

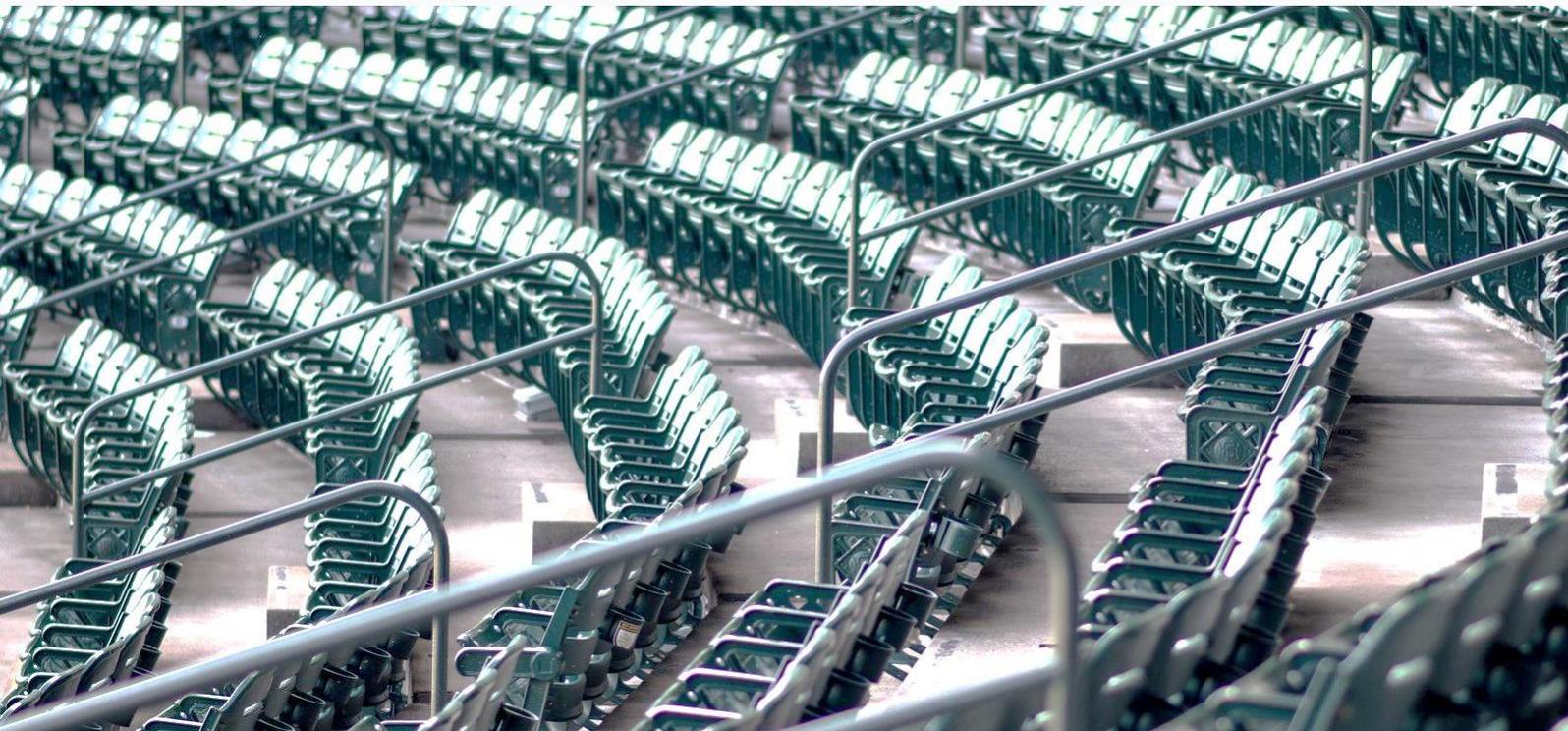


Government of **Western Australia**
Department of **Health**

Consultation Summary Report

**For the discussion paper –
Management of public health risks in public buildings**

May 2019



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Summary

This report summarises the information received by the Department of Health (DOH) in regards to its consultation on public buildings. It also summarises the responses and intended next steps of the DOH. It is not possible in a summary report to represent every view, so this report attempts to capture the main issues and themes raised and the key points of contention.

In October 2018 the discussion paper '*Managing public health risks in public buildings in WA*' was released for a thirteen week comment period, with a number of late submissions accepted. The paper discussed two options, repeal of the existing regulation without replacement and ongoing regulation under the *Public Health Act 2016* (Public Health Act), and presented a number of proposals for potential future regulations.

The purpose of this consultation was to inform the implementation of the Public Health Act and associated review of existing regulations under the *Health (Miscellaneous Provisions) Act 1911* (Health MP Act), in particular the *Health (Public Buildings) Regulations 1992* (Public Buildings Regulations). The DOH sought to gain a better understanding of the potential impacts on and opinions of industry, local government, other government agencies and members of the public associated with the management of public health risks in public buildings.

The DOH received a total of 68 responses during the comment period. There was strong support (84%) for the ongoing management of public buildings under the Public Health Act and varying levels of support for the proposals. The DOH has analysed the responses and proposed their adoption or modification.

There was general agreement from all sectors that any approach should be risk based, and if new regulation is to be developed that it must be clear on which buildings will be covered and excluded. Measures to reduce red tape were generally widely supported, as were measures to reduce duplication with the NCC.

A number of responses confused public buildings with events (which will be regulated separately under the new Act) – as such these comments have not been included and will be taken into consideration as part of the consultation on the proposed events regulations. The comments in this document are the views of respondents only, and should not be taken as the views of the DOH. Recommendations by the DOH have been provided in italics.

Methodology

The definition of a public building is very broad and it was not feasible to attempt to contact every public building owner in the state for comment. Non-government consultation was focussed on industry groups rather than individuals; however individual stakeholders were identified through the Yellow Pages using the following categories:

Aged care services	Function centres & organisers	Roller skating rinks
Amusement centres	Halls	Schools
Building professionals	Ice skating rinks	Shopping centres
Casinos	Indoor sports	Sports
Churches mosques & temples	Kindergartens	Synagogues
Cinemas	Libraries	Technical & trades colleges
Community centres	Museums	Tenpin bowling
Convention & conference venues	Rock climbing venues	Universities & tertiary education colleges

The paper was circulated to a total of 138 local governments, ~30 state agency contacts and ~550 industry stakeholders (including representative bodies and individuals), as well as >400 subscribers to the DOH Environmental Health list server.

Stakeholders were asked to read the DOH’s discussion paper ‘*Managing public health risks in public buildings in WA*’ (available on the DOH website) and provide comment via:

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

Consultation findings

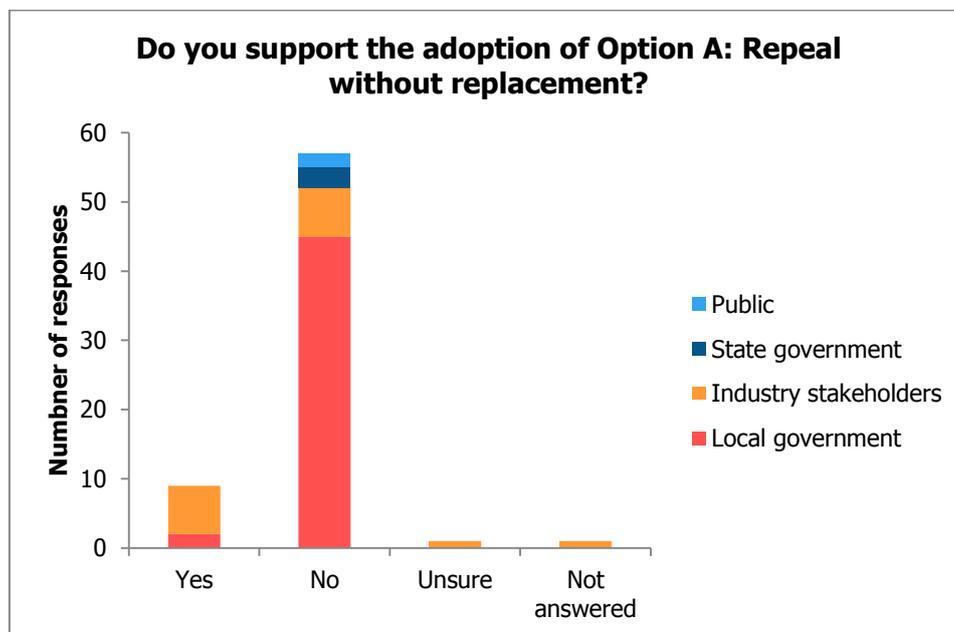
The DOH received a total of 68 responses.

Stakeholder	Responses
Local government	47
State government	3
Industry	16
Public	2
Total	68

17 submissions were received via email and 51 submissions via the online Citizen Space survey. Local government respondents included those from both the environmental health and building professions. Responses were received from only 3% of the industry stakeholders contacted. The response rate for this consultation is slightly lower than would be expected (<9.5%) compared to other external online consultation which typically averages a response rate of 10-15%.

Findings on regulatory options

Respondents were asked to nominate their preferred option out of repealing the regulations without replacement and developing ongoing regulations under the Public Health Act.



