

Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 203

made under the

Work Health and Safety Act 2011

General Outline

Short title

Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024

Authorising law

Section 276(1) and (2) of the *Work Health and Safety Act 2011*.

Policy objectives and the reasons for them

The objectives of the Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024 (Amendment Regulation) are to give effect to part of Recommendation 30 from the 2022 *Review of the Work Health and Safety Act 2011* (WHS Act Review) and support the Government's commitment to increasing the participation of women in frontline roles on Queensland Government construction projects.

Recommendation 30 of the WHS Act Review, in part, recommended elevating existing requirements for facilities in the *Work Health and Safety Regulation 2011* (WHS Regulation) by better aligning with those in the *Managing the work environment and facilities Code of Practice 2021* (Facilities Code of Practice).

Currently, section 41 of the WHS Regulation imposes a duty on a person conducting a business or undertaking to ensure, so far as reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities. Schedule 5A of the WHS Regulation also includes additional requirements for principal contractors of construction projects over \$250,000 to provide specific amenities for

construction work, such as ensuring access to reasonably available and adequately equipped toilets and hand and face washing facilities.

Despite the existing regulatory framework, the WHS Act Review found that there were ongoing issues in workplaces being provided with inadequate facilities and amenities. Further, insufficient, unsafe and poorly located toilets were particularly impacting women working in the construction industry. These factors are a significant barrier to encouraging women to work in male-dominated industries, such as construction, and the WHS Act Review considered that the robust regulation of facilities for women may help drive cultural changes in industry behaviour to reduce these barriers.

The Queensland Government has also committed to meeting the National Association for Women in Construction's target to increase female participation to 11% in frontline roles on Queensland Government construction projects.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by amending the WHS Regulation to meet the specific needs of women working in construction and better aligning with the minimum standards established by the Facilities Code of Practice.

Specifically, the Amendment Regulation amends Schedule 5A of the WHS Regulation to:

- ensure that principal contractors have a duty to provide toilets that are reasonably available to construction persons performing construction work;
- specify the minimum number of toilets and designated female toilets that are required on small construction projects (construction work costing less \$7.5 million), large construction projects (construction work costing over \$7.5 million), and multilevel buildings;
- set out a range of factors that a principal contractor should consider when determining if toilets, including designated female toilets, are reasonably available;
- specify additional requirements to ensure the needs of female construction persons are met, including safe, secure and timely access to designated female toilets and that these facilities include fit-for-purpose amenities, such as sanitary bins;
- provide examples of how a principal contractor may meet their duty to consider the number and placement of toilets on construction projects.

Principal contractors will be required to meet these new requirements for facilities and amenities for construction work from 1 January 2025.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Work Health and Safety Act 2011* to ensure:

- workers and others are protected against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work; and

- providing a framework for continuous improvement and progressively higher standards of work health and safety.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation. Although the Amendment Regulation designates female toilets, the amendments are not inconsistent with the *Anti-Discrimination Act 1991* (AD Act) as the AD Act permits equal opportunity measures in some circumstances.

It is prohibited under section 7 of the AD Act to discriminate on the basis of certain attributes, including sex and gender identity. However, section 105 of the AD Act permits an act *‘to promote equal opportunity for a group of people with an attribute if the purpose of the act is not inconsistent with this Act.’*

Women are underrepresented in construction work and research indicates that inadequate and unhygienic facilities for women working on construction projects are a significant barrier to participation, as well as a potential health and safety risk. The Amendment Regulation aims to improve access to safe and hygienic facilities and amenities, including toilets, sanitary item disposal and hand washing facilities for women working in construction. This promotes equal opportunity for women in construction.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by amending the WHS Regulation.

Benefits and costs of implementation

The Amendment Regulation clarifies and expands existing duties in the work health and safety regulatory framework. A person conducting a business or undertaking (PCBU) currently has a duty to ensure there are adequate facilities for workers under section 19 of the *Work Health and Safety Act 2011*. There are also existing duties for principal contractors to ensure particular amenities for construction work under Schedule 5A of the WHS Regulation.

