



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

Consultation Summary Report

For the discussion paper –

Managing lodging house health risks in Western Australia

September 2020



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Summary

This report summarises the information and responses received by the Department of Health (DOH) from its consultation on lodging houses and outlines the intended next steps. It is not possible in a summary report to present every view - this report attempts to portray the main issues and themes raised and the key points of contention.

In January 2020 the discussion paper "*Managing lodging house health risks in Western Australia*" was released for a period of 13 weeks for comment, with several late submissions accepted due to the COVID-19 pandemic. The paper discussed three options:

- repeal of the existing legislation without replacement, or
- repeal and replace with model local laws, or
- ongoing regulation under the *Public Health Act 2016* (Public Health Act)

and presented several proposals for potential future regulations, should ongoing regulation be supported.

The purpose of this consultation was to inform the implementation of the Public Health Act and the review of existing provisions under the *Health (Miscellaneous Provisions) Act 1911* (Health MP Act), Part 5, Dwellings and health local laws in relation to lodging houses. The DOH sought to gain a better understanding of the potential impacts on and opinions of industry, local government, other government agencies and members of the public associated with the management of public health risks in lodging houses.

The DOH received a total of 44 responses during the consultation period. There was strong support (89%) for the ongoing management of lodging houses under the Public Health Act and overall support for the proposals outlined in the discussion paper. The DOH has analysed the responses and proposed their adoption or modification where appropriate.

There was general agreement from all sectors that this type of accommodation represents a risk to public health which is best managed with risk-based regulations to apply uniformity, clarity and legislation relevant to the modern setting. Measures to reduce duplication with the National Construction Code (NCC) were supported.

This paper should be read in conjunction with the discussion paper "[Managing housing health risks in WA](#)" and "[Consultation Summary Report for the discussion paper- Managing housing health risks in Western Australia](#)". That review determined that the public health risks associated with housing should continue to be regulated under the framework provided by the Public Health Act and the Minister for Health has approved the development of new regulations. The DOH proposed developing specific provisions for lodging houses under the new housing regulations.

There will be several matters that will be included in the new housing regulations. These include:

- The definition of a habitable dwelling which will align with the Residential Design Codes (R-codes) definition for a residential building: "A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis"
- The inclusion of a provision which requires that no building or mobile structure is to be used as a dwelling without the approval of local government
- Provisions that describe the minimum standards required in housing
- Provisions related to the declaration of a property as unfit for human habitation

- Overcrowding prevention provisions relating to minimum cubic air space and rooms used for sleeping purposes.

As part of the lodging houses review, the DOH proposed developing specific provisions for lodging houses under the new housing regulations.

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

Methodology

The objective of this review was to ensure appropriate measures are in place to minimise public health risks associated with lodging houses in WA. An opportunity exists as part of the implementation of the Public Health Act to consider emerging practices and improvements that can be made to the existing system to streamline and potentially reduce the regulatory burden on both industry and enforcement agencies. Non-government consultation was focused on industry groups and potential individual stakeholders.

The discussion paper was circulated to a total of 137 local governments, 13 state agencies as well as a range of industry contacts (~77). The list of industry contacts included

Backpacker establishments	Health care and social assistance agencies
Short stay and tourist accommodation	Remote aboriginal communities/corporations
Housing industry associations	Advocacy groups

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

The DOH also provided an information session on the discussion paper through the West Australian Local Government Association for their stakeholders as an opportunity to receive feedback on proposed changes.

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

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

Consultation Findings

The DOH received a total of 44 responses.

Stakeholder	Responses
State government	2
Local government	34
Industry representatives	7
General public	1
Total	44

In total, the 44 responses were received via:

- The online Citizen Space consultation survey=29
- Written submissions received via email=15

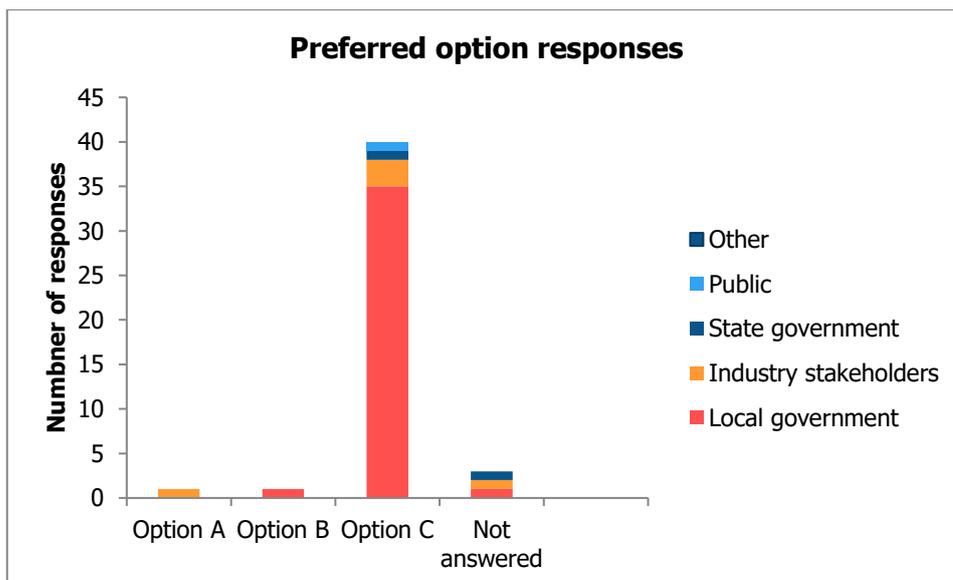
Findings on regulatory options

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

1. Repeal without replacement (Option A);
2. Repeal and replace with model local laws (Option B); and
3. Provide new updated regulations under the Public Health Act (Option C).

From the 43 respondents:

- 7% of respondents chose not to provide a preferred option;
- 2% of respondents supported Option A;
- 2% of respondents supported Option B;
- 89% of respondents supported Option C;



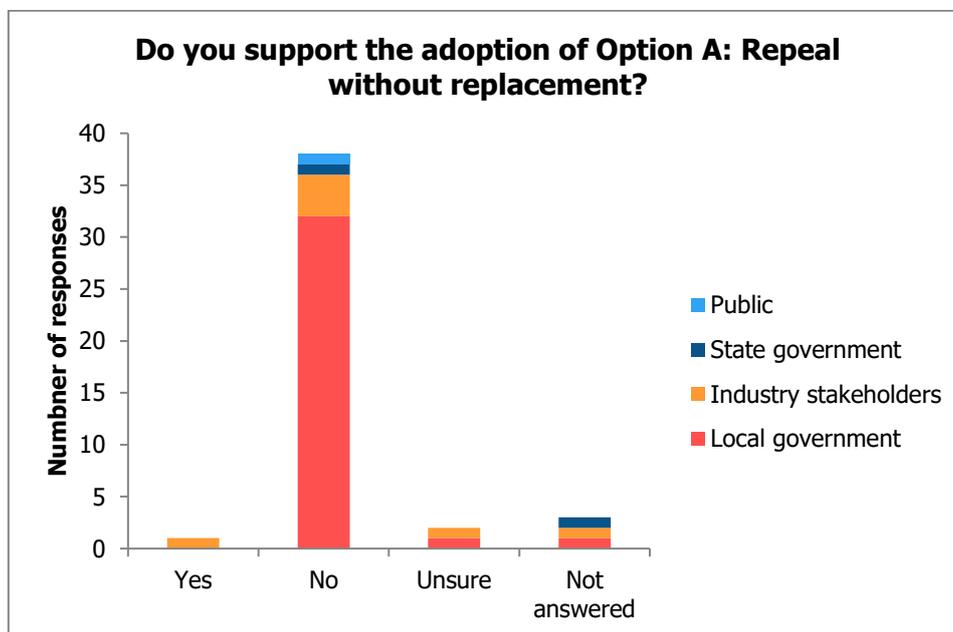
Potential for bias

77% of the stakeholders that responded to the discussion paper are representatives of the group “Local government”. This representation has a potential to create a bias in the results obtained and comments received. As the issues presented in the discussion paper are central to the role of authorised officers in local government this representation is however, understandable.

