



Managing housing health in Western Australia

WALGA Submission to Department of Health

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1. Introduction

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of Local Governments in Western Australia.

It provides an essential voice for its members who are 138 Local Governments, 1,215 Elected Members and approximately 22,000 Local Government employees as well as over 2.2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve. WALGA is appreciative of the extensive consultation with Local Government that the Department of Health has undertaken in the review of legislation and regulations.

2. Background

The Department of Health (DOH) released the “Managing Housing Health Risks in WA” discussion paper for public comment. The discussion paper outlines three options for consideration for Western Australia. These options include:

- **Option A:** Retain status quo. This option would involve attempting to replicate the current regulatory system as far as practicable under the new *Public Health Act 2016*;
- **Option B:** Repeal without replacement and use the general public health duty. Without action, Part V of the Health (MP) Act, the laundries and bathrooms regulations and Sewerage (LVC) Regulations would be repealed without replacement as part of the implementation of the *Public Health Act 2016*;
- **Option C:** Develop new, updated regulations to manage housing public health risks.

Local Government is an enforcement agency under the *Public Health Act 2016* (the Public Health Act), with Local Government Environmental Health Officers (EHO’s) playing a key role in administering the Public Health Act and Regulations. To ensure broad representation of Local Government responses to the Discussion Paper, and within this submission, WALGA promoted the Discussion Paper consultation through our formal communication channels, as well as via emails to Local Government networks of officers working in environmental health.

WALGA received two formal submissions from Local Governments (Shire of Merredin and City of Joondalup) as well as one formal submission from the Metropolitan Environmental Health Management Group (MEHMG), which represents approximately 30 Local Governments in the Perth Metropolitan area. Additionally, WALGA officers responsible for the areas of Community and Planning policy have provided comment on the submission. A list of engagement methods and the Local Governments engaged is included in Appendix 1.

3. Local Government Response

WALGA received three responses, and all of these provide in principle support for Option C. However, the key concerns that emerged from the submissions are not directly dealt with in the discussion paper, but relate to:

- Needing support in dealing with the complex nature of hoarding and squalor incidents.

- Uncertainty of how State housing will be managed under the regulations and the implications this will have for Local Governments.

Option A

Question 1: Do you support the adoption of Option A: Retain status quo?

WALGA does not support the adoption of Option A.

Option B

Question 2: Do you support the adoption of Option B: Repeal without replacement?

WALGA does not support the adoption of Option B.

Option C

Question 3: Do you support the adoption of Option C: Develop new, updated regulations?

Question 4: Do you have any suggestions that have not been considered.

WALGA supports the adoption of **Option C**. This is supported by the MEHMG, Shire of Merredin and City of Joondalup submissions; and all three submissions highlight the need to ensure that Local Governments retain all existing powers in relation to public health and housing.

WALGA requests that Local Government officers are directly involved in the process of drafting the new updated regulations to ensure that they adequately address public health housing from a Local Government perspective. WALGA also requests that DOH consider forming a special working group with Local Government Officers with representation from the Mental Health Commission, Department of Communities and Mental Health Service Providers to explore effective partnerships to deal with complex issues around hoarding and squalor.

Proposal 1 – Provisions for unfit housing

Question 5: Do you support the retention of the provisions for unfit housing?

WALGA supports the retention of provisions for unfit housing outlined in Proposal 1.

MEHMG have requested that the clauses in the new regulations identify minimum basic standards for a dwelling, assuming it was originally built in compliance with the Building Code Australia (BCA). It is anticipated that the new Health regulations will only be used when a building is unhealthy, falls into disrepair or doesn't have the essential facilities.

MEHMG support that the proposed powers for authorised officers largely reflect existing powers currently being used. However, they identified that these enforcement powers should be simplified and improved for more effective implementation. MEHMG highlight the need to consider additional powers; including the power to do the work required in default and charge the owner, as well as the power to place unpaid costs as a charge against the property. This would be useful in the case of owner occupied hoarding and squalor, where a Local Government is able to arrange and pay for cleaning and upgraded fixtures as necessary and recoup the costs when the property is sold.

