



NOWHERE TO GO

Barriers to participation resulting from inadequate workplace amenities for Women in male dominated occupational industries.

August 2021

ABOUT THE ELECTRICAL TRADES UNION

The Electrical Trades Union of Australia ('the ETU') is a division of the Communications, Electrical and Plumbing Union ('the CEPU').¹ The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty thousand workers around the country. The CEPU represents close to one hundred thousand workers nationally, making us amongst the largest trade unions in Australia.

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

WOMEN AND THE ETU

Of the sixty-one thousand ETU members, women make up just under two per cent of the Union's membership. At two per cent, the percentage of women ETU members is reflective of the ratio of women in electrical industry occupations nationally. While women have joined and often been activists over the course of the ETU's history, it is only in recent decades that the Union has started to realise both the potential for women in electrical trades, and the significant obstacles which they continue to face.

Initially, the Union moved to building informal structures to support women in the electrical industry, whilst more recently the Union has established permanent structures through organisational rule changes.

In the late '90s and early 2000s informal gatherings of ETU women occurred periodically around the country, discussing the various barriers to participation, and creating safe spaces of support for women working in male dominated occupations. From time to time, ETU Branches supported delegations to participate in various inter-union forums including Australian Council of Trade Unions Women's Committee and Conferences as well as the annual Women in Male Dominated Occupational Industries (WIMDOI) Conferences. Some branches dedicated resources to their own internal structures to support women such as the establishment of the dedicated Women's Committee's, and in the case of the Qld/NT Branch an annual ETU Women's Conference.

The work of these ETU Women reached a milestone in 2016, when the ETU Divisional Council unanimously voted to change the organisations rules to create Affirmative Action positions in all State and Federal Governance bodies of the Union. This rule change was auspiciously ratified by the Fair Work Commission on International Women's Day in March 2016 and at the subsequent 2019 quadrennial election of the Union. Following this, Affirmative Action positions were created, and rank and file ETU Women nominated and secured positions in all of the Governance structures of the Union: from Branch Conferences through to Branch Executives as well as Nationally through Divisional Council and Divisional Executive and the creation of a National ETU Affirmative Action (Women) Officer.

¹ CEPU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).

There is much work to do, but the ETU has invested in a strong foundation to begin this important work.

ACKNOWLEDGEMENT

The ETU thanks the many ETU women, and in particular the ETU Women's Committee and Affirmative Action Representatives for generously sharing their experiences in their qualitative interviews, frank and honest feedback and for their support of this report.

EXECUTIVE SUMMARY

Ensuring workplace amenities and in particular, workplace toilets, are regularly serviced, accessible, suitable, and open should be a priority for every workplace. Sadly, this is often not the case. For women in historically male dominated occupations the challenge is particularly stark with women's amenities frequently treated as an inconvenience, improperly and / or irregularly serviced or not provided at all.

The Workplace Health and Safety regime has simply failed to keep pace. The system fails at all levels and acts as an impediment to women working in male dominated occupations, trades and industries.

Employers, regulators, and legislators have failed to respond to the increasing shifts in workforce composition. This failure leads to the continuing exclusion of women from too many workplaces around the country. The harm caused by this is not limited to the women who are unfairly discriminated against, but to Australia as whole. In all the debates around skills shortages and temporary skilled migration, policy makers and industry consistently ignore that there is an entire gender largely excluded from participating in these industries. In building a fairer workplace, we will build a stronger, wealthier, and more productive society.

It is time for the legislated provision of adequate workplace amenities to make sure workers are no longer left with nowhere to go.

RECOMMENDATIONS

Legislation

Recommendation 1

The Workplace Health and Safety legislative regime must be amended to provide prescriptive minimum requirements for workplace amenities which ensure they are regularly serviced, accessible, suitable, and open. These statutory requirements must include:

- The minimum amenities, particularly toilets, that all workers must be provided in the workplace
- Frequency and standard of cleaning and servicing of workplace amenities
- Provision of minimum PPE requirements for health, hygiene and sanitation
- Recognition of the different uses and access needs of men and women in the workplace
- Requirements to consult with relevant workers on the provision of gender suitable workplace amenities which ensure they are regularly serviced, accessible, suitable, and open

Recommendation 2

The Commonwealth, State and Territory governments must develop a set regulations and prescribed codes of practice which account for the different risks and hazards presented by different industries and ensuring that the codes of practice address the difference in amenities use and access needs for both men and women in the workplace.

Regulators

Recommendation 3

Regulators must develop checklists as guidance for establishing adequate workplace amenities or when performing workplace inspections or audits for the provision of adequate amenities. These guides could be utilised by entry permit holders, inspectors, workplace delegates, health and safety representatives, safety managers and human resources representatives.

Recommendation 4

When identifying annual priorities for education, compliance and enforcement, Regulators must consult with industry stakeholders to develop targeted campaigns to address improvements to workplace amenities which include a focus on both men's and women's amenities.

Recommendation 5

Regulators must establish a women in male dominated occupational industries reference committee and/or advisory group to assist in determining priorities and assessing progress in improving education and compliance with workplace amenities.

Industry

Recommendation 6

PPE and other safety items must be either pre-stocked or reimbursed and must be appropriate to the needs of both men and women. Consideration should be given to how employers are required to make essential safety equipment available which may include handwash, sanitizer, menstrual cups, menstrual underwear, she-wees, disposal sanitary hygiene bags and toilet liners.