Option A: Repeal without replacement

13% of respondents supported the repeal of regulations without replacement. Of these, two respondents were from local government, and seven were industry stakeholders.

The benefits cited of adopting this option were seen to be:

Lower costs and reduced burden for industry – many industry respondents noted that they are already subject to significant costs and regulation by a number of agencies and bodies of legislation, which may include the NCC, the Department of Racing, Gaming and Liquor (DRGL), the Department of Fire and Emergency Services (DFES), local government planning processes, Worksafe and the WA Police (WAPOL). For buildings of low risk this is particularly burdensome.

Reduced administrative burden and better allocation of resources for local government - respondents noted that this option would reduce administrative burden on local governments and free authorised officers to focus on higher areas of risk. It was also suggested that many building surveyors have little understanding of the Public Buildings Regulations, so requirements would be better placed under the NCC.

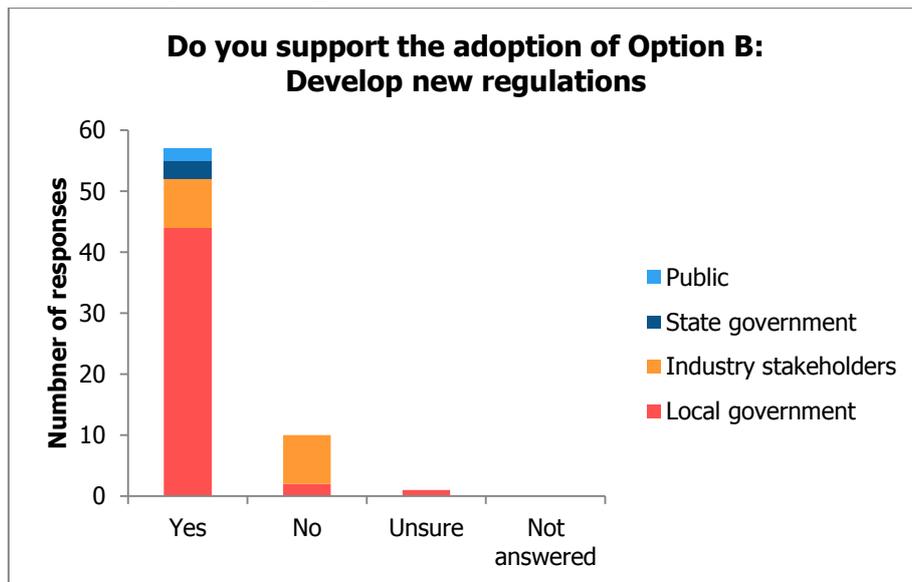
National consistency – It was noted that there has been a trend nationally to remove the operational safety requirements of buildings from health legislation, and WA is now the only state where this is still the case. Working toward national consistency would support owner/occupiers who also operate interstate. However some local governments indicated that they would likely make local laws to control issues, leading to vastly different approaches, which is ultimately a worse outcome.

Respondents who supported this option did note that the public need to have confidence that public buildings are safe for use, and a number supported the principle of risk-based legislation but did not necessarily support Option B.

Respondents perceived the disadvantages of Option A as follows:

- Self-regulation may lead to a decrease in public health standards. It was suggested that profit and cost-cutting would take precedence over public health if an independent agency was not involved, and it was considered that the risks are too high for a self-regulatory scenario. It was stated that there is a community expectation that government will provide oversight and keep the building safe for the public.
- The NCC does not govern ongoing operation of the building or health issues, and only the Public Buildings Regulations contain the power to close non-compliant buildings or deal with complaints. There would also be no ability to set the maximum occupancy in unlicensed venues (although it is recognised this is already the case for other buildings not classed as public buildings), and occupancy permits are not issued retrospectively
- Authorised officers inspect many premises under the *Food Act 2008* (Food Act), so in some instances there is little additional inspection burden. It was suggested that building surveyors are reluctant to carry out inspections which could open them to litigation
- The knowledge and experience of authorised officers in this area would be lost over time, as they would no longer be familiar with the issues. Complaints would be directed elsewhere. It would also represent a missed opportunity for authorised officers in providing an educational role for business owners (including considering other information, such as effluent systems)
- The general public health duty would be unlikely to act in a proactive manner to prevent incidents, as officers would only become aware of issues if complaints were made
- Lack of registration may create difficulties in identifying business owners, which could impact on enforcement action associated with the general public health duty
- Failure of self-regulation could result in increased complaints to local government, and therefore increased time commitments.

Option B: Provide new, updated regulations under the *Public Health Act 2016*



There was broad support for ongoing regulation under the Public Health Act, with 84% of respondents supporting Option B. Of these, 77% were from local government. 50% of industry respondents supported this option, and 100% of the state government and public respondents.

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

Protect public health – many respondents saw this option as the only way to continue to ensure public health outcomes could be met. Proposed new regulations would provide powers to close a non-compliant building, a mechanism for prescribing maximum occupancy to prevent overcrowding, penalties for non-compliance, issuing of infringements and allow immediate action to be taken. Respondents noted that this legislation ‘fills gaps’ between other pieces of legislation, and that without it public health would be compromised. Ongoing regulation was seen to be needed to satisfy the government duty of care to ensure that buildings are safe for the public to use.

Consistency and certainty – some respondents noted that state-wide legislation is needed to provide certainty to enforcement agencies and industry. Without state-wide legislation piecemeal requirements could be developed via local laws. The new Act binds the Crown and as such will ensure legislative requirements can be applied consistently across the state. It was also noted that this process provides a good opportunity to improve the regulations and recognise the changing environment around venues, and reduce duplication between different agencies such as the Building Commission, DRGL and DFES.

Maintaining corporate knowledge – local government authorised officers have been responsible for public buildings for many years and have the body of knowledge on their ongoing maintenance. Their inspections also provide an opportunity to work collaboratively with owner/occupiers to identify discrepancies and educate on public health issues.

Other perceived benefits included:

- It ensures that owner/occupiers are accountable for public health and safety in their buildings
- May be more cost effective for local governments; as legislative requirements can be applied proactively, there is the opportunity for cost recovery and less time would be spent chasing up complaints.

Arguments made by respondents against adopting Option B included that:

- Authorised officers are already required to deal with a very broad range of tasks, and it may make sense to shift this responsibility to the profession which specialises in buildings
- The *Building Regulations 2012* (Building Regulations) already allow for maintenance inspections
- Proposed changes to the regulations may not adequately address the issue of duplication of building legislation
- It may introduce/maintain red tape and cost to owner/occupiers
- Some believe that the advantages of ongoing public building regulation do not outweigh the regulatory burden, given that the risks are generally so low. Some local governments (particularly in regional areas) have low numbers of high risk premises which self-manage effectively, and meet the requirements of the NCC.

Alternative options and proposals

Respondents described a number of additional options, or proposals that could supplement the options provided by the paper.

- Multiple respondents suggested that building legislation (including the *Building Act 2011* (Building Act), the Building Regulations and the NCC) should be amended to deal with the matters sought to be addressed in the Public Buildings Regulations. This was suggested both as a replacement for, and in addition to, ongoing public building regulation under health legislation. It was suggested that changes to building legislation could include:
 - The introduction of ongoing mandatory inspections by building surveyors for the purposes of quality control. The Building Regulations section 48A already requires the maintenance of safety measures in buildings and allows for building surveyors to conduct maintenance inspections
 - Expansion of the occupancy permit fields to include details of performance solutions, which would support not only authorised officers but current and future owners and occupiers of the building
 - Expansion of occupancy permit provisions to include public health factors, so that building surveyors could issue the maximum occupancy. It was suggested that operational inspections could be conducted by the DFES or the DRGL, or health authorised officers
 - Dealing with shortfalls in performance solution documentation under building legislation, rather than health legislation
 - Capturing all areas outside a building (including beer gardens, courtyards and external exit paths) under the NCC to ensure they are adequately assessed for maximum occupancy
 - Amending the Building Act to recognise the Public Buildings Regulations with the ability to stop the clock on applications (as is currently done for wastewater and aquatic facilities issues)
- Move towards a more generic risk-based approach, similar to the DFES requirements under the *Fire Brigades Act 1942* – authorised officers could capture public buildings as registered premises (but not be involved in issuing maximum occupancy), then inspect as was felt necessary and assess the risks, rather than checking against prescriptive requirements. The powers to require exits to be cleared, to close a building etc. would all be retained.
- A number of external certification-type models were presented:
 - In line with the model used in South Australia and possibly other states, owner/occupiers could be required to submit safety certification annually for higher risk buildings. This would involve expansion of building legislation

- Fire services companies who inspect fire hoses and reels could expand their inspections to include other aspects relevant to building fire safety. These reports could then be submitted to the local government to act on any major non-compliances
- Follow the same outcome based standard approach as adopted for food safety. High risk premises are defined and are required to implement a risk management plan (RMP) in accordance with the referenced Australian Standard or alternative code. The RMP is then audited and forwarded to local government.

