



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

# Consultation Summary Report

**For the Discussion Paper - Management of public health  
risks associated with temporary toilets**

October 2018

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## Executive Summary

Stakeholder consultation was undertaken by the Department to obtain feedback and opinions from stakeholders on the current gaps and future direction for the management public health risks associated with temporary toilets.

There was strong support for a management solution to regulate the design, installation, management and provision of temporary toilets. The basis for this preference was the ability to enforce requirements that are necessary to manage the public health risks associated with the use of temporary toilets.

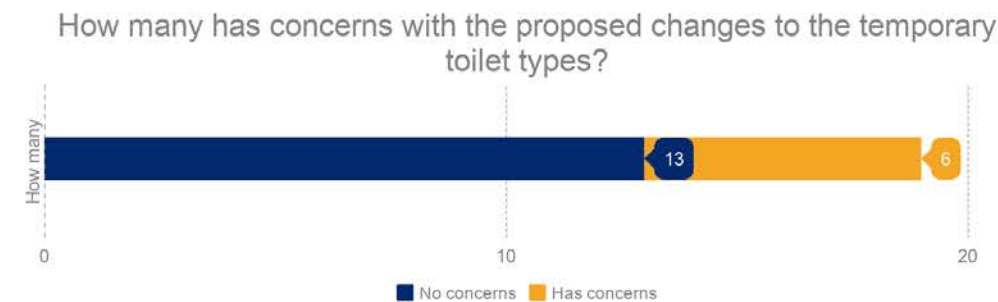
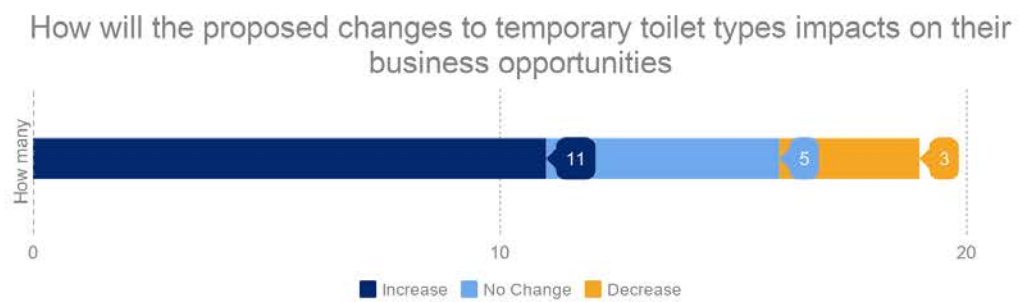
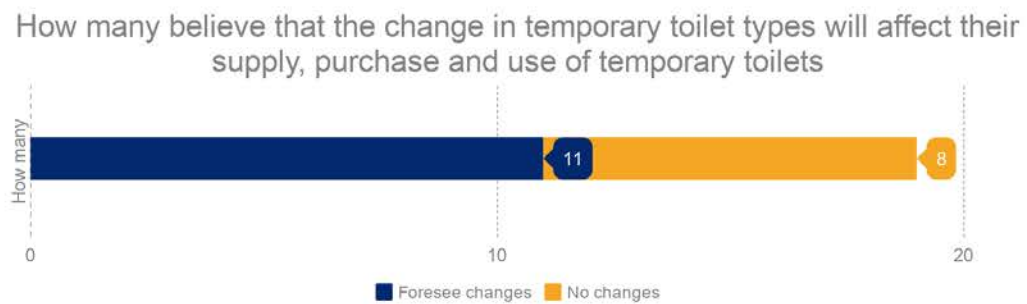
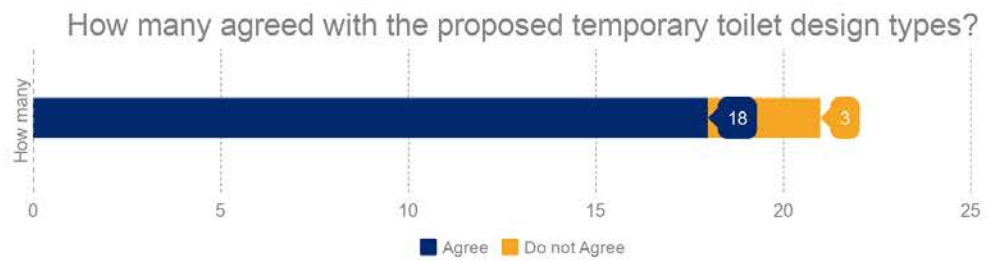
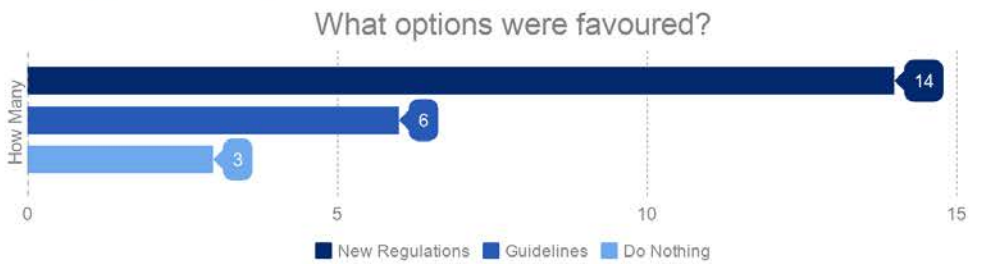
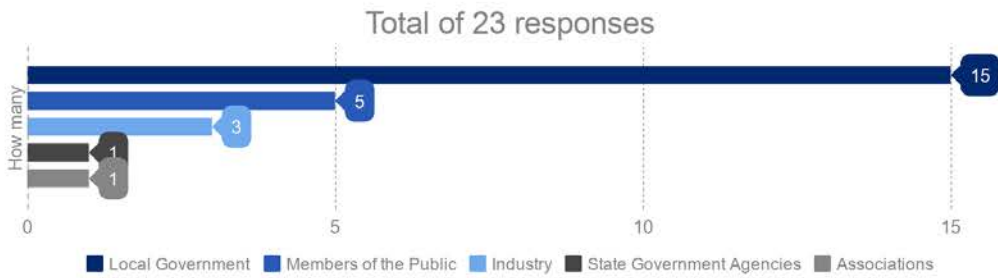
As the provision of accessible temporary toilets is an area that is currently overlooked, the majority of the respondents supported the proposal to diversify temporary toilet designs to include additional designs to make them more accessible to people with disability. In order to address this gap, industry and business will need to make changes to their business operation and the range of products that they supply, which may result in an increase in the overall cost associated with the provision and management of temporary toilets.

