



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

Managing lodging house health risks in Western Australia

Discussion paper
January 2020



1 Contents

1	Contents	1
2	Executive Summary	3
3	Introduction	5
3.1	How does this relate to the discussion paper released on housing by the DOH?	5
3.2	What is a lodging house?	6
3.3	Why are we reviewing management of lodging house risks to health?	6
3.4	What is the purpose of this consultation paper?	6
4	Risk to public health	7
4.1	Overcrowding and emergency management in lodging houses	7
5	Risk assessment	9
6	Current management	11
6.1	What is the role of authorised officers?	11
6.2	Health (Miscellaneous Provisions) Act 1911 (Part V)	11
6.3	Health local laws	11
6.4	Department of Fire and Emergency Services (DFES)	12
6.5	Department of Local Government, Sport and Cultural Industries (DLGSC); Racing, Gaming & Liquor	12
6.6	Examples of Interstate approaches	13
7	Future management	14
7.1	Other Considerations	14
7.2	Option A: Repeal without replacement	16
7.3	Option B: Repeal and replace with model local laws	17
7.4	Option C: Continue to regulate lodging houses under the Public Health Act 2016 using new housing regulations	18
8	Proposals for the development of new regulations	19
8.1	Proposal 1: Amend the definition of a lodging house	20
8.1.1	What should be included?	20
8.1.2	General exclusions	21
8.2	Proposal 2: Registration of lodging houses	24
8.3	Proposal 3: Construction requirements	25
8.3.1	Laundry facilities	25
8.3.2	Sanitary conveniences	26
8.3.3	Kitchen facilities	26
8.4	Proposal 4: Use Requirements	28
8.4.1	Restriction of sleeping areas	28
8.5	Proposal 5: Emergency preparedness requirements	29
8.5.1	Obstructions	29

8.5.2	Locking mechanisms	29
8.5.3	Evacuation lighting	30
8.6	Proposal 6: Fire prevention and control	31
8.7	Proposal 7: Administrative requirements	33
8.8	Proposal 8: Requirements for lodgers	33
8.9	Proposal 9: Vector Control	34
9	How will the proposed changes affect me?	35
10	Next Steps	37
11	Appendix 1 – Regulatory tools under the Public Health Act 2016	38
12	Appendix 2 – Risk assessment methodology	40
13	Appendix 3 – Question list	43
14	References	44

2 Executive Summary

Lodging houses are historically a low cost accommodation option for many vulnerable populations. At present lodging houses are regulated in Western Australia under the *Health (Miscellaneous Provisions) Act 1911* (Health (MP) Act) and health local laws. All provisions under the Health (MP) Act must be repealed as part of the implementation of the *Public Health Act 2016* (Public Health Act).

Along with the basic requirements for housing which are fundamental for a safe, secure and healthy environment which all Western Australians are entitled to, there are other known health risks associated with this style of accommodation. Indeed there have been tragic incidents in this type of accommodation which have resulted in fatalities.

The Department of Health (DOH) must determine how to manage these risks in the future, and this paper discusses the options of repealing the legislation without replacement, regulating with model health local laws or including lodging houses in new housing regulations. Included in this discussion are proposals to be included in regulations if this is the preferred outcome.

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





How to make a submission

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

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

Online survey

Complete the online survey, which may be accessed at <https://consultation.health.wa.gov.au/environmental-health-directorate/lodging-house-regulation-review>

Written submissions

Submissions must be received by **5:00 pm (WST), Tuesday the 28th April 2020**. Late submissions unfortunately cannot be considered.

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

Hard copies can be posted to:

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

Consultation

The following groups have been identified as key stakeholders and will be contacted directly to advise of the release of this paper:

- All Western Australian local governments:
- State Government agencies; and
- Industries that may be affected by the proposed changes, such as providers of low cost accommodation

Your responses will contribute to the DOH's understanding of how any proposed changes to regulation may impact stakeholders. Following public consultation on the reforms outlined in this paper, submissions will be analysed and the DOH will make recommendations on the best way to manage lodging houses. This will be collated and summarised into a report.

3 Introduction

In WA, the Department of Health (DOH) has been involved in managing the health risks associated with lodging houses through the *Health (Miscellaneous Provisions) Act 1911* (Health (MP) Act). There are an estimated 550 lodging houses registered in the state according to local government reporting data collected by the DOH. Over time many risks associated with these establishments have changed and evolved.

During 2012 and 2013 the Consumer Protection Division, Department of Mines, Industry Regulation and Safety (DMIRS) hosted workshops and meetings with key stakeholder groups in the accommodation industry (which covers lodging houses). These groups included tenant advocates, not-for-profit accommodation providers, for-profit accommodation providers and local government (1).

The key health issues identified by these groups were:

- Maintenance and repairs
- Overcrowding
- Unsafe living conditions e.g. no smoke alarms
- Provision of facilities for residents
- Cleanliness
- Burden on sanitation systems
- Safety of electrical, plumbing and other modifications

Poor housing conditions have been proven to contribute to ill-health, with adequate and appropriate housing conditions providing protections against agents of communicable and atopic disease (2, 3).

3.1 How does this relate to the discussion paper released on housing by the DOH?

This paper should be read in conjunction with the discussion paper “*Managing housing health risks in WA*”(4). Released for public consultation between September 2019 and December 2019, this paper details the public health risks associated with inadequate housing standards and proposes minimum standards for all housing.

Preliminary analysis of feedback received from this consultation indicates support for minimum standards. As such, the public health impact of inadequate housing and minimum standards for housing will only be briefly touched on in this paper and it is assumed that minimum standards for lodging houses will be covered under new regulations for housing.

Minimum standards proposed will apply to all accommodation and cover:

- Maintenance of habitable buildings and their fixtures/fittings; being safe, sanitary, structurally sound, in good repair and working order.
- Adequate supply of hot and cold water and appropriate drainage
- Overcrowding prevention

3.2 What is a lodging house?

Part V, Division 2 of the *Health Act 1911* sets out provisions for lodging houses, which most local governments have adopted local laws for.

Under the Health (MP) Act, a lodging house refers to:

“any building or structure permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding of more than 6 persons, exclusive of the family of the keeper thereof, for hire or reward, except for licensed premises, private student accommodation and residential flats”

At present a lodging house may include such accommodation types as a backpacker’s hostel, a house where rooms are rented to six or more unrelated people, crisis accommodation, a bed and breakfast accommodating more than 6 people or a hotel or motel without a liquor licence.

The DOH acknowledges that this definition may be interpreted slightly differently between local government districts areas.

3.3 Why are we reviewing management of lodging house risks to health?

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

At present the legislation involved in the management of lodging house risks to health, includes:

- the Health (MP) Act, Part 5, Dwellings
- Local laws
- the National Construction Code (including the Building Code of Australia and the Plumbing Code of Australia)

All provisions under the Health (MP) Act must be repealed and any local laws made under the Act will become void. The management of lodging houses must be reviewed as a part of this process.

