persons that the licensed premises, or a specified part of the licensed premises, may be used to accommodate.
- (4) An application under subregulation (3) shall be made in the form of Form 3 in Schedule 2 and be accompanied by —
- (a) a risk management plan that has been developed in accordance with AS/NZS 4360; and
 - (b) details of the type of number counting system —
 - (i) that is or is intended to be installed to monitor the number of persons entering and leaving the licensed premises or the specified part of the licensed premises; and
 - (ii) that has been approved by the Executive Director, Public Health;
- and
- (c) such other information as is required by the local government for the purposes of the application; and
 - (d) the fee calculated in accordance with Schedule 1.

Commentary: Sections 48 and 49 of the *Building Act 2011* provide for the modification of an occupancy permit for the additional use of a building on a temporary basis or for a permanent change of building's use and/or classification. Therefore, this provision overlaps with building legislation.

9A. Varying certificate of approval

- (1) On an application under regulation 9 a local government may vary the certificate of approval issued in relation to the public building that is the subject of the application in accordance with the application.
- (2) Notwithstanding anything in subregulation (1), a certificate of approval shall not be varied —
- (a) if a structural alteration or extension of the public building that is the subject of the application is proposed; or

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(b) for the accommodation of any number of persons that exceeds the number permitted under the Building Regulations with respect to sanitary facilities, exits and ventilation.

(3) A local government may —

(a) impose such conditions as it thinks proper in relation to a variation of a certificate of approval; and

(b) vary or revoke a condition imposed under paragraph (a) by written notice served on the occupier of the public building.

Commentary: Sections 48 and 49 of the *Building Act 2011* provide for the modification of an occupancy permit for the additional use of a building on a temporary basis or for a permanent change of building's use and/or classification.

Therefore, this provision overlaps with building legislation to a degree. While building legislation does not provide for a counting system to monitor the number of persons, it is not clear that monitoring the number of persons provides protection of public health.

9B. Certain large licensed premises, occupier's duties to enable head counts etc.

(1) This regulation applies to large licensed premises or a specified part of large licensed premises the certificate of approval in relation to which has been varied under regulation 9A so that a measurement unit of 0.85 m² per person is used to calculate the maximum number of persons that the licensed premises, or a specified part of the licensed premises, may be used to accommodate.

(2) The occupier of the licensed premises shall ensure that any number-counting system that is approved on the application referred to in regulation 9(3) is properly installed and properly operating at the licensed premises or in the specified part of the licensed premises at all times when the premises are open to the public.

(3) The occupier of the licensed premises shall ensure that each movable item, other than chairs, in the licensed premises or the specified part of the licensed premises —

(a) is assigned a Person Equivalent Number (**PEN**) where each PEN equates to 0.7 m² of floor area; and

(b) has its PEN clearly visible, legible and permanently marked on it so that it can be readily identified for the purposes of calculating the number of persons being accommodated in the licensed premises or the specified part of the licensed premises.

(4) If subregulation (3) has not been complied with, an authorised person may assign a PEN under subregulation (3)(a) for the purposes of any inspection by the authorised officer under section 179 of the Act.

(5) The maximum number of persons that the licensed premises or the specified part of the licensed premises may be used to accommodate on each occasion that the premises or part of the premises is open for business shall be shown on the certificate of approval in relation to the licensed premises or the specified part of the licensed premises in accordance with the following:

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

the number of persons allowed under the 0.85 m² measurement unit minus the number of PENs for each occasion on which the licensed premises or the specified part of the licensed premises is open for business, rounded up or down to the nearest whole number.

Commentary: The number of persons accommodated are regulated under various provisions in the *Liquor Control Act 1988* (such as section 64(3)(f)) and D2D18 in the NCC.¹² Occupancy numbers are allocated at the stage an assessment for the purposes of a certificate of design compliance is undertaken. This is not done to limit numbers but rather to provide appropriate number facilities, exit widths and other relevant features.