Recommendation 7

Barriers for women should be identified and removed ensuring readily available access to suitable and easily accessible workplace amenities including when utilising site, depot, station, and substation toilets and provision of appropriate mobile amenities where fixed amenities are not readily accessible. Women's mobile toilets should be locked, with keys issued to women workers on site where a risk assessment identifies a potential safety or security hazard or where requested.

Recommendation 8

All toilets should be fitted with sanitary bins, hand soap (including heavy duty hand cleaner where required) and hot and cold running water. Water containers and hand wash should also be fitted to all field work vehicles.

Recommendation 9

To address workplace culture, education must be provided to those who are unaffected, or are affected differently, by the lack of amenities regarding the issues that arise from poor amenities. Shame-free, informal conversations must be had on these issues. Stronger understanding, empathy and relationships should be built amongst male and women workers.

Recommendation 10

Employers should have a singular point of contact for all employees to report gendered safety issues. Women apprentice meetings and mentorship programs should also be implemented.

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INTRODUCTION

Women are greatly under-represented in Australia's male dominated trade-based occupations and the electrical industry is no exception. The last 35 years has seen significant gender equality initiatives by all levels of Australia's governments. Despite these attempts the proportion of women employed in electrical industries remains low, with no significant improvement in the representation of women in the industry.

Of the numerous research projects undertaken to identify barriers to women's participation in male dominated industries (such as electrical trades), access to adequate amenities is a recurring problem. Whilst this issue is perpetuated by the cyclical relationship between discriminatory workplaces and the resulting barriers women face in order to navigate and address these issues, it does not have to be this way. Concise, unambiguous legislative and regulatory drafting for the provision of adequate workplace amenities suitable for all workers is what is needed to break this cycle.

Additionally, women face major barriers when attempting to address these issues, through the prevailing stereotypes and myths about women in male dominated workplaces, such as the supposed lack of capacity and ability to perform the work or the fiction that provision of adequate amenities would somehow provide women with 'special treatment'. This can result in a culture of unwillingness to accept women within workplaces, a refusal to reasonably respond to their needs and a failure to address the structural issues that have hindered the access of women to these industries, including the lack of amenities on worksites. This also contributes to workplace cultures that are non-inclusive, historically masculine and 'blokey' with a tolerance of inappropriate behaviours, including bullying, aggression, and the objectification of women.

Where a culture of machismo exists in a workplace, so too will a culture that minimises gender specific issues, including women's lack of access to adequate amenities. Furthermore, this kind of culture is emblematic of the negative experience of women in the workforce, often silencing women who raise these issues and punishing them for it. Including putting them at risk of punitive responses, aggressive behaviour, exclusion and isolation.

This discussion paper seeks to explore the barriers inadequate workplace amenities create for women and the resulting impact it has on productivity, safety and the health and wellbeing of women workers.

It is past time for those in charge of Australian workplaces – both the person's conducting the business or undertaking and government regulators – to acknowledge the clear barriers to women's participation in male dominated occupational industries. Employers have failed to address these systemic barriers and it is now time for legislators to deliver better regulation which drives the implementation of proper amenities for women in the workplace.

When it comes to workplace amenities, it is simply not acceptable to continue to leave women with nowhere to go.

HEALTH AND HYGIENE

There are a myriad of health, safety, and hygiene risks that workers face when an employer does not provide adequate workplace amenities. As the closest public facilities are usually fifteen minutes or more away from the worksite, workers regularly report modifying their bodily functions as a way of mediating the effects of their employer's failure to provide adequate workplace amenities. One example is to deliberately drink less water during work hours to avoid bathroom breaks, leading to an increased risk of dehydration. This dehydration, in conjunction with the added heat from mandatory safety uniforms, such as Arc-rated² clothing and often high temperatures of outdoor worksites, poses a significant health risk to workers. This increased risk of fainting, foginess and nausea is particularly dangerous on electrical worksites as electrical work requires concentration and the use of potentially dangerous materials and equipment.

A further challenge is the distances required to be travelled to access other amenities such as public toilets, because the employer has failed to provide adequate workplace amenities. This often means a worker will need to travel through a work site or away from a work site for greater than fifteen minutes in order to access a bathroom.

These challenges and their impacts are particularly acute for women.

As shifts and work patterns across several industries range between four to twelve hours or more, this is an extensive period of time for workers to avoid bathroom breaks, sanitary product changes or expressing breast milk. If tampons are not changed every four to eight hours³ the risk of toxic shock syndrome and blood poisoning can increase and a failure to regularly express milk can lead to painful engorgement, mastitis, and further complications such as sepsis. In addition, the risk of urinary tract infections (UTI's), including recurrent UTI's is increased where women are unable to access bathrooms regularly and within reasonable timeframes. Which, in turn, creates an increased risk of kidney damage over the longer term.

Cumulatively these risks have a substantial impact on women's employment as it often results in greater absenteeism as the structural failure to ensure adequate facilities for women makes work unnecessarily difficult and, at times, impossible. Employers who consider the provision of amenities suitable for women to be an unnecessary expense must instead recognise this should be a basic right and that it will ultimately, through reduced absenteeism, increased morale, and improved productivity, be more cost-effective.

As stated, women also report deliberately deferring periods to avoid needing to change sanitary products, whilst skipping periods can be a safe choice for women, it is recommended that such a decision is informed by health advice and a voluntary choice of the individual. The reality is many women feel pressured to make these 'choices' because when bathrooms are available in a workplace, they are usually inadequate - devoid of bins, running water and soap. Often, these bathrooms are also extremely dirty, and it is reported regularly that 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.

² **Arc ratings** are **ratings** of the protective characteristics of a piece of fabric or other wearable material used for protecting a worker against electrical hazards.