It was also raised that the technical design requirements for accessible toilets and the provision of it is not principally administered by Department of Health. Therefore the best option available that will enable the streamlining of the approvals process for temporary toilets and to provide clarity to industry is to develop guidelines in consultation with other relevant state government agencies.

The enforcement of the sections within a guideline that addresses public health risks associated with temporary toilets can be administered through general provisions of the *Public Health Act 2016* and be captured as part of the approvals process for events/settings where the provision of temporary toilets are required.

The guidelines will also provide flexibility to both regulatory agencies and industry to adapt with any future changes in the design and provision of temporary toilets that will better cater for the needs of the community of Western Australia.

# Consultation Summary



## Background

The discussion paper *Management of public health risks associated with temporary toilets* was released in July 2018. The discussion paper presented a summary of the public health risks associated with the use of temporary toilets and measures that are in place to address the risks. Gaps in current regulation were also discussed, especially in the areas of accessible temporary toilets design and the lack of enforcement the provisions of the *Disability Discrimination Act 1992*.

The discussion paper aimed to obtain feedback from stakeholders and to get a general understanding of their opinions on the current gaps and the possible future direction of regulation and management of temporary toilets that will meet the future needs in WA. The perceived impact to business operation, business opportunities and the provision of the different types of temporary toilets were also investigated in the survey.

## Current regulation of temporary toilets

As the responsible agency for the *Health (Miscellaneous Provisions) Act 1911*, the Department of Health (DOH) and its enforcement agencies are responsible for the implementation of the *Health (Temporary Sanitary Conveniences) Regulations 1997*. These regulations are used to manage the public health risks relating to the design and construction of temporary toilets in WA.

These regulations will be repealed once the *Public Health Act 2016* has been fully implemented.

### *Health (Temporary Sanitary Conveniences) Regulations 1997*

Part 2 of these regulations specifies the design and construction requirements for temporary toilets to ensure that the temporary toilets:

- provided on construction sites are designed and constructed in a way that enables the removal of human waste and withstand months of regular use.
- provided on construction sites are designed and constructed in a way that minimises the risk of failure or waste overflow.
- meets the needs of users, adequately remove waste, do not smell, can withstand months of use (i.e. are fairly sturdy) and ensure privacy for the user.

Toilet designs are approved by the DOH and Local Governments are the on the ground enforcers ensuring that approved toilets are provided on construction sites (as specified by part 3 of the regulations). Local governments can prosecute under the *Health (Miscellaneous Provisions) Act 1911* where someone is found to be in breach of these regulations.

### Other DOH relevant legislation and guidelines

In addition to the *Health (Temporary Sanitary Conveniences) Regulations 1997*, the *Health (Public Buildings) Regulations 1992* and the *Guidelines for concerts, events and organised gatherings 2009* stipulates requirements for temporary toilets when toilets are provided at public events but does not set out design requirements or which types of toilets are required.

Both the Regulations and guideline are under review. The review will take into account the feedback from this discussion paper.

### Other relevant legislation, standards and guidelines

In addition to the DOH regulations and guideline the following regulations, codes of practice and guidelines set out requirements for the management of public health risks associated with the provision of toilets and washbasins.