10. Electrical work, certificate of approval for buildings after

A certificate of approval shall not be issued in relation to a public building on which electrical work has been undertaken unless a person authorised to sign a notice of completion referred to in regulation 52 of the *Electricity (Licensing) Regulations 1991* made under the *Electricity Act 1945* has issued a certificate in the form of Form 5 in Schedule 2 certifying that the electrical work of the public building conforms to the relevant provisions of these regulations, the Building Regulations and the *Electricity (Licensing) Regulations 1991*.

Commentary: As noted in previous consultations, this matter is regulated through other processes, and is not required.

Part 3 — Miscellaneous requirements

11. Seats, fixing requirements for

(1) Except with the approval of the local government but subject to subregulation (2), all seats used for seating audiences in a public building shall be securely fixed to the floor unless fastened together in groups of not less than 4 seats.

(2) Where seats are arranged in regular rows of 10 to 42 seats, aisles shall be provided on both sides of each row.

Commentary: The requirement for fixing seating in public buildings in Western Australia is in the NCC schedule 11 WA Part I4.¹³

R. 12 deleted in 2017.

13. Steps and landings

(1) Every raised area of tiered seating and any change in level which may present a hazard shall be provided with an enclosing wall or guard rail.

¹² <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d2-provision-escape>

¹³ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/11-western-australia/i4-public-buildings>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(2) Steps and landings shall be provided with hand rails on each side that is not stepped unless the local government otherwise approves.

(3) Steps shall have treads not less than 280 mm wide and risers not exceeding 180 mm in height.

Commentary: This provision is addressed in the NCC Schedule 11 WA Part I14 (see above).

14. Exit doors

(1) Except where automatic sliding doors are provided, exit doors shall be constructed to open in the direction of egress unless the local government otherwise approves.

(2) Notwithstanding subregulation (1), where the maximum occupancy of a public building does not exceed 50 persons the local government may approve of manually operated sliding exit doors for the public building.

(3) Except where sliding exit doors are provided exit doors in —

(a) a cinema, theatre or any public building that is intended to accommodate 400 persons or more shall be fitted with —

(i) automatic panic bolts; or

(ii) where the exit doors are double leafed, a rim lock or other type of lock on the second leaf so that when the panic bolt is released on the first leaf both leaves open freely; or

(iii) such fittings as are approved by the Executive Director, Public Health;

(b) a public building other than a public building referred to in paragraph (a) shall be fitted with —

(i) espagnolette central handle bolts; or

(ii) automatic panic bolts; or

(iii) strap bolts; or

(iv) other fittings approved by the local government.

(4) exit doors in a public building shall not be fitted with barrel bolts.

(5) the occupier of a public building that has an occupancy exceeding 50 persons shall ensure that the building has more than one exit unless the local government otherwise approves.

Commentary: This provision is addressed under the NCC's access and egress, in particular D1, D2 and D3.¹⁴ In addition, provisions for latches is now in D3D26 and additional exits for occupancies exceeding 50 people is in WA I4D3.¹⁵

15. Exits to be unobstructed

(1) A person shall not while a public building is in use as a public building —

¹⁴ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d1-access-and-egress>

¹⁵ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d3-construction-exits>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(a) obstruct any lobby, exit, door, gate, corridor, passage, aisle, stairway or gangway; or
(b) lock any exit door or gate in an exit path,
of the public building.

(2) The occupier of a public building shall ensure that while a public building is in use as a public building —

(a) every lobby, exit, door, gate, corridor, passage, aisle, stairway or gangway, of the public building is not obstructed; and

(b) every exit door of the public building that is required to be used is not locked.

(3) A person shall not —

(a) park a vehicle; or

(b) place any other thing,

in an area abutting on any exit of a public building so as to obstruct the free passage of persons or vehicles to or from the exit.

Commentary: This provision is addressed under the NCC's access and egress, in particular D1, D2 and D3.¹⁶ In addition, provisions for latches is in D3D26.¹⁷

16. Exit signs etc. and lighting

(1) Subject to this regulation, where under the Building Regulations a public building is required to have an exit sign, the occupier of the building shall ensure that the sign conforms with AS/NZS 2293.

(2) Where an exit or passage does not provide a clear means of egress from a public building the exit or passage shall be marked with a "NO ESCAPE" sign in letters not less than 100 mm high and 12 mm wide.