³ <https://www.healthdirect.gov.au/toxic-shock-syndrome>

Case study – ‘Marie’

The single biggest issue in four years that I have ever faced on a construction-site is every single construction-site caters only to men...You never get a toilet. The first thing I would do [when arriving to site] is try and find a toilet...and make sure it is not down a dark alley or in a position where the girls would not be safe. We have our personal safety to take care of as well.

In these environments, hand sanitizer is not an adequate replacement for soap and water, which employers tend to provide instead. Moreover, the post-natal impacts on bladder functions are also likely to render these ‘tactics’ impossible. There is often not enough time for post-natal women to access amenities off-site. General bladder control issues are also exacerbated in severity because of these practices. There is also growing research into the connection between inadequate workplace amenities for women triggering early menopause.

Needless to say, the lack of access to basic bathroom amenities, such as clean toilets, soap and running water, sanitary bins, and the toilets proximity to site, is a significant health and hygiene risk that must not be left to an employer’s interpretations of vague references of ‘reasonably practicable’ which is currently the most common guidance on amenities contained in legislation.

Whilst it may not be the deliberate intention of employers, the lived reality for women is that they are often having to self-regulate and modify their bodily functions and make choices that they otherwise might not make, just because their employer has not factored in their basic needs on site. These employers are taking away women’s choices in how they choose to treat their own bodies.

SAFETY

There are major safety issues that arise from how employers within the electrical industry manage workplace amenities for women. For example, Sydney Trains and Ausgrid do not allow their apprentices to perform certain activities which by their very nature restrict access to appropriate amenities. In the case of Sydney Trains, the employer does not allow apprentices to drive company cars through the rail corridor. With Ausgrid, the employer prohibits apprentices accessing substations unless under direct supervision of a trained person (and the requisite substation access training is withheld from apprentices). Ausgrid also does not facilitate apprentices acquiring truck licences which regularly can be the only form of travel from site to a bathroom. Apprentices are allowed to drive other work vehicles but only if they have a provisional P2 NSW vehicle licence or above.

These practices actively prevent women apprentices from accessing amenities off site when public bathrooms are not within walking distance. The risk to women’s safety is exacerbated during nightshifts, when women do not know where the closest unlocked toilet is, and

walking ceases to be an option altogether. In times of desperation, some workers report having to drive unauthorized to substation bathrooms.

Another challenge for women is that when mobile toilets are provided onsite, they are often in extremely poor condition, rarely offering sanitary bins and are usually quite unhygienic. Often the mobile toilet will be provided as a 'quick fix' single add-on rather than the permanent demountable toilet blocks provided for the men on site. In these circumstances environmental factors are rarely considered meaning risks such as extreme heat or cold, adequacy of lighting or hygienic access to hot and cold running water are not addressed which sits in stark comparison to the fixed amenities provided for the male workforce. 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. Again, these structural issues relating to employers not understanding their obligations to provide adequate amenities is derived from a male centric understanding of what is reasonable. This means that women are ultimately unable to access them safely and hygienically for their intended purpose. All of which leaves women entering the industry, such as a new apprentice, disenfranchised from the trade on day one.

An additional structural barrier reported by women during their apprenticeships is that there are often no amenities for women located near the trade training room of older, established educational institutions, such as TAFE. A literal structural oversight that reflects cultural attitudes towards women, as well as the prevailing view at the time of construction of these facilities, that women were not considered in the construction of these training facilities nor was it expected that they would need to use them.

When working within government buildings, women report that often blue-collar workers are not permitted access to 'occupied floors' to use the amenities as there are both formal and informal employer policies that restrict access to elevators when politicians or white-collar workers are using them. The maintenance or facilities sections of these buildings were also established many years prior, often with only male toilets located nearby on that floor or in that area. This has meant that women are often unable to access the floors with requisite amenities or do so at the risk of breaching company policy and facing punishment.

Without access to proper amenities, women workers sometimes have had to resort to urinating in public, where they are at put at an increased risk compared to their male colleagues of sexual assault, harassment, infections, and fines.

Case study – 'Sara'

Men have told me to my face that women should not work at SAPN...it is acceptable for guys to discreetly pee in the gutter and on the truck when it's parked in the city since they have the right 'equipment' to do it. But this is not an option or good look for women. Anyone can be fined. I have had to contact SAPOL to consult with them about this matter but was told that there's no understanding or leniency.

We know sexual assault and harassment is a gendered issue affecting women in the workplace. The electrical trades are no exception and the lack of access to amenities appropriate for women only serves to increase this risk. As these inappropriate acts can also consist of verbal and physical abuse, particularly when the perpetrator is rejected, the need for amenities suitable for and at times exclusive for women, (which can only be locked from the inside) is an essential minimum standard.

Case study – ‘Jodie’

I have been locked in an on-site toilet in the middle of summer for three hours, because they [the male co-workers] thought it was funny.

The safety risks outlined above are all exacerbated for workers working night shifts. During night shift access to the already limited number of suitable amenities options evaporates. Large parts of the workplace are usually locked off at night and public amenities are frequently closed outside of daylight hours. The usual day time protections such as security personnel and onsite supervision is also less frequent or entirely absent. Amenities that remain open are frequently poorly lit, and at times inhabited by individuals experiencing chronic homelessness, addiction, and mental health challenges. At times, these facilities can also be the target of serial offenders.

As outlined above, these are risks are faced by all workers and more must be done to mitigate them. But these risks are more acutely impacting on women and therefore, while addressing them will benefit all workers, the improved safety outcomes for women will be even greater.