### ***Building Regulations 2012 (WA)***

The Department of Mines, Industry Regulation and Safety (DMIRS – formally the Building Commission) is the responsible agency for the [Building Regulations 2012](#). These regulations cite the [Building Code of Australia](#) as the guiding document for building design and construction. Buildings can only be assessed against the regulations and codes in place at the time that the building was constructed. This means that if any future management option considered by the DOH makes reference to design and construction requirements set out in the BCA temporary toilets that are already built will not be able to be assessed against these requirements.

### ***Building Code of Australia***

The Building Code of Australia (BCA) is part of the [National Construction Code](#), a performance based code containing all performance requirements for the construction of buildings and other relevant structures.

The BCA requires that a standard sanitary compartment must be constructed with sufficient space or other means to permit an unconscious occupant to be removed from the compartment.

The BCA requires that when an accessible or ambulant sanitary compartment is provided the circulation spaces, fixtures and fittings of that compartment need to comply with the requirements of *AS 1428.1 2009 Design for access and mobility – General requirements for access – new building work – Accessible Toilets*.

### ***Disability (Access to Premises—Buildings) Standards 2010 (Commonwealth)***

The Federal Government's [Disability \(Access to Premises – Buildings\) Standards 2010](#) have been created to provide certainty for building certifiers, developers and managers that, if access to buildings is provided in accordance with these standards they will be protected from complaints of unlawful discrimination under the *Disability Discrimination Act 1992*.

The standards require that new buildings built after 1 May 2011 meet the access standards as set out in the BCA. These standards apply to new buildings that are Class 1b, Class 2 buildings that have accommodation available for short-term rent; and Class 3, 5, 6, 7, 8, 9 or 10 buildings.

While this standard does not directly apply to temporary toilets; the existence of these standards indicate that where a temporary toilet is provided in lieu of a permanent toilet at a new building (built after 1 May 2011), it should be subject to the accessible buildings standards as set out by the BCA.

### ***Hire and Rental Industry Association Ltd Portable Toilets Division Code of Practice – Guidelines for the provision of portable toilets on construction sites and at events where connection to a sewer is not practical 2015***

The Hire and Rental Industry Association of Australia self-regulates the design and construction requirements for standard temporary toilets provided at worksites through the Hire and Rental Industry Association Ltd Portable Toilet Division [Code of Practice - Guidelines for the provision of portable toilets on construction sites and at events where connection to a sewer is not practical 2015](#) (HRIA COP). The HRIA COP sets a minimum standard for standard temporary toilets including manufacture.

## Objectives of consultation

The key objectives for the consultation is to gain better understanding of the perceptions and opinion of industry, local government, other government agencies and members of public on the management of public health risks associated with temporary toilets in the following aspects:

1. future direction on the management of public health risks associated with temporary toilets;
2. impact on business operation and opportunities of industry and current enforcement agencies;
3. impact on the provision of temporary toilets.

## Methodology

Stakeholders were provided a link to the Department of Health's corporate website [www.health.wa.gov.au](http://www.health.wa.gov.au) directing the respondent to provide feedback by one of three methods:

1. Completing the questions on the online citizenspace survey;
2. Submitting a personalised response by emailing the [publichealthact@health.wa.gov.au](mailto:publichealthact@health.wa.gov.au) email address; and
3. Writing a letter addressed to the Environmental Health Directorate.

## Profile of respondents

A total of 24 responses were received from various stakeholder groups.

Stakeholder	Responses
Local government	14
State government	1
Industry	3
Association group	1
Public	5
<b>Total</b>	<b>24</b>

Of the 24 responses received, two were in the form of formal letters and the remaining 22 were submitted via the online citizenspace platform.