The Amendment Regulation benefits construction workers, and particularly women, by elevating some of the basic standards of the *Managing the work environment and facilities Code of Practice 2021* into the WHS Regulation and addressing barriers to women working in the construction sector.

Construction is a crucial industry in Queensland which is currently impacted by significant skill shortages. Ensuring that safe, secure and fit-for-purpose toilets and amenities, such as hygienic sanitary bins and properly equipped hand washing areas, are reasonably available will assist in encouraging and increasing women’s participation in the construction workforce.

The Amendment Regulation expands the existing responsibilities of PCBUs and principal contractors to ensure these appropriate facilities are available on construction projects. Given

the scope of the Amendment Regulation and the importance of supporting Queensland's construction sector workforce, targeted consultation was undertaken with construction industry representatives.

Consultation did not identify that the cost of implementation would be prohibitive to the sector and practical issues raised by construction industry representatives have been addressed in the drafting of the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992*, and is consistent with the FLPs.

Consultation

The issue of inadequate facilities was identified during the WHS Act Review, which was informed by public and targeted consultation, including employer and industry groups, registered unions, academics, and other bodies. The submissions and outcomes of the WHS Act Review have been considered in preparing the Amendment Regulation.

From May to August 2024, targeted consultation on the Amendment Regulation, specifically, was also undertaken.

Government agencies consulted include:

- Department of the Premier and Cabinet
- Queensland Treasury
- Department of Justice and Attorney-General
- Queensland Health
- Queensland Police Service
- Queensland Corrective Services
- Youth Justice
- Department of Transport and Main Roads
- Department of Education
- Queensland Building and Construction Commission
- Department of Housing, Local Government, Planning and Public Works
- Department of Regional Development, Manufacturing and Water; and the Office of Best Practice Regulation.

Industry and relevant union representatives consulted include the Queensland Council of Unions; Construction, Forestry, Mining and Energy Union; Electrical Trades Union; Plumbing and Pipe Trade Employees Union; Australian Workers' Union; Australian Manufacturing Workers' Union; Master Builders Queensland; Business Chamber Queensland; Local Government Association of Queensland; Australian Industry Group; National Association of Women in Construction; and the Housing Industry Association.

Targeted consultation identified a range of issues which have been addressed and incorporated in the Amendment Regulation where possible. In some instances, representatives provided feedback that was out-of-scope for the policy objectives of improving facilities and amenities for women in construction. However, such feedback has been collated and recorded and will be used to inform the broader policy analysis and implementation of Recommendation 30 of the WHS Act Review in due course.

Notes on provisions

Clause 1 states the regulation may be cited as the *Work Health and Safety (Amenities for Construction Work) Amendment Regulation 2024*.

Clause 2 states the regulation commences on 1 January 2025.

Clause 3 states the regulation amends the *Work Health and Safety Regulation 2011*.

Clause 4 amends schedule 5A, section 1 (Definitions) to insert a definition for *construction person*, *designated female toilet*, and *female construction person*.

The definition for *construction person* includes terms which are defined in Chapter 6 of the *Work Health and Safety Regulation 2011*, including what is a *construction project* (section 292), who is a *principal contractor* (section 293) and what work is, or is not, *construction work* (section 289).

The definition of a *designated female toilet* clarifies that a designated female toilet is for use only by either a female construction person or a person who identifies as a female construction worker.

Clause 5 omits and replaces section 2 of schedule 5A.

New division 1 (Toilets to be reasonably available) is inserted.

New section 2 (Deciding whether toilets are reasonably available) sets out how a principal contractor decides whether a toilet is reasonably available to a construction person.

New section 2(1) confirms that a principal contractor must have regard to all relevant circumstances when making their decision about whether toilets are reasonably available. Examples are provided to assist principal contractors of relevant factors to consider.