Recommendation:

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

The Public Buildings Regulations are not a duplication of the NCC as they serve a different purpose, which is the ongoing management of public health risks associated with the building. The DOH committed to removing existing construction requirements from the Public Buildings Regulations in line with the agreement that construction is the domain of building legislation and the ongoing operation of a building should be dealt with by health legislation and health authorised officers. However, some of the requirements requested to be adopted into the WA Appendix to the NCC were refused. It should be noted that the DOH has no control over changes to legislation administered by the Building Commission.

It is recognised that the Building Regulations contain a maintenance clause (48A), however there is no indication that this is being used in a proactive manner for building surveyors to conduct inspections at present. Anecdotal evidence suggests that this clause may be used to deal with complaints, rather than as a tool for ongoing enforcement. Building legislation also does not contain powers to close a public building, which is of key importance if the building presents a risk to the public.

The DOH acknowledges that industry is subject to a range of requirements in relation to venues, particularly those that are licensed. However, the public health impacts of these areas are not adequately addressed under any other legislation. While other agencies may also be inspecting public buildings, inspections by authorised officers capture all venues of public assembly while other agencies may only capture subsets. Often public buildings inspections are combined with other environmental health inspections (such as food safety or aquatic facilities). They are also the most frequent and serve a different purpose to other agencies:

- *DRGL only inspect licensed premises, and in an infrequent manner. They are inspected for compliance with the Liquor Control Act 1988 and the conditions on the liquor licence, including minimum standards for emergency exits, emergency lighting, evacuation plans, core doors, smoke alarms, fire extinguishers, fire blankets, secondary exits, electrical safety and obstructions*
- *DFES inspections are only undertaken from a fire safety point of view. The DOH has been advised that the purpose of these inspections is primarily for fire crews to understand the layout and risks involved with the building in preparation for any emergency rather than compliance, although crews will look at service tags on fire equipment and any installed fire safety system they may need to use.*
- *WAPOL, Licensing Enforcement Division also inspect only high risk licensed premises, and are primarily concerned with the safe and compliant service of alcohol (although they will consider overcrowding if it appears to be an issue)*
- *WorkSafe are focussed on the health and safety of workers under the relevant occupational health and safety legislation, rather than the safety of the visiting public and respond on the basis of complaints received and perceived level of risk.*

- Local government planners are not involved in the ongoing maintenance of buildings

For these reasons among others, it is believed that the ongoing safety of public buildings is best ensured through new legislation for public buildings, enforced by local government authorised officers.

Findings on proposals

The discussion paper made a number of proposals for what Option B: Provide new, updated regulations under the Public Health Act could look like. Comments on these proposals have been detailed below, along with DOH responses. It is recommended that the following options are progressed:

Proposal 1: Amend the definition of a public building is not adopted, and that the NCC Volume 1 definition of an assembly building be adopted with appropriate amendments instead.

Proposal 2: Requirement for registration is adopted.

Proposal 3: Requirement for an annual or other fee is not adopted, and that fees continue to be charged as they are at present, with local government discretion on the frequency

Proposal 4: Amend risk management plan requirements is adopted.

Proposal 5: Improve transparency of performance solutions is not adopted, as this information is required to be provided to local government under existing legislation.

Proposal 6: Requirements for temporary structures is not adopted, as temporary buildings and incidental structures associated with a building are already regulated under existing legislation. Temporary structures at events will be dealt with separately.

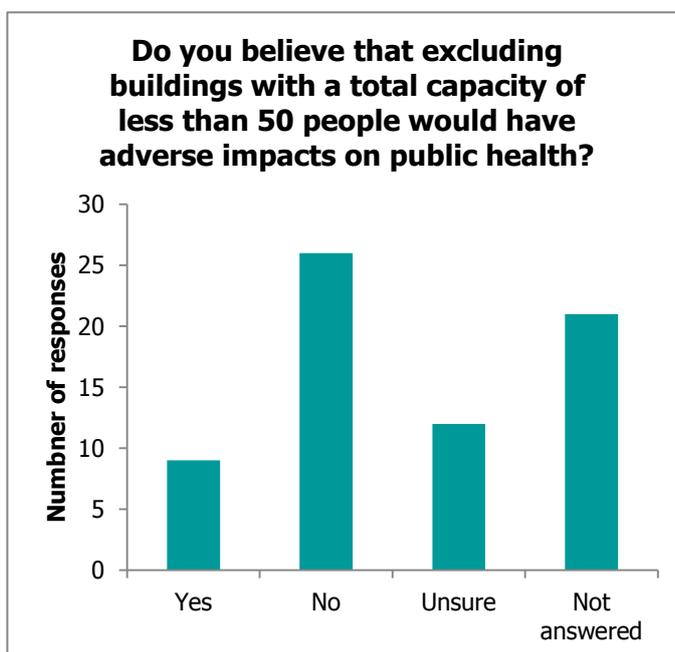
Proposal 7: Repeal electrical requirements from the Public Buildings Regulations is adopted.

Proposal 8: Repeal requirements adopted into the NCC 2019 and **Proposal 9: Repeal various other requirements** are partially adopted, with further clarification on where construction requirements may need to be retained in the Public Buildings Regulations.

Proposal 1: Amend the definition of a public building

Proposal 1 made suggestions for amending the definition of a public building. Views were broad and conflicting, with a number of key elements emerging in the responses.

- The definition should be based on risk with scalable requirements. While there is majority support for excluding buildings for less than 50 people in order to simplify the definition, it was stated that this should be undertaken with a view to the wider risk context as some small buildings, such as laser tag centres



or escape rooms, can still pose a high risk to public health.

- A number of respondents supported the use of the NCC definition of an assembly building or close alignment with this definition in order to support existing systems. The reasons in the paper for not doing so were challenged.
- There was some support for maintaining a broad definition and for retaining the current definition. Some respondents suggested that fewer buildings should be captured in order to focus resources on areas of high risk, particularly regional areas where there is no full-time authorised officer.
- There was some support for clearly defined exemptions, and it was widely recognised that clarity is needed for the benefit of all stakeholders.
- Some respondents indicated the proposed changes to the definition would not represent a significant burden to them, particularly in regional areas. Others (particularly in regard to the buildings for consideration) indicated that their addition would be onerous.
- There were very few comments on the intention to include a purpose rather than a spontaneous gathering of people.
- A number of respondents agreed with the inclusion of outdoor areas (such as beer gardens) and suggested that at present, the occupancy of outdoor areas may not be reflected in the provision of facilities such as toilets. It was also suggested that exits, paths and steps in areas external to the building need to be considered.

Exclusion of current building types and proposed exclusions

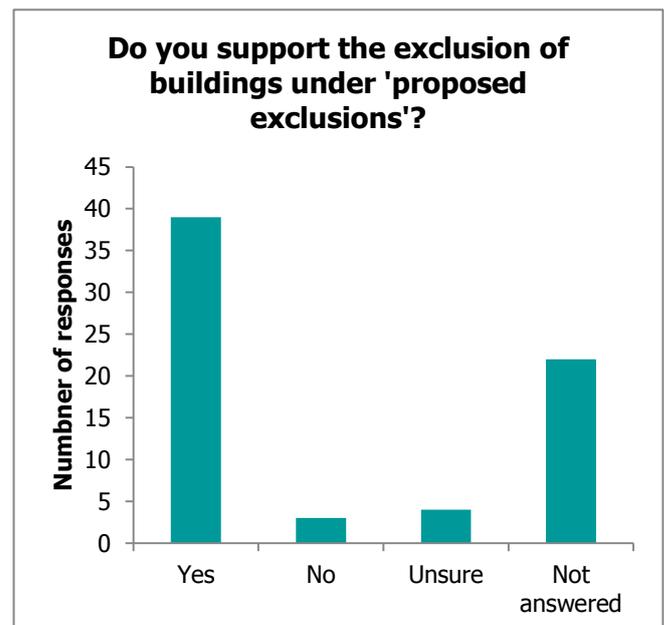
39 respondents (85%) to this question supported the continuing exclusion of buildings under 'proposed exclusions'. This included correctional centres, places of childcare, private healthcare facilities and places of transit. Respondents reiterated the justifications in the paper and noted that there is a need to minimise duplication, and therefore any areas that are under the control of other agencies should be excluded.

Some respondents requested further information on the existing management of these buildings, and suggested that any public gathering-type buildings that are not regulated under other legislation should be captured as a public building.

It was also noted that if the NCC definition of a public building was used then this would simplify the process given that many of these buildings are already excluded.

15 respondents stated they did not believe any existing public buildings should be removed from the definition. Other buildings suggested for exclusion from the definition included:

- School and university auditoriums (considered alongside the organisation's own risk management practices), school classrooms and trade/practical areas, and pre-schools
- Premises that are used for religious purposes – one respondent indicated that it can be difficult for authorised officers to access these buildings, with no contact details provided and buildings being closed during office hours
- Gymnasiums
- Youth club buildings



Excluding buildings with capacity less than 50 people

Stakeholders were asked whether they believed that excluding buildings with a capacity of less than 50 people would affect public health. Of 47 respondents, 55% did not believe so.

