

Thursday, 14 December 2023

Hon Mick de Brenni MP

Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement

Via email [epw@ministerial.qld.gov.au](mailto:epw@ministerial.qld.gov.au) and [springwood@parliament.qld.gov.au](mailto:springwood@parliament.qld.gov.au)

**RE: Support for all-gender amenities proposal to NCC Section F, F4 Sanitary and Other Facilities,  
Clause F4D3, F4D4**

Dear Minister de Brenni,

On behalf of the Queensland Chapter of the Australian Institute of Architects (The Institute), I am seeking your support in principle for a submission put forward to the ABCB by Alison Cox from TAFE NSW (attached).

The Institute recognises that current regulations within the National Construction Code (NCC) do not provide sufficient inclusion for all-gendered amenities within Section F, and we support the proposal recommending that “...a percentage of the required amenities under the NCC be able to be provided as single amenity all-gender bathrooms along-side female and male bathrooms.” This proposal aims to avoid the current expense, risk, and delay of seeking performance solutions to allow projects to receive certification for all-gender amenities

Inclusive design is an essential aspect of enhancing our built environment, and the provision for all-gendered amenities progresses this outcome through an improvement of safety for building users and a reduction in discrimination, harassment, and abuse. Providing gender-inclusive amenities within the built environment embodies a commitment to the human rights of our people and will lead to a more accepting society. It also represents the opportunity for Queensland to continue its strong leadership in equitable and inclusive design.


The submission proposes detailed solutions to the provision of single amenity, all-gender bathrooms in addition to female and male bathrooms to address the need for facilities that can be used by individuals who do not associate with a particular gender or feel unsafe or unwelcome in a gendered space. It also recognises the need for options for people with diverse cultural backgrounds that aren't provided with culturally inclusive environments.

Although the Institute is in full alignment with all principles outlined in the attached submission, it acknowledges that full research into or analysis of the proposed quantified solutions has not yet been undertaken by our members, and we would be pleased to assist in road testing the proposed clauses.

Through high-quality architecture, we can ensure that our built environment is inclusive. We ask that you consider this regulatory change and support its aim to assist architects in their desire to design spaces enriched with inclusivity without the burden of onerous, costly, and time-consuming performance-based solutions.

Access to sanitation is a human right that governments must guarantee. Ensuring amenities are inclusive is achievable with your support.

Yours sincerely,



Amy Degenhart  
Queensland Chapter President  
Australian Institute of Architects

Encl. 1 (Proposal for Change - All-Gender Amenities - NCC 2025.pdf)

Subject/topic: All-gender amenities

Volume/standard	Provision
NCC Volume One	Section F, F4 Sanitary and Other Facilities, Clause F4D3, F4D4
NCC Volume Two	N/A
NCC Volume Three	N/A
ABCB standard	N/A

Submission date: 31 July 2023

Proposer's name: Alison Cox

Proposer's organisation: TAFE NSW

Postal address: Building A, Mary Ann Street, Ultimo, NSW 2007

Business telephone: 0456 608 543

Email address: Alison.Cox16@tafensw.edu.au

## The proposal

### What is the proposal?

To allow the provision of all-gender amenities as deemed to satisfy under the NCC.

The proposal recommends that a percentage of the required amenities under the NCC be able to be provided as single amenity all-gender bathrooms along-side female and male bathrooms. All gender amenities may be an individual facility with a closet pan, adequate means of disposal of sanitary products, and associated fittings contained within a single room with a door that opens onto non-gendered circulation area.

It is recommended that:

- Where a project is only required to provide two individual closet pans in addition to a unisex accessible bathroom, that these can be replaced with two all-gender closet pans.
- Where a project is required to provide three closet pans in addition to a unisex accessible bathroom or urinals (for example 1x male closet pan, 1x male urinal and 1x female closet pan), these can be replaced with 1x male, 1x female and 1x all gender closet pan.
- Where a project is required to provide four or more closet pans or urinals a project team may choose to convert up to 30% of all required fixtures to all-gender amenities. All-gender amenities should be converted equally from the requirements for both female and male minimum provisions.

The proposal does not suggest that all bathrooms in a project may be provided as all gender amenities, with the exception of projects that only provide two individual closet pans.

The proposal requires that individual all-gender sanitary compartments be provided with a handbasin within the sanitary compartment. However, where multiple all-gender sanitary compartments are provided, acceptance of shared handwashing facilities as deemed to satisfy is supported. This is especially important for facilities such as primary schools where supervision of students is important for operation of the facilities.

### Recommended updates to NCC 2022

It is recommended that the following clauses are updated:

#### F4D3

(2) [modified clause] Unless the premises are used predominantly by one *gender*, sanitary facilities must be provided on the basis of equal numbers of males and females, *with suitable provision of all-gender amenities*.