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

3.4 What is the purpose of this consultation paper?

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

The paper will examine the health risks presented by lodging houses, detail their current risk management strategies and present a number of options for future management

4 Risk to public health

The critical role of housing in public health has long been recognised in Australia and is discussed extensively in the DOH's "*Managing housing health risks in WA*"(4) discussion paper. Ensuring the following, addresses the minimum standards for housing:

- functioning facilities for bathing, ablutions, food preparation and handwashing (supporting good domestic hygiene and safe food preparation)
- maintaining air quality
- minimising contact with human waste from sewage or disease carrying vectors and
- minimising overcrowding.

Specifically with lodging house type accommodation, overcrowding intensifies the risk of death or injury in an emergency situation. This is explored further below.

4.1 Overcrowding and emergency management in lodging houses

Where multiple unrelated people are staying in a high density setting, it is imperative that the building remains evacuation-ready, for example:

- doors must be able to be opened from the inside
- locks must not prevent or slow down evacuation
- exits and exit paths must be clear at all times and
- required firefighting equipment must be present and maintained.

While fire safety is addressed in the construction of a building by the NCC, it is the requirements applicable to the safe on-going operation of a lodging house that the DOH is concerned with.

Many lives have been lost in lodging house fires around Australia. In 1991 the Palm Grove Hostel fire in NSW killed 12 people. The inquest found that there was inadequate management of the psychiatric facility, fire alarms did not work during the fire, and the only phone in the facility was locked inside a room preventing the residents from calling for help immediately(5).

In 1989 a fire at the Downunder Hostel in Sydney killed six people and led to a tightening of backpacker accommodation regulations in NSW. Following these events, new legislation was introduced to regulate fire safety. Local governments and fire authorities were given special enforcement powers in relation to buildings posing a fire risk. Authorised fire officers can now inspect buildings when requested by the relevant local government or where the Commissioner has received a complaint. The commissioner can also ask a council to carry out safety inspections. Orders can also be given to owners of buildings regarding fire safety measures, including owners or managers of shared accommodation buildings (6).

In 2000 a fire at the Childers backpacker's hostel in Queensland left 15 people dead, further examined in the case study below (7). Most recently in December 2019 there was a fatality, with several others injured after a fire in an East Perth backpacker's hostel. While not necessarily a failing in the standards of the accommodation, it shows management of this risk is necessary to protect the public when such incidents do occur (8). In addition to those instances where fatalities have occurred there have been other documented cases of fires in hostels in Western Australia, Queensland, and Melbourne where people have been safely evacuated (6, 7).

Fire fatalities are not only limited to multi-storey, high capacity accommodation types. There have also been examples of smaller boarding house and rooming house fatalities, such as the death of three people at the Seabreeze Lodge boarding house in 2002 and two people in a Brunswick rooming house in 2006 (9, 10).

Lessons learned:

Childers backpackers hostel, QLD



Figure 1 the portrait in oils "Taking a break in the field" by Josonia Palaitis (depicts the 15 backpackers killed in the Childers fire).

In June 2013, a deliberately lit fire burnt down the Palace Backpackers Hostel, in Queensland. Fifteen people died in the fire.

A 2006 coroner's inquest found there were a number of issues which impacted upon the extraordinary loss of life. These included:

- density of occupancy
- lack of early warning to the occupants
- the smoke alarm system was disabled prior to the fire and an electrical fault existed in the alarm panel
- inadequacy of fire installations within the building
- compromised means of escape from rooms on the first floor
- exit signs did not function correctly and the backup battery had never been changed
- windows and doorways were obstructed, and furnishings were combustible

Reports from the Queensland Fire and Rescue Authority concluded that loss of life could have been significantly reduced with adequate and properly maintained early warning systems. If adequate warning systems had of been in place occupants could have evacuated safely.

Source: Queensland Coroner's Court – Inquest into the Palace Backpackers Hostel Fire [5]

5 Risk assessment

The Public Health Act implements a modern, flexible, pro-active risk-based framework that can be applied to regulate any given risk to public health. Regulations under the Public Health Act will be made in circumstances where the nature of the public health risk is such that regulations are required, and those regulations will apply and build upon the framework provided by the Public Health Act. A risk assessment has been undertaken in accordance with the risk assessment model provided by the 2011 Health Risk Assessment (Scoping) Guidelines, Department of Health WA (further information on this method is provided in appendix 3). Figure 2 below details application of the risk assessment model.

Note: The risk severity rating is based upon the percentage of the at-risk populations requiring treatment for chronic health consequences. This is difficult to quantify and as such the likelihood has been estimated for the occurrence of one incident, per one average member of the population.

Figure 2: Public health risk assessment of risks associated with lodging houses

Risk	Transmission of disease to patrons or visitors to lodging houses						
Risk Factor	Cause	Who is at risk?	Severity*	Likelihood**	Risk level***	Legislative control in place	Resultant risk level#
Contact with human waste or disease causing agents	Inadequate facilities for food preparation and laundry.	Inhabitants and visitors	Moderate	Possible	Low	NCC	Very low
	Sanitary facilities not maintained	Inhabitants and visitors	Moderate	Likely	Medium	N/A Residential Tenancies Act (limited)	Medium
	Overcrowding leading to inadequate access to facilities used to maintain hygiene	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act (local laws)	Very low
Contact with pest vectors	Poor maintenance of and failure to repair structure leading to pest entry	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act (limited) Residential Tenancies Act (limited)	Low
	Accumulation of domestic waste through hoarding or squalor, or poor food storage or cleaning practices including failing to clean food remnants	Inhabitants and visitors	Moderate	Possible	Low	Health (MP) Act	Low

Risk	Sustaining injuries or physical harm from being within the lodging house						
Risk Factor	Cause	Who is at risk?	Severity*	Likelihood**	Risk level***	Legislative control in place	Resultant risk level#
Risk to physical safety	Inadequate maintenance of fire safety equipment or emergency preparedness	Inhabitants and visitors	Catastrophic	Unlikely	High	Lodging houses: Health (MP) Act Local laws NCC Building Regulations 2012	Medium
	Overcrowding	Inhabitants and visitors	Major	Possible	Medium	NCC Health (MP) Act	Very low
Negative mental and social effects	Overcrowding	Inhabitants	Moderate	Likely	Medium	Health (MP) Act	Low

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

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

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

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

6 Current management

Risks to health in lodging houses are managed primarily under the:

- *Health (Miscellaneous Provisions) Act 1911* (Part V, Division 2)
- Health local laws developed by local governments and the:
- National Construction Code (including the Building Code of Australia and the Plumbing Code of Australia)

6.1 What is the role of authorised officers?

Health (MP) Act authorised officers have powers and responsibilities in regards to lodging houses, including:

- assessing and approving applications for registration
- ongoing management and inspection
- charging an annual fee for registration or inspection
- investigating complaints

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

Part V Division 2 – Lodging houses

Part V, Division 2 sets out the provisions for lodging houses, which most local governments have enacted local laws for. This Division includes provisions for:

- registering a lodging house with the local government and keeping a register of all lodgers;
- providing an adequate water supply for the use of lodgers;
- cleansing walls and ceilings;
- notifying authorities of infectious disease;
- reporting deaths of lodgers; and
- making local laws for lodging houses.