Support for excluding buildings with occupancy less than 50 people included comments that:

- Under normal circumstances, groups under 50 are easily evacuated from a building. In these cases, it would be sufficient to use the general public health duty if an issue or complaint arises
- The risks are so minimal that the administrative burden of including these buildings greatly outweighs any benefits
- The threshold could be even higher, with suggestions of 100 people, 200 people in a licensed venue or any other venue with more than 1000
- It will be difficult to develop a definition without having an extremely broad scope capturing a significant number of building types. Have a capacity limit simplifies this process
- Clarification would need to be made with respect to buildings where rooms may individually hold less than 50 people but lead to common exit pathways shared by many more than this (such as a high rise teaching institution).

The primary argument against excluding buildings with occupancy of less than 50 was that it does not necessarily represent a risk-based approach, and that local government need discretion to capture buildings that may be small but high risk. Instances where a building with a capacity of less than 50 people could still be high risk include:

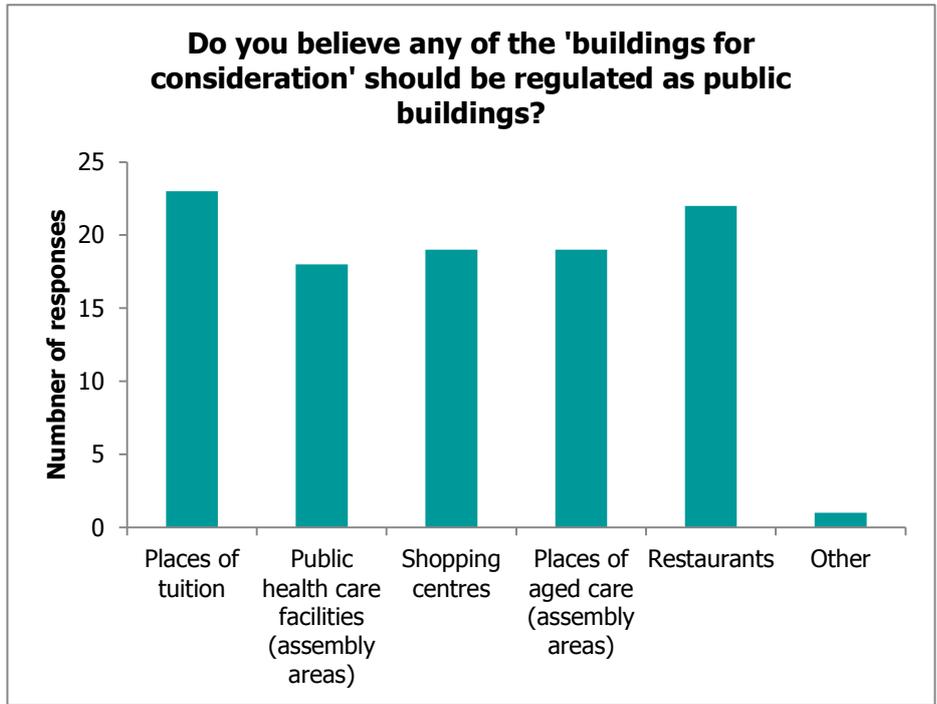
- A small bar being hired out and overcrowded
- Anywhere there could be egress difficulties, such as more than one room, stairs, steps or an elevator
- Buildings where there is low light, obstacles etc. (such as laser tag or an escape room).

Other suggestions and concerns with this proposal include:

- It may be difficult to administer and enforce, and would be worthwhile instead for these small buildings to remain compliant with operational aspects (such as keeping the exits clear) without needing to be inspected by local government
- They could be managed in a similar way to premises under the Food Act, where premises notify the local government but can then be classified as exempt. If the use changes, the owner/occupier would have the responsibility to inform the local government to enable a further risk assessment to be undertaken
- An exemption based on occupancy should not be applied to every type of use, as some premises should be captured regardless of their capacity (such as small bars). Such an exemption would also need to consider the distinction between a single room or a building as a whole
- There is a potential for this to be exploited by owner/occupiers wanting to avoid compliance requirements.

Buildings for consideration

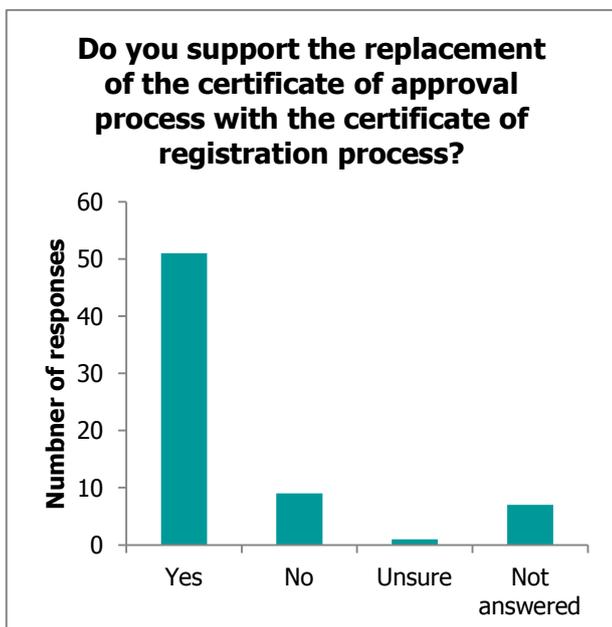
There were varying opinions on each of the buildings for consideration, which included places of tuition, public health care facilities, shopping centres, places of aged care and restaurants. It was noted that each has the potential to pose a risk to public health, particularly through blocked exits and those that tend to be visited by vulnerable populations. Others stated that these buildings should already have their own risk management and evacuation plans in place, therefore additional regulation may not be necessary.



Some respondents suggested further information was needed on the current regulation of each of these types of buildings. It was recognised that to include any additional buildings which are not currently regulated as public buildings will impose costs on local government and on industry, and that a cost benefit analysis should be conducted before any attempt to do so.

Restaurants in particular were highly contentious. Many respondents believed the risk in some restaurants warranted their regulation as public buildings, and that they may resemble bars and taverns in their operation. However, respondents also noted that the inclusion of restaurants would be onerous, time-intensive, politically challenging and pose additional costs for industry. Respondents made various suggestions that restaurants should only be included if:

- They have entertainment (or patrons attending a specific public event)
- They seat more than a certain number of people (100 and 200 were suggested)
- They have function rooms
- They are not attached to a licensed venue or shopping centre
- They are licensed or BYO.



Comparable legislation

Respondents were asked to answer a question regarding any instances of comparable regulations that applied to buildings which were not public buildings, in order to identify potential duplication. 22 respondents stated they could not identify any instances of comparable regulation. Of those who did, the most commonly cited was building legislation, including the maintenance of safety measures under the Building Regulations (section 48A), the NCC definition of an assembly building, and the NCC generally. One respondent noted existing requirements for lodging houses, psychiatric hostels and aged care, and one respondent suggested WorkSafe legislation may

be sufficient to manage places such as training rooms in organisations.

Recommendation:

The DOH recommends that this proposal is not adopted, and that the NCC definition of an assembly building is adopted with minor amendments. It is agreed that building assessment processes are already determining whether or not the building is an assembly building and aligning with this existing system will reduce confusion, while still achieving the public health outcome of protecting health in areas of public gathering, particularly as events will be regulated separately.

Under the NCC 2019:

Assembly building means a building where people may assemble for—

- (a) civic, theatrical, social, political or religious purposes including a library, theatre, public hall or place of worship; or*
- (b) educational purposes in a school, early childhood centre, preschool, or the like; or*
- (c) entertainment, recreational or sporting purposes including—*
 - (i) a discotheque, nightclub or a bar area of a hotel or motel providing live entertainment or containing a dance floor; or*
 - (ii) a cinema; or*
 - (iii) a sports stadium, sporting or other club; or*
- (d) transit purposes including a bus station, railway station, airport or ferry terminal*

It is recommended that this definition is adopted with the following amendments:

- *licensed premises (as defined in the current Public Buildings Regulations) should continue to be captured, and should also include premises with small bar licences. The presence of alcohol is considered a significant risk factor for public health purposes and these venues should be inspected as public buildings.*
- *(d) buildings for transit purposes should be excluded. Places of transit exist for the purpose of temporary passive assembly in preparation for movement to another location. They do not usually involve prolonged gathering to conduct an activity, and in this have a different purpose and different risks to other public buildings. This has been outlined in the discussion paper. It is also considered that places of transit in WA are already appropriately managed by the Public Transport Authority, Department of Transport and the Civil Aviation Safety Authority.*
- *requirements for (b) assembly buildings for educational purposes will be amended to exclude:*
 - *early childcare centres (further details provided in the discussion paper) and any places of child care which are subject to the Child Care Services (Child Care) Regulations 2006 (further details on this are provided in the discussion paper)*
 - *individual classrooms as the risks are considered negligible. Classrooms typically accommodate a relatively small number of students, are subject to occupational health and safety requirements, are subject to occupancy density requirements in the NCC, students are usually familiar with the building entry and exit points, and are under the direction of a teacher or supervisor. Assembly halls, gymnasiums and other larger assembly areas would continue to be captured.*

The proposed new regulations for public buildings will be subject to a cost benefit analysis as part of the Department of Treasury's Regulatory Impact Assessment process.

Proposal 2: Requirement for registration

74% of the 61 respondents to this section supported the replacement of the certificate of approval process with the certificate of registration. A number of respondents stated that the change in process would have minimal impact other than the initial reissuing of certificates. Others responded that it would be slightly more work, but produce better outcomes with increased information provided and an ability to register a building at any time.