(5) [new clause] *A premises may be provided with all-gender sanitary compartments where there is an identified need for these facilities*

(a) [new clause] *Where all-gender sanitary compartments are provided, these must be taken equally from the provision of male or female sanitary compartments*

**F4D4**

(1) [modified clause] Except where permitted by (3), (4), (7), (12), F4D5(a) and F4D5(b) separate sanitary facilities for *males, females and gender diverse people* must be provided for.... (etc)

(3) [modified clause] If not more than 10 people are employed, an *accessible* facility may be provided instead of separate facilities for each *gender*

(4) [modified clause] If the majority of employees are of one *gender*, not more than 2 employees of *another gender* may share toilet facilities... (etc)

(6) [modified clause] Adequate means of disposal of sanitary products must be provided in sanitary facilities for use by *females or gender diverse people*

(12) [new clause] *All-gender sanitary compartments may be provided where a single closet pan, handbasin and adequate means of disposal of sanitary products are contained within a single room, accessed from a circulation space that is not limited by gender:*

(a) *Where a project is only required to provide two individual closet pans, that these can be replaced with two all-gender toilets*

(b) *Where a project is required to provide three closet pans or urinals, these may be replaced with 1x male closet pan, 1x female closet pan and 1x all-gender closet pan*

(c) *Where a project is required to provide four or more closet pans or urinals, a project may convert up to 30% of all required fixtures to all-gender amenities.*

## The current problem

### What problem is the proposal designed to solve?

The proposal is intended to remove discrimination against transgender, non-binary, intersex and gender diverse people, to improve the availability of personal choice and to allow building owners, managers and designers to design facilities that meet the needs of their occupants.

NCC 2022, clause F4P1 Personal hygiene facilities states:

*Suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, to the degree necessary, appropriate to-*

- (a) The function or use of the building: and*
- (b) **The number and gender of the occupants:** and*
- (c) The disability or other **particular needs of the occupants.***

Based on this clause, suitable bathrooms to suit gender diverse people or the particular needs of gender-diverse occupants must be provided, however the NCC 2022 does not include a suitable mechanism to provide all-gender amenities.

Under the current version of the NCC, toilets may only be provided that are designated female, male or unisex accessible. The advice received from the ABCB and from Private Certifiers is that either additional bathrooms may be provided above the NCC minimums which can be designated all-gender; or a performance solution may be provided. Both of these options incur additional project costs.

Further, some organisations are taking the approach of utilizing existing unisex accessible bathrooms for all-gender use and changing the signs on the bathrooms post-certification. It is not suitable to rely on unisex accessible bathrooms as:

1. Gender diverse people may be uncomfortable using an accessible bathroom as it is reminiscent of outdated ideas around sexuality and gender expression being a disability.
2. Further reliance on unisex accessible bathrooms increases the use of these bathrooms and creates additional barriers for people with disability accessing the facilities they need.

This approach also creates code non-compliance issues for any future use, refurbishment and sale of these buildings.

Currently the only options for building owners or managers wishing to provide all-gender amenities incurs additional cost and regulatory requirements to ensure these amenities can be certified. If building owners or managers do not provide safe and inclusive amenities including all-gender bathrooms, they may be exposed to liability from users experiencing discrimination, bullying or harassment.

**What evidence exists to show there is a problem?**

A growing body of evidence exists demonstrating that toilets remain sites of segregation and bullying.

Key pieces of research include:

- The Office of the Advocate for Children and Young People (ACYP) report “The Voices of LGBTQIA+ Young People in NSW” consulted with 233 LGBTQIA+ young people aged 12-24 years. This report summarises research and provides suggestions to improve support for these groups across NSW. The report identifies that *“Transgender, non-binary and gender diverse students expressed frustrations regarding practices at their schools which they viewed as non-inclusive. These included... decisions related to sharing bathrooms and change rooms with their aligned gender identity”* [LGBTQIA+ Report – Executive Summary, Page 11]. This problem is further compounded when gender diverse students were directed to use the Unisex Accessible bathrooms at a school where these facilities are locked and a key must be requested from staff. The report goes on to recommend that *“NSW Department of Education should ensure every school has an all-gendered bathroom option that all students, of all genders, are able to use, alongside a single-sex bathroom option.”* [LGBTQIA+ Report – Recommendations, Page 3]

Further details of the report can be found [here](#)

- Stalled! (an advocacy group based in the United States of America) has undertaken research into bathrooms as historical sites of discrimination and segregation and has provided design solutions to address this. Their work has identified, that although opponents of all gender facilities point to likely bullying of women or children by transgender individuals in shared bathroom spaces, it is more likely that transgender, non-binary, intersex or gender diverse people will experience bullying and discrimination in bathrooms. A video summarizing their research is available [here](#)
- “Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives”, a study by J Herman at the UCLA School of Law, identifies that 18% of respondents were denied access to a gender segregated bathroom and 68% had experienced at least one instance of verbal

harassment in a gender segregated bathroom. The paper is available [here](#)

- “The Gender-Neutral Bathroom: a new frame and some nudges”, a study by L Bovens and A Marcoci published by Cambridge University Press identifies that:

*“According to the largest survey of the experiences of trans people in the USA to date:*

- *59% of respondents sometimes refrained from using a bathroom outside of their home in the previous year. The main rationale was fear of confrontation.*
- *24% were asked at least once in the previous year whether they were in the right bathroom and 9% were denied or stopped from using one.*
- *12% of respondents were “verbally harassed, physically attacked, and/or sexual assaulted when accessing or while using a bathroom in the past year*
- *32% refrained from drinking or eating to avoid bathroom use*
- *8% developed a urinary tract infection or other kidney-related problems due to refraining from using the bathroom.”*

- Providing exclusively all-gender bathrooms will create different problems. There are some cultures, religious groups or groups within the community who require gender segregated bathrooms. Provision of both gender-segregated and all-gender amenities is recommended by the Access Institute in their paper entitled “All Gender Toilets – We just want to go to the toilet!” J Manton 2021, available [here](#)

Recently, other legislation and building codes around the world have been amended to allow the provision of all-gender amenities including;

- International Plumbing Code 2021 edition has been amended to allow single user public restrooms to be provided with signage to indicate they are available for use regardless of gender
  - A summary of the changes can be found [here](#)
  - The Code can be found [here](#)
- California’s Equal Access Restroom Act (2017) requires that all business establishments, public spaces and government facilities with single-user bathrooms must now identify them as all-gender.
  - The Act can be found [here](#)
- Other major cities in the United States including New York, Chicago, Washington D.C., Cleveland, Denver, Seattle, Austin, and Philadelphia, have enacted ordinances establishing an individual’s right to a public restroom that conforms to their gender identity.

- Vancouver municipality imposed compulsory requirements on public buildings to provide all gender toilets in April 2014



## The objective

### How will the proposal solve the problem?

Providing all-gender amenities as standard practice will reduce discrimination against transgender, non-binary, intersex and gender diverse people by providing additional options for everyone to choose a bathroom based on their gender preferences. It will improve safety, reduce instances of discrimination, harassment and abuse, across all areas of building design including education, commercial, offices, health, justice and entertainment venues.

The proposal will solve the problem by allowing building owners, managers and designers to provide all-gender amenities alongside designated male, female and unisex accessible amenities in their facilities with no additional cost or regulatory barriers.

In addition, providing all-gender amenities will have the additional benefits of:

- Providing individual cubicles for a range of other uses including:
  - o Parents supporting young children of a different gender to use a toilet such as fathers taking their daughters to the toilet;
  - o People needing space to use menstrual hygiene products with private access to a closet pan and sink;
  - o People who feel unsafe or uncomfortable using communal bathrooms;
  - o People who need to undertake medical procedures such as diabetes management, changing drainage bags or other procedures where private access to a closet pan and sink is required;
- Reducing waiting times and enabling overflow use of shared facilities when a gendered bathroom is at capacity, for example long queues are often observed at the female bathrooms during the interval of a performance.

### What alternatives to the proposal (regulatory and non-regulatory) have been considered and why are they not recommended?

The alternatives to the proposal are to retain the existing clauses under the NCC and:

1. Utilise existing unisex accessible bathrooms. This option is not recommended as it equates an individual's gender expression with a disability and creates additional barriers for people with disability using accessible bathrooms.
2. Provide additional all-gender amenities over and above the minimum provisions of the NCC. Providing additional amenities above the requirements of the NCC introduces additional costs to a project and may result in the all-gender bathrooms being excluded from the design.

3. Provide a performance solution to allow projects to receive certification for all-gender amenities. This option is not recommended as every performance requires additional fees for a consultant to write the performance solution and fees for the architect, certifier and other consultants to manage and coordinate the requirements of the performance solution. Further, performance solutions may involve additional ongoing management requirements which are an administrative burden for building owners and managers.

## The impacts

### Who will be affected by the proposal?

TAFE NSW is required to provide equitable access to education for all of our customers. The TAFE NSW Strategic Plan states that:

*“TAFE NSW plays a critical role in promoting equity and access to education in NSW. As the public training provider, TAFE NSW has an obligation to the NSW Government to serve the people and communities of NSW including those who face significant barriers to education and employment.”*

The ability to provide all-gender bathrooms aligns with TAFE NSWs requirements to promote equity and access to education to all.

In addition, this proposal will positively impact:

- Transgender, non-binary, intersex and gender diverse people by providing safe and equitable access to amenities
- Building owners, managers and designers who can provide all-gender amenities without additional regulatory barriers or building costs
- Building owners and managers who will be at reduced risk of liability from claims relating to discrimination, bullying or harassment
- Education and other institutions who are required to deliver equitable services to all users
- Parents of young children assisting with toileting
- People with medical conditions who would benefit from single fixture amenities
- People who use menstrual products
- Anyone in the community who experiences shorter wait times when able to make use of additional all-gender amenities
- Private certifiers who will have fewer regulatory barriers to ensure compliant facilities

### In what way and to what extent will they be affected by the proposal?

See above description for description and extent of impact.