EMPLOYER RESPONSES TO REQUESTED CHANGE

Employer responses to requested changes are often one of consistently undermining and/or ignoring the safety risk. Basic health and hygiene measures are all too often treated as “taboo” as employers have not received training in discussing these issues. This often forces women to avoid broaching the issue altogether, attempting to sidestep the ‘childish’ language and whispers amongst male colleagues and management. Women workers are also subject to feelings of embarrassment and shame when discussing these risks with their employers, particularly when the culture of the work environment is unsupportive of women which all too often is the case in male dominated occupational industries. There is also significant evidence to show that employers are incapable of discussing the needs of the women in the workforce themselves, often lacking the maturity, the training or both and that when an individual raises these risks, they are often ignored or even treated punitively.

Where codes of practice or legislation allows for an employer to re-assign an existing in-built male toilet as a unisex toilet due to workplace gender ratio’s - often the employer does not undertake any modifications to the amenities to ensure that both women and men have

appropriate and safe access to the bathroom. Urinals and urinal walls are still left open and fully exposed to all workers. This introduces the risk of actual or perceived sexual harassment from either gender. Sometimes employers fail to even place unisex signage up - but inform women on site that they are unisex toilets – causing unnecessary friction and discomfort on site when women are forced to use the men’s facilities.

Women are regularly told to be ‘grateful’ for being accepted into these industries, and complaints of inadequate facilities are often met with a ‘if you don’t like it, then leave’ mentality, which demonstrates a deeply entrenched archaic refusal to accept women into male dominated industries.

Case study – ‘Amanda’

My principal contractor refused to provide the women on site with amenities. When I brought this issue up on site, he threatened me, a female electrical subcontractor, that I would receive no further contracts if I continued to ‘complain’ and refuse to use the men’s toilet.

The pervasive nature of this discrimination further excludes women from a participatory workforce as women fear they will be labeled as ‘difficult’ or ‘troublemakers’, which then feeds into the confirmation bias of predominantly male employers ‘suspicions’ that women are unsuited to these work environments.

Employers often fail to create inclusive workplaces, both as a result of and a major contributor to, the discriminatory practices faced by women within these industries. In believing that workplace culture does not require amendment, employers often provide extremely poor responses to the concern’s women raise. These perceptions continue to perpetuate the issues women face within these workplaces.

Case study – ‘Jill’

I have heard employers say, ‘if I hire a woman, I’ll have to put in a special toilet.’

An additional barrier to addressing these issues is the ‘special treatment’ argument, whereby employers claim they do not want the added expense of making ‘special’ allowances for women. This straw man fallacy fails to recognize the often-significant accommodations already built into workplaces for men. The installation of urinals for example is not a ‘necessary’ feature of workplace amenities but are installed nevertheless for men’s ‘special treatment’.

Women have reported that they work in worksites and workshops where employers have already accommodated a men's quiet room or prayer space, but their own access to basic amenities is still difficult to pursue with their employer. Further highlighting the absurdity of the 'special treatment' argument.

Personal Protective Equipment is another example of how the workplace is designed for men. Women are not small men. One-size-fits-all equipment designed on male body templates ignores the impact of biological features such as facial geometry and breasts.

But of course, these accommodations for men are not special treatment, they are simply fulfilling the employer's duty of care to provide a safe place of work for male workers. Equally, employers should make the same effort to provide a safe place of work for women by providing suitable amenities and fit for purpose protective equipment. Providing a safe workplace is not special treatment, it is the bare minimum of what everyone should expect for themselves and for each other.

DEFICIENCIES IN JURISDICTIONAL ARRANGEMENTS

Work Health and Safety Act 2011

The *Work Health and Safety Act 2011* ('WHS') is the primary, national legislative framework, informing all subordinate sources of workplace safety provisions. The application of **WHS** is further supported through regulations and model codes of conduct, as determined by the *Safe Work Australia Act 2008*.⁴

Responsibility for WHS compliance rests with an employer and/or a 'person conducting a business or undertaking' (PCBU).⁵ The term is broad and will typically refer to an employer as a PCBU, and the people who perform work for a PCBU are considered workers.

PCBU's have a primary duty of care which obliges them to ensure, so far as is reasonably practicable, the health and safety of workers.⁶ This duty of care extends, without limitation, to ensuring the work environment is without risks to health and personal safety and includes the provision of adequate facilities for the welfare of workers.⁷

Depending on the jurisdiction, the WHS has some practical functionality in terms of holding employers accountable for managing the work environment and related facilities. Section 273B (*Application of the Legislation Act 2003*) of the WHS states that certain Codes of Practice are to be made by 'legislative instrument', and thus effective in law, if they are approved by the respective Minister under section 274(1).⁸

Essentially, if (for example) an employer commits an offence against a provision of the **WHS**, approved codes of practice are admissible in proceedings as evidence as to whether or not an employer has failed in executing an obligation owed to their employees.

⁴ *Model Work Health and Safety Act, 2008* [access](#)

⁵ *Work Health and Safety Act, 2011*, Subdivision 2, S.5

⁶ *Ibid*, s.19 (1)

⁷ *Ibid*, s.19 (3)

⁸ *Work Health and Safety Act 2011*, No.137, 2011, Part 1, Division 2 Object, 3 Object

Despite the uniformity of federal legislation, not all amenities' laws are as robust as one another. Both Western Australia and Victoria have not adopted the model federal laws and have instead opted for their own State laws relating to work health and safety. As a result, Victoria and Western Australia do not provide express regulatory provisions with regard to amenities.