Part VII – Nuisances and offensive trades

Division 3 of Part VII gives local governments the power to make local laws in respect to preventing overcrowding (199(7)) and prohibiting people with diseases entering a lodging house (199(18)).

6.3 Health local laws

Local governments primarily manage lodging houses through local laws. Existing local laws generally include provisions for:

- administrative and maintenance requirements for keepers
- administrative matters, such as the requirement to maintain a record of lodgers, number the rooms and keep duplicates of keys
- requirements for lodgers, such as not misusing facilities, eating in sleeping apartments etc.

- restriction on use of rooms for sleeping and overcrowding those rooms
- prescriptive construction and use requirements, including for provision of facilities and their maintenance, minimum floor area, signage, supply of water, furnishings, ventilation, fire prevention, obstructions and locks

6.4 Department of Fire and Emergency Services (DFES)

The DFES classify Class 2 – 9 buildings as having a low, medium, high or extreme risk rating, and conduct periodic inspections based on this risk level. The assessment of risk is based on a building's size, the number of people accommodated and the building condition.

The purpose of this inspection is generally to familiarise crews with the layout and particular risks of the building, although crews can also request rectification of any fire safety item that does not meet their operational requirements. DFES may order, request and/or recommend that building owners comply with the fire safety provisions of the BCA and have recourse through the *Fire Brigades Act 1942* and/or other relevant government departments.

6.5 Department of Local Government, Sport and Cultural Industries (DLGSC); Racing, Gaming & Liquor

The Health (MP) Act definition of a lodging house currently excludes “premises licensed under a publican's general licence, limited hotel licence, or wayside-house licence, granted under the *Licensing Act 1911*”.

Such premises are managed by the DRGL (part of the Department of Local Government, Sport and Cultural Industries) under the *Liquor Control Act 1988* (Liquor Control Act). Premises inspectors are based in the Perth metropolitan area but conduct inspections of properties throughout the state, assessing for compliance with; health and safety standards, exit lighting and pathways, smoke detection and alarms and the general standard of the accommodation offerings.

Section 99 of the liquor control act details the licensee's obligations to keep clean and in repair the fixtures and fittings of the premises and maintain it to a reasonable standard. Inspectors can require works be undertaken in relation to maintenance and cleanliness, if it is considered in the public interest to do so. Requirements for premises are assessed using existing standards such as the NCC, public building requirements and internal policies which have been developed with FESA to address fire safety measures where the NCC is not applicable (typically older premises to which the NCC does not apply).

The frequencies of these checks are not determined by legislation. Inspectors often coordinate with authorised officers to obtain information about such premises. Currently inspections are occurring routinely once every 7 to 8 years and can also be performed if a complaint is received about a premise.

6.6 Examples of Interstate approaches

Jurisdictional management of lodging houses varies, reflecting the unique circumstances and history of each State's approach. Generally, the management of safety in lodging houses or low cost accommodation outside of WA is covered under health, building and tenancy legislation or a combination of those. The relevant legislation is outlined in more detail below.

Victoria

Legislation: *Residential Tenancies (Rooming House Standards) Regulations 2012*, *Public Health and Wellbeing (Prescribed Accommodation) Regulations 2009*

In addition to the minimum standards for rooming houses, Victoria also regulates a class of 'Prescribed Accommodation', which includes residential accommodation, hotels and motels, hostels, student dormitories and holiday camps. They are subject to registration, renewal, and prescribed standards to prevent overcrowding and ensure the maintenance, cleanliness, water supply, sanitation and hygiene of such accommodations.

Queensland

Legislation: *Residential Tenancies and Rooming Accommodation Regulation 2009*; *Building Act 1975*.

Accommodation such as hostels, boarding houses, bed & breakfasts and farm-stays, where more than six unrelated persons stay and have access to shared facilities, are termed Budget Accommodation Buildings. These buildings are required to comply with specific provisions for fire safety under the *Building Act 1975* and are registered with the local government. Local government is required to inspect them for compliance at least once every three years, and cannot charge a fee for inspection.

New South Wales

Legislation: *Public Health Regulation 2012*
Boarding Houses Act 2012

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

In NSW, boarding houses are regulated under the *Boarding Houses Act 2012*. They must be on a public register, and local governments have the power to inspect such facilities.

Tasmania

Legislation: *Residential Tenancy Act 1997*

Minimum standards also apply to boarding houses, which include situations where a live-in landlord rents out three or more rooms, or a live-out landlord rents one or more rooms (that are not covered by the *Residential Tenancy Act 1997*).



7 Future management

The risks to public health associated with lodging houses can be significant, particularly if they present a fire danger.

The risks of poor housing are well-understood, detailed in the “*Managing housing health risks in WA*”(4)) discussion paper and are currently managed under the Health (MP) Act.

All provisions under the Health (MP) Act must be repealed as part of the implementation of the Public Health Act. The DOH’s preferred option to protect public health involves continuing to manage risks to health associated with lodging houses by regulating them under the Public Health Act.

The Public Health Act is risk-based; promoting a less prescriptive approach to managing public health risks under this Act. A key component of this Act is the general public health duty, the provisions of which allow authorised officers to act to protect public health in a broad range of circumstances. This means that subsidiary legislation does not need to make provision for mitigating every possible risk.

7.1 Other Considerations

A number of agencies are working in this area at the present time. It is necessary to consider their proposed changes when drafting future management proposals:

Short-stay accommodation

The issue of short-stay accommodation regulation is currently being reviewed by the Western Australian Planning Commission, part of the Department of Planning, Lands and Heritage. The issue is highly controversial, and in October 2018 was referred to the Economics and Industry Standing Committee by the Minister for Planning.

It is unclear as yet if recommendations raised by this inquiry will affect traditional accommodation options such as lodging houses as well as ‘air bnb’ type accommodations, however it can be assumed that there will be changes to the regulation of a number of lodging house types, including serviced apartments and holiday homes. An interdepartmental working group has been formed which will determine a number of baseline requirements.

Costing scenario: Seabreeze Fire

On the 18 August 2002, a fire tore through the Seabreeze Lodge, a boarding house licensed by the Brisbane City Council, leaving three people dead.

There were around 30 people in the building at the time of the fire. The cause of the fire remains unknown.