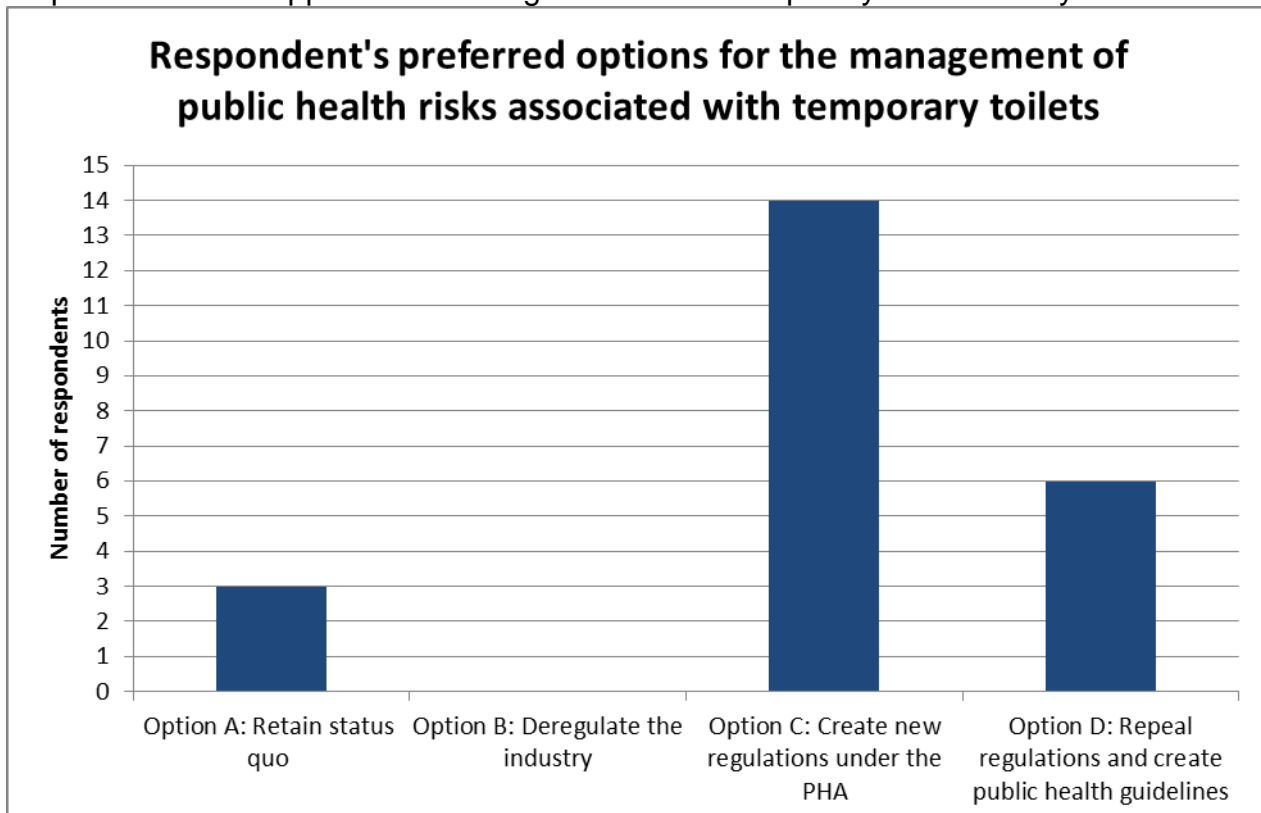
Based on the number of local governments and local temporary toilets manufacturers and distributors, the number of responses is considered typical for an external online consultation which normally averages a response rate of around 10-15%. The responses received would be a good representation of the cross-section of the opinions of the various stakeholder groups.

## Legislative options

The discussion paper outlined several options for the future management of public health risks associated with temporary toilets. The four options are:

- **Option A: Do nothing.** Retain status quo as far as practicable by replacing the current temporary toilets management system with the same or similar requirements under the *Public Health Act 2016*.
- **Option B: Repeal the current regulations with no replacements.** Deregulate the temporary toilet industry by repealing the *Health (Temporary Sanitary Conveniences) Regulations 1997* without replacement.
- **Option C: Develop new regulations for temporary toilets.** Repeal the *Health (Temporary Sanitary Conveniences) Regulations 1997* and create regulations under the *Public Health Act 2016*. Regulations would enable the DOH to set a minimum standard for how standard and accessible temporary toilets should be built but would not state when each particular toilet style is required.
- **Option D: Develop guidelines for temporary toilets.** Repeal the *Health (Temporary Sanitary Conveniences) Regulations 1997* and create a public health guideline. A public health guideline would enable the DOH to provide guidance on how temporary toilets should be built and would mean that that WA would be the only jurisdiction to have guidance material on ambulant and accessible temporary toilets. The Guideline would not state when each particular toilet style is required.

From the consultation responses, 61% of the respondents were in support of the creation of new regulations under the new *Public Health Act 2016*. 26% of respondents were in support of the creation of guidelines, while 13% of respondents felt that the current regulations are adequate in managing the health risk associated with temporary toilets and are in support to adopt the current regulations via the *Public Health Act 2016* in its current form. There were no respondents that supported the deregulation of the temporary toilet industry.





## **Basis of respondent's preference to create new regulations under the Public Health Act**

There were three main reasons given by respondents who opted to create new regulations under the *Public Health Act 2016*.

### ***Ability to enforce the requirements for the design, installation and maintenance of temporary toilets.***

71% of the respondents opted for formal regulations to be in place to regulate the design, installation and maintenance of temporary toilets. The respondents that opted for this felt that regulations are required to enforce the requirements associated with the management of temporary toilets. Concerns were raised that other alternatives might not be sufficient to provide the necessary powers to require the industry to comply with the requirements necessary for the management of public health risks associated with temporary toilets.

### ***Enforcement of requirements for disability access.***

There were concerns that the accessibility requirements could not be enforced without formal regulations. It was mentioned that the provision of temporary toilets must be inclusive of people with disabilities and that this requirement should be formally regulated to push industry to comply with the disability regulations.

### ***The scope of current regulations does not fully address current situations where temporary toilets are needed.***

The requirements in the current regulations are heavily focused on the installation of temporary toilets in construction sites. However, the use of temporary toilets extends to other settings and locations such as public events and remote unserviceable locations.

The respondents that opted for new regulations are of the opinion that the new regulations should capture the different settings where temporary toilets are needed.

## **Basis of respondent's preference to create guidelines and not formally regulate temporary toilets**

There were 6 respondents who opted for guidelines to be created in place of regulations.