It should be noted however that out of the 44 respondents only 1 respondent (industry) favoured ‘Option A’ repeal of current regulation with no replacement and only 2 respondents (local government) favoured ‘Option B’ regulation with model local laws.

Of those that supported Option C or didn’t answer, there was a balanced distribution of the remaining group representations (State government, Industry, Public and Other), which suggests that the group ‘Local Government’ is not in direct opposition to any other group.

Option A: Repeal without replacement



One respondent (2%) supported repealing the existing regulatory regime without replacement.

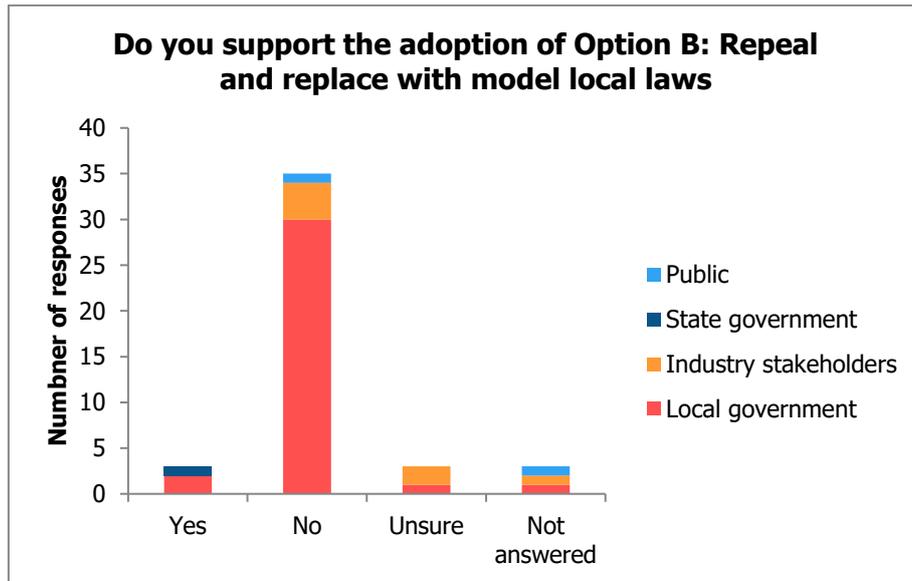
The benefits given by this respondent were:

- This would remove outdated standards
- It would not impose additional regulation on backpackers’ style accommodation

Other respondents perceived the disadvantages of Option A as follows:

- The public health risk would remain high and be largely unregulated
- Industry self-regulation can lead to decreased standards and an increased risk to the public
- Proactive risk management would be difficult
- Potential inconsistencies between jurisdictions if individual local governments created local laws to manage the risk
- Reduced public confidence in the health and safety of lodging houses

Option B: Repeal and replace with model local laws

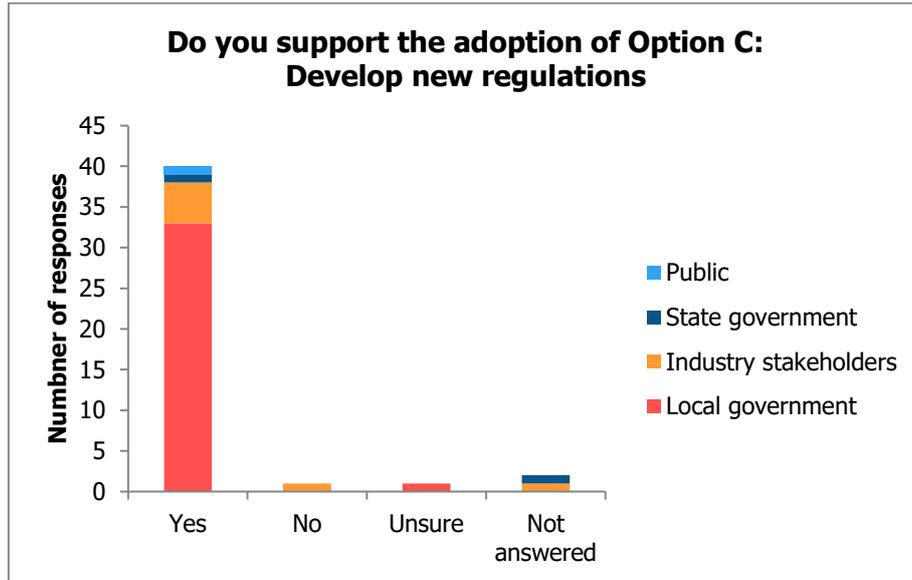


There were a few respondents who thought Option B or C could be successful in managing the public health risk presented by lodging houses, however regulations were clearly preferred over local laws and feedback was almost universally negative for Option B.

Respondents perceived the disadvantages of Option B as follows:

- Inconsistency between local governments given discretion in adopting local laws and the ability for local governments to alter them
- Local laws may not be an adequate deterrent for poor safety standards
- The use of local laws increases the risk of confusion in the industry about what is best practice
- Difficulties with developing local laws under the *Local Government Act 1995* which affect private property
- Local laws are unnecessary as there is no need for local variations to requirements
- There are limited enforcement options in local laws when compared to regulations

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



There was broad support for new regulations under the Public Health Act, with 91% of respondents supporting Option C. The proportion of respondents who favoured Option C were as follows, 33 out of 34 local government, 5 out of 7 industry, 1 out of 2 state government and 1 out of 1 public respondents.

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

- Adopts a coherent, consistent approach for regulation across the state and provides clear provisions with adequate enforcement capacity
- Adequate level of control for a high-risk industry
- Protection of public health and safety, particularly for vulnerable or at-risk sections of the community who rely on low cost accommodation
- Existing WA legislation has successfully managed lodging houses for many years and it should then continue under the Public Health Act
- Regulations will require more uniform compliance and potentially raise the standard of lodging houses
- Clear compliance obligations for the lodging house industry.

Other comments included:

- Implementation of any new regulations will be universal, and all local governments will be affected by the changes (not just those currently regulating lodging houses).
- There was some concern that excluding some tourist accommodation but including others will create an unfair advantage for some commercial accommodation providers.

Alternative options and proposals

One respondent felt that regulatory oversight was required but questioned whether environmental health officers were best suited to this, particularly if fire is considered the main risk for this type of accommodation. The Department of Fire and Emergency Service (DFES), the Department of Racing Gaming and Liquor (DRGL) and the National Construction Code all have a role in regulating aspects of this accommodation. This respondent proposed that the general public health duty may be enough to address public health issues that arise with budget accommodation.

A couple of respondents expressed concern about the recent COVID-19 outbreak. One of these respondents cited incidences of COVID-19 cases coming from accommodation such as backpackers hostels and suggested that consideration should be given to ensure public health and wellbeing for like scenarios in the future.

One respondent suggested requiring lodging houses to have a Fire and Emergency Plan that must be audited at a set frequency and submitted to an enforcement agency, such as DFES, for verification. This would minimise the burden on local governments while also ensuring a higher level of oversight than is currently provided by DRGL and would introduce free market competition for the role of suitable auditors.