A number of respondents have requested that applicants be required to apply at the building licence stage for a 'numbers approval' from the authorised officer, including floor plans showing the number of sanitary facilities, exits, floor area and the use of the building along with the proposed occupancy. The purpose of this would be to allow the authorised officer to assess occupancy in accordance with public health factors and reach agreement with all stakeholders prior to the building being constructed. It is noted that at present this process does not occur until after construction, and can result in expensive retrofitting in order to comply with the public buildings regulations.

A number of respondents believed the registration process to be a duplication of the current occupancy permit process under building legislation, and proposed that building legislation be amended to consider public health factors, issue occupancy numbers and eliminate the need for a second assessment.

Other respondents reported that the occupancy permit under building legislation serves a different purpose, and that the ability to issue a maximum accommodation certificate must be retained as the tool for authorised officers to grant the building owner/occupier permission to open and operate.

A range of other comments were made:

- The onus should be on the owner/occupier to register and to fail to do so should be an offence, as well as to open a building prior to being issued with a certificate of registration
- A once off certificate should be sent at initial approval only (similar to food businesses). Ongoing reissue of certificate is onerous and unnecessary
- A change in process should not be at a cost to owner/occupiers, as they are not initiating the change. Any additional inspection, compliance and administration requires additional resources and will impose costs on businesses
- A registration process places an additional administrative burden on local government to maintain details of ownership of public buildings
- A number of respondents expressed support for authorised officers to have the ability to exercise discretion in the management of public buildings, such as when assigning maximum occupancy and conditions.

Certificate of registration

Respondents noted that the following details could also be included on the certificate of registration:

- The associated building occupancy permit number
- Maximum occupancy of the discrete parts/rooms of the building
- Date of issue, length of registration and expiry date
- Prescribed use
- The name and contact details of the responsible person
- Hydraulic capacity of the effluent system
- Risk rating
- Restricting factors on which the maximum occupancy has been derived

- Changing the term ‘maximum accommodation’ to ‘maximum accommodation for a specific use’
- Similar to the certificate of design compliance, a list of the documents used as the basis of assessment of the maximum occupancy, so that any performance solutions can be identified.

Recommendation:

The DOH recommends that this proposal is adopted. Operating a public building should be declared a registrable activity, making it subject to the provisions for registration under the Public Health Act Part 8. As there is already a certificate of approval process in place on application for a public building it is not thought that the impacts of replacing this process would be significant. There is no intent to require the reissuing of certificates each year (see recommendations for Proposal 3).

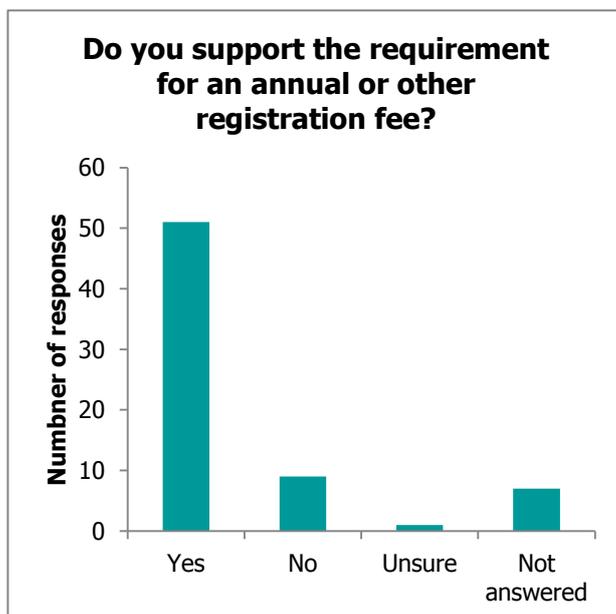
The DOH cannot require a separate application to determine the maximum accommodation to be made to authorised officers at the same time that the building permit is lodged. While it is recognised that this can create issues with the applicants once the maximum accommodation is assigned, this is dealt with effectively in a number of local governments by developing good working relationships between building and environmental health staff so that authorised officers are aware of the applications earlier in the process. Local governments are encouraged to facilitate the cross-flow of information in this way in order to remedy issues. Given that there are now reduced construction requirements in the Public Buildings Regulations, it is not considered necessary to adopt a ‘stop the clock’ function on public building applications.

Proposal 3: Requirement for an annual or other fee

84% of respondents to this question supported the proposal to introduce an annual or other fee. However, the comments indicated that many respondents in fact supported a fee in principle but not necessarily the fee structure or frequency outlined in the discussion paper.

Respondents described the need for local government to recover costs in regard to administering the regulations. There was a strong preference among respondents for this fee to be discretionary in order to allow:

- the exemption of certain types of buildings, such as those of very low risk and those owned by not for profit groups
- the fee to be based on risk and
- the fee to be administered annually rather than at three or five year intervals (such as the current situation with swimming pools, which may be inspected once every four years but pay 25% of that cost on an annual basis).



Respondents commented that risk levels may not closely correlate with work undertaken, for example the frequent inspection of small, low risk venues. Fees would need to be closely examined to correlate with risk levels and inspection regime. It was noted that the administration of a new fee system would generate additional costs. It was also suggested that registration should be an administrative process only rather than a tool for compliance, with the regulation using stand-alone enforcement tools and penalties to manage non-compliances.

The primary concern from industry respondents was the additional costs for business which can prove prohibitive, particularly for not for profit organisations. The primary disadvantage of this fee structure as described by local government was that it locks them in to providing a service which may not be necessary at the prescribed frequency.

Other disadvantages described by respondents include:

- Owner/occupiers may need to engage expensive consultancy services to ensure compliance
- Additional administrative burden for local government (such as time spent invoicing and chasing up payments)
- Initial implementation could be challenging for premises which have not been classed as a public building before
- Having different fee frequencies (for example, annually vs every three years) for different premises would be difficult to administer.

A number of respondents mentioned the fee structure in the Food Act, which is very close to the available mechanism under the Public Health Act. This gives local government the option to charge a registration fee for service under the *Local Government Act 1995* if they choose to do so, and then decide whether to charge an annual surveillance/assessment fee. Other alternatives proposed included:

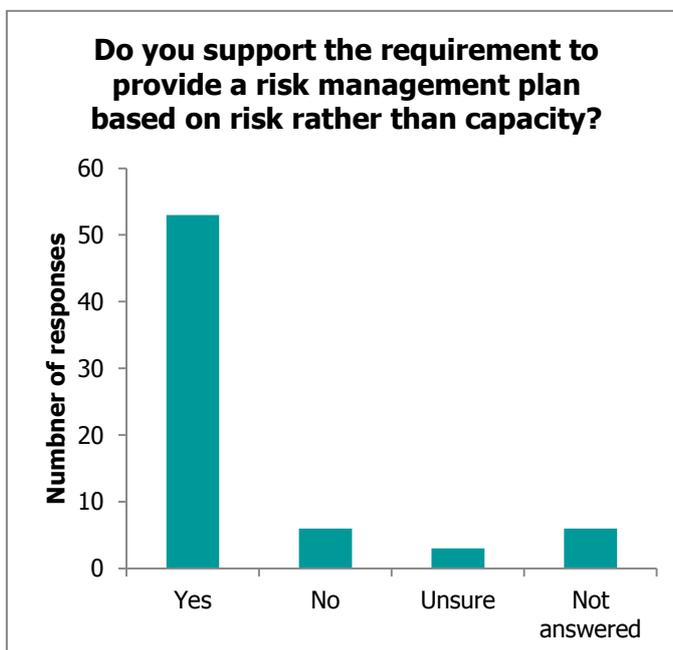
- introducing an inspection fee only, to ensure that owners receive the service they are paying for and to reduce the pressure on local government to inspect at a certain frequency
- a notification fee such as that in the Food Act, where changes are made the owner must notify the local government and a fee is then paid to assess the changes, rather than assessing on an annual or other basis
- external certification of evacuation and risk management plans
- inspection by a building surveyor.

Recommendation:

The DOH recommends that this proposal is not adopted, and that fees are managed under the Public Health Act directly. Part 294 of the Public Health Act provides for a fee or charge for the performance of a function as an enforcement agency under the Act and its regulations to be recovered under the Local Government Act 1995. Therefore, local governments may issue a fee for receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate.

The intent is that these provisions would allow local government to continue to charge fees in a similar way to the current format, rather than prescribing an annual fee. This ensures that owners/occupiers are only charged for the service they receive. It also removes the burden of seeking annual renewal payments and grants local governments the discretion to continue to determine their own inspection frequency, without any introduced pressure.

Inspection frequency recommendations will be reviewed as part of the review of the Public Buildings guidelines.



Proposal 4: Amend risk management plan requirements

Of 62 respondents, 85% supported the proposal to provide a risk management plan based on risk rather than capacity. It was generally agreed that this was a sensible approach that was in alignment with the direction taken under the Public Health Act.

There was also general agreement that authorised officers would require additional training and clear guidance documents in order to review RMP's critically, particularly for officers who do not do this frequently.

