

**Submission
No 33**

INQUIRY INTO PUBLIC TOILETS

Organisation: Australian Feminists for Women's Rights (AF4WR)

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The following is a contribution to the New South Wales Legislative Council Inquiry into public toilets from Australian Feminists for Women's Rights (AF4WR). AF4WR is an incorporated association of left-wing feminists who campaign for the sex-based rights of women and girls, within the broader struggle for a more just and equal society.

This submission focuses on part (a) of the Terms of Reference: the provision, design, accessibility and inclusivity of public toilets across New South Wales, including toilets provided in public places and toilets provided for the use of members of the public in private premises accessed by the public. Any outcomes from this inquiry should focus on the safety and dignity of women and girls using public toilets in NSW.

AF4WR makes this submission with the following understanding of gender and sex as two separate concepts, one based in social constructs (gender) and one based in biological science (sex). The following definitions are used by AF4WR:

- Sex refers to the biological dimorphism among humans as sexually dimorphic mammals, i.e. humans are male or female, and have a range of different physiological characteristics according to sex. The infinitesimally small proportion of the human population that is truly intersex (rather than cases of anomalous chromosomal makeup in biological males or females, such as Klinefelter or Turner syndromes, which are often mistakenly classed as intersex), does not alter this fact.
- Women and girls means those of female sex, that is, female bodied adults and children: those born with various multiples of the X chromosome (most commonly XX) and possessing female genitalia and other secondary female sexed-based characteristics due to female puberty. In our discussion of women and girls, this is the population to which we are referring.
- Gender is a sociocultural construct based on sex-role stereotypes. It is not a material or biological condition but a cultural one, and although it can be a basis of analysis of cultural prejudices against women and girls that contribute to the acts of personal, institutional, or symbolic violence they experience, it has no basis in material reality. Considerable confusion has arisen out of the conflation of the concepts of sex and gender within institutional vocabulary and legislation.

Safety of women and girls

Unfortunately, for many women and girls, the experience of sex-based harassment and violence is a constant and real threat to their safety and is an experience multiplied over their lifetime as identified by UN Women:

Women and girls experience and fear different forms of sexual violence in public spaces, from unwelcome sexual remarks and gestures, to rape and femicide. It happens on streets,

in and around public transportation, schools, workplaces, **public toilets** (our emphasis), water and food distribution sites, and parks. This reality reduces women's and girls' freedom of movement. It reduces their ability to participate in school, work, and public life. It limits their access to essential services and their enjoyment of cultural and recreational activities, and negatively impacts their health and well-being (UN Women 2024).

The Australian Bureau of Statistics indicates that 39 percent of women and girls have experienced violence since the age of 15 and the Australian Human Rights Commission has found that more than half of women and girls have experienced sexual harassment and that in most incidents the harasser was male (Our Watch, 2024).

Women and girls deserve to have access to a single-sex space for refuge as well as sanitary activities so they can undertake these activities not just *being* safe but *feeling* as safe as possible (Cervini, 2024).

In the UK in 2018, following a Freedom of Information request, *The Times* (and other media organisations subsequently) reported that unisex changing rooms at public swimming pools increase the risk of assault on women and girls (Gilligan, 2018). The statistics indicated that “just under 90 per cent of complaints regarding changing room sexual assaults, voyeurism and harassment are about incidents in unisex facilities” (Gilligan, 2018). Further, statistics from this request indicate that in 2017–18 in the UK, there were 134 reported incidents, and 120 of these occurred in mixed sex changing rooms, while only 14 occurred in single-sex changing rooms (Gilligan, 2018).

Facilities that are not deemed for the exclusive use for women and girls provide an increased risk of violence, including sexual violence, perpetrated by men (Gilligan, 2018). We are well aware that this is a risk in Australia as well as world-wide (Qld Police, 2019).

Dignity of women and girls

Women and girls also have a right to dignity when using sanitary facilities (Towns & Ballantyne, 2023; Cervini, 2024; Lewkowitz & Gilliliand, 2024). As outlined above, the use of sanitary facilities includes experiences that are specific to female bodies, including pregnancy, miscarriage, breastfeeding and menstruation. Enabling access to single-sex sanitary facilities recognises the particular needs of women and girls and provides them with dignity. To build a world where women and girls experience equality they need to be afforded access to appropriate spaces to manage their reproductive health and sanitary needs, including when they are moving around the world in shared spaces.

Trauma recovery is an important part of providing dignity to women and girls who have experienced sex-based violence. Trauma-informed responses to sexual harassment and violence indicate that those who have experienced this type of harassment and violence require time in recovery (Queensland Centre for Domestic and Family Violence Research, 2020). Further, supporting this recovery includes providing access to single-sex facilities and services therefore reducing the risk of re-traumatisation (Queensland Centre for Domestic and Family Violence Research, 2020). This should be paramount when considering access to sanitary facilities as encountering an unknown male in a confined and isolated space can be frightening.