(3) The occupier of, or person in charge of, a public building shall ensure that while a public building is open to the public —

(a) all "EXIT" signs are kept visible and illuminated; and

(b) all "NO ESCAPE" signs are kept visible.

(4) The outside of every public building exit that abuts on a road, thoroughfare, lane, passageway or right-of-way shall be fitted with an "EMERGENCY EXIT" sign in letters not less than 100 mm high and 12 mm wide.

(5) Where a pathway or thoroughfare from a public building entrance or exit that is intended to be used by the public during the hours of darkness does not abut directly on a public thoroughfare the pathway or thoroughfare shall be illuminated to a minimum horizontal illuminance of 1 lux during the time that the public building is open to the public during the hours of darkness.

¹⁶ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d1-access-and-egress>

¹⁷ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d3-construction-exits>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

Commentary: This provision is addressed by NCC, in particular part E4.¹⁸ It is noted that No Escape signs are not covered under the NCC. D3D28 covers signage on doors which is specified as 'Fire Safety Door - Do Not Obstruct' and the height of the letters is 20mm.¹⁹

R. 17 deleted in 2017.

18. Electric fans

(1) An electric fan, other than ceiling fans, in any area of a public building to which members of the public have access shall be installed in a permanent position and so that the blades of the fan are —

- (a) not less than 2 000 mm above floor level; and
- (b) protected by a robust guard.

(2) A ceiling fan in a public building shall be installed so that the blades are not less than 2 400 mm above the floor level unless the blades are protected by guards that prevent accidental contact with them.

Commentary: Fans are not usually installed in modern public buildings. Therefore, this provision is redundant.

In addition, manufacturers' guidance materials usually have requirements that include fan clearance.

19. Heaters

(1) A radiant electrical heater provided in a public area of a public building shall be installed in a fixed position and so every part of the heating element is not less than 2 100 mm from the level of the floor and not less than 600 mm from any ceiling that is made of a combustible material.

(2) Any oil, fuel or electrical fan type heater shall be fitted with over temperature protection.

Commentary: Heaters are not usually installed in modern public buildings, generally HVAC systems are used. Therefore, this provision is redundant.

20. Sanitary facilities

(1) Every public building, shall, unless exempted in writing by the local government, be provided with a water carriage system for sewage disposal and sanitary conveniences in accordance with the Building Regulations or as approved by the local government.

(2) All rooms containing sanitary conveniences shall be provided with appropriate signs to indicate gender.

(3) The signs required by subregulation (2) shall be illuminated during darkness.

¹⁸ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/e-services-and-equipment/part-e4-visibility-emergency-exit-signs-and-warning-systems>

¹⁹ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/d-access-and-egress/part-d3-construction-exits>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(4) Where sanitary conveniences provided for a public building are situated externally to the public building the area providing access to the sanitary conveniences shall be illuminated in a manner that conforms with these regulations.

(5) Permanent sanitary conveniences provided for a public building are to be illuminated with a minimum illuminance of 80 lux.

(6) Temporary sanitary conveniences provided for a public building are to be illuminated with a minimum illuminance of 40 lux.

Commentary: This provision is addressed by NCC Part F4 (aside from illumination requirements).²⁰

21. General maintenance

An occupier of a public building shall ensure that all materials, fittings, seating, appliances and other things installed or used in a public building are maintained in a proper state of repair and in fit sanitary condition.

Commentary: Section 110 of the *Building Act 2011* provides for the issuing of a building order for general maintenance.

Section 112 of the *Building Act 2011* limits the content of a building order and does not consider maintenance unless there is a danger to people, property or the environment. This would not include the condition of furniture and fittings.

Regulation 48A in the *Building Regulations 2012* covers safety measures; however, this also does not include furniture and fittings.

In addition, regulation 48A has general requirements for the maintenance of specific items in a building, namely safety measures and certain building services.

Regulation 48A does not extend to general maintenance of the other types of matters currently covered by the health public buildings regulations. However, it is unclear whether monitoring compliance with ongoing maintenance is an effective mechanism for the promotion of public health. There appears to be wide variation in the extent to which local governments undertake such inspections, and whether there is a sufficient level of training by authorised officers for such inspections to result in improved public health outcomes.