It is important to note that the issue of hoarding and squalor has been raised as a significant challenge for Local Governments, yet this has not been properly addressed in this paper. This is a complex social issue, which requires a collaborative, strategic, cross-organisational approach to address. **WALGA requests that DOH establish a special working group to deal with this issue with representation from the Mental Health Commission, Department of Communities, Mental Health Service Providers and Local Governments.**

Local Governments are concerned that when dealing with landowners with mental health conditions, or who are of limited financial means, the current and proposed compliance tools will not work effectively. There needs to be cooperation and clearer communication between organisations working on each case; as all organisations have the health and wellbeing of the hoarder, neighbours and community as a priority but all have different areas of expertise. MEHMG have identified that Local Government EHO's need the assistance of mental health experts to deal with these situations.

Proposal 2 – Define habitable building or dwelling

Question 6: Do you support the proposed changes to the definition of a habitable building?

WALGA supports the definition of a 'habitable building', but recommend that it be the same as the R Codes. This will allow alignment between planning and health terminology and prevent confusion and misinterpretations.

The Shire of Merredin support these changes and outlines that the definition of habitable building or dwelling must exclude buildings not originally intended for human accommodation such as sheds and other outbuildings. They suggest that new regulations should incorporate provision similar to those forming Section 144 of the *Health (MP) Act 1911*. Consideration must also be given to cross referencing existing definitions for other facilities used for habitation such as caravans, park homes, camper vans, tents etc. which are used for the purpose of habitation but are not buildings as defined by the *Buildings Act 2011* and the *Caravan and Camping Act 1995*.

MEHMG have also identified other definitions that will be required including, minimum habitable standard, overcrowding and dwelling.

The City of Joondalup suggest that the definition of habitable building should also consider the temporary nature of habitable buildings and the minimum structural requirements. For example, the City receives enquiries from community groups that wish to hold overnight

sleepovers within the City's community buildings. Although sleepovers are typically not permitted in the City's community buildings, any proposed definition should consider such arrangements and whether provisions of facilities such as showers or laundries should apply.

Proposal 3 – Maintenance of habitable buildings

Question 7: Do you support the proposed requirements for habitable buildings to:

- a) Be structurally sound and in good repair and condition?**
- b) Have fittings and fixtures maintained in safe, sanitary, good working order?**
- c) Comply with the National Construction Code (NCC), including for the provision of facilities**
- d) Have an adequate supply of hot and cold water?**

Question 8: Do you support the development of requirements for floor waste sand submission to the Australian Building Codes Board for inclusion in the NCC?

Question 9: Do you support the inclusion of requirements for floor wastes in the proposed housing regulations?

WALGA in principle supports Proposal 3, as do MEHMG, the Shire of Merredin and the City of Joondalup.

MEHMG have highlighted the need for regulation to determine the minimum standards for housing. There also needs to be a definition of what a dwelling is and the minimum fixtures and fittings required to foster comfortable healthy living conditions (i.e. a minimum habitable standard).

The powers that exist currently allow Local Governments to issue orders and notices to require property owners to bring a dwelling up to a minimum habitable standard. The definition of a habitable standard is currently spread across several health Local Laws with clauses that typically state that the building should comply with the BCA. All buildings should comply with the BCA when they are constructed, but cannot be forced to retrospectively comply with the constantly evolving and improving standards in the BCA in future. Therefore, there is a need for statements that describe minimum standards that can be enforceable in court if an owner disagrees with a formal Notice. In many cases, the current laws include discretion for the qualified EHO to determine the minimum habitable standard. Common clauses include statements like "to the satisfaction of the Principle EHO" (PEHO), and/or "in the opinion of the PEHO". These discretionary powers are essential when dealing with the growing number of unusual cases; such as the occupation of half-finished buildings.