It needs to be recognised that opening up female facilities to males is discomfiting to women and girls. It is also exclusionary as women and girls often choose not to use these facilities. This can result in women's and girls' discomfort, at best, or self-exclusion from places, including sports facilities, as a result of their need for single-sex spaces not being met. As discussed above, mixed-sex facilities reduce the safety of women and girls and do not affirm the dignity of women. Prioritising the feelings of a small subset of the population but ignoring the needs of the majority is poor policy.

Moreover, Australia is becoming increasingly religiously diverse over time according to the ABS (Australian Bureau of Statistics, 2022). Having somewhere to adjust clothing and perform religious hygiene rituals away from the opposite sex is essential to some women's ability to participate in work and public life.

Sex Parity

On average, women take longer to use the toilet than men and use the toilet more often, as evidenced by the ubiquitous long queues at airports, theatres, and sports venues. There are many reasons for this, including:

- Menstruation and pregnancy;
- The greater likelihood that women have certain health conditions related to use of toilets, for example cystitis and IBS;
- The extra time it takes women to remove and replace clothing due to the need to sit or squat to urinate; women are also more often carrying bags;
- The greater time needed to use a toilet cubicle than a urinal, e.g. to open and close the door, clean the seat, ensure the flush has operated effectively; and
- The greater likelihood that women are looking after small children or caring for others: children and the elderly take longer to use the toilet and need to go more often.

In Hong Kong, building regulations now specify that there must be 1.6 female toilets for every one male toilet in public places. Designers and providers should use a more socially equitable rather than a geometrically equal allocation of space and facilities, so that women can take the time they need in a toilet without having to pay for it by waiting longer (O'Dwyer, 2018; Lowe, 2019).

Disability

Everyone, regardless of their access needs or disability or reliance on the assistance of carers or specialist equipment, should be able to use a public toilet facility hygienically and with dignity.

Women with profound and multiple learning disabilities or with physical disabilities such as spinal injuries, muscular dystrophy and multiple sclerosis often need extra equipment and space to allow them to use the toilets safely and comfortably and often need to use the toilet more often than men.

Changing Places facilities should be available in all public venues (Changing Places, 2021).

Women with Children

Parents face many challenges trying to find a safe and accessible place to change a nappy, use the toilet while looking after babies and young children, and find safe facilities for older children to use. On average, children spend more time with their mothers and this burden disproportionately affects women.

Sufficient family facilities should be provided so that children and babies in prams do not have to be separated from their parent while one uses the toilet. Baby changing facilities should be provided in all toilet facilities.

Often, children don't realise they need to urinate or put it off until the need is urgent. Public facilities should be available nearby.

Harmonisation with legislation and regulatory requirements

Any changes in NSW policy should be harmonious with other existing requirements. These include:

- National Construction Code
- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- Any relevant NSW legislation including the Anti-Discrimination Act (1977)

With some exclusions (e.g. for unisex accessible facilities) the National Construction Code states that separate sanitary facilities for males and females must be provided. Unisex accessible facilities must be located such that they can be entered without crossing an area reserved for one sex only.

Australia signed the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1980 and ratified it in 1983. CEDAW defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. All laws and regulations need to be considered against this standard. Removal of sex as a criterion for appropriate allocation of public toilet facilities would constitute a breach of Australia’s treaty obligations under CEDAW.

Further, Australia signed and ratified the Convention on the Rights of the Child in 1990. Consideration of the rights of girls should also be considered and whether the exclusion of the criterion of sex is likely to result in their best interests being served or their rights being infringed upon as a result of a lack of appropriate sanitary facilities for girls.

Menstrual Hygiene

The following should be provided in all sanitary facilities used by women and girls:

- A dispenser for sanitary products;
- Adequate means of disposal of sanitary product;
- In appropriate locations, free sanitary products available.

Recommendations

Recommendations from this inquiry should:

- 1) Prioritise the needs of women and girls
- 2) Provide more female facilities
- 3) Make it clear that individual mixed sex facilities must follow specific standards defined for the purpose of safety, dignity, and privacy of the users.
- 4) Ensure mixed-sex facilities are designed with women's and girls' safety and dignity in mind, including:
 - mixed-sex sanitary facilities should be individual rooms containing toilet, sanitary bin, hand basin, soap, mirror, hand dryer, and bag hook;
 - individual mixed-sex sanitary facilities must have a door that is full height and lockable and clear signage should be provided;
 - the entrance of individual mixed-sex facilities should open into public space, not a corridor, to allow for passive surveillance;
 - the common space onto which the facilities open should never be a dead end and must never create an entrapment spot; and
 - facilities must be designed in accordance with Crime Prevention Through Environmental Design (CPTED) principles especially in regard to sightlines, entrapment spots, isolation, and loitering (The International Crime Prevention through Environmental Design Association).
- 5) Ensure the majority of facilities are single-sex, noting that the number of people requiring mixed-sex facilities is small and that significantly more floor space is required to accommodate well designed mixed sex facilities without compromising safety and privacy.
- 6) Provide menstrual products and facilities in female and mixed-sex facilities.
- 7) Provide accessible facilities including Accessible Adult Changing Facilities.
- 8) Provide family facilities including nappy changing.

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