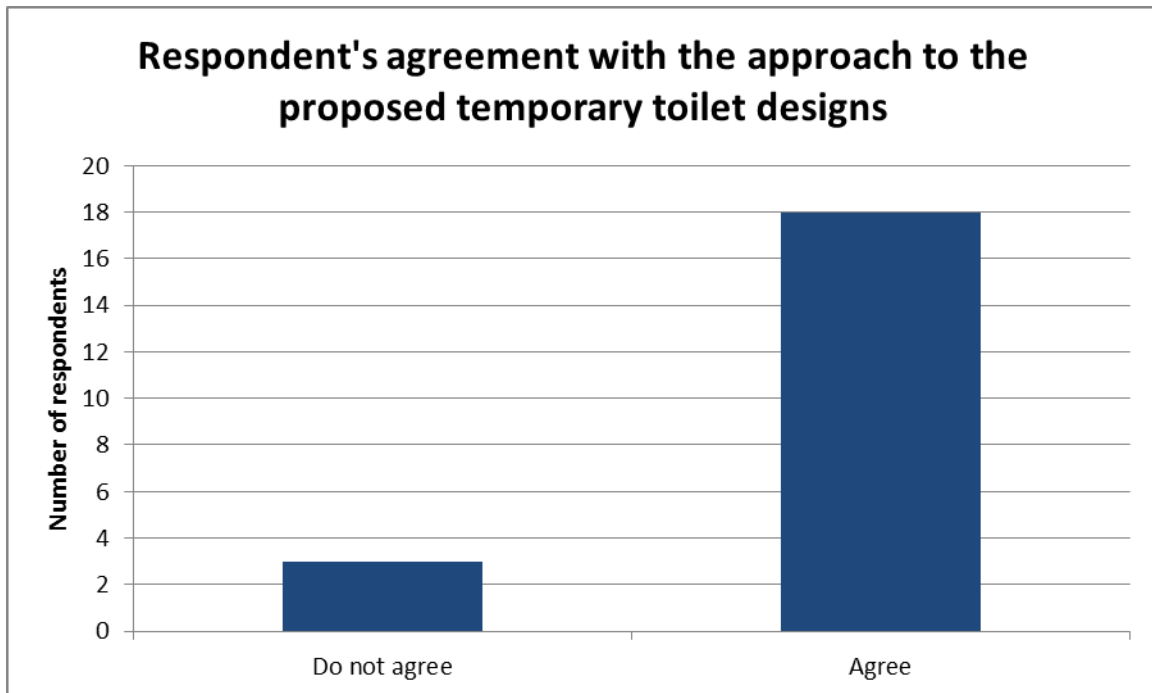
It has been mentioned that the public health risks associated with the use of temporary toilets can be managed under the general provisions of the *Public Health Act 2016* and there is no need for a specific regulation for temporary toilets.

The use of guidelines to manage the design and use of temporary toilets will allow for more flexibility to accommodate innovation and adoption of new technologies.

## Design of temporary toilets

The discussion paper presented a proposal to extend the range of temporary toilet designs to include accessible toilets. It aims to investigate possible solutions to address a gap in the current regulations pertaining to the provision of accessible temporary toilets and its impact on businesses, manufacturers, local government and members of public.

86% of the respondents felt that the additional designs that incorporate the various accessibility features should be included in future management options.



The respondents who did not agree with this approach had concerns on the management process becoming overly prescriptive and restrict innovation of new products and design. They were also concerned that a prescribed listing of designs will become out-of-date. It was also mentioned that there is currently no process / assessment criteria in place to determine the types of temporary toilets that are required for the different settings where temporary toilets are required.

