

**Submission
No 28**

INQUIRY INTO PUBLIC TOILETS

Organisation: Inner City Legal Centre (ICLC)

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Legislative Council Inquiry into Public Toilets

The Inner City Legal Centre (ICLC) thanks the Legislative Council and the members of Portfolio Committee No 8 for the opportunity to provide submission on the Terms of Reference of the Public Toilet Inquiry.

Acknowledgement

The ICLC offices sit upon the unceded traditional lands of the Gadigal People of the Eora Nation. We pay our thanks and respects to Elders past and present for their continued care and custodianship of these lands.

About the ICLC

Since 1980, the ICLC has proudly stood amongst leading legal advocates for the LGBTQIA+ and sex worker communities in NSW. We provide the only specialist legal services for these communities in NSW.

The ICLC is also one of the most underfunded Community Legal Services in NSW, as the LGBTQIA+ and sex worker communities are not priority populations under the National Legal Assistance Partnership.

We are frequently invited to provide insight on issues impacting the communities that we support. Being a small, community-based organisation, we do not have a dedicated policy and law reform position within our organization. Nevertheless, we attempt to fit law and policy reform work around our primary frontline duties.

The bulk of this submission was drafted by First Nations Intern Xander Mains. We thank Xander for his work and for Community Legal Centres NSW for supporting Xander's placement with the ICLC.

Our Recommendations

We urge the State of NSW to ensure that the regulation and design of public toilets prioritise the safety, dignity, and inclusivity of all individuals, particularly individuals who do not fit within typical gender expectations and norms. No one should ever feel unsafe or intimidated when using public facilities. Access to public toilets must remain a fundamental right, free from harassment or discrimination. All laws relating to public toilet use should discourage violence and aggression based on gender identity and expression.

It is also essential to recognise that public toilets serve a broader purpose beyond facilitating toileting. We recommend that the state of NSW recognise that public toilets provide essential private spaces for a range of essential activities. This may include; showering or cleaning up, changing clothes after exercise or spilling food, changing nappies and cleaning children, use as a private or 'wind-down' space, administering medication, safely using and disposing of injecting equipment and a place of safety or refuge. On occasion, people will use public toilets for sexual activity, spontaneous or otherwise.

Public toilet design and use should reflect that marginalised members of our community are more likely to rely on public toilets than people with easier access to private or user-pays spaces. Therefore, providing safe and comfortable spaces for diverse use by all members of community should be a key goal in public toilet policy, design and maintenance.

Best practice design:

1. Female/male/unisex signage should be replaced with "All-Gender" signage.
2. Optimal design and layout is a number of all-gender single-use stalls that are available for anyone to use.
3. All-Gender toilets should not be exclusively co-located with accessible or ambulatory toilets.
4. Private single-stall bathrooms include room for a bench to facilitate changing clothes and other personal tasks.
5. Outdoors and All-Gender stalls should have no or limited gaps between doors and walls to ensure privacy.
6. An overall increase in the availability of single-stall showers and change rooms in NSW.

Legislative Reform:

NSW Police Education and Reform:

7. Additional mandatory and ongoing training be provided to NSWPF officers concerning the LGBTIQ community, which should include sensitivity in policing of sexual activity that may occur in public or semi-public areas.

Accessibility for LGBTIQ+ and the transgender and gender diverse community

We recommend that public toilets be designed in a way that actively prevents gender-based discrimination and harassment. This includes ensuring the availability of options beyond the traditional male and female gender categories and increasing the number of available all-gender toilets.

Trans and gender diverse (TGD) are inclusive umbrella terms that describe people whose gender is different to what was presumed for them at birth. International empirical evidence suggests that the TGD population ranges from 0.5 to 4.5% - suggesting that there could be more than one million TGD adults in Australia today. While trans and gender diverse people are more likely to be impacted by violence and aggression based on their gender appearance or identity ([Strauss et al, 2019](#)), this form of harassment can also impact cis-gender people (i.e. people whose gender is the same as what was presumed for them at birth) too.

Most NSW public bathrooms are gender segregated. For trans and gender diverse people, as well as cis gender people who do not conform with gender expectations; for example, masculine presenting cis-gender women, these divisions can lead to discomfort, conflict, and even the risk of harassment or violence based on perceived gender conformity or appearance. This is commonly referred to as "gender-policing."

International research provides evidence that segregated toilets are unsafe spaces for TGD and gender non-conforming people. A [2017 Stonewall report](#) found that one in five trans students are bullied in UK school toilets, and three in five are not allowed to use the toilets they feel comfortable in. This discomfort continues throughout life; a [2015 Scottish Trans Alliance survey](#) of non-binary people found that over half (55.2%) avoided public toilets due to fear of harassment, being perceived as non-binary, or being 'outed.' The [2018 'Around the Toilet'](#) report summarised these experiences, calling for toilet design that would meet the needs of all populations. These findings reflect the ongoing anxiety and dangers that many TGD people experience when using public toilet facilities.

In many cases self-policing behaviour or avoidance of using toilets as a means to prevent experiences of discrimination can become necessary. This results in members of our community not able to use public toilets, which limits participation in public life and

different areas based on safe toilet availability ([Webber, 2018 QLD](#)), serious discomfort and in some cases susceptibility to health problems.

A UK [consultation](#) with the trans and gender diverse community provided suggestions for public toilet design. This includes a preference for single stall physical designs, signage that reflects all bodies and the review and enforcement of anti-discrimination policies. This report also discouraged the conflation of accessible toilets with 'all-gender' alternatives.