Occupational Health and Safety (OH&S)

The Victorian and West Australian laws, the *Occupational Health and Safety Act* (Victoria: 2004) (Western Australia: 1984) operate similarly, but not equally to the **WHS**, as the jurisdictional comparison in **Table 1** shows.^{9 10}

While the objects of both OH&S Acts state that they are designed to promote, improve, and secure the standards for occupational safety, health, and welfare of employees,^{11 12} they do not expressly provide the same level of prescription as the **WHS** with regard to amenities.

Safe Work Australia

Safe Work Australia ('**SWA**') is a statutory body established to develop national policy relating to WHS and workers compensation, the tripartite body is jointly funded by the Commonwealth, States and Territories through an intergovernmental agreement.¹³ SWA is meant to work in partnership with governments, employers, and employees to drive WHS policy development.¹⁴

Some of Safe Work Australia's key functions are:¹⁵

- (a) To develop, evaluate and, if necessary, revise:
 - (i) A model WHS legislative framework, to be developed for approval by the WHS Ministers for adoption by the Commonwealth, States and Territories.
- (b) Monitor the adoption by the Commonwealth, the States and Territories of the WHS legislative framework approved by WHS Ministers

Safe Work Australia's model WHS laws, as administered by State and Territory Ministers (to the exclusion of VIC & WA), consist of three components:¹⁶

1. The WHS Act
2. Model WHS Regulations, and
3. Model Codes of Practice

⁹ *Occupational Work Health and Safety Act 2004*

¹⁰ *Occupational Work Health and Safety Act 1984*

¹¹ *Ibid, Long Title, 1984*

¹² *Occupational Work Health and Safety Act, S2 'Objects' 2004*

¹³ *Safe Work Australia, 'About Us', May 2020, [access](#)*

¹⁴ *Ibid*

¹⁵ *Safe Work Australia Act, 2008, Part 2, Section 6, Item 2*

¹⁶ *Safe Work Australia, 'Law and Regulation', May 2020, [access](#)*

Model WHS Regulations set out specific requirements for particular hazards and risks.¹⁷ Codes of Practice offer practical information for Employers and workers on how they can meet the requirements set out in the WHS and Model Regulations.

In reviewing the rules and regulations which impose WHS duties on PCBU's in relation to amenities, it is important to consider how they operate in context of their definitions and statutory framework. See **Table 1 (Appendix)**. The table summarises the jurisdictional inconsistencies between the States and Territories and goes some way in explaining why employees have significant challenge when it comes to compelling employers to provide for ample access to hygienic and safe toilets.

Legislative Paper Tiger

As outlined above, not all laws are made equal. Even in the case where legislation provides for some form of obligation for employers to facilitate adequate amenities for their workers, it is in practice a thinly veiled legislative paper tiger. That is to say, much of the WHS, OH&S and SWA leaves much to be desired in terms of the legislation's mandate.

Moreover, codes of practice are largely not mandatory, provided a PCBU implements another method of equivalent or higher standard.¹⁸ We know the bare minimum requirements as stipulated by the codes are not being met, let alone any 'higher standard'. For example;

- (a) Northern Territory Code of Practice: 'Managing the work environment and facilities'

"Workers, including those who have particular needs or disabilities, must have access to facilities. Facilities may not need to be provided if they are already available close to the workplace, are suitable for workers to use and the workers have opportunities to use them.

*This would mean that:*¹⁹

- *workers are provided with breaks to use facilities*
- *the facilities are within a reasonable distance from the work area*
- *workers on different shifts have similar access; and*
- *the means of access is safe at all times"*²⁰

And,

*"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, and there are two or fewer workers of one gender."*²¹

¹⁷ *Business.Gov.au, 'Risk Management, Health & safety, World Health and Safety', Australian Government, Commonwealth of Australia, March 2021, [access](#)*

¹⁸ *Ibid*

¹⁹ *Work Health and Safety Regulations, Clause 41*

²⁰ *Managing the work environment and facilities, Code of Practice, Northern Territory, March 2020*

²¹ *Ibid*

Despite what appears to be clear obligations, we know employers are taking an indifferent approach to this issue. In an article published by the Australian Broadcasting Corporation (ABC), electrician and founder of the Darwin Sparkettes Sarah Brunton outlines the appalling state of bathroom facilities in the Northern Territory and highlights the inextricable link between providing bathrooms for all workers and workplace respect.²²

Ms Brunton recalls occasions where facilities were located in a makeshift cleaning cupboard, toilets that were hundreds of meters away from site and the countless times she has driven herself to a service station to use their facilities.²³ We know this is not a unique experience and we know the social, economic, cultural and health impacts that this all too common approach to amenities yields.

It is accepted that women are entitled to easily accessible toilets and sanitary bins, yet requirements and laws designed to promote safe work environments do little to reflect this and are instead left to interpretation, usually by men.

Reasonably Practicable

A broad interpretation of the requirements proposed by legislative instruments by PCBU's appears to a concurrent theme underlying many of the issue's women are facing in the industrial space.

The legislative requirements are too open to interpretation, all too often it appears to only be contemplated that those amenities will only be used in the context of how men access them. Not taking into consideration the *specific needs* of women, such as washing basins, sanitary disposal bins and the additional hygiene requirements associated with menstruation.

