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

We do however have concerns with the latest draft of the WHS Amendment Regulations and the difficulty in applying them.

Existing Facilities Code

The current requirements for all workplaces set out in the *Managing the work environment and facilities Code of Practice 2021*¹ (the Facilities Code) adequately ensure all persons have access to clean amenities at work. The requirements in the WHS Amendment Regulation unnecessarily go beyond what is required at all other workplaces.

Large construction projects

The definition of a “large” project should be related to the numbers of workers on site and not the value of the work. Master Builders supports the earlier draft that prescribed designated female amenities where the number of workers on site at a particular time reached 15, regardless of the project value.

If it is to be based on value, the threshold of \$1.5 million or more to be a “large” construction project is too low. Master Builders submits that to be a “large” project, it should be commercial construction and the cost of the commercial construction work must be \$10 million or more.

It is well documented that the cost of construction has increased due to a range of factors, including increased cost of materials and labour, and this affects all construction projects. In Queensland the

¹ https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0021/72642/managing-the-work-environment-facilities-cop-2021.pdf

Australian Bureau of Statistics reports that the cost of house construction has risen by 40 per cent over the past 3 years². Many new houses are costing in excess of \$1.5 million to build, and it is not uncommon for new home and renovation projects containing high end fixtures and fittings to cost in excess of \$5 million.

In residential construction, even on a multi-million dollar project, it is rare to have more than 15 persons on site at any one time. It is more common to have far less people on site due to how a housing project is sequenced and the reduced need for the labour intensive tasks, such as concreting and scaffolding. The value of a residential contract is determined largely by the complexity of the construction and the cost of fixtures and fittings, rather than the number of workers as with commercial work.

According to the WHS Amendment Regulation, a housing project contracted at more than \$1.5 million with less than 15 people on site at any one time would require at least two toilets.

Residential construction has traditionally only provided a single unisex toilet on site as they do not have the space or accessibility to safely have an additional toilet on site. Any toilet facility needs to be located at the front of the site for delivery and servicing accessibility, and to ensure it does not impact on the movement of materials, machinery and people on the site. With the average house block only around 400sqm, and with smaller and smaller frontages, to put a second toilet on site would create additional safety issues. These safety issues include, impacting access and egress, movement of plant and people around the site and the stability of the toilet facilities.

For example, at the recent Master Builders Housing & Construction Awards, the Award for Individual Home from \$5 million up to \$10 million was constructed on a small, sloping site, that covered the entire land footprint (see **Attachment 1**). Further, the Award for Home Renovation Project from \$1 million up to \$2 million was won by a project in Bulimba (see **Attachment 2**), involving a rebuild of an existing house with a large footprint. Finally, the Individual Home from \$1.5 million up to \$2 million was built on Hope Island, covering the entire block and built next to water.

These projects are not “large” projects with more than 15 workers at any one time.

According to the WHS Amendment Regulation, these housing projects would be considered large projects and would require 1 toilet and 1 designated female toilet. As is demonstrated in the pictures at **Attachment 1**, **Attachment 2**, and **Attachment 3**, there is little available space for additional amenities.

It is more practical that such projects provide facilities in accordance with the existing Facilities Code (see **Attachment 4**).

‘Reasonably available’

As is demonstrated in the pictures at **Attachment 1**, **Attachment 2**, and **Attachment 3**, there is difficulty in providing amenities that are reasonably available on projects in built up, residential areas.

² ABS, 6427.0 Producer Price Index, March 2024

Further, in relation to where a “connected toilet” has to be within 100m of where the construction work is being performed, there are issues with how this is practically applied when working on a project that contains existing facilities, and/or on projects with a large footprint. It is not always practical to have a toilet available within 100m of every single work area. Whilst one is always readily available within the project, it may not strictly be within 100m.

For example, on shopping centres, airports and hospitals. In such cases the work activity could progress away from the amenities at the site entrance. Under the WHS Amendment Regulations, it would mean the toilet would need to be relocated or another connected toilet provided. This would be a costly and impractical exercise as suitable sewage lines might not be designed / installed / commissioned across the project.

Again, it is more practical and clearer for all parties that facilities be provided in accordance with the existing Facilities Code (see **Attachment 4**).

Unisex facilities

Master Builders question why the separation of gender is necessary on construction projects, per the proposed WHS Amendment Regulation, but not in other workplaces or public spaces as outlined in the Facilities Code. We also raise that separating facilities and removing unisex facilities could exclude persons who are non-binary, and also transgender persons or those transitioning who may not want to advise the PCBU.

