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Proposed changes to amenity requirements for construction work – *Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024*

Introduction

Master Builders support the intent of the *Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024* (WHS Amendment Regulation).

We also support the following statement from the 2022 independent review of the *Work Health and Safety Act 2011*¹ (the 2022 Review):

*It goes without saying that ... the failure to provide adequate amenities for women workers on construction sites ... is beyond unacceptable*²

We support the ETU's *Nowhere to Go* report which identified that³

*[c]oncise, unambiguous legislative and regulatory drafting for the provision of adequate workplace amenities suitable for all workers is what is needed to break this cycle*⁴.

Master Builders is concerned that if the WHS Amendment Regulation is implemented without amendment it will result in confusion and outcomes that do not achieve its intent.

The 2022 Review

We submit that the WHS Amendment Regulation does not address the following issue identified in the 2022 Review:

One issue identified in the course of the review is that the obligations in respect of amenities are spread across multiple different sources. For example, in respect of construction there is a construction specific regulation which imposes some obligations and there is also a facilities code of practice which imposes additional obligations. It is undesirable for prescriptive

¹ <https://www.oir.qld.gov.au/public-consultation/work-health-and-safety-act-2011-review>

² Ibid, page 115

³ https://www.etunational.asn.au/wp-content/uploads/2022/03/2108_ETU-Women_Nowhere-to-Go_Report_Draft02_WEB.pdf

⁴ Ibid, page 6

obligations about these matters to be located in different places. That only serves confusion amongst PCBUs and workers. Accordingly, it is recommended that where provision is made for amenities in the regulations, all of the obligations contained in the code of practice should be repeated in those provisions and harmonised so that the obligations are described in the same way⁵

Nor does the WHS Amendment Regulation address Recommendation 30 of the 2022 Review:

That the Minister consider elevating existing requirements for toilets in the code of practice into the WHS Regulation and harmonising the language used in the new provisions⁶

We submit that amenities obligations will still be spread across different sources, retaining the confusion identified in the 2021 review.

Specific issues

Item	Issue
Proposed insertion of “ <i>designated female toilet</i> means a toilet designated for use only by female construction persons” at Schedule 5A, section 1.	Designating and limiting a toilet’s use to only “female construction persons” overlooks the fact that other females attend construction workplaces, including clients, consultants and other non-construction person visitors.
Proposed insertion of new subsection 2A at Schedule 5A, specifically the requirement to identify the toilet as a “designated female toilet” (subsection (1)) and the requirement to restrict access to the toilet to only “female construction persons” (subsection (2)).	Further, not providing guidance or examples at subsection (2) creates ambiguity about how to restrict access, and will leave PCBU’s subject to dispute and penalties for interpreting subsection (2) in a way not supported by the Regulator, or permit holders and HSR’s. For example, should they be locked with a combination lock, should a key pad be installed, etc.
The new examples at proposed subsection 2(2), specifically: <i>2 For 20 construction persons, there must be— (a) at least 2 toilets; and</i>	We are confused by the examples and what is required. Whilst it is only an example, it creates some confusion by giving an example for 20 persons and 120 persons as there are no specific requirements for situations where there are exactly 20 or 120 workers, only for every 15.

⁵ <https://www.oir.qld.gov.au/public-consultation/work-health-and-safety-act-2011-review>, page 115

⁶ page 115

Item	Issue
<p><i>(b) at least 1 designated female toilet in addition to the toilets mentioned in paragraph (a).</i></p> <p>3 For 120 construction persons, there must be—</p> <p><i>(a) at least 8 toilets; and</i></p> <p><i>(b) at least 2 designated female toilets in addition to the toilets mentioned in paragraph (a).</i></p>	<p>It could also be read that the example of 20 is to be used to calculate obligations for multiples of 20 workers, rather than 15.</p> <p>There is also no mention of urinals, despite this being contained in the code of practice.</p> <p>To remove confusion and clarify the obligations, a table, similar to that contained in the National Construction Code, could be used (see Attachment 1 for an example)</p>
<p>Proposed insertion of a new subsection (5), and specifically the requirement to ensure a designated female toilet is “reasonably available”.</p>	<p>According to the existing subsection (1), examples of toilets that are reasonably available are:</p> <ul style="list-style-type: none"> • <i>toilets located within the site compound boundary</i> • <i>toilets located within the boundary of the workplace where the construction work is being performed</i> <p>As such, this new subsection (5) does not clarify the location of toilets other than what is prescribed by the examples in subsection (1).</p>

Section 4 - Privacy, ventilation and toilet paper

We support the new section 4(2). Feedback from females in the industry has been positive regarding this provision as it not only addresses the Government’s commitments regarding facilities and amenities, but also addresses potential physical and psychological WHS issues associated with females having to enter and share a facility occupied by men.

Commencement Date and Transitional Arrangements

We submit that there is no need for transitional arrangements and support the 1 January 2025 commencement contained in the draft WHS Amendment Regulation.

17 June 2024

Attachment 1

	Facility Type	Number of Construction Persons	Number of Facilities
Male Workers	Closet Pans	1-15	1
		16-30	2
		31-60	4
		61 - 90	5
		>91	Add 1 per 15 male persons
	Washbasins	1-30	1
		31-60	2
		61-120	3
	Urinals	1-30	1
		31- 60	2
		>61	Add 1 per 30 male persons
Female Workers	Closet Pans	1-15	1 Unisex
		16-30	1 Female
		31-60	2 Female
		61- 90	3 Female
		>90	Add 1 per 15 persons
	Washbasins	1-60	1
		60-90	2
		>90	Add 1 per 60

Example: For 31-60 workers, 4 closet pans, 2 urinals and 2 washbasins, in addition to 2 Female closet pans and 2 washbasins.