- Authorised officers tended to believe that many owner/occupiers would already have a RMP as part of their internal processes (or through another agency, such as DRGL for licensed premises), thus inferring it would not be a major additional requirement
- There was a suggestion that RMPs should only be required for high risk premises, or for the requirement to be applied at local government discretion only to buildings with particular risks that warrant individual consideration
- Respondents questioned the liability that authorised officers take on when reviewing and requesting amendments to a RMP, and requested a clear legal position on when/how changes could be required
- Enforcement options also need to be considered, such as if an authorised officer recommends amendments to the RMP which are not taken up by the applicant
- There is a need for the power to require a copy of a RMP, as it may not always be practical to thoroughly review a plan onsite
- An additional impact not recognised by the paper is that under the new Public Health Act local government will be required to produce RMPs for their own facilities.

Recommendation:

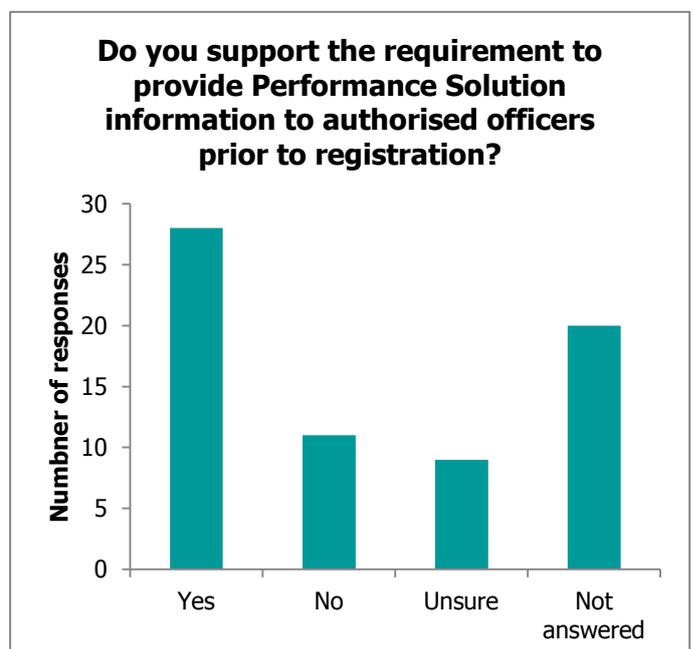
The DOH recommends that this proposal is adopted, but may be subject to refinement or change pending legal advice.

There is confusion and concern amongst authorised officers around their role in requesting, viewing or assessing RMPs and the potential liability taken on when doing so, as well as the powers for enforcement. The DOH is currently seeking legal clarification on this, which will shape the proposal accordingly. The intent is to minimise the liability taken on by authorised officers while maintaining the intent of the regulations – owner/occupiers should always remain ultimately liable for the health and safety of patrons within their buildings.

Further information on risk management planning will be provided in the guidelines.

Proposal 5: Improve transparency of performance solutions

58% of respondents to this question supported the proposal for the provision of information on performance solutions. It is likely that there was some confusion from respondents when commenting on this question – for clarification, this proposal does not suggest that authorised officers should be responsible for assessing the suitability of performance solutions as part of the building permit process, but that officers should be provided with information about the performance solutions employed during the construction of a building as the authority



assessing the ongoing operation of the building and assigning the maximum accommodation.

Authorised officers reflected that they are often not aware of performance solutions being in place, or that they only become aware when challenged on the maximum accommodation number they have assigned. A number of respondents indicated that private certifiers often do not provide performance solution documentation and do not adequately justify performance solutions. In these instances it is difficult for the authorised officer to know what measures are in place for the ongoing operation of the building.

Respondents from both building and health professions were supportive of amending the occupancy permit to include the details of any performance solutions applied. This would not only benefit authorised officers, but also current and future owners and occupiers of the building. It should be noted that the DOH has no control over the contents of the occupancy permit.

There was concern among authorised officers that the NCC and associated performance solutions do not consider risks other than structural or fire, although one industry respondent disputed this, and that performance solutions may be used solely as a cost saving measure with respect to reducing sanitary facilities and exits. It was also stated that there are often different interpretations of performance solutions between officers, and without documentation these cannot be resolved.

A key issue raised was that in using performance solutions a building may comply with building legislation but still present a risk to public health – clear examples were provided such as a door having exit signs on both sides (with the justification being that there would be a staged exit), or where a public building egressed into a pool area however occupants are still trapped with no means of escape. Both of these examples were signed off by building surveyors yet present a clear risk to public health.

There was also confusion over how certifiers are meeting the performance requirements of the NCC (for example, to justify that “the exits are appropriate to the number, mobility and other characteristics of occupants”) without stipulating a maximum occupancy. If maximum occupancy is consistently being calculated at present, it is not being provided to authorised officers.

There were a number of additional arguments against this proposal, and alternatives provided:

- Respondents pointed out that authorised officers under health legislation are not the appropriate authority to assess performance solutions, however this was not the intent of the proposal
- It was suggested that building legislation should be amended to ensure the maximum occupancy is calculated by the building surveyor and provided in documentation
- Requiring performance solution documentation could negatively impact the already time-sensitive process of approving a public building
- It was thought that it would be more useful to have this information prior to the building permit being issued

Additional alternatives and ideas that could improve public health included:

- Taking steps to ensure that performance solutions cover risks other than fire (such as clarification from the Building Commission and education of surveyors, or alternatively conducting a public building assessment prior to issuing the building permit)
- Including a box on the public buildings registration form indicating whether a performance solution has been used, though it is recognised that sometimes building owners and managers are unaware of whether a performance solution is in place
- Granting local governments the power to evaluate performance solutions

- Not permitting any performance solution that impacts on issues related to the public buildings requirements
- Allowing for smaller premises with simple performance solutions to sort out their own documentation
- Referring the performance solutions to a building surveyor for comment
- Providing authorised officers with the power to seek additional requirements (such as activation buttons for evacuation alarms behind bar areas, rather than relying on smoke detection)
- Including an appeal system for applicants, as there are financial implications for requesting this information
- Developing significant penalties for owners not complying with the requirements of the performance solution.

Recommendation:

The DOH recommends that this proposal is not adopted. The provision of performance solution information to local government is already covered under existing legislation. For Class 2 – 9 buildings, regulation 18A of the Building Regulations 2012 requires that the Certificate of Design Compliance include a statement about each performance solution that applies to the building work and details of the assessment methods used in its determination. This is submitted to the permit authority (local government), who are required to keep this information on record.

Authorised officers require this information in order to calculate the maximum accommodation number and to fully understand the building’s ongoing use as the primary inspectors and the authority responsible for maintenance compliance. However, given that this information is already required to be provided to the local government, access to the approved performance solutions for authorised officers must be considered a process issue rather than a legislative one. As per the recommendation in Proposal 2, local governments are encouraged to strengthen the sharing of information between building and environmental health.

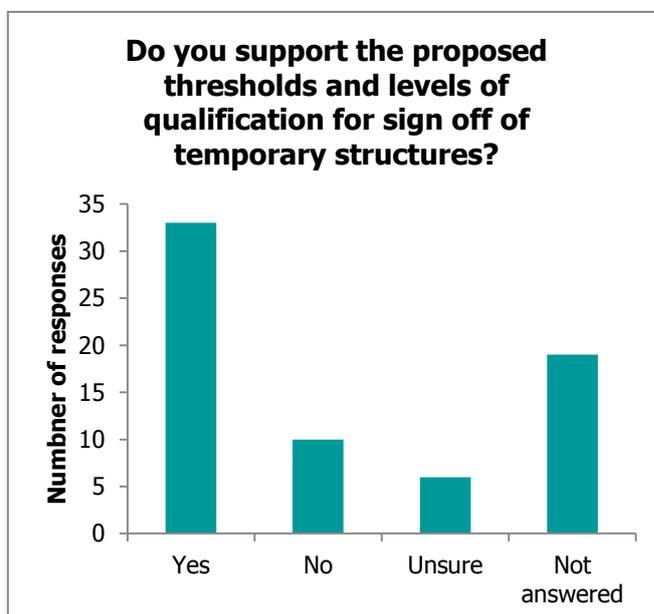
It is recognised that there are much wider issues with the development and documentation of performance solutions as outlined in the Shergold Weir Building Confidence report [1]. As such, the capacity of health legislation to address such issues is limited however comments and concerns in this area will be relayed to the Building Commission, including the key recommendation that performance solution information be provided on the occupancy permit.

Proposal 6: Requirements for temporary structures

Of the 49 respondents to this question, 67% supported the proposed thresholds for temporary structures. It should be noted that temporary structures for events will undergo further consultation between March 2019 and June 2019 as part of the DOH’s regulatory review for events.

The primary argument against this proposal was that many regional areas would experience difficulty in obtaining certification from a structural engineer. It was suggested that it may be more appropriate for an engineer to remotely assess a structure and it be erected onsite by a competent person in accordance with the manufacturer’s details.