Master Builders submit that unisex facilities, especially on smaller projects and all residential projects, provided they are properly maintained and contain items such as sanitary bins, works best.

Sanitary bins

Master Builders does not object to the proposed provisions requiring sanitary bins. According to the ETU’s *Nowhere to Go* report³:

... when mobile toilets are provided onsite, they are often in extremely poor condition, rarely offering sanitary bins and are usually quite unhygienic ... When sanitary bins are available, which is rare for mobile facilities and not always in fixed facilities, they are often inappropriately labelled and irregularly serviced. This results in their misuse as others fill the bins with miscellaneous rubbish.

We do however say that such provisions can be included in unisex facilities on smaller projects where designated female toilets are not required.

³ https://www.etunational.asn.au/wp-content/uploads/2022/03/2108_ETU-Women_Nowhere-to-Go_Report_Draft02_WEB.pdf, page 8

Persons who identify as female

Whilst we acknowledge that the WHS Amendment Regulation is intended to be inclusive, the use of the words “identifies as female” are problematic.

Master Builders are concerned that cisgender male workers may use the WHS Amendment Regulation to continue the inappropriate and unacceptable behaviour of accessing female toilets by merely stating that they identify as female.

The ETU’s *Nowhere to Go* report identified that⁴

... male workers will use the mobile toilets allocated for women to defecate in as male toilets are often dirtier and seats may be covered in urine.

The WHS Amendment Regulation allows this problem to continue.

Large “lineal” projects (road and other civil)

Whilst we do not object to all workers having access to amenities, the challenges on large civil projects cannot be underestimated. Nor can the common sense approach that we currently see on such projects.

These projects can span hundreds and in some cases thousands of kilometres. On such projects it is common to allow all workers sufficient time for breaks and access to amenities by allowing travel in work times to amenities. In cases where, similar to residential construction, there are few workers on these projects despite their value, providing the amenities set out in the WHS Amendment Regulation is impractical.

For example, travelling at a 40km/h site speed limit, a person would travel 3.3km in 5 minutes. This would mean a requirement for approximately 6 sets of toilets for a 20km site, and 300 sets of toilets for a 1,000km site, regardless of the number of workers engaged at any one time.

Proposed section 2

According to subsection (5) of section 2:

... the principal contractor for a construction project does not necessarily comply with section 2A only because the principal contractor has complied with sections 2B, 2C, 2D and 2E.

Master Builders cannot understand how a principal contractor who complies with the strict requirements for the required number (2B and 2C), location (2D) and accessibility (2E) of toilets, could somehow still breach the general duty to ensure toilets are reasonably available provided at section 2A.

Regulations provide a minimum requirement which can always be improved upon or bettered (which is s 2 (1)) but it now provides a positive obligation to assess the minimum requirements and

⁴ Ibid, page 7

leave it open to interpretation that the needs may not be met, leading to confusion and open to disputation.

Definition of 'construction person'

The new definition of construction person relies on the existing Regulation 289. However, the proposed new Schedule 5A, section 1, refers to "a construction project" and "a principal contractor", which are defined separately in Regulation 292 and 293. See below the relevant Regulations with key words highlighted:

289 Meaning of *construction work*

(1) In this chapter, ***construction work*** means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure.

...

292 Meaning of *construction project*

In this chapter, a ***construction project*** is a project that involves construction work where the cost of the construction work is \$250,000 or more.