As noted earlier in this document, the general public health duty in section 34 of the *Public Health Act 2016* also provides for the requirement to prevent or minimise harm, and section 35 provides for 'the issue of an improvement notice or enforcement order' should failure of general maintenance constitute a public health risk.

²⁰ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/f-health-and-amenity/part-f4-sanitary-and-other-facilities>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

22. Fires

- (1) A person shall not light, operate or maintain a fire or an open heating apparatus of any kind in a public building without the written approval of the local government.
- (2) A person shall not store within a public building any materials of a flammable nature that are not required for the purpose of the usual activities carried out in the public building.

Commentary: NCC part G2D2, G2D3 has provision for combustion appliances but does not cover lighting or operating fires or the storage of fuel.²¹ In addition, WHS laws would apply where there are employees or other workers.

23. Stage curtains

- (1) Stage curtains in a public building shall be made of nontoxic fire retarding materials or shall be made fire-retarded by a method approved by the Executive Director, Public Health.
- (2) Decorative treatments in a public building that are not referred to in the Building Regulations shall be made of nontoxic fire-retardant materials unless the local government otherwise approves.
- (3) In subregulations (1) and (2) **nontoxic** includes nontoxic in any circumstances specified by the Executive Director, Public Health.

Commentary: This provision is addressed in the NCC Specification 32.²²

R. 24 deleted in 2017.

25. Fire precautions and smoke control devices

The occupier of a public building shall ensure that all fire alarms, hydrants, telephones and other fittings and appliances necessary for the prevention or extinguishment of fires are maintained in efficient working order.

Commentary: Regulation 48a of the *Building Regulations 2012* require the 'owner of an existing building that is a Class 2 to Class 9 building' to comply with a range of safety requirements, including (a) building fire integrity, (e) firefighting services and equipment, and (g) automatic fire detection and alarm.

26. Evacuation plans

- (1) The occupier of a cinema, licensed premises or any other public building specified for the purposes of this regulation by the local government shall, within the time specified in writing

²¹ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/f-health-and-amenity/part-f4-sanitary-and-other-facilities>

²² https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/i-special-use-buildings/32-construction-proscenium-walls#_e3e45af0-b72c-4406-8306-41453925475a

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

by the local government, formulate written arrangements (an **emergency plan**) for the emergency evacuation of the public building.

(1a) An emergency plan shall —

(a) satisfy the relevant requirements of Australian Standard AS 3745:1995 — Emergency Control Organization and Procedures for Buildings; and

(b) incorporate a risk management plan that has been developed in accordance with AS/NZS 4360.

(2) An occupier shall submit an emergency plan for approval by the local government.

(3) Where the local government so directs an emergency plan shall be amended in accordance with the directions so given.

(4) An occupier of a public building shall at such intervals as are specified by the local government carry out rehearsals of the emergency plan approved in relation to the public building.

Commentary: Regulation 43 of the *Work Health and Safety (General) Regulations 2022* provides for a duty to prepare, maintain and implement emergency plans.

26A. Risk management plans

The occupier of a public building that is the subject of an application referred to in regulation 4(2) or 9(3) shall ensure that there is compliance with the risk management plan approved on the application.

Commentary: See section on risk management plans in the second consultation paper (above).

Part 4 — Lighting

Division 1 — General

27. Artificial lighting to be provided

Artificial lighting for a public building shall be provided by electric lighting.

Commentary: The specification of a method of lighting is no longer required in regulations.

28. General lighting for public building

(1) A general lighting system, separate from any theatrical, stage or special effects lighting system, shall be provided throughout the inside of a public building.

(2) The general lighting system referred to in subregulation (1) shall provide a minimum illuminance of 40 lux with a general colour rendering of not less than Ra = 40 at floor level.

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

Commentary: This provision is addressed in the NCC. F6P2²³ sets a minimum of 20 lux for artificial lighting and J7 regulates the maximum watts per square metre allowances for energy efficiency purposes.²⁴

29. Position of luminaires

Luminaires installed less than 2 400 mm from floor or ground level on which persons normally stand shall be so constructed that —

- (a) bare lamps are not exposed; and
- (b) protection is provided against contact and accidental damage.