At the time the fire occurred major legislative changes in response to the Childers backpackers’ fire had not yet been implemented.

Sea Breeze Lodge was a high risk property with a high fire load under the property, insufficient maintenance of smoke alarms and ongoing electrical problems (6).

Costs to government:

*Value of one statistical life:
\$4,502,846(8)*

Number of deaths: 3

*Total cost to government:
\$13,508,538*

Consumer Protection

Consumer Protection (DMIRS) are currently reviewing the residential tenancies legislation and have released a [discussion paper](#) open for comment until May 2020. This paper outlines a number of potential reforms dealing with issues identified with the operation of the legislation, including broadening protections for boarders and lodgers, introducing minimum standards for rentals and creating a register for lessors. The DOH and Consumer Protection will ensure that unnecessary duplication of requirements does not occur.



7.2 Option A: Repeal without replacement

Without action, Part V Division 2 of the Health (MP) Act will be repealed without replacement as part of the implementation of the Public Health Act; Existing local laws made under the Health (MP) Act will then become void.

All buildings will continue to be required to comply with building legislation and the NCC, including requirements for the provision of fire safety equipment. DFES would continue to conduct periodic inspections of extreme and high fire risk buildings in accordance with their schedules. DRGL would still maintain some oversight of licensed premises.

The DOH can provide a Guideline on lodging houses which can be implemented using the general public health duty. If a risk to public health was identified, authorised officers have the ability to respond to the issue using the general public health duty. In addition, Local governments can choose to develop local laws under the *Local Government Act 1995* to manage lodging houses.

Advantages

- reduced regulatory burden for local government and lodging house operators
- reduced costs for lodging house operators who are no longer required to pay fees
- more efficient business is likely to result in cost savings to the patron
- self-regulation encourages businesses to behave ethically, as standards are determined by peers rather than a top-down approach
- the general public health duty can be used to capture new and emerging threats as well as known issues

Disadvantages

- lodging house operators may have little incentive to maintain high safety standards and adequately address risks
- this area has historically been regulated by the health portfolio, so deregulation may introduce industry confusion
- reduced public confidence in the health and safety of lodging houses
- fines cannot be issued as provisions for infringement notices can only be in regulations or local laws
- more difficult to proactively respond to emerging risks

Question 1: Do you support the adoption of **Option A: repeal without replacement**? Why or why not?

7.3 Option B: Repeal and replace with model local laws

Without action, Part V Division 2 of the Health (MP) Act will be repealed without replacement as part of the implementation of the Public Health Act. Existing local laws made under the Health (MP) will become void and local governments will need to make local laws for public health matters under the *Local Government Act 1995*.

It is anticipated that new regulations for housing will provide requirements for habitable buildings including:

- being structurally sound and in good repair/condition
- having fixtures and fittings maintained in safe, sanitary and good working order
- the provision of facilities
- adequate supply of hot and cold water
- provisions for floor wastes
- provisions to prevent overcrowding

The DOH could develop model local laws for lodging houses which contain provisions for the definition of a lodging house, registration, construction and use requirements, emergency preparedness requirements, administrative and vector control requirements as well as including enforcement options such as infringement notices.

This would allow local governments the option to manage these types of accommodation in their jurisdiction should they wish to. Model local laws would also ensure some uniformity between those local authorities choosing to regulate them.

Advantages

- Potential reduced regulatory burden for local government and lodging house operators as local government may choose not to adopt model local laws
- reduced costs for lodging house operators who were no longer regulated, with cost savings potentially passed on to patrons
- updated model local laws will reflect the current environment

Disadvantages

- lodging house operators may have little incentive to maintain high safety standards and adequately address risks if not regulated
- this area has historically been regulated by the health portfolio, so deregulation may introduce industry confusion
- potential for inconsistency depending on local law uptake by local government as requirements for lodging houses will vary depending on model local law adoption

Question 2: Do you support the adoption of **Option B: Repeal and replace with model local laws**? Why or why not?

7.4 Option C: Continue to regulate lodging houses under the Public Health Act using housing regulations

Under this option, lodging houses would be included in new regulations for managing housing developed under the Public Health Act.

It is anticipated that new public health regulations for housing will require the following for habitable buildings:

- being structurally sound and in good repair/condition
- having fixtures and fittings maintained in safe, sanitary and good working order
- the provision of facilities
- have an adequate supply of hot and cold water
- provisions for floor wastes
- provisions to prevent overcrowding

Requirements specifically for lodging houses would be included under these regulations including a definition, registration requirements, construction and use requirements, emergency preparedness requirements, administrative and vector control requirements. Authorised officers would retain responsibility for enforcement of lodging house management.

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

Advantages

- public safety maintained at a consistently high standard
- consistency between local governments in the management of lodging house health risks
- enforcement remains with authorised officers with existing expertise in this area
- higher penalties may encourage increased compliance
- local government may utilise recovery costs related to registration and inspection
- clear compliance obligations for the lodging house industry

Disadvantages

- As regulations will apply to all local governments it may take time for those local governments who currently do not regulate lodging houses to implement the requirements; including familiarisation with new legislation and provision of information to those impacted
- Maintains or increases the current level of regulatory burden on the industry/operators

Question 3: Do you support the adoption of **Option C: continue to regulate lodging houses under the *Public Health Act 2016* using new housing regulations?** Why or why not?

8 Proposals for the development of new regulations

The following proposals are suggested for inclusion in new regulation if **Option B: Repeal and replace with model local laws** or **Option C: Continue to regulate lodging houses under the Public Health Act** are chosen as the preferred option. It should be noted that any proposed new legislation cannot duplicate existing legislation.

A number of assumptions have been made. These are:

- That all proposals outlined in the consultation paper “*Managing housing health risks in WA*” released by the DOH are adopted
- That as a number of agencies are working in this area at the present time it will be necessary to consider their proposed changes when drafting future management proposals. For example, it is possible that overcrowding may be addressed by tenancy legislation.

8 proposals have been detailed:

- Proposal 1: Amend the definition of a lodging house
- Proposal 2: Registration of lodging houses
- Proposal 3: Construction requirements
- Proposal 4: Use Requirements
- Proposal 5: Emergency preparedness requirements
- Proposal 6: Fire Prevention and control requirements
- Proposal 7: Requirements for lodgers
- Proposal 8: Vector control requirements

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

8.1 Proposal 1: Amend the definition of a lodging house

Proposal summary:

- Amend the definition of a lodging house to long term or transient accommodation for a number of unrelated persons with relevant inclusions and exclusions

At present, the definition of a lodging house is very broad:

“any building or structure permanent or otherwise, and any part thereof, in which provision is made for lodging or boarding of more than 6 persons, exclusive of the family of the keeper thereof, for hire or reward, except for licensed premises, private student accommodation and residential flats”

It is apparent that local governments are applying this definition differently and circumstances have changed considerably since the time it was enacted. Market factors have significantly reshaped the accommodation industry in recent years, particularly for holiday accommodation. People have public avenues of complaint for tourist accommodation and others can be easily warned if premises are substandard.