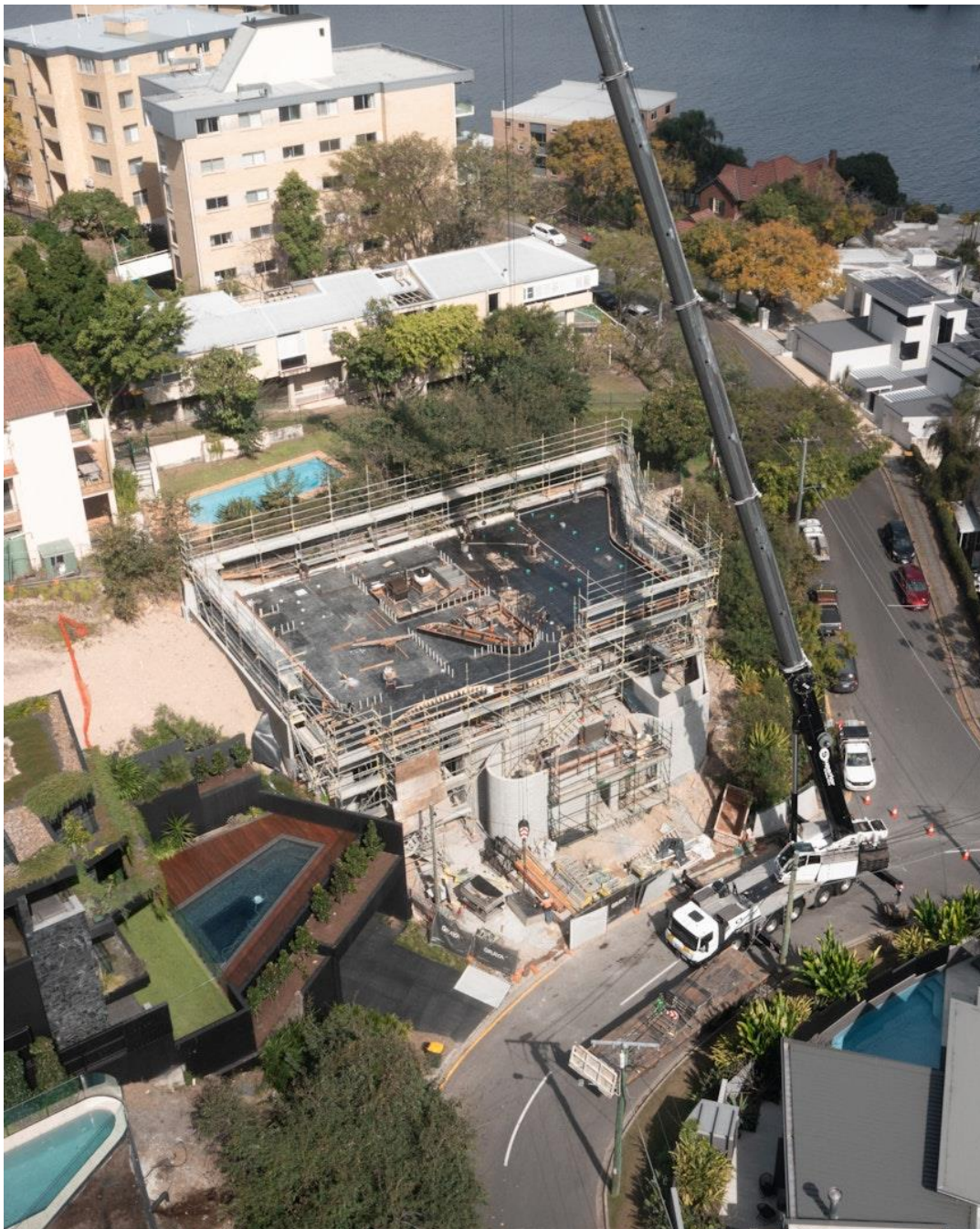
293 Meaning of *principal contractor*

(1) In this chapter, a person conducting a business or undertaking that commissions a construction project is, subject to this section, the ***principal contractor*** for the project.

The issue is that whilst the intent appears to be to define a construction worker as someone working on construction work, because the proposed new definition refers to principal contractors and construction projects, it implies that a construction worker can only be one which is working on projects over \$250,000.

5 August 2024

Attachment 1



Attachment 2



Attachment 3



Attachment 4

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 (NCC)* 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
- 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.

The WHS Regulation sets out the duties of principal contractors to provide amenities, including toilets, for construction work.

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
- 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
- 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.

3.4. Hand washing

Hand washing facilities must be provided to enable workers to maintain a good standard of personal hygiene. Workers may need to wash their hands at different times, for example after visiting the toilet, before and after eating meals, after handling chemicals or handling greasy machinery.

The WHS Regulation sets out the duties of principal contractors to provide amenities, including hand washing facilities, for construction work.

Number of hand washing basins

In most cases, for both males and females, hand washing basins should be provided in at least the ratio of one wash basin for every 30 male workers and one for every 30 female workers, or part thereof.

The number of hand washing basins may need to be increased depending on the nature of the work carried out at the workplace. For example, where the work involves exposure to infectious substances or other contaminants, separate hand washing basins should be provided in addition to those provided with toilets.

Design of hand washing facilities

Hand washing facilities should:

- be accessible at all times to work areas, eating areas and the toilets
- be separate from troughs or sinks used in connection with the work process
- contain both hot and cold water taps or temperature mixers
- be protected from the weather
- be supplied with non-irritating soap preferably from a soap dispenser
- contain hygienic hand drying facilities, for example automatic air dryers or paper towels.

Where a business engages in activities such as food preparation or health care, there are also duties under health legislation in relation to hand washing facilities.