Other comments included that:



- Temporary structures should be dealt with under event regulations/management rather than the public buildings regulations
- Guidance on who is a 'competent person' should be provided
- There may be an opportunity to review whether authorised officers are best placed to deal with temporary structures, or whether building surveyors may be more suitable
- The Building Commission could become a central agency for approving temporary structures, removing the need for temporary structures to obtain a separate approval at every location.
- The risk of all structures should be captured, not just those for public use – for example, a staff tent could blow away and injure members of the public
- Sign offs should stipulate any applicable conditions, for example a limiting wind speed
- A standard form should be developed and provided by the DOH in order to bring consistency and ensure that all parties know what the sign off represents
- Respondents also made various suggestions for increasing or decreasing the size of the proposed thresholds.

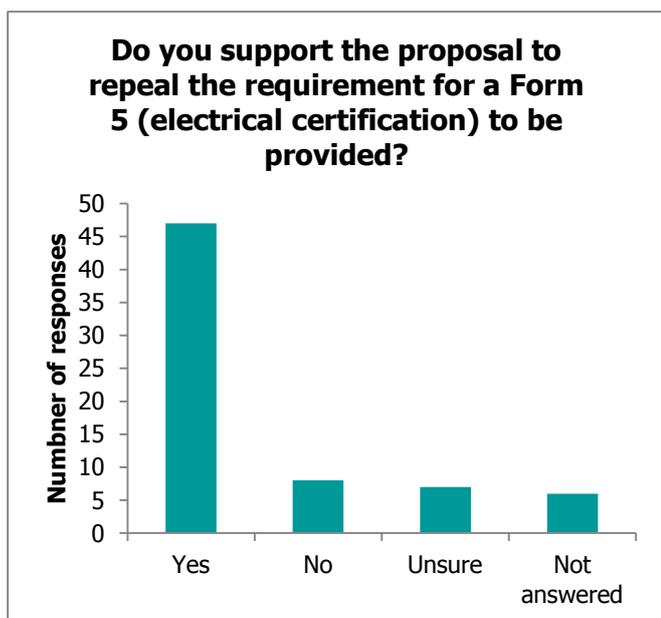
Recommendation:

The DOH recommends that temporary structures are not captured by the Public Buildings Regulations. Structures at events are subject to a separate consultation and their suitability for regulation will be assessed separately as part of that process.

If a temporary structure is erected in a public building, this is generally part of an event and means that the building will be operating over and above its regular operation, requiring an event approval. If it is intended that the structure will become a permanent element of the building, the public building approval can be varied or revised.

The DOH recommends that an approval for a temporary structure under health legislation should not apply where the local government has required a building permit, in the interest of reducing duplication.

Proposal 7: Repeal electrical requirements from the Public Buildings Regulations



76% of the 62 respondents to this section support the proposal to repeal the requirement for a Form 5 (electrical safety certification) to be provided. There was some confusion when answering this question, as a number of respondents raised the issue of electrical approvals for events (which will be managed separately to public buildings in future).

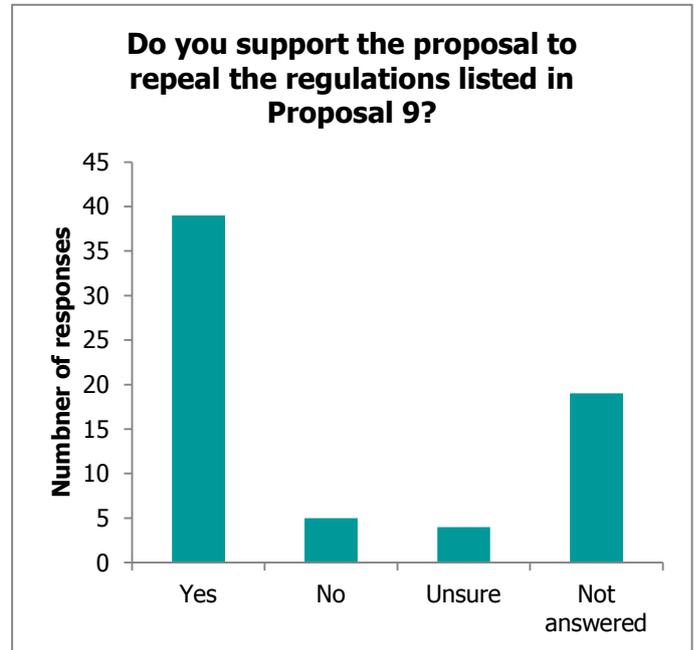
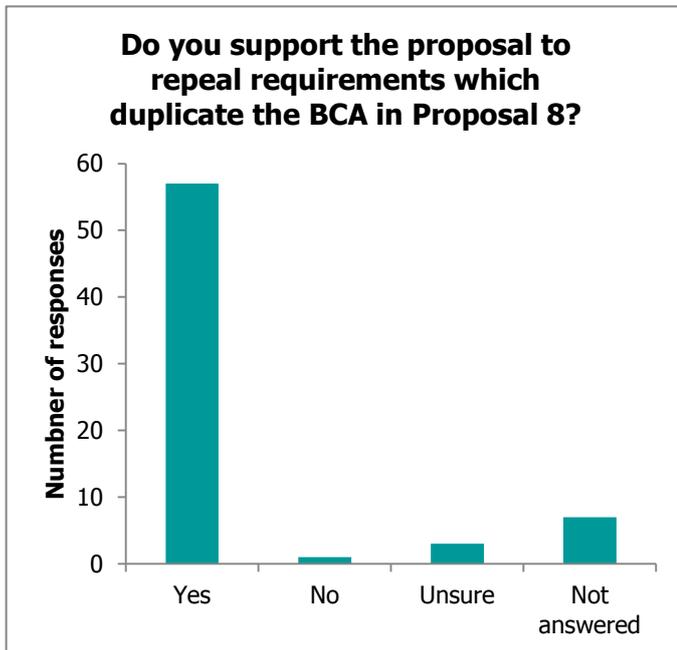
Respondents noted that the safety of electrical installations is crucial, and some of those who did not support this proposal questioned how safety would be ensured. However, it was generally recognised that the Building Commission (DMIRS) are the appropriate authority with the expertise to deal with electrical matters, and that this was not an appropriate function for authorised officers.

It was also noted that the electrical safety certification is also required to be provided to the local government as part of the building permit approval, therefore this requirement is a direct duplication.

Recommendation:

The DOH recommends that this proposal be adopted. Electrical certification requirements for events are subject to separate consultation.

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



At the time that the discussion paper was released, the DOH was liaising with the Building Commission to have construction requirements from the Public Buildings Regulations included in a WA Appendix to the NCC.

The proposed inclusions at that time were provided in the discussion paper, and in Proposal 8 respondents were asked if they supported the repeal of the requirements included in the WA Appendix (which has since been released by the Australian Building Codes Board). In Proposal 9, respondents were asked if they supported the proposal to repeal other miscellaneous clauses.

94% and 81% of respondents respectively supported these proposals in principle. Many respondents stated that the repeal of the stated requirements would be a positive move reducing duplication and confusion, and agreed that building surveyors were the correct officers to assess these matters under the NCC. Other clauses were also suggested for repeal.

However, concerns were also raised about the current application of the NCC requirements and the inadequacy of building legislation and processes. It was noted that performance solutions can be used under the NCC to affect exits and reduce facilities (as described in Proposal 5). Other issues included that:

- Requirements for locking devices and balustrade heights may not be adequate
- Temporary structures may not be subject to a building permit, so the items described must still be considered for such structures
- Electric fans and heaters may be a fire risk which is not covered by the NCC
- The NCC only captures exit doors and does not adequately cover external areas and exit paths surrounding the building

A number of local government officers have since contacted the DOH about the use of performance solutions to reduce costs which have an adverse impact on public health and which they believe result in the building not meeting the requirements of the NCC.

Recommendation:

The DOH recommends that this proposal be partially adopted. Requirements that have been fully adopted into the NCC without exceptions will be repealed from health legislation.

The DOH has ongoing concerns with the public safety determinations being made by private certifiers under the NCC, and is aware of multiple instances of compromised public safety (including through unsafe locking devices and reduced exit capacity) in new WA public buildings. Where possible the DOH is still committed to removing construction requirements from health legislation but the primary intent must be to ensure that public safety is maintained. If the DOH is not satisfied that this can be achieved, then requirements may need to be retained in the Public Buildings Regulations. This is not the preferred outcome and the DOH will continue to bring these matters of safety to the attention of the Building Commission to be dealt with on a larger scale.