Recommendation:

The DOH recommends that 'Option C': continue to regulate lodging houses regulations under the Public Health Act using housing regulations' is adopted

The feedback from respondents supports the creation of new regulations to manage the public health risks associated with the operation of lodging houses. Regulations are the preferred method for management to provide uniformity and clarity for both industry and enforcement agencies.

The expectation of such regulation is to protect public health and wellbeing, particularly for those more vulnerable members of the population who rely on low cost accommodation. Whilst it would be possible to manage this issue using the general public health duty, it was seen as an industry that was not well-suited to self-regulation. If enforcement agencies were not taking a proactive role in protecting health and safety standards in such accommodation, it was considered that vulnerable elements of the population would be likely to accept poor standards for fear of being homeless.

Whilst the DRGL has a role in regulating accommodation, their remit only extends to licensed premises and as such does not have a broad enough scope to cover all relevant accommodation. The NCC, whilst covering the construction of a building, does not govern the ongoing management of public health risks associated with the operation of a building.

The DFES is an advisory agency which has oversight in the construction of Class 2-9 buildings in Western Australia at the planning and completion stages. The DFES conducts fire safety assessments for high fire risk buildings in relation to the requirements of fire-fighters in the event of a fire. New lodging house regulations will not overlap any DFES requirements but will aim to support the inhabitants of a lodging house be prepared for and respond to an emergency event within a lodging house.

Lodging house regulations are not seen as the appropriate legislation to have mandatory requirements for a pandemic scenario, however, new regulations which require high hygiene standards and prevent overcrowding would be beneficial in the event of infectious disease outbreaks.

The DOH considers local governments well placed to review emergency planning in the context of registering a lodging house and this is consistent with other requirements for authorised officers in their role reviewing risk and emergency management planning with public assembly buildings. The DOH will provide guidance material to support new regulations.

Findings on proposals

The discussion paper made several proposals if respondent's preference was for Option C: continue to regulate lodging houses under the Public Health Act using housing regulations. Comments on these proposals have been detailed below, along with the DOH responses. It is recommended that the following options are progressed:

Proposal 1: Amend the definition of a lodging house is adopted, subject to refinement

Proposal 2: Registration of a lodging house is adopted

Proposal 3: Construction requirements is adopted

Proposal 4: Use requirements is adopted

Proposal 5: Emergency preparedness requirements is adopted

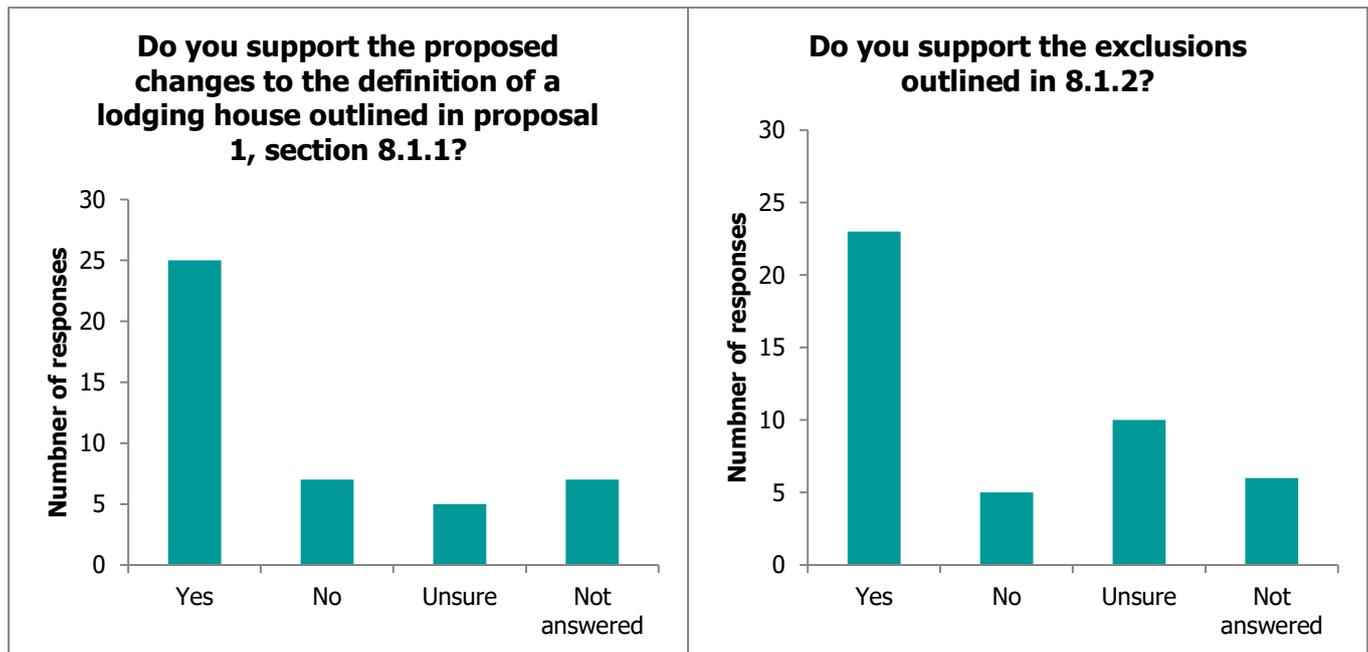
Proposal 6: Fire prevention and control is adopted

Proposal 7: Administrative requirements is adopted

Proposal 8: Requirements for lodgers is adopted

Proposal 9: Vector control is adopted

Proposal 1: Amend the definition of a lodging house



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”

is considered very broad and outdated in the modern context. A new definition is required to reflect the present market of accommodation and clarify the type of accommodation to be captured.

The DOH proposed a definition to align with Class 1b and Class 3 buildings as defined in the National Construction Code (NCC) as most lodging house style accommodation falls within these classes.

The definition proposed was as follows:

“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 (the 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”

General exclusions were proposed for accommodation which was already regulated by existing legislation or seen as low risk/potentially appropriate for self-regulation.

This included:

- Tourist accommodation

- Prescribed psychiatric hostels
- Licensed premises
- Hotel or motel caretaker's accommodation, managers or owner's flats and workers quarters
- Residential parts of a school, primary or secondary school
- Accommodation for children (out of home care or group home care)
- Accommodation for people with a disability
- Residential part of a health-care building which accommodates staff
- A residential care building or accommodation for the aged

There was mixed support from respondents for the definition proposed. The consensus was that the definition needed updating but the form that this would take was more divisive. 57% of respondents supported the proposed changes to the definition outlined and 52% supported the exclusions. 27% of respondents were unsure or did not answer regarding their support for inclusions and 36% were unsure or did not answer regarding exclusions. A greater percentage of respondents (23%) were unsure about the exclusions, compared to the inclusions (11%).

Several respondents suggested adding in the use of shared facilities (bedrooms, bathrooms and kitchens) to the definition. Other suggestions were removing serviced apartments and adding recreational campsites and student accommodation operated privately or publicly. The length of accommodation stay was also mentioned by several respondents as something requiring further clarification.

Tourist accommodation was brought up by several respondents as posing a risk to public health and requiring regulation. Other respondents however felt that tourist facilities generally self-regulate well due to the nature of the industry. It was pointed out by a couple of industry respondents that it was unfair to exclude tourist accommodation but capture backpackers in the definition.

Recommendation:

The DOH recommends that the proposal is adopted to update the lodging house definition, with further refinement.

The DOH has refined the definition of a lodging house to be defined as follows.