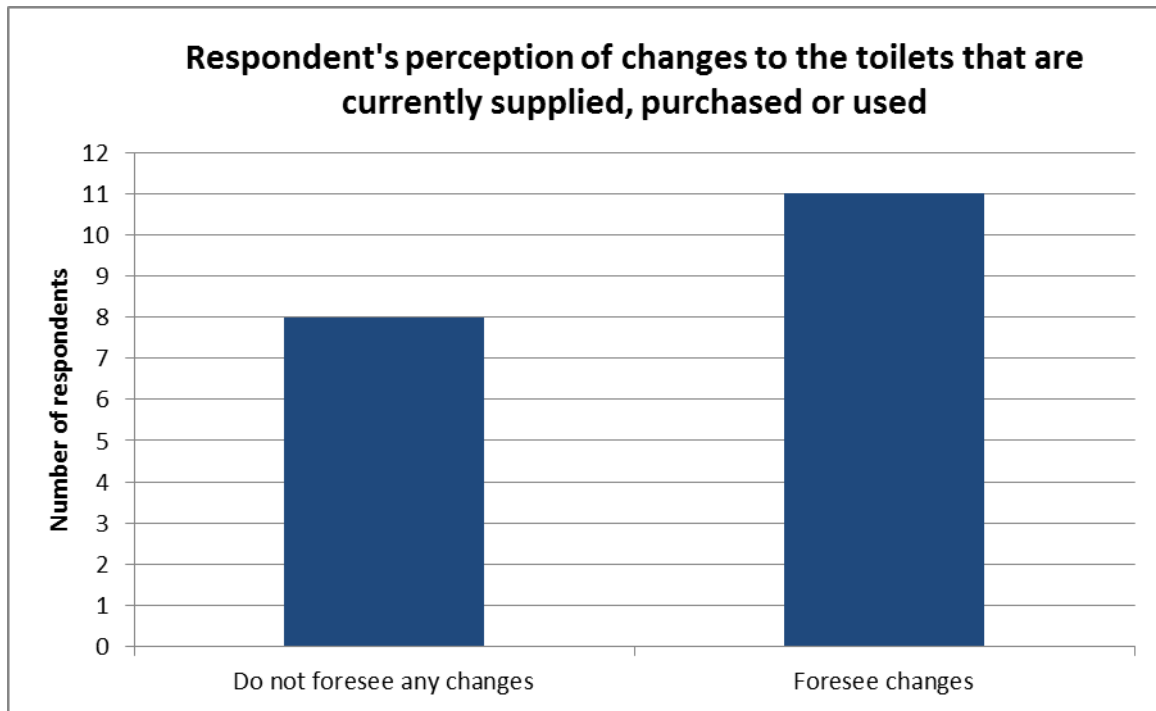
## Changes to business operation, impact on business and business opportunities

In the survey, respondents discussed any foreseeable impact on their business operations and future opportunities arising from the propose adoption of the additional temporary toilet designs.

### ***Perception on changes to the toilets that are currently supplied, purchased or used***

58% of respondents foresee changes to the toilets that are currently supplied, purchased or used by them or their business should the proposed changes in toilet designs be enforced. The following changes were raised:

- Higher overheads to stock up on the different types of temporary toilets, which will impact more heavily on the hire companies in the rural areas.
- Hiring costs of temporary toilets will increase as the cost of the higher overheads is passed on to the consumers.
- Increased burden to the authorised officers who will be checking for compliance.

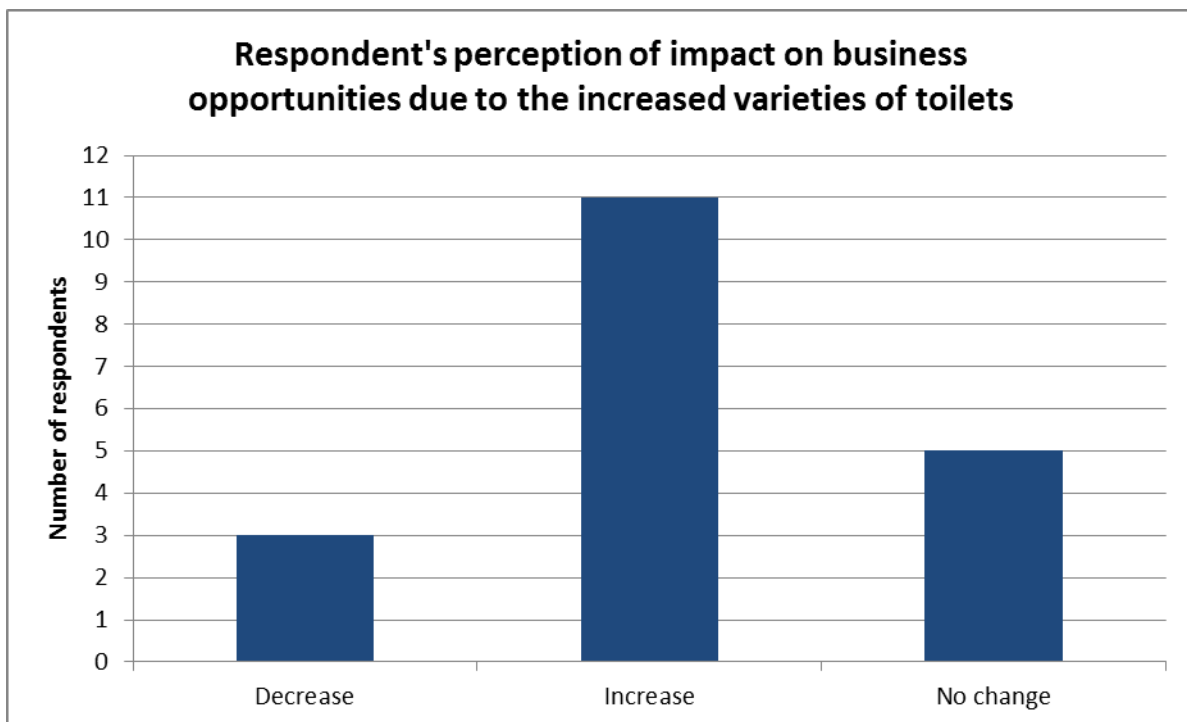


***Concerns on the proposed design changes***

The majority of the respondents (68%) do not have any concerns about the potential impact of the proposed changes to the temporary toilet designs. Of the respondents who were concerned with proposed design changes, their cause of concern was mostly due to the changes that were discussed in the previous section.