8.1.1 What should be included?

It is proposed that the definition of a lodging house be amended to the following:

- *A lodging house is long term or transient accommodation provided for a number of unrelated persons including but not limited to the following;*
 - *A boarding house, guest house, hostel, lodging house, crisis or backpacker accommodation*
 - *privately operated residential accommodation for a school (college, university or similar) that is not operated by an educational institution*
 - *rooming houses where occupants are not tenants (occupier has a licence to occupy rather than a lease and the landlord has a separate agreement with each occupier)*
 - *serviced apartments not used as short stay holiday accommodation*

This aligns with Class 1b/Class 3 buildings as per the NCC classifications listed below:

Classification	Building type
Class 1a	Single houses and attached dwellings (not located above or below any other dwelling)
Class 1b	A boarding house, guest house, hostel or the like with the total area of all floors not exceeding 300m², and where not more than 12 people reside (not located above or below any other dwelling)
Class 2	A building containing two or more sole-occupancy units which are each a separate dwelling (such as apartment buildings)
Class 3	Residential buildings other than Class 1 or 2. Places of long term or transient living for a number of unrelated people (e.g. boarding house, hostel), or care-type facilities
Class 4	A residence within a building of a non-residential nature

This definition aims to align with the NCC classifications and also capture the following types of accommodation:

- lower cost options
- premises with a high turnover of patrons
- those accommodating vulnerable populations e.g. homeless hostels, rehab centres
- high fire risk properties

8.1.2 General exclusions

Short stay tourist accommodation – Short stay holiday accommodation (including airbnb, Stayz etc) has been the subject of a Parliamentary Inquiry by the Economics and Industry Standing Committee. Recommendations from this inquiry include regulating short stay accommodation (typically **class 1A** and **class 2** buildings) under the *Planning and Development (Local Planning Schemes) Regulations 2015* and establishing baseline requirements, as well as a registration scheme through an interdepartmental working group. As such, it is proposed that any short-stay tourist accommodation captured under the new policies be excluded from regulation under lodging houses requirements. The DOH will work with the relevant government departments to ensure there is no duplication or regulatory gaps.

Tourist accommodation (short term holiday accommodation) – This would include cabins in caravan parks, hotels, motels, tourist parks, farm stay, holiday resorts, bed and breakfasts and similar tourist accommodation. This accommodation itself is typically rented out on a commercial basis for short periods and generally does not require the signing of a lease agreement. This does not include a lodging house situated on a recreational campsite principally used for recreational, sporting, religious, ethnic or educational pursuits or conferences of conventions (e.g. youth camps, church camps etc.).

Prescribed psychiatric hostels – The Licensing and Accreditation Regulatory Unit license and monitor private psychiatric hostels under the *Private Hospitals and Health Services Act 1927*. These are defined as “a private premises in which 3 or more persons who-are socially dependent because of mental illness, are not members of the family of the proprietor of the premises, reside and are treated or cared for”. To obtain a licence, relevant standards must be met including health and safety requirements. These premises are subject to annual compliance inspections.

Public facilities are overseen by the Office of the Chief Psychiatrist, the Mental Health Commission and the providing health service. National standards for Mental Health Services exist which can be applied to such public facilities. There are also National Safety and Quality Health Service (NSQHS) Standards which have components that relate to mental health. If a patient has a complaint with the standard of accommodation they can lodge it with the relevant providing health service.

Licensed Premises – Continue with the current exclusions of licensed premises managed by DRGL as described in Section 6.5.

Hotel or motel caretaker’s accommodation, managers or owner’s flats, workers quarters (fruit pickers, shearers or hotel workers) – Employers who provide accommodation to employees have duties under the *Occupational Safety and Health Act 1984*, Division 4. This

applies to accommodation that the employer owns or is necessary for the purposes of employment. The employer must as far as practicable, maintain the premises so that the employee is not exposed to hazards at the premises.

A residential part of a school, primary or secondary school – The Minister for Education administers legislation for boarding schools. The *School Boarding Facilities Legislation Amendments and Repeal Act 2016* supersedes the *School Education Act 1999* to include residential colleges. The process for boarding school registration in WA adopts AS/NZS 5725 Boarding standard for Australian schools and residences, which ensures that the premises are fit for purpose, safe, hygienic, well-maintained and appropriate.

Accommodation for children – States and territories are responsible for the administration and funding of out-of-home care. Residential care is provided in group homes that are operated by the Department of Communities and the community service sector. These facilities typically accommodate 4-8 people. Children have advocates and case workers with whom they can raise concerns about their living situation or safety. The *Children and Community Services Act 2004* and *Child care Services (Child Care) Regulations 2006* provide the legislative framework for out-of-home care.

Accommodation for people with disability – there is both private and publicly provided accommodation for people with disabilities, typically for no more than 3 or 4 people in one facility, but commonly 1-2 people. Along with the NCC, Specialist Disability Accommodation (SDA) Design Standards set out the minimum design requirements for accommodating people with a disability. Service providers for people with a disability are regulated under legislation including the *Disability Services Act 1993* and the NDIS Quality and Safeguarding Framework. When it comes to group homes or shared living options, tenant's rights are protected by a number of factors including the following; the Australian Human Rights Commission, Equal Opportunity Act, Residential Tenancies Agreement and any obligations under property management contracts with the Department of Communities. Given the small number of people likely to be accommodated in such housing and the additional regulatory measures for disability service providers it is considered unnecessary to capture this accommodation.

A residential part of a health-care building which accommodates staff – Employers who provide accommodation to employees have duties under the *Occupational Safety and Health Act 1984*, Division 4. This applies to accommodation that the employer owns or is necessary for the purposes of employment. The employer must as far as practicable, maintain the premises so that the employee is not exposed to hazards at the premises.

A residential part of a detention centre – this includes a prison, remand centre, juvenile detention centre, holding cells or psychiatric detention centre. The Office of the Inspector of Custodial Services oversees the way people in custody are managed, including regular inspections of prisons.

A residential care building or accommodation for the aged – such facilities are regulated under a number of pieces of national legislation including the *Aged Care Act 1997* and subsidiary regulations. Aged Care Quality Standards require organisations are safe, clean, well maintained and comfortable. The furniture, fittings and equipment are required to be safe, clean, well maintained and suitable for the consumer.

It should be noted that the Public Health Act provides the general public health duty which allows authorised officers to act to protect public health in a broad range of circumstances. This means that subsidiary legislation does not need to make provision for mitigating every possible risk.

Question 4: Overall, do you support the proposed changes to the definition of a lodging house outlined in proposal 1, section 8.1.1?