Commentary: This provision is addressed in the NCC F6D5.²⁵

30. Switches

- (1) Unless otherwise approved by the local government, switches controlling lighting in areas accessible to the public shall be located or protected so that they cannot be operated by the public.
- (2) Where automatic control of lighting is provided, a separate manual “ON” switch that overrides all automatic controls shall be provided.

Commentary: Lighting and power control is addressed in the NCC J7D4.²⁶

31. External lighting

- (1) Subject to these regulations, the external areas of a public building shall be illuminated with a minimum illuminance of 1 lux at ground level.
- (2) External lighting systems shall be connected to circuits separate from those supplying lighting for foyers, entry porches, emergency escape passages or areas providing entry or egress to the public building.
- (3) Where 2 or more lights are required to illuminate external stairs or exit paths, luminaires shall be connected over at least 2 circuits and so arranged that all sections remain illuminated if one circuit fails.
- (4) Switches controlling external lighting shall not be located so as to be accessible to the public unless the Executive Director, Public Health, approves.

Commentary: This provision is addressed in the NCC WA I4D6 and J7D6.²⁷

32. Emergency lighting

²³ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/f-health-and-amenity/part-f6-light-and-ventilation>

²⁴ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/j-energy-efficiency/part-j7-artificial-lighting-and-power>

²⁵ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/f-health-and-amenity/part-f6-light-and-ventilation>

²⁶ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/j-energy-efficiency/part-j7-artificial-lighting-and-power>

²⁷ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/j-energy-efficiency/part-j7-artificial-lighting-and-power>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field
Provisions of the Health (Public Buildings) Regulations 1992
<p>(1) Subject to this regulation, emergency lighting shall be provided in a public building in accordance with Building Regulations and AS/NZS 2293.</p> <p>(2) An emergency lighting system shall be maintained in accordance with AS/NZS 2293.</p> <p>(3) Where an emergency lighting system operates through contactors or is remotely operated through a control system, provisions which are “fail safe” shall be made to automatically provide energy for the emergency luminaires in the event of a fault that extinguishes the general lighting required to be provided under these regulations.</p> <p>Commentary: This provision is addressed in the NCC E4D2.²⁸</p>
R. 33 deleted in 2017.
R. 34 deleted in 2017.
Part 5 — Special provisions
Division 1 — General
35. Effect of this Part
Nothing in this Part derogates from any of the other provisions of these regulations.
36. Wiring requirements
<p>(1) Any equipment intended for use for a continuous period exceeding 90 days shall be connected by fixed wiring.</p> <p>(2) Temporary wiring shall not be —</p> <p>(a) laid on the floor; or</p> <p>(b) accessible to the public unless adequately protected; or</p> <p>(c) positioned in such a manner as to be a hazard.</p> <p>Commentary: This provision is more appropriate to electricity legislation, or may be more appropriate to events regulation.</p>
Division 2 — Public buildings used for entertainment
37. Application of Division
This Division applies to theatres, cinemas, stadiums, halls, lecture theatres, gymnasiums, discotheques and other public buildings in which a number of persons assemble or may assemble for the purposes of entertainment.
Commentary: It is noted that these buildings are considered Class 9b Buildings under the NCC.
R. 38 deleted in 2017.
39. Safety lighting

²⁸ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/e-services-and-equipment/part-e4-visibility-emergency-exit-signs-and-warning-systems>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

- (1) Permanent effective safety lighting shall be provided for —
- (a) foyers and passages;
 - (b) floors that are ramped at an inclination steeper than 1 in 12;
 - (c) main aisles between blocks of fixed seats;
 - (d) the tread of each step, of any public building or any area of a public building open to the public when normal lighting is dimmed or extinguished.
- (2) Energy for safety lighting shall not be provided from any emergency power supply.
- (3) Safety lighting shall not be dimmed or modulated.
- The circuits of the safety lighting system and the emergency lighting system shall be so aligned that in any case of failure in the safety lighting system the emergency lighting system in the area of the failure is automatically energised,

Commentary: This provision of aisle lights is addressed in part in the NCC Part I1D7.²⁹

R. 40 deleted in 2017.

41. Emergency lighting

Except where the Executive Director, Public Health, otherwise approves, an emergency lighting system that conforms to these regulations shall be provided.