***Impact of business opportunities***

The majority of the respondents (58%) foresee the propose change will result in an increase in business opportunity. 26% of respondents do not foresee any changes, while 16% foresee a decrease in business opportunities.



Of the respondents that foresee an increase in business opportunities, they were of the opinion that the increase will be caused by the following factors:

- An increased regulatory push resulting in an increase demand for the different products.
- An increase in the number of event attendees resulting from greater availability of accessible facilities.
- Companies that are able to supply a wider range of products and meet the market demand will have more business.

The respondents that foresee a decrease in business opportunities felt this will be caused by the following factors:

- The new requirements will be overly burdensome on the manufacturers which will result in a decrease in the number of jobs available where they can deliver their services/products that will meet the new requirements.
- There will be an increased cost to businesses to meet the additional requirements.

### **Impact on provision of temporary toilets**

63% of respondents foresee the proposed changes in the temporary toilet designs will impact on the provision of temporary toilets.

The respondents felt that the following areas will be impacted:

#### ***Positive impacts***

- Better provision of accessible facilities for people with disability.
- Improvement in the lifestyle of people with disability.

#### ***Negative impacts***

- Increase in resources required for the administration, licensing and approvals required for the provision of temporary toilets.
- A decrease in provision caused by the increase in hiring costs.
- Industry will seek ways to offset the increased cost of hiring by decreasing the number of toilets that will be provided.
- It will be more difficult for rural companies to provide competitive prices.
- There will be limited companies that can meet the requirements of the proposed changes.
- The additional toilets that are required will increase the overall cost of an event. The increased cost will then be passed on the consumers.

## Key observations and discussion

There were a few key observations from the responses received in the survey.

### Need for formal regulations to enforce requirements on the design, management and provision of temporary toilets

One of the major concerns that some respondents had was the inability to enforce requirements on the design, management and provision of temporary toilets. In the absence of formal regulations, a guideline will need to be in place to detail the design requirements for temporary toilets.

The use of temporary toilets will become a public health risk when there are non-compliant designs and inadequate maintenance. Without specific regulations on temporary toilets, there were concerns that no mechanisms will be in place to enforce required changes to prevent potential public health risks.

Although the proper design, installation and management of temporary toilets are essential to prevent public health risks, it is not necessary to create specific regulations to regulate temporary toilets. The general public health duty prescribed in the *Public Health Act 2016* requires that a person must take all reasonable and practicable steps to prevent or minimise any harm to public health that might foreseeably result from anything done or omitted to be done by the person. Under the *Public Health Act 2016* harm includes activities that may have adverse impacts and effects on a person's physical or psychological wellbeing, whether it is long term or an immediate impact.

The provisions in a guideline will set out the accepted standards and requirements for the design, installation, management and provision of temporary toilets. Under section 34(3) of the *Public Health Act 2016*, a person will not be taken to be in breach of the general public health duty if they are acting in a manner that accord with generally accepted practices. Where a person fails to follow these generally accepted practices, this may be considered a failure to comply with the general public health duty. This may constitute grounds for action to be taken under the *Public Health Act 2016*, including the issuing of an improvement notice or enforcement order. Local governments would also have the ability to prosecute under the *Public Health Act 2016* when a breach of the general public health duty can be demonstrated and supported with evidence.

The current design and performance requirements for accessible facilities in a built environment are specified in the *AS 1428.1* which is incorporated into the Building Code of Australia. To incorporate the specific requirements that are relevant to the technical design of accessible temporary toilets in health regulations might not be the best option for the following reasons:

- Department of Health does not have the technical expertise to assess for compliance.
- The current codes and standards pertaining to accessibility of buildings and structures are not administered by DOH.
- The legislation pertaining to the provision of facilities for people with disability is not administered by DOH.

### There is a gap in the provision of accessible temporary toilets

From the responses in the consultation, most of the respondents agreed that there is a gap in the current provision of facilities for people with disability. One of the major factors that contributed to this gap is the absence of specific standards or guidelines for the design of accessible temporary toilets.

As the design requirements for accessibility facilities are currently administered by DMIRS, formal health regulations might not be the best avenue to cover technical design requirements

on accessible temporary toilets. Further consultation with DMIRS is required to determine the design requirements for accessible temporary toilets.

### **Increased cost associated with the provision of accessible facilities**

In order to improve the provision of accessible temporary toilets, the manufacturer and distributors of temporary toilets will need to diversify their range of products in order to be able to meet regulatory requirements. This will entail an initial investment to manufacture products that are compliant with the requirements.

To ensure the viability of these products on the market, it is important that there is a mechanism in place to enforce the requirements for the provision accessible temporary toilets. As the *Disability Discrimination Act 1992* is administered by Department of Communities (DOC), the provision of accessible facilities, including temporary toilets, that Act's requirements will need to be further clarified and conveyed to all relevant parties that will be required to comply.