Question 5: Do you support the exclusions outlined in 8.1.2?

Question 6: Is there anything this definition fails to capture or any potential duplication?



8.2 Proposal 2: Registration of lodging houses

Proposal summary:

- Prescribe the operation of a lodging house as a public health risk activity that must be registered with the local government

Currently, under the Health (MP) Act, local governments are required to be registered with their local government. It is proposed that lodging houses will continue to register with Local Government under new legislation as a public health risk activity. Part 8 of the Public Health Act provides a framework for the registration of activities declared by the regulations to be public health risk activities.

Provision of documents

Any person who wishes to open a lodging house must apply to the appropriate local government for registration of a lodging house. Applicants will be required to provide an application in the required form. Other documents that may be required include:

- site plans
- scaled plans with information on exit provisions and number of toilets
- emergency plans

Maximum accommodation

On receipt of an application for registration, it is proposed that the authorised officer will determine the maximum number of lodgers that can be accommodated in the building using criteria provided by the DOH. This should be calculated taking into account the floor area per lodger, number of exits and number of facilities such as toilets. The maximum accommodation number should be included on the certificate of registration. It will be an offence to accommodate more people than specified on this certificate.

Cost recovery

The Public Health Act provides that a local government may charge a fee for a registration application. In accordance with section 294 of the Act, this fee must be fixed and recovered under the *Local Government Act 1995* Part 6, Division 5, Subdivision 2.

This means that local governments may set a fee for services provided, including receiving an application, granting an approval, making an inspection or issuing a certificate on a cost recovery basis.

Question 7: Do you support the inclusion of lodging houses as a public health risk activity that must be registered with local government?

Question 8: Do you support the requirements for assigning maximum accommodation?

8.3 Proposal 3: Construction requirements

Proposal summary:

- Lodging houses to comply with the maintenance requirements for habitable buildings
- Provisions for laundry facilities
- Provisions for sanitary conveniences

Compliance with existing legislation

A number of local laws currently state that the construction of lodging houses should comply with the Building Code. The NCC is the relevant set of standards to contain construction requirements for all buildings including lodging houses. There are certain areas however that the NCC does not prescribe for certain classes of accommodation which have been historically required by health legislation as explored below.

8.3.1 Laundry facilities

The provision of a laundry is necessary to promote good domestic hygiene, particularly in long term accommodation.

The NCC provides the following performance requirements for laundering facilities:

- Laundering facilities or space for laundering facilities and the means for the sanitary disposal of waste water be provided in a convenient location within or associated with a building appropriate to the function or use of the building.

These provisions do not apply to Class 3 buildings, which includes a majority of lodging house type buildings.

At present, the majority of lodging houses local laws requires the provision of one laundry unit for use by every 15 lodgers.

There are two proposed approaches:

Prescriptive provisions

It is proposed that each lodging house could be required to provide a laundry as per the requirements of the NCC, and where no requirements apply to that building class, that they provide on the premises for the use of each 15 lodgers:

- One washing machine
- One wash trough and
- One electrical dryer or 30 metres of clothes line.

Outcome based provisions

Where laundry facilities are provided:

- Adequate facilities for the number of lodgers in the lodging house

Question 9: Do you support prescriptive or outcome based requirements for laundry facilities? Please detail why.

8.3.2 Sanitary conveniences

Currently lodging house local laws have the following provisions for sanitary conveniences:

- Toilets and bathrooms must be present and in good working order
- Each must have a basin and a shower or bath, adequate supply of hot and cold water
- Showers/baths must have impervious walls to 1.8m
- Private, apportioned to each sex (with signage) and have adequate lighting and ventilation

The NCC provides for the provision of sanitary and other facilities in buildings. Performance requirements for personal hygiene facilities are as follows:

- Suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, to the degree necessary, appropriate to-
 - The function or use of the building; and
 - The number and gender of the occupants; and
 - The disability or other particular needs of the occupants

Class 1 buildings only need to comply with suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, appropriate to its function or use.

Class 3 buildings have prescribed amounts of facilities to be provided as detailed in the NCC.

New provisions for habitable buildings will provide for such facilities to be kept in good working order.

As such, no specific provisions for sanitary conveniences are outlined in this paper. It is recognised that although authorised officers do not have the authority to enforce the requirements of the NCC, it is possible to include the relevant provisions from the NCC in lodging house regulations or local laws as an enforcement tool for officers.

Question 10: Would you support the relevant NCC provisions for sanitary conveniences being contained within lodging house regulation? Please detail why.

8.3.3 Kitchen facilities

At present, about half of the local laws relating to lodging houses have provisions for kitchen and cooking facilities.

The NCC provides for the following as performance requirements for kitchen facilities:

- A facility must be provided which includes-
 - A means for food rinsing, utensil washing and the sanitary disposal of associated waste water; and
 - A means for cooking food; and
 - A space for food preparation

This does not apply to Class 3 buildings, which includes lodging house type buildings.

It is proposed that each lodging house that provides a kitchen is required to provide:

- Adequate food storage facilities and cupboards
- Adequate refrigerator space for storage of perishable goods
- Adequate cooking facilities for the amount of lodgers
- A means for food rinsing, utensil washing, hand washing and the sanitary disposal of associated waste water

Question 11: Do you support the proposed provisions for kitchen facilities? If not, please detail why.



8.4 Proposal 4: Use Requirements

8.4.1 Restriction of sleeping areas

At present, local law provisions for lodging houses restrict the use of certain rooms for sleeping. This prevents operators from attempting to overcrowd premises or house patrons in unsuitable areas, or areas where their privacy may be compromised.

If the proposals for habitable buildings are adopted, the provisions for overcrowding will extend to lodging houses. These provisions are as follows:

- a room that is not a habitable room shall not be used for sleeping purposes and
- habitable rooms must contain adequate sleeping space and ventilation.

Two additional requirements, which many local governments already have in place in their local laws, are also proposed for lodging houses:

- A sleeping room must be accessible without passing through a room being occupied by another person and
- have a minimum space of 5.5m² (including the bed) for each patron in the room (except in the case of a hostel or lodging house on a recreational campsite for short term use)

Question 12: Do you support the additional requirements for restrictions of sleeping areas? If not, please detail why.

8.5 Proposal 5: Emergency preparedness requirements

Proposal summary:

- Sufficient exit capacity is to be provided and maintained at all times to allow for safe movement and egress
- Evacuation lighting to be provided as per the BCA

It is proposed that sufficient exit capacity must be provided and maintained at all times to allow for safe egress. It is considered that this would include:

- all exit doors and passages must comply with all relevant requirements under the NCC
- all exits and paths to an exit to remain unobstructed at all times
- evacuation plans must be displayed where easily visible to occupants
- locks and locking devices must comply with the NCC, and to fit any additional non-compliant device is an offence.