Clarity also needs to be provided in regard to a building being in good repair. For example, a damaged bedroom door might not be in good repair, but may not pose any public health risk. Authorised officers should only be engaged in circumstances where there is a potential public health risk.

The NCC contains provisions for the minimum facilities required in a dwelling that also contains requirements such as "*a kitchen sink or washbasin must not be counted as a laundry*

washtub". Should an occupier remove a laundry wash tub, it is not clear whether this is intended to be captured as a 'maintenance issue' or as a failure to comply with the NCC.

Local Government Local Laws work well in many areas but are not consistent across the State and should be consolidated and incorporated into Regulations. Currently there are Regulations and Local Laws that deal separately with sanitary conveniences, bathrooms, kitchens, ventilation and maintenance of buildings. There are also separate Regulations and Local Laws dealing with asbestos, rodents and pest infestations, overcrowding, septics and wastewater, accumulation of offensive matter and nuisances. MEHMG have recommended that a working group of experienced Local Government EHO's be tasked to develop draft Regulations that will allow Local Governments to deal effectively and efficiently with these public health issues in a housing context. It is critical to ensure that powers that may only be rarely enforced but are essential are not inadvertently lost, such as the power to require a yard to be paved and drained.

Support is provided for the inclusion of floor wastes in the proposed housing regulations as discussed in Proposal 3. However, there are reservations about Proposal 3 where floor wastes may not be included for all wet areas in dwellings. The MEHMG has identified that wet areas ought to be provided with floor wastes to cater for the overflow of sinks, baths and other appliances. Without the provision of floor wastes, flooding can occur which may lead to other more serious issues.

Where possible, WALGA recommends that anything that can be included into the NCC is supported, as this saves duplication and reduces confusion. In relation to whether or not floor waste requirements should be in the NCC or WA Housing regulations, they should be in at least one or the other to limit confusion.

Proposal 4 - Overcrowding

Question 10: Do you support the proposals to prevent overcrowding?

WALGA supports the proposal to prevent overcrowding as outlined in Proposal 4. Some Local Governments consider this to be a big issue, with numerous examples provided of dwellings with occupancy levels far exceeding the maximum requirements.

Question 11: Please describe any additional ways that stakeholders may be impacted?

MEHMG have identified that through the *Health (MP) Act 1911*, Local Governments have the power to declare houses unfit, to issue notices, to require fixtures and fittings to be fixed/provided, houses and land to be cleaned. Where required, the Act gives Local Governments the power to have houses removed when unsafe or beyond repair. However, the current powers available for these purposes are unwieldy and rarely used. Powers in the

Building Act to deal with unsafe structures are rarely used in these situations. Therefore having more usable mechanisms to enact these powers would mean they would have better use.

Consideration should be given to providing Local Governments updated powers to deal swiftly with buildings that are derelict, to reduce the opportunity for antisocial behaviour to occur in them.

Question 12: Do you have any further comments?

WALGA requests clarity from DOH in relation to the management of State Housing under the new regulations and the potential impact this may have on Local Governments across the State. MEHMG have raised concern regarding the 'Binding of the Crown' in relation to the proposed regulations. While the new *Public Health Act 2016* potentially sets new legal standards for State owned and/or managed properties, there is ambiguity about how these will be regulated. Local Governments have concerns that they may be required to fill this role, which if this was to occur would have significant resource implications for them. WALGA is conscious the Department of Communities as the responsible agency for managing the State's housing stock (as a landlord), is currently reviewing the State Housing Strategy for which public and social housing is concerned. WALGA requests that Local Governments are closely consulted through this process, particularly where they will be directly impacted as outlined below.

This concern has been raised due to the mention on pages 7/8 of the Discussion Paper of State agencies applying for exemptions from immediate compliance with better standards of housing in remote Aboriginal communities. However, there is a wide range of other types of State housing properties in both metropolitan and regional areas, that can generate a significant number of complaints to Local Governments and these types of housing are not mentioned in the paper. Complaints about these properties range from structural defects (broken windows, leaking roofs, defective septic systems etc. which are a State responsibility), to accumulations in front and rear yard areas and squalor within the dwellings (tenant behaviour). Currently all of these issues are the responsibility of the Department of Communities.