“Long term or transient accommodation provided for a number of unrelated persons with shared facilities such as bedrooms, bathrooms and kitchens including but not limited to:

- *a boarding house, lodging house, guest house, hostel, rooming house or crisis accommodation*
- *short-stay* accommodation for more than 12 people*
- *residential accommodation for a school (college, university or similar)*
- *accommodation located on a recreational campsite principally used for recreational, sporting, religious, ethnic or education pursuits or conference of conventions (e.g. youth camps, church camps)”*

The following will be excluded:

- *Prescribed psychiatric hostels licensed under the Private Hospitals and Health Services Act 1927*

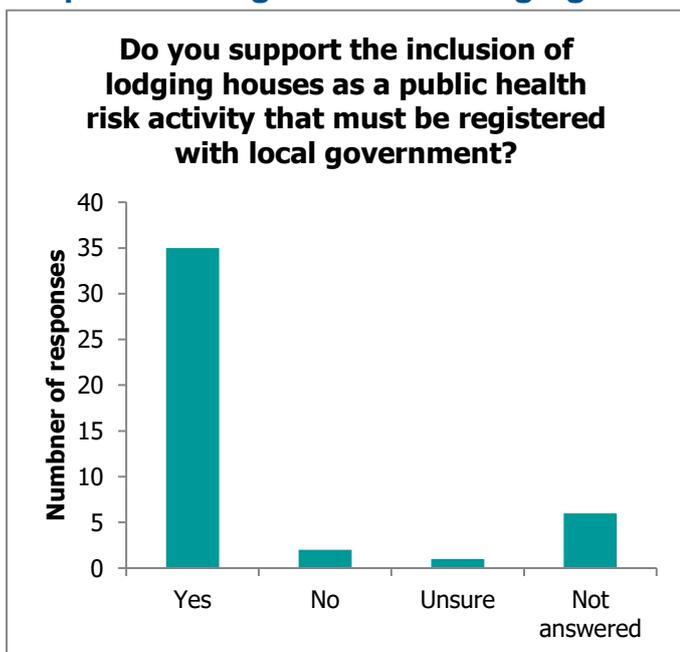
- A tenancy under a residential tenancy agreement as defined by the Residential Tenancies Act 1987
- Public and private hospitals
- Caravan parks and camping grounds
- Employer provided accommodation as defined by the Occupational Safety and Health Act 1984
- Residential colleges covered by the School Boarding Facilities Legislation Amendments and Repeal Act 2016
- Out of home care provided for children by the Department of Communities and the community service sector
- Public and privately provided accommodation for people with a disability
- Accommodation overseen by the Office of the Inspector of Custodial Services
- A residential care building or accommodation for the aged

**Short-stay refers to all properties or parts of properties offered as temporary accommodation to the market for purposes such as leisure, business and travel.*

Several other government departments are working in this area concurrently, so it is possible that short stay accommodation and accommodation covered under the Residential Tenancies Act, may be subject to change. The DOH will continue to work with the relevant government departments to ensure there are no regulatory gaps or duplications.

In accordance with the PH Act any Crown operated buildings classified as lodging houses under this definition will be bound by new regulations. This means that lodging house style accommodation that is operated by state government agencies such as the Department of Communities will now be bound by these regulations. Under the PH Act if required, State agencies will have the option to apply for an exemption from immediate compliance and implement an improvement plan to demonstrate how the requirements of the regulations will be met over time.

Proposal 2: Registration of lodging houses

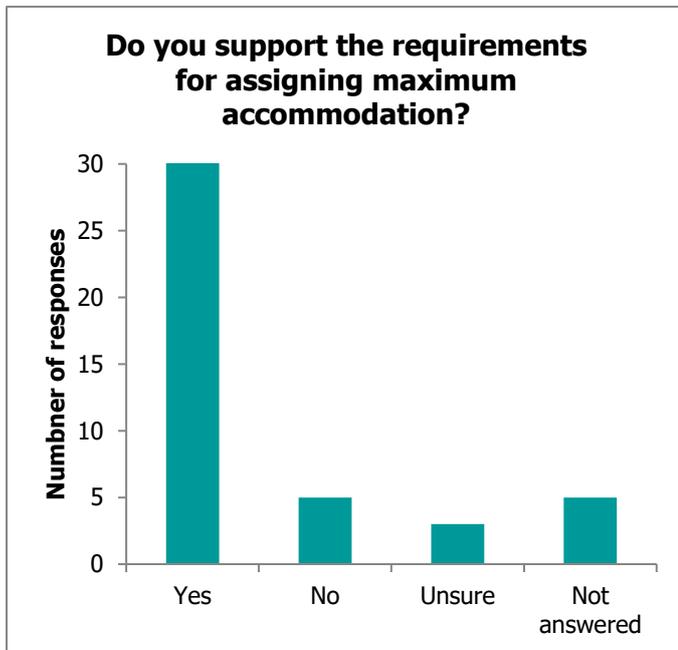


The DOH proposed that operating a lodging house is a public health risk activity and therefore operators must register with local government. This is a continuation of current requirements under the Health (MP) act.

As part of the registration process it was proposed that operators would have to apply to local government in the required form along with scaled site plans, with information on exit provisions and facilities as well as emergency planning. Authorised officers could use this information to determine the maximum number of lodgers that can be accommodated in the building using criteria provided by the DOH to prevent overcrowding of these facilities.

The proposal for a registration process was well supported by respondents, with 80% of

respondents favourable. Respondents felt that this was maintaining the status quo and felt local government was well placed to regulate these kinds of establishments. It was generally considered that lodging house type accommodation was not well suited to self-regulation.



Several respondents commented on the issues arising from inappropriate management of lodging houses and the need to revoke or cancel a registration when necessary, or potentially impose specific conditions on the registration. A few respondents suggested the requirement for a venue management plan and/or for an onsite keeper for lodging houses in the case of higher risk lodging houses. Inspection frequency, annual registration and cost recovery were other areas touched on by respondents.

Comments also reflected the need to manage lodging houses based on risk. There were several suggestions that the frequency of inspections and registration should be subject to risk assessment so as not to burden lower risk operators.

70% of respondents agreed with assigning a maximum number of occupants for lodging houses. Some respondents felt this would assist with the prevention of overcrowding and the negative impacts associated with this. One respondent suggested that assigning maximum occupancy may prevent innovative accommodation offerings from entering the Western Australia market and felt that the market would dictate the appropriate space per person.

Recommendation:

The DOH recommends that regulations will prescribe the operation of a lodging house as a public health risk activity that must be registered with the local government.

Any person who wishes to open a lodging house will be required to apply to the appropriate local government for registration. Applicants will be required to provide an application with the relevant documentation such as scaled site plans and emergency planning to support their application. A venue management plan would also be considered appropriate documentation to require for a higher risk operation.

Authorised officers will calculate the maximum number of lodgers that can be accommodated in the facility by considering:

- *minimum floor area requirements (outlined in proposal 4)*
- *minimum cubic air space requirements*
- *exits as per Part D of the BCA Volume One (for Class 3 buildings)*
- *number of sanitary facilities as per the BCA Volume One (for Class 3 buildings).*

Existing lodging houses will have to comply with the standards of the time they were built, they will not need to comply with the current standards of the BCA. A provision will be provided to allow for transitioning existing lodging houses to the new regulations such that an existing lodging house approval under the old legislation is still valid.