For many trans and gender diverse people who do not have disabilities, it would be inappropriate to use a bathroom specifically designed for people with disability (especially when there is only one accessible toilet available). It additionally places already highly visible trans and gender diverse people at risk of further policing by the general public for using a bathroom that they apparently do not need to use. Of course, there are many people with disability who are also trans or gender diverse. Accessible and ambulatory toilets should be available to people of all genders.

Toilet designs should also preserve an individual's right to privacy, including the privacy of their trans status. Having a single unisex bathroom alongside male and female bathrooms can further ostracise or out a trans or gender diverse person, where others may question why an individual does not use the 'main' gendered bathrooms.

For example, a transgender man may not be safe to use the male bathrooms, if they use the toilet cubicles to urinate (rather than the urinal). Urinating in a cubicle instead of a urinal may bring about unwanted questions, or even harassment from other bathroom-goers, co-workers or acquaintances. For a seemingly able bodied and cis appearing transgender man, using the unisex or accessible toilets may also invite unwanted questions or policing from the general public.

In NSW, public toilets are a key site of gender policing, where many members of the general public feel comfortable calling out, harassing and even expelling people who are deemed to not belong in the space.

Case Study

Amy* is a transgender young woman. While at an event, she went to use the female public toilets. Event organisers had positioned a staff member outside the toilets to ensure that members of the public were using the 'correct' bathroom based on that staff members evaluation of their appearance. As Amy approached the female toilets she was harangued by the staff member. Luckily, a woman using the female toilets came to her defence and told the staff member to leave her alone.

Owing to the limited options available for recourse under the NSW Anti-Discrimination Act 1977, the NSW anti-discrimination protections, Amy was unsuccessful in her claim against the event organisers and staff.

Signage

All gender signage allows all members of the public to access and feel comfortable in selecting and toilets. As the signage removes binary reference to male and female genders, there would be no basis for excluding people from using the bathrooms based on their gender identity. It also signals to the LGTBQIA+ community that the space is inclusive and safe.

Our colleagues at [TransHub](#) provide the following signage recommendations for different bathroom and toilet types:



Model provided by the TransHub website

Design of Public Toilets

For trans and gender diverse people who do make it into the safety and privacy of a toilet cubicle, there remains risk of harm where cubicles are not appropriately designed. Often public toilets will have significant gaps in the toilet cubicle doors and walls.

While everyone is likely to enjoy the security and privacy of gap-free toilet walls and doors, for trans, gender diverse and intersex people ensuring privacy can be essential to their safety from people who would harass, or harm people identified as gender or sex diverse.

People outside a toilet cubicle should not have opportunities to peer inside to see anybody in a state of undress.

Many privately owned bathrooms, showers and changerooms that are accessible to the public, or to a portion of the public; for example in shopping centres, gyms and workplaces, may not be a bathroom that is safe for trans and gender diverse people. This may be because a person presents ambiguously in their gender, or because they may be at risk of harm using or being noticed to use the bathroom that does align with their assumed gender; especially in closed spaces like at work. So, this can leave using public toilets as an important option for trans and gender diverse people.

Additionally trans and gender diverse people remain at increased risk of homelessness and insecure housing and may have increased reliance on public toilets.

Therefore, we recommend that private single-stall bathrooms are designed with room for a bench/place to rest a bag, etc. and for stalls to be closed with no-to-limited gaps. This would allow trans and gender diverse people privacy and safety when using public toilets for a range of purposes including changing clothes.

Criminalisation

We acknowledge and commend the NSW Government for its apology on 6 June 2024 to those people who had been convicted under laws that criminalised homosexuality.

Public toilets were the site in which many people who were engaging in consensual activities were entrapped by Police, arrested and convicted. Public toilets were also the key site of many assaults and murders, which were frequently overlooked and improperly investigated by Police, which had been reported in the Special Commission of Inquiry into LGBTIQ hate crimes.

Although use of public toilets as a private meeting place for members of the LGBTQIA+ community has declined as alternative meeting places have become available following decriminalisation and the gradual de-stigmatisation of homosexual activity; it remains the case that public toilets will be used for this purpose from time to time, especially in areas where sex on premises venues are not available.

The HIV/AIDS Legal Centre (HALC)¹ has received reports from clients of NSW Police staking out public toilets for people engaging in sexual acts, disproportionately targeting the LGBTQIA+ community. On one occasion, police charged a HALC client with the offence of obscene exposure where a police officer allegedly viewed the client through the gaps in the toilet door masturbating, when in fact the client's account was that they were simply, urinating. On another occasion, a LGBTQIA+ client of HALC was accused by police of masturbating in a bathroom that was a known venue for sexual activity when he was found to be simply using the urinal.

The effects of over-policing and criminalisation of uses of public toilets includes community advocates known to Inner City Legal Centre advising international LGBTQIA+ community members attending Sydney for World Pride 2023, that they should avoid using beats and public toilets and instead use sex on premises venues to avoid being charged with a criminal offence.

In line with Recommendation 8 of the Special Commission of Inquiry into LGBTIQ Hate Crimes; ICLC and HALC strongly support the implementation of additional mandatory and ongoing training be provided to NSWPF officers concerning the LGBTIQ community, which should include sensitivity in policing of sexual activity that may be taking place in public or semi-public areas.

This would reduce the negative impacts of engaging with the criminal justice system and courts can have on already marginalised communities.

We thank you for the opportunity to provide these submissions and would welcome further discussions with the portfolio committee, should this assist.

Katie Green
Chief Executive Officer
INNER CITY LEGAL CENTRE

¹ This case study was provided to us by the HIV/AIDS Legal Centre and reproduced with their consent.