In regards to remote aboriginal housing members consider that the State Government needs to be more accountable to ensure that State Housing does not remain in poor condition, disrepair or even abandoned which may also require substantial investment by the State in fulfilling their inspection regime under any changes.

MEHMG are concerned that the Discussion Paper indicates that the State may apply for exemptions to ensure that house repairs and upgrades are not initially covered by the new Act. There is also an assumption that tenants behaviour will require management by Local Governments (which includes; complaint investigation, service of Notice, instigation of legal action, act in default). The use (or misuse) of State owned properties also has a public health impact not only on the tenants and their families but also people on the adjoining properties due to nuisances created. The new legislative framework must include provisions that will effectively capture and allow for enforcement of public health considerations on the State Government housing sector.

Whilst the metropolitan Local Governments, via MEHMG, are concerned about the potential extra burden of having to manage State housing, regional Local Governments who have contributed to the MEHMG submission, have highlighted that they need adequate power to address complaints relating to State housing themselves. This is because they have added pressure on them to respond to neighbour complaints about problem tenants, as many towns do not have the Department of Communities staff locally available. As such, it is important that the ability to address complaints relating to state owned housing (including associated powers to access / inspect properties and to issue unfit for human habitation notices) are not diminished for Regional Local Governments.

The Shire of Merredin have commented on the need for strong and unambiguous legislative powers to deal with issues relating to the use of unsuitable buildings or parts of buildings for human habitation as well as inclusion of maintenance provisions relating to adequacy of housing to ensure that it is fit for purpose.

MEHMG have identified that higher penalties for noncompliance with notices and orders with infringement powers will be useful and very possibly, more effective. They have also identified the need to clarify the future regulation of lodging houses and through Airbnb.

The City of Joondalup raised that the separation of laundries and kitchens that is currently included in the *Health Act (Laundries and Bathrooms) Regulations*, is not adequately considered by the NCC. As the nature of housing is changing, such as an increasing number of density developments and apartment buildings, the likelihood of a dwelling being constructed with a laundry trough next to a food preparation area would increase. Allowing a laundry facility to be in the immediate area of food preparation surfaces would present an increased public health risk. Therefore, the separation of kitchen and laundry facilities should be maintained as a first preference; however, given the worldwide trend towards combining these functions within apartments, the Department should give consideration as to how this can be safely accommodated.

The City of Joondalup also highlighted that mould is increasing as an issue of public health significance in dwellings. While human influence may be a causative factor, such as the failure to turn on exhaust fans or open windows, provisions that allow an authorised officer to require actions such as the installation of condensation dryers or improve ventilation, should be considered.

4. Conclusion

Thank you again for the opportunity to make comment on the “Managing Housing Health Risks in WA” Discussion Paper. Local Governments are appreciative of the opportunity to provide input on the development of the *Public Health Act 2016* regulations, and it is anticipated that integrating the experiences and knowledge of Local Government Environmental Health Officers into regulation will lead to improved health and wellbeing for community.

WALGA supports DOH’s preferred option C to develop new, updated regulations to manage public health risks, but requests that Local Government officers are directly involved in the development of these regulations.

5. Appendix: Engagement Methods

Engagement Process

Newsletters:

- WALGA Local Government News
- WALGA Community and Place News

Emails:

- MEHMG
- LG Environmental Health Officers Mailing List
- Regional Networks Environmental Health Officers
- WALGA Teams: Governance, Waste, Environment, Planning

Formal correspondence:

- Submission sent to WALGA People and Place Policy Team
- Submission approved by State Council via Flying Minute (TBC)

Local Governments Engaged

Written submissions received from:

- MEHMG
- Shire of Merredin
- City of Joondalup

Comments received from:

- WALGA Planning