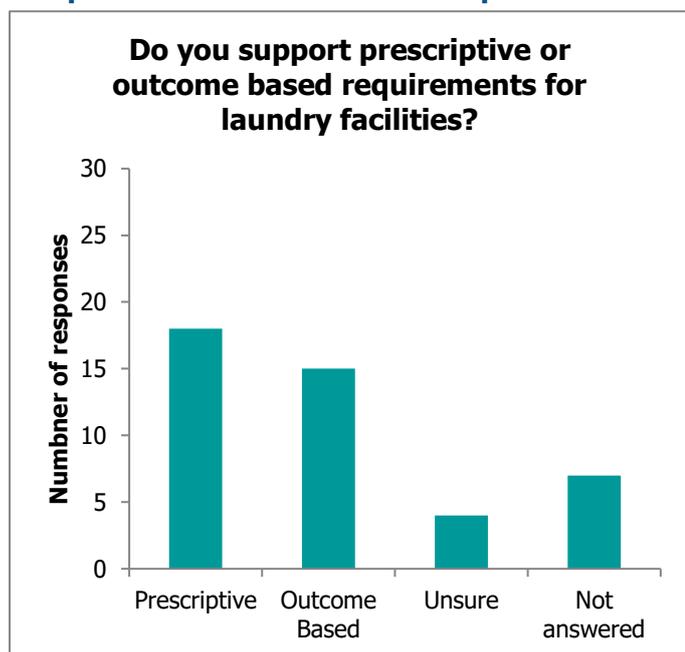
Local government will have discretion to scale requirements for establishments. This may be the level of planning documentation required or the inspection frequency. Authorised officers will be able to assign relevant conditions to the registration of a lodging house in consultation with guidelines to be provided by the DOH. For example, for larger establishments the local government may choose to require a manager or keeper on site.

An annual registration process was mentioned by several respondents. This process can be implemented by a local government, with cost recovery, under the existing legislation without being required to be prescribed in new regulations.

The PH Act provides for the appropriate enforcement agency to vary the conditions of, suspend or cancel a registration under section 71 of the Act. Grounds for suspension/cancellation include matters such as failing to pay the required fees, failing to not comply with conditions of registration or being convicted of an offence under the PH Act. In addition, the DOH will include the ability for the enforcement agency to suspend or cancel a registration if an operator is subject to enforcement action under the regulations.

Cost recovery is provided for under the Local Government Act by section 294 of the Public Health Act 2016. A local government may charge for the performance of a function as an enforcement agency under the Act, including a fee or charge for the provisions of information.

Proposal 3: Construction requirements laundry facilities



The DOH acknowledges that the National Construction Code is the relevant standard for the construction requirements for lodging houses. However, kitchen and laundry facilities have historically been required by health legislation that the NCC does not prescribe for certain classes of accommodation. Laundry facilities are considered important for maintaining health and hygiene standards for occupants.

Respondents were asked if they supported a requirement for outcome based 'adequate laundry facilities' versus prescriptive provisions for the amount and type of laundry facilities in lodging houses. 41% of respondents favoured prescriptive provisions in relation to the number and type of laundry

facilities provided with 34% preferring outcome based although the feedback was mixed.

Respondents who supported outcome-based requirements praised their flexibility and potential for innovation. Criticism from respondents suggested that outcome-based provisions were open to interpretation and their inconsistent application could lead to difficulties with enforcement. Respondents who supported prescriptive provisions felt they were easier to understand, enforce and follow. Criticism of these kind of requirements was that they do not recognise the individual characteristics of the market, location, practicalities and changing environments.

Recommendation:

The DOH recommends that prescriptive provisions are adopted for the provision of laundry facilities in a lodging house.

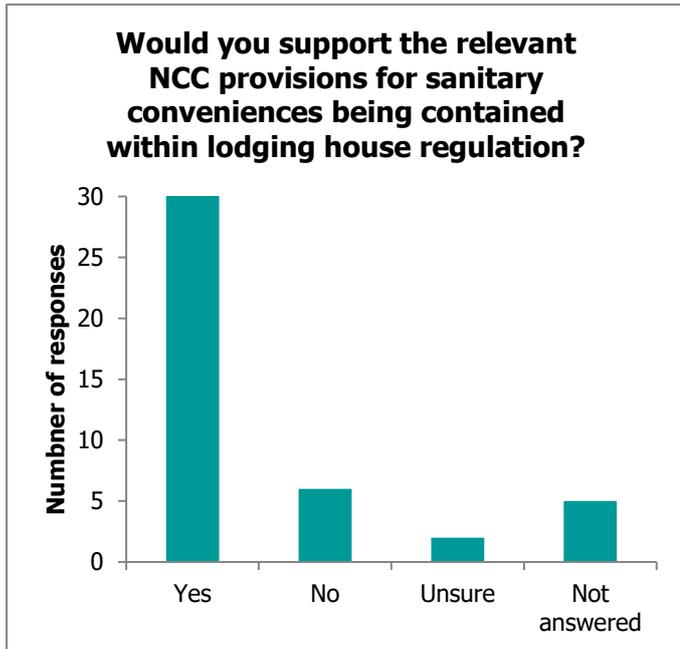
Each lodging house will be required to provide a laundry as per the performance requirements of the NCC: laundering facilities or space for laundering facilities and the means for sanitary disposal of waste water be provided in a convenient location within or associated with a building appropriate to the function or the use of the building.

Where no laundry requirements apply to that building class, that they provide on the premises for the use of each 15 lodgers:

- One washing machine (minimum 4kg capacity)
- One wash trough and (minimum 36L capacity)
- One electrical dryer (minimum 4kg capacity) or 30 metres of clothes line.

The regulations will allow an operator to apply to the LG for an exemption if they can show a suitable alternative is available, for example that a laundromat facility is available in the immediate vicinity. This will be at the discretion of the local government.

Proposal 3: Construction requirements sanitary facilities



Provisions for sanitary facilities are contained in the NCC, with different requirements applicable depending on the class of the building. As a result, no specific provisions were outlined in the discussion paper for the provision of sanitary facilities, rather it was proposed that the NCC requirements could be included in new health legislation as an enforcement tool for authorised officers. The new housing regulations for habitable buildings, which will also capture lodging houses, will provide for sanitary facilities to be maintained and kept in good working order.

70% of respondents supported including the NCC requirements for the provision of sanitary facilities in lodging house regulations. It was felt that there was a benefit to enabling

authorised officers to enforce these provisions should they find any issues with the provision of sanitary facilities during inspections. Particularly for the ongoing management of lodging house operation once the facility is built. This would decrease reliance on authorised officers under the Building Act for compliance, while maintaining consistency with the construction code. It was noted however that the NCC will not apply to older lodging houses.

Recommendation:

The DOH recommends that the relevant NCC requirements for provision of sanitary conveniences be contained within lodging house regulations.

Lodging houses will be required to comply with the NCC provisions for sanitary facilities. Every lodging house will be required to be provided with a water carriage system for sewage disposal and sanitary conveniences in accordance with the Building Regulations.

Volume Two of the NCC contains the requirements for Class 1 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, appropriate to its function or use*

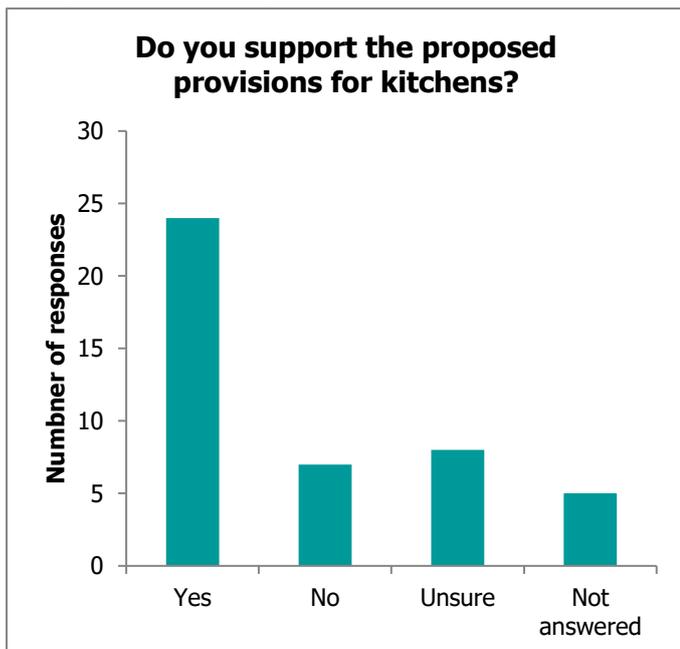
Volume One of the NCC contains the requirements for Class 2-9 buildings. Performance requirements for personal hygiene facilities are as follows:

- *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.*

The number of facilities should align with the requirements of the BCA Volume One, Table F2.3.