'Reasonably Practicable' is the yardstick against which an Employers duty to their workers is measured. It is defined by the WHS as:²⁴

"In relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

- (a) the likelihood of the hazard or the risk concerned occurring; and*
- (b) the degree of harm that might result from the hazard or the risk; and*
- (c) what the person concerned knows, or ought reasonably to know, about:*
 - (i) the hazard or the risk; and*
 - (ii) ways of eliminating or minimising the risk; and*
- (d) the availability and suitability of ways to eliminate or minimise the risk; and*

²² Australian Broadcasting Association, 'Toilets and Tampons: the Northern Territory's female facilities gap in male-dominated workplaces', Emilia Terzon and Rebecca McLaren, November 2015, [access](#)

²³ Ibid

²⁴ Work Health and Safety Act, 2011, Subdivision 2, S.18

- (e) *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”*

Perhaps it is ignorance to the fundamental understanding of women’s reproductive health. Or maybe it is because the risk (such as UTI’s) is considered less than the cost of implementing adequate bathroom facilities. Evasive phrases to note are *‘means that which is, or was at a particular time’, ‘reasonably able’, ‘degree of harm’, ‘minimising’* and *‘whether the cost is grossly disproportionate to the risk’*.²⁵ All of which, when interpreted through the lens of “guidance” as opposed to law significantly dilute the mandate of the WHS, OH&S and all Safe Work’s subsidiaries.

BARRIERS WOMEN FACE AND OPPORTUNITIES TO OVERCOME THEM

As outlined throughout this paper, societal attitudes and norms, workplace culture, an absence of leadership in the workplace and a deficient regulatory environment all combine to create significant barriers to women’s participation in male dominated industries. Proper provision of workplace amenities is one significant barrier that must be addressed. It is important when contemplating how to tackle this challenge, strategies that place the responsibility for change on women must be avoided. It is not women who have created this barrier and it is egregious to think that the solutions to these challenges might be borne by women alone. In saying this, it is important to recognise this statement does not mean that the solutions should be developed absent the input of women.

Research has found that the types of measures often implemented by construction employers do not make a significant difference to the lived work experience of women in that industry, or result in an increase in the number of women workers.²⁶ Research has found that formal institutional rules are inherently gendered, and that “a lack of robustness and revisability in policy design is a key factor influencing the lack of progress in improving women’s representation and gender equality in the construction sector”.²⁷

Successful strategies include women and men in the policy-setting process, rather than imposing schemes from the top down. This in turn leads to stronger accountability mechanisms, reporting and feedback processes.

One strategy that has proven effective in increasing retention of women workers is facilitating women’s networks and mentorship within the industry. Women in the industry have identified a positive feeling of family and camaraderie at work as a reason for staying in the industry and contributing to their job satisfaction. These networks and mentorship programs provide a level of support and community that can often be lacking in male-dominated workplaces, where a woman may be the only female worker on site. The experience of ETU women is

²⁵ *Work Health and Safety Act, 2011, Subdivision 2, S.18*

²⁶ French and Strachan (2015) p 240

²⁷ French and Strachan (2015) p 378

that Human Resources departments, where they exist, have largely proven ineffectual in facilitating the necessary initiatives that are needed.

Case study – ‘Jen’

I’ve always felt my first six months on the job would have been easier if I had an appointed mentor, to take the ‘otherness’ out of being a woman in a group of dudes. It would have made it easier to talk to them and to voice what I need. And I think of myself as a pretty strong extrovert. Imagine what this would have been like for less social newbies.

A greater number of women role models within the industry coupled with mentoring and networking programs would contribute to a culture of support and community for women in the construction industry.

Case study – ‘Jen’

It has helped a lot to have the guys know what it is like not to have proper toilets. It makes a difference to make comparisons of experiences, like if it was their daughter, mother, or sister in my shoes. It is also important to take the time to build trust. The more I’ve come to know my workmates, we understand each other better and the surer I feel that they will have my back.

It is important to acknowledge that legislative measures to achieve gender equity, such as audits and targets for gender parity, or the adoption of flexible workplace practices and anti-discrimination policies to ensure employers comply with their legislative obligations, are either not enforced or monitored. In the case of amenities, they are regularly left to non-mandatory codes of practice or long held cultural practices of not addressing the issues such as workers taking the risk of a fine and urinating in a subtle corner or the back of the truck. Men are also affected by the lack of amenities, but they have a culturally acceptable way of not addressing it. If a fine was issued, the employer would refuse to pay it, shifting responsibility again onto the individual for employers’ failure to provide adequate amenities.

The importance of prescriptive legislative improvements to workplace amenities coupled with a strong regulatory education, compliance and enforcement program would deliver significant improvements for all workers with regard to workplace amenities, and particularly for women.

The regulatory environment can no longer be left to vague concepts of ‘reasonably practicable’ and ‘should’ and ‘could’ for such an obvious and essential workplace requirement and the over reliance on codes of practice which are often not mandatory, creates legislative loopholes for employers to argue their way out of.

RECOMMENDATIONS

Legislation

Recommendation 1

Legislative amendments are required to provide prescriptive minimum requirements for workplace amenities which ensure they are regularly serviced, accessible, suitable, and open. These statutory requirements must include:

- Frequency and standard of cleaning and servicing of workplace amenities
- Provision of minimum PPE requirements for health, hygiene and sanitation
- Recognition of the different uses and access needs of men and women in the workplace
- The minimum amenities that all workers must be provided in the workplace
- Requirements to consult with relevant workers on the provision of gender suitable workplace amenities which ensure they are regularly serviced, accessible, suitable, and open

Recommendation 2

The creation of regulations and prescribed codes of practice which account for the different risks and hazards presented by different industries and ensuring that the codes of practice address the difference in amenities uses and access needs for both men and women in the workplace.

Regulators

Recommendation 3

Regulators should develop checklists as guidance for establishing adequate workplace amenities or when performing workplace inspections or audits for the provision of adequate amenities. These guides could be utilised by entry permit holders, inspectors, workplace delegates, health and safety representatives, safety managers and human resources representatives.