8.5.1 Obstructions

At present, lodging houses local laws contain a provision to ensure that exits and paths of egress are kept clear. Local laws differ between local governments but the provision commonly states that:

“A keeper shall not cause, suffer or permit furniture, fittings or other things to be placed either temporarily or permanently in or on:

- *a stairway, stair landing, fire-escape, window or common passageway or*
- *part of the lodging house in common use or intended or adapted for common use*

in such a manner as to form an obstruction to the free passage of lodgers, residents or persons occupying the lodging house.”

Blocked exits and paths of egress can result in fatalities in an emergency situation. It is critical that they remain clear at all times. As such, it is proposed that this provision to allow unobstructed egress is carried over into the new regulations including any outdoor areas of a property with updated wording.

8.5.2 Locking mechanisms

In any emergency situation it is vital that patrons are able to leave the building via consistently safe exits. At present, the local laws relating to lodging houses prohibit a person fitting an exit door with anything which prevents the door being opened from the inside. Some also state that all doorways and doors in a required exit must comply with the building code.

It is proposed that all locks and locking devices on doors in a required exit, or part of a required exit or in the path of travel to a required exit must be readily openable without a key from the side that faces a person seeking egress by a single hand downward action as per D2.21. NCC Volume 1 and to fit any non-compliant device is an offence.

8.5.3 Evacuation lighting

It is proposed that lodging houses be required to comply with the relevant NCC provisions for evacuation lighting and signage:

- in Class 2-4 buildings exit signage and lighting as per NCC Vol One Part E4 to provide visibility and identification of exits in an emergency
 - A building must be provided with a system that ensures a level of visibility sufficient to enable exits, paths of travel to exits and any obstacles along a path of travel to an exit to be identified; and activates instantaneously upon the failure of an artificial lighting systems, to the degree necessary, appropriate to the function or use of the building; and the floor areas of the building and the distance of travel to an exit
 - To facilitate evacuation, suitable signs or other means of identification must, to the degree necessary be provided to identify the location of exits, and guide occupants to exits, be clearly visible to occupants and operate in the event of a power failure of the main lighting system for sufficient time for occupants to safely evacuate
- in Class 1b buildings, lighting to assist evacuation as per NCC Vol Two 3.7.2.5. This states that lighting must be activated by the smoke alarm, and include either light incorporated within the smoke alarm or lighting in the corridor, area or hallway served by the smoke alarm
- ensure that evacuation lighting is kept separate from the general lighting system and kept illuminated during the hours of darkness
- ensure that illuminated exit signs are installed above exit doorways which comply with *AS/NZS 2293.1:2005* and which are maintained in good working order at all times

Question 13: Do you support the provisions outlined above for emergency egress? If not please detail why.

8.6 Proposal 6: Fire prevention and control

Proposal summary:

- Lodging houses are required to provide adequate fire protection, prevention and control measures.

The NCC outlines fire protection, prevention and control requirements for all types of buildings in detail, including the provision of fire extinguishers and smoke alarms.

It is proposed that lodging houses be required to provide adequate fire protection, prevention and control measures as per the NCC. This includes:

- In Class 1b buildings:
 - smoke alarms as per NCC Vol Two 3.7.2.4; this requires smoke alarms to be installed on or near the ceiling in every bedroom; and in every corridor or hallway associated with a bedroom, or if there is no corridor or hallway, in an area between the bedrooms and the remainder of the building; and on each other storey.
 - evacuation lighting as per NCC Vol Two 3.7.2.5; a system of lighting must be installed to assist evacuation of occupants in the event of a fire, and be activated by the smoke alarm and consist of a light incorporated within the smoke alarm or the lighting located in the corridor, hallway or area served by the smoke alarm.
- In Class 2-4 buildings firefighting equipment as per NCC Vol One Part E1 including;
 - fire extinguishers, as per NCC Vol One Part E1.6, must be installed to the degree necessary to allow occupants to undertake initial attack on a fire appropriate to;
 - The size of the fire compartment; and
 - The function or use of the building; and
 - Any other fire safety systems installed in the building; and
 - The fire hazard
 - Smoke hazard management as per NCC Vol One Part E2;
 - In a building providing sleeping accommodation, occupants must be provided with automatic warning on the detection of smoke so they may evacuate in the event of a fire to a safe place
 - Occupants must be given time to evacuate before the onset of untenable conditions (dangerous temperatures, low visibility and dangerous levels of toxicity).

It is also proposed that:

- all firefighting and protection equipment (including fire blankets, fire extinguishers, emergency lighting, evacuation lighting etc.) must be clearly visible, accessible and maintained in good working order in accordance with the manufacturer's instructions at all times.

Other fire prevention measures:

- No person shall smoke within a lodging house.
- Approved fire blanket positioned within 2 metres of the cooking area in each kitchen
- A keeper shall ensure that any items which are likely to cause a fire hazard are not located within bedrooms or dormitories of a lodging house
- Materials used in bedrooms and dormitory areas including drapes, curtains, blinds, furniture, upholstery, floor covering and beds must adequately resist the spread of fire and limit smoke.

Question 14: Do you support the provisions outlined above for fire prevention and control? If not please detail why.



8.7 Proposal 7: Administrative requirements

Proposal summary:

- Lodging house operators are required to maintain a register of all lodgers

The Health (MP) Act requires that lodging house operators maintain a register of all lodgers (this should not be confused with the register of lodging houses maintained by the local government). This register serves multiple purposes:

- In the event of an emergency, the lodging house operator must be aware of and able to account for all persons in the building
- Lodgers are generally more transient than the general population, and having a record of their details allows emergency services to locate people if necessary

It is proposed that lodging house operators continue to be required to maintain a register of all lodgers, including their name, contact details, previous address and date of entry and exit. This register does not have to be publicly available, but it will need to be made available on request by an authorized officer. This may be in the event of an emergency or the notification of infectious disease for example.

Question 15: Do you support the requirement for a register of lodgers? If not please detail why.

8.8 Proposal 8: Requirements for lodgers

Proposal summary:

- No requirements for lodgers are carried over

At present, most local laws contain a number of requirements that lodgers must adhere to while residing in the building. These included things such as not keeping or storing offensive materials, depositing rubbish in the proper receptacles and using a sleeping apartment for dining purposes.

It is proposed that these are not carried over as the safe operation of a lodging house is the responsibility of the owner and it is their responsibility to manage the occupants.

Question 16: Do you support the removal of requirements for lodgers? If not please detail why.

8.9 Proposal 9: Vector Control

Proposal summary:

- Lodging house operators are required to prevent the breeding or harbourage of disease vectors in a lodging house
- Lodging house operators must implement control measures when required by an authorised officer

As pest infestations including bed bugs are common in shared accommodations it is proposed that provisions to control outbreaks of pests are retained.