Sanitary conveniences will be required to be maintained in a safe, sanitary and good working order as per the requirements for all habitable buildings.

Proposal 3: Requirements for kitchens



The DOH proposed that lodging houses that provide a kitchen are required to meet the standards of the NCC. This would ensure lodging houses would provide a means for food rinsing, utensil washing and the sanitary disposal of associated waste water, a means for cooking food and a space for food preparation. In addition to these standards, it was proposed that a kitchen would need to provide adequate food storage, refrigerator space and cooking facilities.

54% of respondents supported the provisions while only 16% were unsupportive of requirements. Comments from respondents who were unsure or unsupportive of this proposal raised concerns about the provision of kitchens without commercial specifications being inadequate for these kinds of facilities.

This was considered particularly relevant for larger premises due to the potential increased risk of fire with inadequate facilities. Concerns were also raised about insufficient exhaust and extraction systems. In addition, there were concerns domestic kitchens would not withstand accommodating larger numbers of people in a lodging house arrangement. It was suggested by a few respondents that larger premises should be required to comply with AS 4674 'Design, construction and fit-out of food premises' while exempting smaller premises. It was suggested by numerous respondents that guidance material would need to support what adequate meant if this terminology is used.

Recommendation:

The DOH recommends that lodging houses have specified provisions for kitchen and cooking facilities.

For building classes that must provide kitchen facilities according to the NCC Volume One and Two, the following performance requirement must be met;

- *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

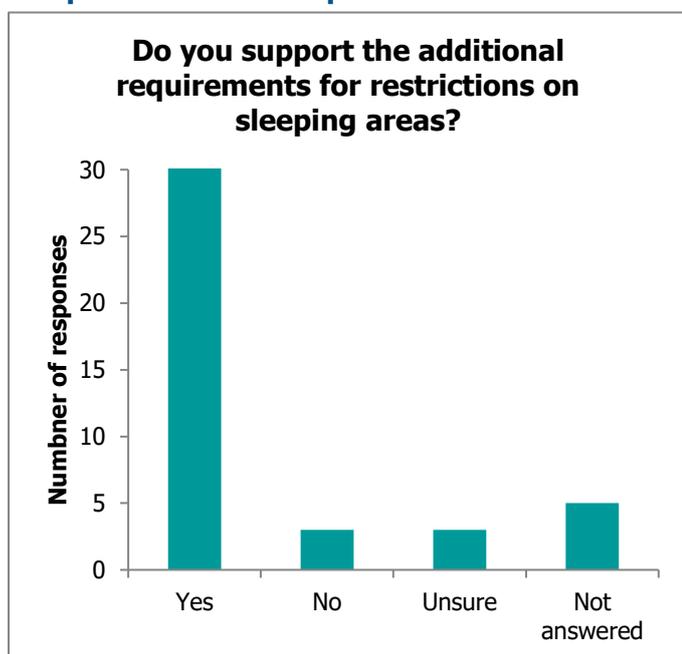
In addition to these requirements regulations will require a lodging house that provides a kitchen to provide adequate:

- Food storage facilities and cupboards
- Refrigerator space for storage of perishable goods
- Cooking facilities for the amount of lodgers

Guidance information will contain details about what would be considered ‘adequate’. This will include requirements for larger operations which would be better suited to more commercial type facilities and relevant standards that are applicable. Businesses which operate a commercial kitchen will continue to be dealt with under the Food Act 2008.

Cleaning and maintenance of fixtures and fittings will be covered under new housing regulations under general requirements for habitable dwellings to have fixtures and fittings maintained in safe, sanitary and good working order.

Proposal 4: Use requirements



In addition to the overcrowding provisions in the housing regulations, which will require habitable rooms to provide adequate sleeping space and ventilation, two additional requirements were proposed. These were; sleeping rooms to be accessible without passing through a room being occupied by another person; and having a minimum space of 5.5m² (including the bed) for each patron in the room (except in a hostel or recreational campsite for short term use).

75% of respondents agreed with this proposal. Comments were largely supportive of these measures to manage the public health risk with overcrowding and address privacy considerations. There were some concerns however that these restrictions may prevent innovation in the budget accommodation

market such as capsule hotels or split hotel rooms.

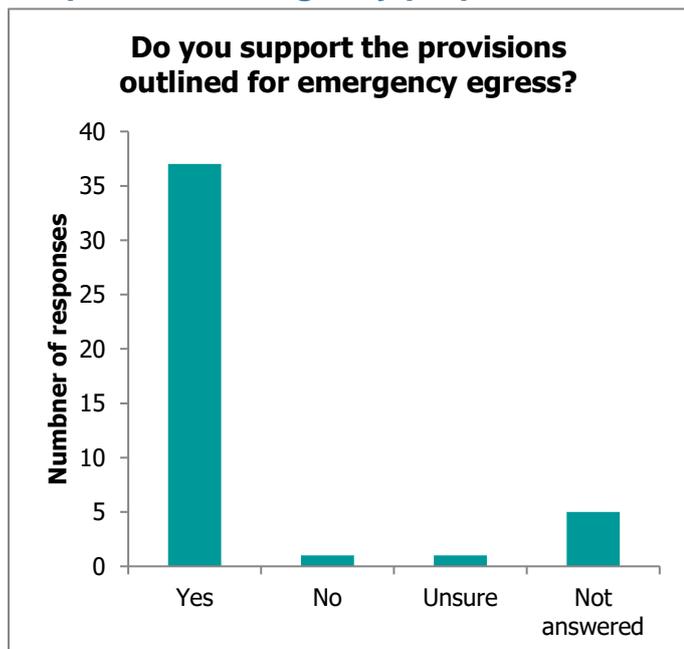
Recommendation:

The DOH recommends that the proposal for additional requirements for restrictions on sleeping areas are adopted.

In addition to the overcrowding provisions provided by the housing regulations lodging houses will be required to have a minimum of 5.5.m² (including the bed) for each patron in the room for longer term sleeping accommodation (more than 28 consecutive days) or 2m² in any other case.

Privacy provisions will be included so that a room which is not accessible without passing through a room in the private occupation of another person, will not be able to be used for sleeping purposes.

Proposal 5: Emergency preparedness requirements



The DOH proposed that lodging houses should be required to maintain sufficient exit capacity to allow for the safe movement and egress of residents in the event of an emergency. This would include compliance with the relevant standards in the NCC Volume One section 3.7 and NCC Volume Two in sections D and E for exits, locks, and evacuation lighting. In addition to the NCC requirements it was also proposed that maintaining unobstructed exits and displaying evacuation plans could be required.

This proposal was supported by 37 out of 39 persons that provided a response. Only one respondent did not support this, and one was unsure. Comments centred around the need for clear guidance information particularly due

to the complexities of the NCC and the different classes of buildings that lodging houses may belong to. It was also suggested that an emergency management plan may be a useful inclusion as part of emergency preparedness requirements. One respondent raised the issues of performance solutions which may be used in new buildings which could potentially affect capacity, safe operation and egress requirements.

Recommendation:

The DOH recommends that this proposal is adopted. Lodging houses will be required to provide sufficient exit capacity and evacuation lighting to allow for safe egress in the event of an emergency.