Recommendation 4

When identifying annual priorities for education, compliance and enforcement Regulators should consult with industry stakeholders to develop targeted campaigns to address improvements to workplace amenities which include a focus on both men's and women's amenities.

Recommendation 5

Regulators must establish a women in male dominated occupational industries reference committee and/or advisory group to assist in determining priorities and assessing progress in improving education and compliance with workplace amenities.

Industry

Recommendation 6

PPE and other safety items must be either pre-stocked or reimbursed and must be appropriate to the needs of both men and women. Consideration should be given to how employers are required to make essential safety equipment available which may include handwash, sanitizer, menstrual cups, menstrual underwear, she-wees, disposal sanitary hygiene bags and toilet liners.

Recommendation 7

Barriers for women should be identified and removed ensuring readily available access to suitable and easily accessible workplace amenities including when utilising site, depot, station, and substation toilets and provision of appropriate mobile amenities where fixed amenities are not readily accessible. Women's mobile toilets should be locked, with keys issued to women workers on site where a risk assessment identifies a potential safety or security hazard or where requested.

Recommendation 8

All toilets should be fitted with sanitary bins, hand soap (including heavy duty hand cleaner where required) and hot and cold running water. Water containers and hand wash should also be fitted to all field work vehicles.

Recommendation 9

To address workplace culture, education must be provided to those who are unaffected, or are affected differently, by the lack of amenities regarding the issues that arise from poor amenities. Shame-free, informal conversations must be had on these issues. Stronger understanding, empathy and relationships should be built amongst male and women workers.

Recommendation 10

Employers should have a singular point of contact for all employees to report gendered safety issues. Women apprentice meetings and mentorship programs should also be implemented.

CONCLUSION

Currently, women in male dominated occupational industries are regularly being forced to travel long distances to use public amenities, use men's facilities or otherwise avoid going to the bathroom altogether. This presents major consequences to the health, safety, hygiene and wellbeing of women workers. This structural failure to provide proper amenities is reflective of discriminatory and problematic workplace cultures that minimize and refuse to respond to the needs of women, along with a deficient regulatory environment. As this is a structural issue, the solution must also provide for structural reform. The explicit provision of suitable amenities that are appropriate to the way both men and women access them, is an essential step towards supporting the increased engagement of women in male dominated occupational industries and should be mandated under federal and state legislation.

The addition of more prescriptive legislative guidance will provide clarity to employers and the industry around expected standards regarding health, safety, hygiene and wellbeing of all workers and in turn provide the necessary framework safety regulators need to deliver the education, compliance, and enforcement outcomes necessary to make workplaces safer.

Lastly, it is imperative that industry, with increasing numbers of women entering the workforce, provide structurally safer and more inclusive workplaces. Whilst it may be reflective of complex, historical, sociocultural issues, the provision of suitable amenities provides for a simple solution and practical recognition of the increasing shift in workforce compositions that will have significant social and economic benefits for all Australians.

It is up to all of us to ensure women are no longer left with nowhere to go.

APPENDIX 1 – HEAT MAP

Table 1: Heat map of current regulatory environment against recommendations.

<i>Legislation</i>		NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
Recommendation 1										
Legislation and Regulations	Legislation stipulates that facilities must be regularly cleaned and maintained									
	Legislation stipulates minimum PPE requirements for health, hygiene and sanitation									
	Legislation recognises the different uses and access needs of men and women in the workplace									
	Legislation clearly stipulates the minimum amenities that all workers must be provided in the workplace									
	Act or regulations require consultation with relevant workers on the provision of gender suitable workplace amenities which ensure they are regularly serviced, accessible, suitable, and open									
Recommendation 2										
Codes of Practice	Code of Practice takes into account different hazards presented by different industries									
	Code of practice which provides guidance on the provision of facilities having regard to the composition of the workforce									
	Codes of practice address differences in amenity use by men and women									

Table 2: Heat map of current Regulator activity against recommendations.

<i>Regulators</i>		NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
Recommendation 3										
Regulator	Regulator produces checklist for use by inspectors and right of entry permit holders to investigate provision of appropriate facilities.	G	G	G	R	G	G	G	G	G
	When identifying annual priorities for education, compliance and enforcement, regular consults with industry stakeholders to develop targeted campaigns to address improvements to workplace amenities which include a focus on both men's and women's amenities.	R	R	R	R	R	R	R	R	R
	Regulator has a women in male dominated occupational industries reference committee and/or advisory group to assist in determining priorities and assessing progress in improving education and compliance with workplace amenities.	R	R	R	R	R	R	R	R	R

- GREEN Clear and enforceable regulatory requirements
- AMBER Some regulatory requirements exist
- RED No enforceable regulatory requirement

APPENDIX 2 – REGULATORY COMPARISON

Key

Definition

Reasonably practicable is a term used in relation to a duty to ensure health and safety. Meaning that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety of workers and the general public.

And, taking into account and weighing up all relevant matters including:²⁸

- (a) likelihood of the hazard or risk concerned occurring, and*
- (b) the degree of harm that might result from the hazard or risk, and*
- (c) the availability and suitability of ways to eliminate and minimise risk”*

N/A

Not Available. Refers to the non-existence of any amenities provisions per State and Territory.