Example one provides that a principal contractor may determine toilets are reasonably available on a single level building construction project if they are located within 100 metres of where the construction work is being performed.

Example two provides two options about how a principal contractor may approach making the decision on a more expansive project, such as a road, solar or wind farm construction project. One option may be to ensure that toilets are located within 200 metres of where the construction work is being performed. Similarly, the principal contractor may determine that toilets are reasonably available if they are located within a two-kilometre trip for workers who have immediate access to a vehicle.

The examples provide guidance about how to determine whether toilets are reasonably available and are not exhaustive of the types of projects or the locations where toilets should be located. Principal contractors may need to consider a range of factors when making this determination, such as the nature of the construction work, workforce composition, location of the project, access to vehicles, and existing facilities and amenities.

New section 2(2) provides specific requirements for how a principal contractor must decide whether designated female toilets are reasonably available for female construction persons. It is a requirement that principal contractors must ensure the needs of female construction workers are considered when meeting the minimum requirements set out in new sections 2B, 2C, 2D and 2E.

The example in new section 2(2) provides that ensuring designated female toilets are reasonably available may require supplying more than the minimum number of toilets. This may occur on a significantly large site, or if the participation rate of female construction persons is large for that project e.g., if there are sixteen construction persons for a small construction project, and eight are female, it may be necessary to supply more than the minimum one designated female toilet for the convenient access by these workers.

New section 2(3) provides that the minimum requirements for complying with the duty of principal contractors to ensure toilets are reasonably available are in new sections 2B, 2C, 2D, and 2E. However, new section 2(4) states that a principal contractor for a construction project does not necessarily comply with their duty simply because they have met these requirements. Principal contractors should consider the particular needs of construction persons and the nature of a construction project on a case-by-case basis to make these decisions.

New section 2A (Duty to ensure toilets are reasonably available) provides that a principal contractor for a construction project must ensure that toilets complying with division 2 are reasonably available to each construction person. A failure to comply with this duty may result in a maximum penalty of 20 penalty units.

New section 2B (Required minimum number of toilets) sets the minimum number of toilets, and designated female toilets, that must be available for construction persons.

Subsection (1) requires that there must be at least one toilet for each 15, or part of 15, construction persons.

Subsection (2) provides that there must be at least one designated female toilet for each 100, or part of 100, construction persons for *large construction projects* in addition to the minimum number of toilets set out in subsection (1). Two examples are provided to assist principal contractors about how to calculate the minimum number of toilets.

Subsection (3) provides a method of calculating the minimum number of designated female toilets for *small construction projects*. Subject to the principal contractor considering other requirements, such as new sections 2C, 2D and 2E, one female designated toilet is required where there are 15 or more construction persons on a small construction project. Examples of how to calculate the number of toilets are also provided.

Subsection (4) provides the definitions for *large construction project* and *small construction project*. Both definitions are to be read in conjunction with the definition of *construction project* in section 292 of the *Work Health and Safety Regulation 2011*, as only construction projects valued at \$250,000 or more necessitate the additional amenities requirements for construction work under Schedule 5A.

New section 2C (Additional requirements about number and location of toilets for multilevel buildings) inserts specific requirements for multilevel construction projects.

Subsection (1) ensures that principal contractors have additional considerations to construction projects that include at least 4 levels of a structure that is a building. When counting the number of levels, the ground level is not included e.g., a structure made up of a ground level, level 1, level 2, and level 3 is not captured by these additional requirements.

Subsection (2) provides the minimum number of toilets and designated female toilets, and at the minimum, these toilets should be located on above and below ground levels as set out. Principal contractors may determine it is necessary to have additional toilets and on additional levels to those set out to ensure toilets are reasonably available.

Subsection (3) confirms that the number of toilets for multilevel buildings applies even if the minimum number of toilets or designated female toilets required in this subsection is higher than the minimum number of toilets or designated female toilets otherwise set out (i.e., under new section 2B), but does not otherwise affect the minimum number toilets or designated female toilets.

