

Portfolio Committee 8 - 2024 Inquiry into public toilets

Hearing 7 April 2025

Responses to Questions taken on Notice: SafeWork NSW

Question
<p>Q1</p> <p>The CHAIR: I think in your opening statement you mentioned isolated work or after-hours work. Particularly we're looking at the issue of accessibility of toilets after hours. Availability of cleaners during that time has been raised as a barrier. What do we need to take into account if we're going to be recommending more people undertake cleaning work in remote locations or antisocial hours?</p> <p>MARY SNELL: Again it's going to depend on where it is. If workers raise complaints with us, we'll go to the workplace and ask, "Where are the amenities?" We can issue improvement notices to make sure they're available, because they should be available during the working hours for workplaces, and in clean and good order—and safe. In terms of beyond that, I could take it on notice, but we probably haven't had that kind of regulatory engagement previously.</p> <p>The CHAIR: No worries, very happy for you to take it on notice.</p>
<p>ANSWER</p> <p>The Committee should take into account the NSW Code of Practice – Managing the Work Environment and Facilities which provides useful guidance on this matter, including section 4.2 on remote or isolated work:</p>
<p>Q2</p> <p>The Hon. ANTHONY D'ADAM: Okay, so there's a specific provision in the code of practice that provides a definition of what constitutes good, clean and working order facilities. Is that correct?</p> <p>MARY SNELL: I'm not sure, sorry, that I'd describe it as a definition, but it would give a framework around the elements that you need to have that, in terms of it's cleaned regularly and there are components that it must have. I'll just find them for you. Part 3 of the code of practice will set out the specific requirements, so things like a toilet should be fitted with a hinged seat and lid; provided with lighting and ventilation; clearly signposted; fitted with a hinged door that is capable of being locked; designed to allow emergency access; positioned to ensure privacy for users; and separated from other rooms by an airlock, soundproof wall and a separate entrance that's clearly marked.</p> <p>In terms of what they should be supplied with—toilet paper, handwashing facilities, rubbish bins and, for female workers, hygienic means to dispose of sanitary items—they are the kinds of elements that are in the code of practice. If an inspector went to a workplace and these elements were not present, then they'd have the power to issue what's called an improvement notice to compel the workplace—or the PCBU, rather—to comply with the requirements of the regulation. They would set out things like, "Fix these things as soon as possible. Make sure there are alternate toilets available in the meantime."</p> <p>The Hon. ANTHONY D'ADAM: How frequently is that an occurrence, where amenities are subpar and an inspector might issue an improvement notice?</p> <p>MARY SNELL: I would have to take that on notice. In relation to public toilets only, I'm aware of two in the last five years.</p> <p>The Hon. ANTHONY D'ADAM: Are you able to provide just the relevant sections—clause 41 and the extracts from the code of conduct—for the benefit of the Committee on notice?</p> <p>MARY SNELL: Yes.</p>
<p>ANSWER</p> <p>See below extract of Clause 41 of the <i>Work Health and Safety Regulation 2017</i>:</p> <p>41 Duty to provide and maintain adequate and accessible facilities</p> <p>(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities.</p> <p>Maximum penalty—</p>

- (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.
- (2) The person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that the facilities provided under subclause (1) are maintained so as to be—
- (a) in good working order, and
 - (b) clean, safe and accessible.

Maximum penalty—

- (a) for an individual—73 penalty units, or
 - (b) for a body corporate—364 penalty units.
- (3) For the purposes of this clause, a person conducting a business or undertaking must have regard to all relevant matters, including the following—
- (a) the nature of the work being carried out at the workplace,
 - (b) the nature of the hazards at the workplace,
 - (c) the size, location and nature of the workplace,
 - (d) the number and composition of the workers at the workplace.

See below extract of the relevant section of the [*NSW Code of Practice – Managing the Work Environment and Facilities*](#), being section 3.3 – Toilets:

3.3. Toilets

Access to clean toilets must be provided for all workers while they are at work. Where reasonably practicable, toilet facilities should be provided for workers, rather than relying on access to external public toilets.

Number of toilets

For workplaces within buildings, the *National Construction Code of Australia* sets out the ratio of toilets to the number of workers, and the specifications for toilets. Generally, separate toilets should be provided in workplaces where there are both male and female workers. However, one unisex toilet may be provided in workplaces with both male and female workers where:

- the total number of people who normally work at the workplace is 10 or fewer, and
- there are two or fewer workers of one gender.

For example, a workplace with two male and eight female workers or with one female and three male workers could have a unisex toilet because there are 10 or fewer workers in total and two or fewer workers of one gender.

A unisex toilet should include one closet pan, one washbasin and means for disposing of sanitary items.

For all other workplaces, separate toilets should be provided in the following ratios.

Workers	Closet Pan(s)	Urinals
Males	1 per 20 males	1 per 25 males
Females	1 per 15 females	N/A

These ratios are the minimum standard that should be provided. However, in some workplaces, the scheduling of workers' breaks will affect the number of toilets required. There should be enough toilets available for the number of workers who may need to use them at the same time.

Design of toilets

Toilets should be:

- fitted with a hinged seat and lid
- provided with lighting and ventilation
- clearly signposted
- fitted with a hinged door capable of locking from the inside on each cubicle
- designed to allow emergency access
- positioned to ensure privacy for users, and
- separated from other rooms by an airlock, a sound-proof wall and a separate entrance that is clearly marked.