²⁸ Safe Work Australia, Interpretive Guideline – Model Work Health and Safety Act, meaning of ‘reasonably practicable’, [access](#)

Table 3: Amenities Facilities across the States and Territories

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
EXPRESS LEGISLATIVE PROVISIONS (Acts)	N/A	Must provide, so far as is reasonably practicable, adequate facilities for the welfare of employees at any workplace under the management and control of the employer. ⁱ	N/A	The provision by employers or occupiers of prescribed facilities for the safety and health of persons at the workplace. ⁱⁱ	N/A	N/A	N/A	N/A	Provision of adequate facilities for the welfare of workers at work in carrying out work for the business or undertaking, including access to those facilities. ⁱⁱⁱ
EXPRESS REGULATORY PROVISIONS	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	N/A	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	N/A	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets,	

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
	drinking water, washing facilities, and eating facilities. ^{iv}		drinking water, washing facilities, and eating facilities. ^v		drinking water, washing facilities, and eating facilities. ^{vi}	drinking water, washing facilities, and eating facilities. ^{vii}	drinking water, washing facilities, and eating facilities. ^{viii}	drinking water, washing facilities, and eating facilities. ^{ix}	
<p>CODES OF PRACTICE</p> <p><i>Generally, all of the codes accept that workplaces must have separate toilets in work spaces where there are male and female employees.</i></p> <p><i>However, there are exceptions.</i></p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and;</p> <p>There are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan,</p>	<p>One unisex toilet may be provided where a workplace with both male and female employees are:</p> <p>The total number of people who work at the workplace is 10 or fewer. Or there are two or fewer of one gender.^{xi}</p> <p>A unisex toilet is a toilet that comprises of one closet pan, one</p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and – there are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan, one</p>	<p>In some small businesses where there may be only a few workers and the privacy of males and females can be assured, it may only be necessary to provide one toilet.^{xv}</p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and – there are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan, one</p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and – there are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan, one</p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and – there are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan, one</p>	<p>One unisex toilet may be provided in workplaces with both male and female workers where:</p> <p>The total number of people who normally work at the workplace is 10 or fewer, and – there are two or fewer workers of one gender.</p> <p>A unisex toilet should include one closet pan, one</p>	

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
	one washbasin and means for disposing of sanitary items. ^x	wash basin and a sanitary disposal unit. Unisex toilets need to be fully enclosed for privacy and have a door that can be securely locked from the inside. ^{xii} Separate male and female toilet facilities need to be provided where there are both male and females onsite. ^{xiii}	washbasin and means for disposing of sanitary items. ^{xiv}		washbasin and means for disposing of sanitary items. ^{xvi}	washbasin and means for disposing of sanitary items. ^{xvii}	washbasin and means for disposing of sanitary items. ^{xviii}	washbasin and means for disposing of sanitary items. ^{xix}	
PRESCRIBED RATIOS		Number of employees (including owners and managers) 1-20 Males = 1 Closet pan(s) per		N/A					

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	CTH
		20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females ^{xx}							
(FOR ALL OTHER WORKPLACES)	Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females. ^{xxi}		Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females.		Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females.	Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females.	Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females.	Males = 1 Closet pan(s) per 20 males, and 1 Urinal per 25 Males Females = 1 Closet pan(s) per 15 females.	
LEGALLY BINDING	✓ ^{xxii}	✗ ^{xxiii}	✓	✗	✓	✓	✓	✓	

ⁱ Occupational Health and Safety Act, Victoria, 2004, Part 2, Division 2, S.21(d)

ⁱⁱ Occupational Health and Safety Act, Western Australia, 1984, Schedule 1, S.18

ⁱⁱⁱ Work Health and Safety Act, 2011, (Cth) No.137, Part 2, Division 2, S19 (e)

^{iv} Work Health and Safety Regulations 2017 (NSW), Part 3.2, Division 2, 40- Duty in relation to general workplace facilities

^v Work Health and Safety Regulations 2011 (QLD), Part 3.2, Division 2, 40- Duty in relation to general workplace facilities

^{vi} Work Health and Safety Regulations 2012 (SA), Part 3.2, Division 2, 40- Duty in relation to general workplace facilities

^{vii} Work Health and Safety Regulations 2012 (TAS), Part 3.2, Division 2, 40- Duty in relation to general workplace facilities

^{viii} Work Health and Safety (National Uniform Legislation) 2011, Part 3.2, Division 2, 40- Duty in relation to general workplace facilities

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- ix *Work Health and Safety (National Uniform Legislation) 2011*, Part 3.2, Division 2, 40- Duty in relation to general workplace facilities
- x [NSW Government Code of Practice: Managing the work environment and facilities \(2019\)](#)
- xi *Compliance Code: Workplace amenities and work environment*, Victoria, 2008
- xii *Code of Compliance: Facilities in Construction and compliance code*, Victoria, 2018
- xiii *Code of Compliance: Facilities in Construction and compliance code*, Victoria, 2018
- xiv [QLD Managing the work environment and facilities Code of Practice 2021](#)
- xv [WA Code of Practice Workplace Amenities and Facilities 2002](#)
- xvi [SA Model Code of Practice: managing the work environment and facilities](#)
- xvii [TAS Managing the work environment and facilities: code of practice](#)
- xviii [NT Managing the Work Environment and Facilities Code of Practice](#)
- xix [ACT Work Health and Safety \(Managing the Work Environment and Facilities Code of Practice\) 2020](#)
- xx *Compliance Code: Workplace amenities and work environment*, Victoria, 2008
- xxi [NSW Government Code of Practice: Managing the work environment and facilities \(2019\)](#)
- xxii [NSW Government Code of Practice: Managing the work environment and facilities \(2019\)](#)
- xxiii *Compliance Code: Workplace amenities and work environment*, Victoria, 2008