It is suggested that the following requirements are included:

- That adequate measures are taken to prevent the breeding or harbourage of disease vectors in a lodging house (this would include providing appropriate bedding such as mattress protectors)
- Owners or occupiers are to follow the direction of an authorised officer to implement measures to control disease vectors

Question 17: Do you support the other requirements for vector control outlined above? If not please detail why.

9 How will the proposed changes affect me?

The intent of this discussion paper is to outline and seek feedback on proposed options for managing public health risks in lodging houses. The results of this consultation will inform the development of the reforms

The following section describes potential impacts of the proposals for lodging houses being adopted under new legislation in Western Australia.

Lodging house operators

Lodging house operators are already required to register their premises under the Health (MP) Act. This usually also involves meeting a suite of compliance measures determined by the relevant local government under their local laws. In this sense, there will be little change unless a local government currently does not register lodging houses in their jurisdiction.

Operators will be required to comply with the general requirements for habitable buildings and lodging houses.

Owners/occupiers will benefit from a degree of consistency of the requirements across local government areas if regulations are adopted. It is also an opportunity to modernise and update the legislation to suit the current environment.

It is possible that some current lodging houses will no longer be captured under health legislation, and may instead be subject to management actions resulting from the Economics and Industry Standing Committee Inquiry into Short Stay Accommodation such as bed and breakfasts and serviced apartments.

It is also possible that some lodging houses which were not previously captured will now be captured under health legislation depending on the local government's previous management.

Members of the public

Members of the public who require low cost accommodation will be protected from the public health risks associated with this accommodation. Users of this accommodation will have increased confidence that high standards of amenity and safety are being upheld.

Local government

Preliminary informal discussions in the development of the proposals have indicated that local governments favour the continued regulation of lodging houses via regulations. Updating the legislation will make regulation more appropriate for the current environment.

Many responsibilities of authorised officers will remain the same including processing applications for registration, determining maximum accommodation for sleeping areas and performing inspections for compliance with health and safety standards.

As regulations will apply to all local governments it may take time for those local governments who currently do not regulate lodging houses to implement the requirements; including familiarisation with new legislation and provision of information to those impacted

Authorised officers will no longer be required to assess plans for construction compliance.

There will be an increase in consistency across local government areas, improving capacity and transfer of skill.

State Government

It is anticipated that proposed changes will have minor impacts on state government.

The DOH will continue to regulate Rottnest Island and Kings Park. As the system manager, the DOH will also be responsible for issuing guidelines and providing advice on implementation of new regulations. The DOH will assist local governments where required.

As previously stated several government departments are working in the area at this time the DOH will continue to work with DMIRs and any relevant government departments to ensure there are no regulatory gaps or overlaps.



10 Next Steps

The information gathered from this consultation will be used in the development of recommendations on the best way to manage lodging houses under the *Public Health Act 2016*. Your input is crucial as it will assist in identifying the areas of the proposed regulatory framework that needs further consideration.

After analysis of all submissions, a determination of which option to adopt will be made. The results and findings of the consultation will be presented in a consultation summary report and submitted to the WA Better Regulation Unit, to support the preferred option. The consultation summary report will also be made available on the Department of Health website.

Please note, that your feedback forms part of a public consultation process and the Government may quote from your comments in future publications. If you prefer your name and organisation to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to Freedom of Information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

The consultation and feedback process will be open until 28th April 2020. Please direct any feedback to publichealthact@health.wa.gov.au.

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

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

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

General public health duty

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

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

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

Infringement notices

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

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

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

Improvement notices and enforcement orders

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

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

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

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

Prosecution

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

Registration and licensing

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

12 Appendix 2 – Risk assessment methodology

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

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

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

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

Table 1 Definition of risk levels

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

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

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

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

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

Table 4 Risk matrix (qualitative)

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

13 Appendix 3 – Question list

The following is a master list of all questions contained in this discussion paper. You are encouraged to respond to these questions through the online survey, which can be accessed using the link on page 4 of this document.

Question 1: Do you support the adoption of **Option A: Repeal without replacement**? Why or why not?

Question 2: Do you support the adoption of **Option B: Repeal and replace with model health local laws**? Why or why not?

Question 3: Do you support the adoption of **Option C: continue to regulate lodging houses under the Public Health Act using housing regulations**? Why or why not?

Question 4: Overall, do you support the proposed changes to the definition of a lodging house outlined in proposal 1, section 8.1.1?

Question 5: Do you support the exclusions outlined in 8.1.2?

Question 6: Is there anything this definition fails to capture or any potential duplication?

Question 7: Do you support the inclusion of lodging houses as a public health risk activity that must be registered with local government?

Question 8: Do you support the requirements for assigning maximum accommodation?

Question 9: Do you support prescriptive or outcome based requirements for laundry facilities? Please detail why.

Question 10: Would you support the relevant NCC provisions for sanitary conveniences being contained within lodging house regulation? Please detail why.

Question 11: Do you support the proposed provisions for kitchen facilities? If not, please detail why.

Question 12: Do you support the additional requirements for restrictions of sleeping areas? If not, please detail why.

Question 13: Do you support the provisions outlined above for emergency egress? If not please detail why.

Question 14: Do you support the provisions outlined above for fire prevention and control? If not please detail why.

Question 15: Do you support the requirement for a register of lodgers? If not please detail why.

Question 16: Do you support the removal of requirements for lodgers? If not please detail why.

Question 17: Do you support the other requirements for vector control outlined above? If not please detail why.

14 References

1. Australia GoW. Borders and Lodgers C-RIS. In: Protection DoCC, editor. 2016.
2. UN Committee on Economic SaCR. General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant). UN Committee on Economic, Social and Cultural Rights (CESCR); 1991.
3. Bashir SA. Home is Where the Harm is: Inadequate Housing as a Public Health Crisis. *American Journal of Public Health*,. (92):5.
4. Australia GoW. *Managing housing health risks in WA*. In: Health Do, editor. 2019.
5. Australia NC. A tragic toll: Building fires in Australia. *The Australian*. 2011.
6. Library QP. Fire Safety and Budget Accommodation: The Building and Other Legislation Amendment Bill 2001. 2002.
7. Barnes M. Inquest into the Palace Backpackers Hostel Fire. Office of the State Coroner; 2006.
8. Bourke K. Woman dies in East Perth backpacker hostel fire as police investigate potential arson. *ABC News*. 2019.
9. Clements. Coroners Findings and Decision; Inquest into the death and circumstances of death of Shone Landue, Gary Reid and Stanley Doolan. In: Coroner OotS, editor. 2005.
10. persons Cth. Council to Homeless Persons Rooming House Project June 2014 The state of rooming house reform in Victoria. 2014.
11. Office of Best Practice Regulation. Best Practice Regulation Guidance Note Value of statistical life. In: Department of Prime Minister and Cabinet, editor.: Australian Government,; 2014.

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