Commentary: This provision is addressed in the NCC Part E 4³⁰ and WA Part I4 which refers to public buildings in Western Australia.³¹

42. Stage equipment

- (1) Lamps, appliances and other apparatus shall be so fixed or arranged that they —
- (a) do not cause a fire hazard; or
 - (b) become liable to damage by the movement of the proscenium curtain or proscenium opening safety screen.
- (2) Suspended stage battens, grids and other equipment shall be in good repair, anchored to prevent swaying and sufficiently supported according to the load being carried so as to prevent danger to persons below.
- (3) Where a suspended stage batten, grid or other equipment is required to be lowered the fittings shall be so designed that the ropes pass over the pulleys and shall be controlled by approved ratchet or self-sustaining type winches.

²⁹ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/i-special-use-buildings/part-i1-class-9b-buildings>

³⁰ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/e-services-and-equipment/part-e4-visibility-emergency-exit-signs-and-warning-systems>

³¹ <https://ncc.abcb.gov.au/editions/ncc-2022/adopted/volume-one/i-special-use-buildings/wa-part-i4-public-buildings>

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

(4) Any stage or effects lighting fittings suspended over any area to which the public has access shall be secured by means of safety chains to adequate supports to ensure that the fittings are held if the primary means of support fails.

(5) Curtain motors fitted with sliprings or commutators that can cause arcing when in operation shall be of a totally enclosed type or enclosed in an outer metal case that has ventilation openings protected by wire screens.

(6) The Executive Director, Public Health may in special cases on application made by the occupier approve of fittings that are not prescribed in this regulation, but any such approval applies only to the fittings specified in the approval.

Commentary: Proscenium curtains are covered by BCA 2022 Part I 1D3 specification 32 contains the requirements for the construction of proscenium walls for theatres or public halls and the like.

43. Cinematograph equipment

(1) Where a cinematograph machine includes a Xenon type lamp unit, the lamphouse shall be locked while the machine is in operation and for a period after operation to allow the machine to cool.

(2) Where a cinematograph machine contains a carbon arc type lamp unit, a metal receptacle shall be provided for any carbon ends removed from the lamp.

(3) A carbon arc type cinematographic machine shall be so constructed that heated carbon does not come into contact with a projection booth or its fittings when the receptacle is overturned.

Commentary: This provision refers to outdated technology and is no longer required.

44. Switchboards

(1) Auditorium safety lighting, emergency lighting or general lighting final subcircuits, shall not be supplied from a switchboard supplying cinematograph equipment or stage theatrical effects.

(2) Circuit protection devices on switchboards supplying cinematograph or stage theatrical effects shall be arranged so that they fully discriminate to prevent disruption of the power supply to any other part of the installation.

(3) Lighting dimmers shall be connected in the active conductors and an isolating switch shall be provided for each dimmer bank installed and where a resistive-type dimmer is used the isolating switch shall be on the line side of the dimmer.

Commentary: These matters are more appropriately dealt with by electricity legislation or policies.

Sections 45 – 49 apply to drive-ins. As there are now very few drive-ins remaining in Western Australia, this is no longer required.

Health (Public Buildings) Regulations 1992 and commentary on whether other legislation or NCC adequately covers the field

Provisions of the Health (Public Buildings) Regulations 1992

R. 50 – 52 deleted 2017.

Regulations 53-56 relate to circuses, travelling shows, tents and similar temporary structures.

Commentary: It is proposed that these temporary structures will be covered by events regulations, which will be subject to a separate consultation.

R. 57 – 60 deleted in 2017.

Regulations 61 and 62 refer to testing and maintenance of electrical devices, and maintenance of emergency lighting.

Commentary: These matters are more appropriately covered by the *Electricity (Licensing) Regulations 1991* made under the *Electricity Act 1945*.

Sections 63 regarding offences and section 64 penalties will be amended based on retained or updated regulations.

END OF PAPER

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