

Portfolio Committee No. 8 - Customer Service – Inquiry into Public Toilets: Response to Question on Notice to the Justice and Equity Centre

Question

The CHAIR: My question for you, Ms Daly, and I appreciate you may need to take it on notice, but I'm interested in the sort of legal aspect of this. From the perspective of the Justice and Equity Centre, is there a human rights issue or a discrimination issue with public toilets not adequately being provided?

ALANNAH DALY: In terms of whether it qualifies as discrimination under the legislation, I'm not sure. I'd probably have to take that on notice. In a sort of social sense, I suppose it is disproportionately impacting one group of people more than others, so I would call that structural discrimination. I'm not sure exactly about the strict legal test for discrimination, though. Other legal aspects that might be worth considering is how it is part of a broader issue with the criminalisation of homelessness. So things that people who have a home to stay in would do within their private space, if you don't have a private space to do that, they become criminalised, because you're doing it in public. Things like public urination or exposure, things like that, they can entrench disadvantage and the difficulties experienced by people who don't have a home. But I'm happy to take on notice that broader question around discrimination.

The CHAIR: Thank you, that's helpful. In your written submission there's a particular comment in terms

Response

Homelessness is a human rights issue as it violates the right to an adequate standard of living, including housing,¹ recognised under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Homelessness can also violate other rights including the right to privacy and the right to health.²

A lack of access to public toilets may also undermine the right to sanitation. This right is derived from the right to an adequate standard of living³ and it entitles everyone to 'have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and socially and culturally acceptable and that provides privacy and ensures dignity.'⁴

As raised by People with Disability Australia (PWDA) in their submission,⁵ we note that there have been suggestions to recognise access to public toilets as a standalone human right. In our view, this would be a positive reform that would promote improved access to public toilets for all, including people experiencing homelessness.

The inadequate provision of public toilets potentially raises questions of discrimination. The *Anti-Discrimination Act NSW* (1977) does not protect individuals from discrimination on the basis of their housing status, so there would currently be no legal claim for discrimination for a lack of access to facilities purely due to homelessness (although this could change if housing status is added as a protected attribute as an outcome of the NSW Law Reform Commission's review of this legislation).

¹ Tamara Walsh, 'A right to inclusion? Homelessness, human rights and social exclusion' *Australian Journal of Human Rights* (2006) 12(1) 186.

² Australian Human Rights Commission, [Homelessness is a Human Rights Issue](#) (Issues paper, 2008).

³ Human Rights Watch, "Going to the Toilet When You Want": Sanitation as a Human Right (Web article) 19 April 2017 < https://www.hrw.org/report/2017/04/19/going-toilet-when-you-want/sanitation-human-right#_ftn8>.

⁴ Ibid.

⁵ People with Disability Australia, Submission no 41 to Portfolio Committee No. 8 – Customer Service, *Inquiry into Public Toilets* (28 October 2024) 3.

However, there are other protected attributes which may be relevant to a person's access to public facilities. As explained by the Inner City Legal Centre in their submission to this inquiry, the lack of inclusive public toilets has disproportionate impacts on gender-diverse people.⁶ Additionally, People with Disability Australia explain how people with disability are excluded from the public sphere because there are not enough accessible toilet facilities.⁷

⁶ Inner City Legal Centre, Submission no 28 to Portfolio Committee No. 8 – Customer Service, *Inquiry into Public Toilets* 31 October 2024.

⁷ People with Disability Australia, Submission no 41 to Portfolio Committee No. 8 – Customer Service, *Inquiry into Public Toilets* (28 October 2024) 2.