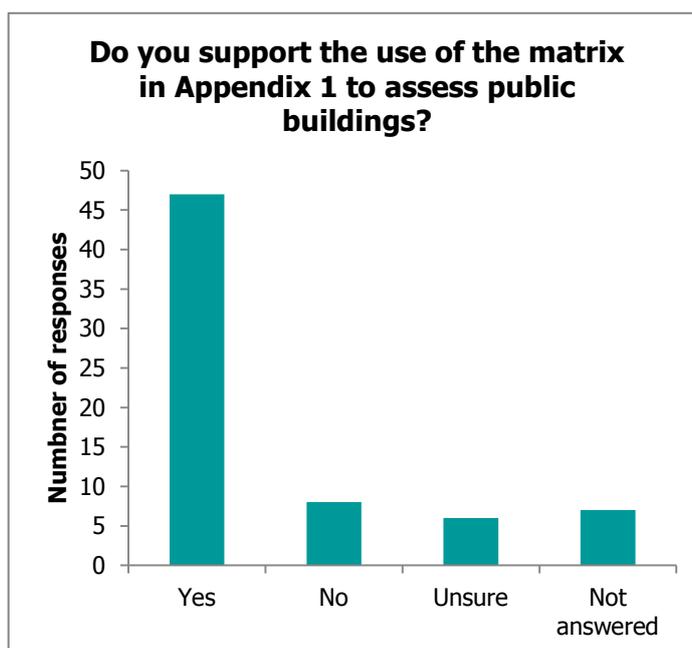
Specific amendments to the proposals are recommended:

- a) Safety lighting: In addition to any requirements for photo-luminescent lighting, the new regulations should require safety lighting to comply with the NCC and to not be dimmed or modulated (with additional information in the guidelines).*
- b) Changes in level: The DOH believes that the NCC requirement for a barrier for a change in level of more than 1 metre is insufficient, and intends to retain the requirement for 'every raised area of tiered seating and any change in level which presents a hazard to be provided with an enclosing wall or guard rail'.*
- c) Fire-isolated staircases: Fire-isolated staircases have been exempted from a number of requirements in the WA Appendix, including the requirements for provision of handrails on both sides of a stairway, landing or ramp and dimensions for treads and risers. The DOH believes that these should therefore be retained in the Public Buildings Regulations.*

Risk matrix

77% of respondents to this section supported the introduction of the risk matrix in Appendix 1 of the discussion paper. Respondents suggested that the matrix should be part of a code of practice or guideline rather than the regulation, to ensure it can remain flexible to adapt to emerging technologies and issues.

It was also thought that the matrix appeared to have quite a low threshold for medium risk events, and that this should be reviewed. Respondents believed the matrix would need to be reviewed frequently on implementation, and adapted according to feedback. It was also noted that better definition of terms/concepts is needed, such as complex, entry restrictions, crowd dynamics, and high, medium and low risk activities.



Other comments included:

- Suggestions around the removal of certain factors, such as entry restrictions
- Suggestions for additional factors such as type of use, volunteer or permanent staff, permanent or temporary facilities
- Issues with the alcohol and drug multiplier, and concerns about the implications of assessing a building as likely to encourage illicit drug use
- Religious buildings appear to come out at a higher risk rating than would be expected
- If there is a failure, the application of a matrix may complicate insurance matters
- Requests for justification of certain factors being considered high risk (such as entertainment with amplified music).

Recommendation:

The DOH recommends that this proposal be adopted, with the risk matrix included as part of the guidelines. The guidelines will include accompanying information to assist authorised officers in applying the risk matrix.

The matrix will be reviewed and comments given by respondents will inform adjustments (including examining the threshold between low and medium-risk events). The Community Development and Justice Standing Committee's Inquiry into the protection of crowded places from terrorist attacks (released April 2019) made a number of recommendations which may impact the risk matrix. It is acknowledged that continual improvement of the matrix will be necessary once implemented.

Further comments and stakeholder impacts

Respondents were invited to make any additional comments that they hadn't included in the rest of their response. These included:

- Legacy issues will remain - the main issues will occur with older buildings that are not subject to the requirements of the NCC, and may not comply with current day requirements, as well as others such as buildings with heritage requirements
- There is support for authorised officers to have key enforcement powers as they do under the current regulations. It was also suggested that police officers should have the ability to close down illegal gatherings
- There is some support for authorised officers to take a discretionary approach, which aligns with approaches under the Public Health Act. Consistency of regulation will be reliant on the risk assessment tools
- The impacts of capturing buildings which are not currently captured (such as those on Crown land) need to be considered. Local governments also own many public buildings (particularly in regional areas), and are not only an enforcement agency
- The DOH needs to provide guiding resources and expertise
- Department of Fire and Emergency Services (DFES) should be considered as a stakeholder

Next steps

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

The DOH will seek further information including:

- Legal advice on the appropriate manner to obtain and assess RMPs and
- Discussion with the Building Commission on comments made by respondents and ongoing concerns with building safety

Once this information has been obtained, the DOH will commence developing a Preliminary Impact Assessment for the Department of Treasury's Better Regulation Unit. This is required as part of the Regulatory Impact Assessment process.

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

Appendix 1 – Consultation submission list

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

Local government	
City of Bayswater	Shire of Kojonup
City of Belmont	City of Kwinana
City of Bunbury	City of Mandurah
City of Busselton	Shire of Manjimup
Town of Cambridge	City of Melville
Shire of Capel	Shire of Merredin
Shire of Chittering	Shire of Morawa
Town of Claremont	Shire of Murray
City of Cockburn	City of Nedlands
Town of Cottesloe	Town of Victoria Park
Shire of Dandaragan	City of Perth
Shire of Dardanup	City of South Perth
Shire of Esperance	Shire of Victoria Plains & Westonia
Shire of Exmouth	Shire of Augusta-Margaret River
City of Fremantle	Shire of Bruce Rock
City of Greater Geraldton	City of Rockingham
Shire of Gingin	City of Subiaco
Shire of Harvey	City of Swan
Shire of Port Hedland	City of Vincent
Shire of Serpentine Jarrahdale	City of Wanneroo
City of Joondalup	WA Local Government Association
City of Kalamunda	The Metropolitan Environmental Health Managers Group
Environmental Health Australia (WA)	
Industry	
Anglican Diocese of Perth	JMG Building Surveyors
Anglican Parish of Mount Lawley	Kelmscott Free Reformed Church
Australian Hotels Association	Mustang Bar/Business Improvement Group of Northbridge
Australian Institute of Building Surveyors	Northside United Pentecostal Church Inc.
CMS Events	Perth Festival
Free Reformed Church of Southern River	The Cathedral Church of St John the Divine
Housing Industry Association	The Roman Catholic Archbishop of Perth
Ian Lush and Associates	2x members of the public
State government	
Department of Mines, Industry Regulation and Safety	
PathWest	

Appendix 2 – Citizen Space online survey questions

Regulatory options

- 1: Do you support the adoption of **Option A: Repeal without replacement**? Why or why not?
- 2: Can you identify any further advantages or disadvantages of **Option A**?
- 3: Do you support the adoption of **Option B: Provide new, updated regulations**? Why or why not?
- 4: Can you identify any further advantages or disadvantages of **Option B**?

5: Do you have any suggestions for alternative options that have not been considered? Please explain your ideas by providing examples of complaints, case studies, data or other evidence.

Administrative improvements and definition

6: Do you believe any of the current public building types should be excluded from regulation? Please explain your reasoning.

7: Do you believe that excluding buildings with a total capacity of less than 50 people would have any adverse impacts on public health? Please provide specific examples.

8: Do you support the exclusion of buildings under 'Proposed exclusions' (page 23)? Please detail the positive and negative impacts on you or your organisation.

9: Do you believe that any of the 'Buildings for consideration' (page 24) should be regulated as public buildings? Please explain your reasoning.

10: Overall, do you support the proposed changes to the definition of a public building in section 8.1? Please detail the positive and negative impacts on you or your organisation.

11: Can you identify any situations where comparable regulations exist in similar buildings (that are not public buildings)? The purpose of this question is to identify any potential duplication.

12: Is there any information additional to the points on page 27 that you believe should be included on the certificate of registration?

13: Do you support the replacement of the certificate of approval process with the certificate of registration process? Please detail the positive and negative impacts on you or your organisation.

14: Do you support the requirement for an annual or other registration fee? Please detail the positive and negative impacts on you or your organisation.

Protecting public safety

15: Do you support the requirement to provide a risk management plan based on risk rather than capacity? Please detail the positive and negative impacts on you or your organisation.

16 (for authorised officers): What type of additional assistance would you or your local government require in assessing RMPs? Please detail.

17: Do you support the requirement to provide performance solution information to authorised officers prior to registration? Please detail the positive and negative impacts on you or your organisation.

18 (for authorised officers): Have you faced any challenges in dealing with performance solutions? Please detail and provide examples where possible.

19: Are there any other measures you believe could be taken under Health legislation to protect public safety in regards to performance solutions?

20: Do you support the proposed thresholds and levels of qualification for sign off of temporary structures? If no, please detail your preferred alternative.

21: Would prescribing thresholds for the sign off of temporary structures affect you or your organisation? If yes, please describe the impacts.

Removing red tape

22: Do you support the proposal to repeal the requirement for a Form 5 (electrical safety certification)? Please detail the positive and negative impacts on you or your organisation.

23: Do you support the proposal to repeal the requirements which duplicate the NCC? Please detail the positive and negative impacts on you or your organisation.

24: Do you support the proposal to repeal the regulations listed in **Proposal 9**? Please detail the positive and negative impacts on you or your organisation.

Other impacts on stakeholders

25: Do you believe there would be any additional impacts on any stakeholder group that are not listed in section 10 of the paper (page 41-43), or that you have not detailed in your previous answers?

26: Do you have any further suggestions on ways to improve the consistency of public building regulation across local government areas, or any further comments?

27: Do you support the use of the matrix in Appendix 1 to assess public buildings? Please detail the positive and negative impacts on you or your organisation.

28: Can you think of any examples of areas where this matrix may fail to classify buildings accurately? Please detail.

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

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