The DOH will include the following provisions to allow for safe egress:

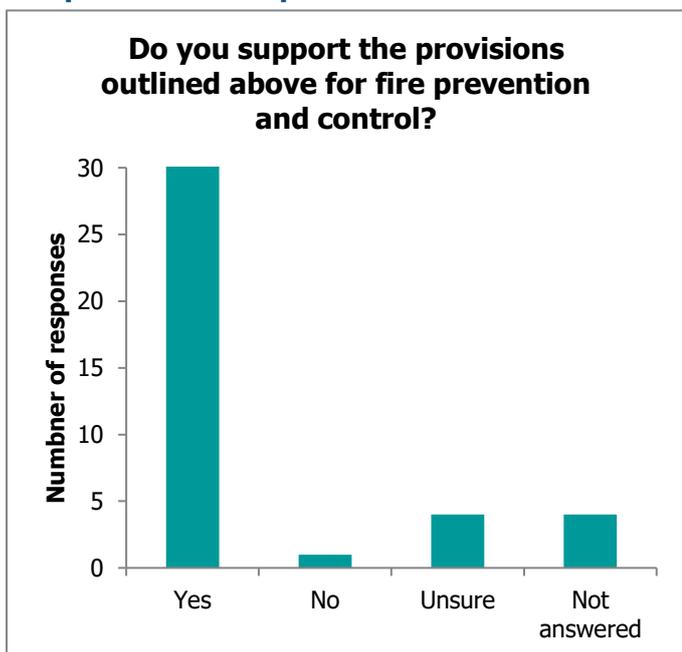
- *All internal/external exits and paths to an exit must remain unobstructed at all times*
- *Evacuation plans must be displayed where easily visible to occupants at primary entry points and behind each accommodation room door*
- *For Class 3 buildings, all exit doors and passages must comply with all relevant requirements under section D, Volume One of the NCC*
- *For Class 1 buildings, an operator will not be permitted to be fit to an exit door, a lock or other device which prevents the door from being opened from within a lodging house*
- *All locks and locking devices on a required exit for Class 2-9 buildings must comply with section D2.21, Volume One of the NCC*
- *The minimum requirement for smoke alarms and evacuation lighting for all lodging houses is as per section 3.7.5.4, 3.7.5.5 and 3.7.5.6, Volume Two of the NCC, for Class 1b buildings*
- *Where higher standards apply, for example Class 2-9 buildings (Volume 1 of the NCC), smoke hazard management, emergency lighting and exit signage must comply with NCC Vol One Part E2 & E4*
- *Where exit signs are required they must comply with AS/NZS 2293.1:2005 and be maintained in good working*

Detailed information on complying with the relevant Australian Standards and the National Construction Code will be included in guidance information for authorised officers. The DOH will require the inclusion of an emergency management plan (including evacuation plans) as part of the initial documentation required upon application for registration of a lodging house. The standards from the NCC will be included to ensure authorised officers have recourse if applicable standards are not continuing to be met in the ongoing inspections they will perform.

Any performance solutions used in the design of a lodging house that will impact on maximum capacity or ongoing operational requirements of the building will need to be disclosed by the applicant at the time of application and be noted on the certificate of registration. This will be the same as the approach used by public buildings.

It is acknowledged that older establishments will not comply with current construction standards. The DOH will provide guidance information on how best to assess emergency preparedness requirements for premises where the NCC standards are not applicable.

Proposal 6: Fire prevention and control



The DOH proposed provisions to ensure lodging houses are required to provide adequate fire protection, prevention and control measures to allow for an effective first response to a fire within a lodging house.

These included the relevant standards from the National Construction Code Volume One and Two in relation to smoke alarms, evacuation lighting, firefighting equipment and smoke hazard management.

It was also proposed that all firefighting equipment be clearly visible, accessible and maintained in good working order in accordance with the manufacturer’s instructions at all times.

Other suggested prevention measures related to smoking within a lodging house, provision of fire blankets and fixtures/fittings being non-hazardous and fire retarding.

80% of respondents agreed with these proposals. Several comments pertained to the need for specific guidance on appropriate materials to resist the spread of fire. Multiple respondents commented that this could be something that could be difficult to assess and enforce. It was also suggested that there should be collaboration with DFES to ensure their expertise guide authorised officers in their role in fire prevention and control.

There were some respondents who felt that it was unfair to place the onus on the operator of such establishments to control what guests bring into their bedrooms, that might be considered a fire hazard.

Recommendation:

The DOH recommends that this proposal is adopted. Lodging houses will be required to provide adequate fire prevention and control measures.

In addition to the provisions outlined in proposal 5, the DOH will require Class 2-9 buildings provide firefighting equipment as per Volume One of the NCC Part E1.6.

All firefighting equipment and essential fire safety measures within a lodging house (including fire blankets, fire extinguishers, emergency lighting, evacuation lighting, fire hose reels, fire hydrants, fire sprinkler systems, smoke alarms etc.) will be required to be clearly visible, accessible and maintained in good working order in accordance with the manufacturer’s instructions at all times.

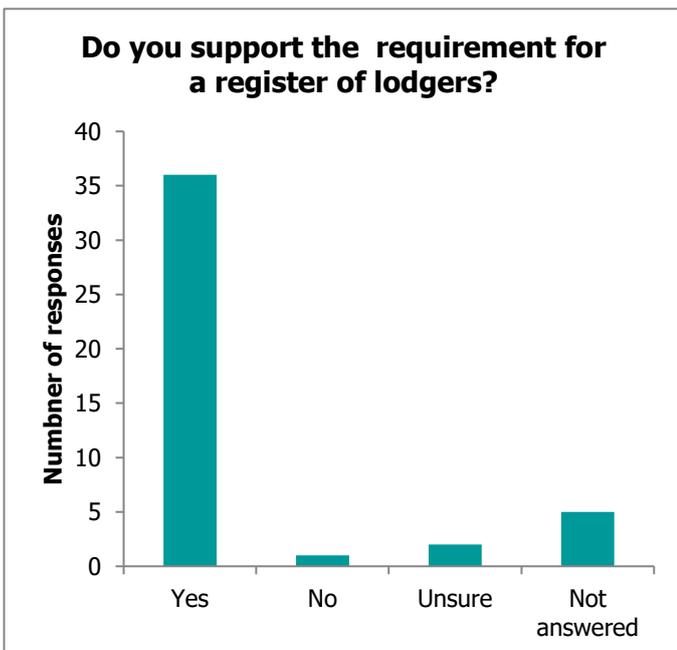
Other fire prevention requirements will include;

- The provision of a fire blanket within a kitchen
- Items likely to cause a fire hazard prohibited from being located within bedrooms or dormitories (guidance on such items will be provided for examples candles, matches, lighters etc.)
- Materials used in bedrooms or dormitories (drapes, curtains, blinds, furniture, upholstery, floor covering and beds) must adequately resist the spread of fire and limit smoke (guidance material will be provided on this)
- Fire extinguishing appliances as directed by local government (where no requirements exist under the NCC).

The DOH proposed continuing existing local law requirements prohibiting smoking within a lodging house which was well supported by respondents. Upon further investigation it is considered that lodging houses could meet the definition for public places under the Tobacco Products Control Regulations 2006 which regulates smoking in public places. The DOH will seek further legal opinion on whether this would be a duplication or could be included.

Training and guidance information will be provided with the implementation of this legislation to ensure authorised officers are familiar with the relevant requirements. The focus of requirements for fire prevention and control is to enhance the prevention of, and first response to a fire, before emergency services arrive.