Toilets should be supplied with:

- toilet paper for each toilet
- hand washing facilities
- rubbish bins, and
- for female workers, hygienic means to dispose of sanitary items.

Access to toilets

Toilets must be accessible for all workers including workers with a disability. Preferably toilets should be located inside a building or as close as possible to the workplace. In multistorey buildings, toilets should be located on at least every second floor.

Mobile, temporary or remote workplaces

If work is undertaken away from base locations or at outdoor sites, for example by gardeners, bus drivers, couriers, workers must have access to other toilets, for example public toilets or toilets at clients' premises. In such cases, information should be provided to workers on where the toilets are located.

Where it is not reasonably practicable to provide access to permanent toilets, for example short-term temporary workplaces and workplaces in remote areas, portable toilets should be provided. Portable toilets should be located in a secure place with safe access. They should be installed so they do not fall over or become unstable and should be serviced regularly to keep them clean.

Q3

The Hon. STEPHEN LAWRENCE: Thanks, Ms Snell, for attending. Your evidence is much appreciated. In terms of the applicable standard for the provision of toilets for employees—you talked about the legislative standard. Is that set by subsidiary legislation, in effect?

MARY SNELL: In terms of the Work Health and Safety Regulation, that flows from the Work Health and Safety Act, which flows from the model framework. That's the model laws at the national level that jurisdictions have the opportunity to opt in and adopt and New South Wales has done that. Within that framework, the detail is in—you have a primary duty to provide a workplace that is a safe and healthy workplace, and then it cascades to the regulation where clause 41 relates to the duty for amenities. There's also another clause, which I'll take on notice to share more formally. Clause 40 also applies, and that relates to general workplace management. For example, if we had identified mould as an issue, the improvement notice might likely relate more to clause 40 than clause 41. Clause 41 would be about the taps and that the equipment is not functional or it's broken, for example.

ANSWER

The legislative standards applicable to the provision of toilets to employees are prescribed by the [Work Health and Safety Act 2011](#) (WHS Act) and [Work Health and Safety Regulation 2017](#) (WHS Regulation). Such provisions include:

- [Section 19](#) WHS Act – primary duty of care
- [Section 47](#) WHS Act – duty to consult workers
- [Clause 40](#) WHS Regulation – duty in relation to workplace facilities
- [Clause 41](#) WHS Regulation – duty to provide and maintain adequate and accessible facilities
- [Clause 399](#) WHS Regulation – specific provision of changing rooms, washing, showering and toilet facilities relating to working with lead.

Q4

The Hon. STEPHEN LAWRENCE: But is there a requirement, for example, when you've got bigger workforces, that you must provide a unisex toilet so that the gender-diverse person has a toilet to use that's not male or female?

MARY SNELL: I'd have to take that on notice.

The Hon. STEPHEN LAWRENCE: Yes, if you wouldn't mind, that would be useful. We've just had a lot of evidence about trans issues and all toilets. I'm interested from an OH&S point of view. I know that's not the right acronym now. What's the situation, basically? Is there a minimum standard in New South Wales that employers have to meet or is it a bit greater than that? If you wouldn't mind taking that on notice, that would be appreciated.

MARY SNELL: Yes, certainly.

ANSWER

There is no prescriptive requirement. Under clause 41 of the WHS Regulation, a person conducting a business or undertaking (PCBU) must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities. Under sub-clause (3) the PCBU must have regard to all relevant matters, including the number and composition of the workers at the workplace.

Section 47 of the WHS Act provides that the PCBU must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety. The nature of that consultation is then covered in section 48.

Part 3.3 of the *NSW Code of Practice – Managing the Work Environment and Facilities* also contains information on minimum standards for the number of type of toilets to be provided at workplaces. However, the Code of Practice does not override the statutory duties referred to above.

Q5

The Hon. AILEEN MacDONALD: What responsibilities do facility operators in both the public and private sphere have under WHS laws when managing public toilets?

MARY SNELL: I might take that on notice because I think it's probably going to get unpacked into a few layers because they will be a PCBU.

ANSWER

Where a facility operator is a PCBU for the purpose of work health and safety (WHS) laws, responsibilities under WHS laws about the management of toilets apply, irrespective of whether they operate in a public or private sphere.

In particular, such facility operators have a responsibility to ensure, so far as is reasonably practicable, that it provides adequate toilet facilities for workers and those facilities are maintained so as to be in good working order and clean, safe and accessible (see clause 41 WHS Regulation).

Q6

The Hon. AILEEN MacDONALD: In your role, are you involved in inter-agency planning or advocacy work on public amenities?

MARY SNELL: I'd have to take that on notice, too. Not in my role, but I can take that on notice because I'm one of many.

ANSWER

SafeWork NSW regularly participates in inter-agency planning and advocacy work to improve WHS outcomes and promote compliance with WHS laws including, where relevant, in relation to amenities.

Q7

The Hon. AILEEN MacDONALD: You might need to take this one on notice, too. Do you think that there needs to be clearer design and maintenance standards that would go to improving safety outcomes for both staff and the public?

MARY SNELL: Again, sorry, I would need to take that on notice.

ANSWER

SafeWork NSW supports a framework for continuous improvement and progressively higher standards of WHS.