### **Next Steps**

From the consultation, there is a preference for new regulations related to temporary toilet design to be created under the *Public Health Act 2016*. However, regulations specifically for temporary toilets that are solely administered by DOH will not have the capacity to fully address the needs for better provision of accessible temporary toilets. After reviewing the basis for the preferred option, the DOH believes that it is possible to manage the public health risks and concerns that were raised in the consultation via the general provisions of the *Public Health Act 2016*. A guideline will be drafted that sets out the generally accepted practices relating to the design and construction of temporary toilets. Where temporary toilet designer or manufacturer or equivalent fails to follow these generally accepted practices, this may be considered a failure to comply with the general public health duty. This may constitute grounds for action to be taken under the Public Health Act, including the issue of an improvement notice or enforcement order.

In addition to this, the guideline will provide minimum requirements for ambulant and accessible temporary toilets types. The guideline will not set out requirements for when each of the temporary toilet designs are to be provided but rather set the standards of the classification system which toilets can be assessed against. It would then be up to persons/businesses/ events providing/hiring the toilets to choose the toilet which best meet the expected needs of the users.

The guideline will be drafted by the Department of Health in consultation with other relevant State Government agencies. The guideline will address all areas relating to the design, installation, management and provision of temporary toilets. Furthermore, the requirements of the guidelines can be easily incorporated into the approval process for events / settings where the temporary toilets are required.

## Appendix 1 – Stakeholder engagement list

The following stakeholders were targeted in communications designed to encourage a submission.

<b>Local Government</b>
138 local governments in WA
Western Australian Local Government Association WA
<b>Industry groups and associations</b>
Ability Centre
Access Institute
Advocare Incorporated
Australian Federation of Disability Organisations
Australian Hotels Association (WA)
Catholic Archdiocese of Perth Personal Advocacy Services
Citizen Advocacy Perth West
Developmental Disability WA
Disability Advocacy Network Australia
Equal Access Pty Ltd
Ethnic Disability Advocacy Centre
Headwest
Hire and Rental Industry Association
Independence Australia
National Disability Services WA
People with Disabilities (WA) Inc
Public Health Advocacy Association WA
Small Business Development Corporation
Spinal Cord Injuries Australia
Spine and Limb Foundation
Uniting CareWest
WA Association for Mental Health
<b>State governments</b>
Department of Communities
Department of Education
Department of Jobs, Tourism, Science and Innovation
Department of Local Government, Sport and Cultural Industries
<b>Temporary toilets manufacturers and hire companies</b>

## Appendix 2 – Online citizen space questionnaire

### Stakeholder Details

1. What is your name?
2. What is your email address?
3. Please indicate what organisation you represent. If you are a member of the public please write 'member of the public'

### Assessing the public health risks

4. Are there other public health risk factors that the DOH has not considered?
  - a. Comments

### Management options considered

5. Which is your preferred option?
  - Option A - Retain status quo as far as practicable by replacing the current Health (Temporary Sanitary Conveniences) Regulations 1997 management systems with the same or similar requirements under the Public Health Act 2016.
  - Option B - Repeal Health (Temporary Sanitary Conveniences) Regulations 1997 without replacement.
  - Option C - Repeal the Health (Temporary Sanitary Conveniences) Regulations 1997 and create regulations for the design and construction of temporary toilets under the Public Health Act 2016.
  - Option D – Repeal the Health (Temporary Sanitary Conveniences) Regulations 1997 and replace with a public health guideline.
  - a. Why?
  - b. If you do not agree with any of the options investigated please outline how you think the design and construction of temporary toilets should be managed.
  - c. Are there alternative options that have not been considered?

### Feedback on the temporary toilet design options considered

6. Do you agree with this approach to temporary toilet designs?
  - a. If not, why not?
  - b. Do you have any comment regarding the Standard temporary toilet concept?
  - c. Do you have any comments regarding the Ambulant temporary toilet concept?
  - d. Do you have any comments regarding the Accessible temporary toilet concept?
  - e. Do you have any comment regarding the Accessible plus temporary toilet concept?
  - f. Do you have any comment regarding the Fully accessible (or Adult Changing Facility) temporary toilet concept?
  - g. Comments?

### Feedback on how the temporary toilet designs may impact people or businesses

7. Do you or your business believe the temporary toilet designs will require you to make changes to the toilets you currently supply, purchase or use?
  - a. If yes, can you please provide details?
  - b. If not, please provide details
  - c. Comments
8. Do you or your business have any concerns regarding how the proposed temporary toilet designs will impact you?
  - a. If yes, can you please provide details?
  - b. If no, please explain why.
  - c. Comments
9. Do you believe that the proposed temporary toilet designs will increase or decrease business opportunities due to increased varieties of toilets?
  - a. Please provide details on your answer
  - b. Comments
10. Do you believe the temporary toilet designs will impact the provision of temporary toilets?
  - a. If yes, what situations will be impacted?
  - b. Is the impact good, bad or neutral?
  - c. Comments



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

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