Proposal 7: Administrative requirements



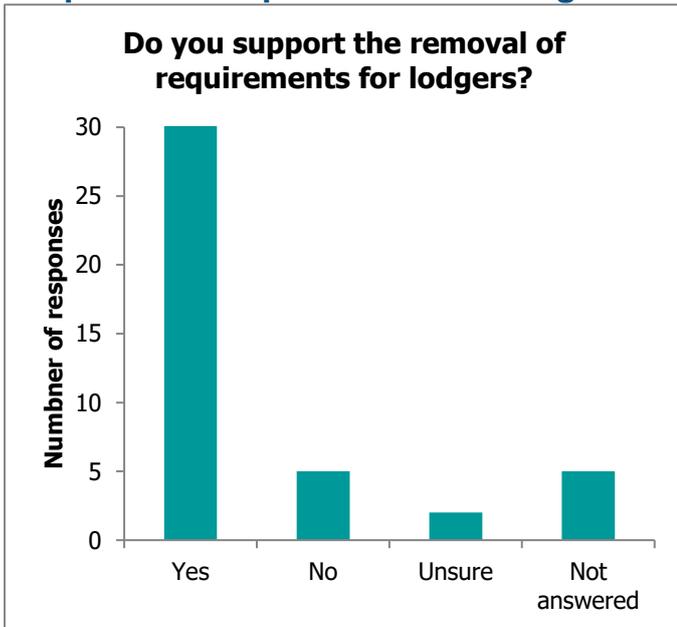
This proposal outlined requirements for lodging house operators to maintain a register of all lodgers. This is to allow operators to be aware of, and account for, all persons who are accommodated in the building in the event of an emergency.

81% of respondents supported this proposal. Respondents emphasised that this should be restricted to emergency use only, however total numbers may be required to give oversight into overcrowding outside of an emergency. It was also noted that this may be important for infectious disease tracking particularly considering the COVID-19 pandemic.

Recommendation: *The DOH recommends that this proposal is adopted. Lodging house operators will be required to maintain a register of all lodgers.*

The regulations will require lodging house operators to maintain a register of all lodgers, including their name, contact details and date of entry and exit. This register will not be made publicly available, but it will need to be made available on request by an authorised officer. This may be in the event of an emergency, or the notification of infectious diseases or where there are suspicions of overcrowding.

Proposal 8: Requirements for lodgers



Historically local health laws contained requirements for people who stayed in lodging house accommodation. For example, local laws would require that lodgers could not keep food or smoke within their bedroom. Most respondents agreed with not carrying over any requirements for lodgers.

72% of respondents supported removing these requirements. A few respondents felt that removing these requirements may increase the difficulty for an authorised officer to be able to act on lower health and safety standards of lodgers, however it was also noted that it would be difficult for local governments to take actions against individual lodgers.

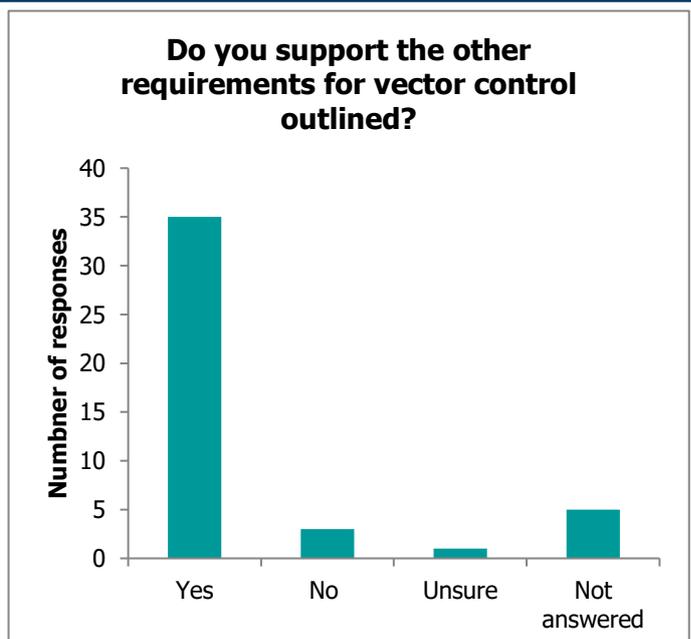
Recommendation:

The DOH recommends that this proposal is adopted. No requirements for lodgers will be carried over in to new legislation.

Proposal 9: Vector control

It was proposed that lodging house operators be required to prevent the breeding or harbourage of disease vectors within a lodging house due to their role in preventing the spreading of disease. This proposal was supported by 79% of respondents.

Comments suggested that this was a standard requirement to manage environmental health issues that come from pests which can act as disease vectors. Guidance material was considered necessary to provide clarity and detail related to vector control issues within lodging houses.



Recommendation:

The DOH recommends that this proposal is adopted. Lodging house operators will be required to prevent and control disease vectors.

Lodging house operators will be required to prevent the breeding or harbourage of disease vectors and implement control measures when required by an authorised officer. This may be in relation to:

- *Harbouring a disease vector*
- *Breeding a disease vector*
- *Food sources for a disease vector*
- *Transmission of an infectious disease to humans by a disease vector*
- *The elimination or eradication of disease vectors on a premise.*

Further information on vector control will be contained within guidance material produced by the DOH which accompanies the regulations. Guidance information will cover issues around vector control in a lodging house such as inappropriate food storage, inadequate cleaning, issues around bedding, pest entry points and inadequate pest control.



Further comments and stakeholder impacts

There are multiple government agencies working on budget accommodation legislation at this time. The DOH recognises that legislative changes in both the Residential Tenancies Act and short-stay accommodation may impact any regulations drafted by the DOH in relation to lodging houses. The DOH will continue to work with the relevant government departments to ensure that there is no duplication or regulatory gaps. In addition, the DOH will strive to work with any other government departments that may be affected by any changes such as DFES and DRGL.

Next Steps

The information gathered in this consultation indicates that there is a majority preference for ongoing regulation of lodging houses under the Public Health Act.

The DOH will seek to further refine the definition of a lodging house and work with other government bodies to ensure no regulatory duplication or gaps.

Once this information has been finalised, the DOH will consider the need to develop a regulatory impact statement based on the significance of the economic impact these regulations may pose.

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

Appendix 1 – Consultation submission list

Local government
Shire of Augusta Margaret River
City of Bayswater
City of Belmont
City of Bunbury
City of Busselton
Town of Cambridge
Shire of Capel
Shire of Chittering
City of Cockburn
Shire of Dandaragan
City of Gosnells
City of Greater Geraldton
City of Joondalup
City of Kalamunda
City of Kalgoorlie-Boulder
Shire of Leonora
City of Mandurah
Shire of Mundaring
Shire of Murray
Shire of Narrogin
City of Nedlands
City of Perth
Shire of Serpentine-Jarrahdale
City of Subiaco
City of Swan
Town of Victoria Park
City of Wanneroo
Shire of York
Industry Groups and Associations
Australian Council on Smoking and Health
ANZ Enviro
Cancer Council
Fremantle Hostel
Kangaroo Inn
Metropolitan Environmental Health Managers Group
Ray White Kalbarri
Shelter WA
Western Australia Local Government Association
State government
Department of Primary Industries and Regional Development
Department of Planning, Lands and Heritage

* Respondents who wished to remain confidential were not included in this list

Appendix 2 - Citizen Space online survey questions

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 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 2016* using new housing regulations**? Why or why not?

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

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? Do you support the exclusions: Why or why not?

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

Question 8: Do you support the requirements for assigning maximum accommodation? Why or why not?

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 kitchens? 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 for emergency egress? If not please detail why.

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

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

Please detail the positive and negative impacts on you or your organisation.

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.



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