New section 2D (Additional requirement about location of designated female toilets) provides requirements that must be considered by a principal contractor to meet the needs of female construction persons. Subsections (1) and (2) state that a *standalone* designated female toilet, or a block or room of designated female toilets, must be located in close proximity to other non-designated toilets, so far as is reasonably practicable. Subsection (3) defines *non-designated toilet* as meaning a toilet other than a designated female toilet (i.e., an all-gender toilet that can be used by any construction person working on the construction project, including construction persons who identify as non-binary) and *standalone* as meaning a toilet that is not in a block or room.

New section 2E (Requirements about accessibility of designated female toilets) provides important requirements that must be met for the safety and accessibility of these facilities for female construction persons.

Subsection (1) provides that a designated female toilet must have a sign attached to the block, room or cubicle where the toilet is located that identifies it as a designated female toilet. Signage should be clear, informative and avoid using words or images that may constitute sexual or gender-based harassment.

Subsection (2) requires that access to a designated female toilet must be restricted so that the toilet can only be used by female construction persons. The example provides that a designated female toilet may be fitted with a lock that opens with a code given to the female construction persons but not to other construction persons. It may be practical for a principal contractor to provide this code at an induction. The way access is granted should also ensure dignity and, where practicable, should not require female construction persons to present at every toilet break to request a key.

Clause 6 amends schedule 5A, section 3 (When toilet must be connected toilet or portable toilet).

New section 3(4A) clarifies requirements for portable toilets which are made available to construction persons. Aligned with existing requirements in the *Managing the work environment and facilities Code of Practice 2021*, new section 4A clarifies that portable

toilets must be located in a secure place, with safe access, and installed so they cannot fall over or become unstable.

Sections 3(4A) and (5) are renumbered as subsections (5) and (6).

Clause 7 amends schedule 5A, section 4 (Privacy, ventilation and toilet paper) to omit sections 4(2) and (3) and replace it with new section 4(2).

New section 4(2) requires that a toilet made available to a female construction person, whether it is a designated female toilet or an all-gender toilet, must be accessible without them needing to enter a block or room that has a cubicle or urinal that may be used by male construction persons. Hand and face washing facilities must be made available either inside the block, room or cubicle where the toilet is installed or immediately adjacent to the block, room or cubicle. A sanitary bin must also be provided that is immediately adjacent to the toilet e.g., within easy reaching distance of the toilet.

New section 4(5) defines a *sanitary bin* as being a facility designed for the purpose of disposing of sanitary items for females. A general waste bin and other methods which are not safe, hygienic or fit-for-purpose are not considered to meet the requirements of this definition.

Sections 4(4) and (5) are renumbered as subsections (3) and (4).

Clause 8 inserts new section 4A (Other Requirements) into Schedule 5A. Toilets, whether a designated female toilet or an all-gender toilet, must have a hinged seat and lid, appropriate natural or other lighting, and be in a block, room or cubicle that can be accessed in an emergency.

Clause 9 amends schedule 5A, section 5 (Room, or sheltered area, to eat meals in) to omit the term *construction work* and replace it with *construction project*.

Clause 10 amends schedule 5A, section 6 (Hands and face washing facilities).

Section 6(1) omits the term *construction work* and replaces it with *construction project*.

Section 6(1)(a) is amended to ensure that adequate soap is provided in hand and face washing facilities.

Section 6(1)(b) is amended to change the requirement from a hose to a tap to reflect contemporary practices.

New sections 6(1)(c) and (d) are inserted to ensure that facilities for hands and face washing include a bin and an appropriate way for drying the hands. The examples of hygienic hand-drying facilities, such as automatic air dryers or paper towels, reflect the standard expected in the *Managing the work environment and facilities Code of Practice 2021*.

Section 6(2) is omitted as a consequential change to the amendments in Clauses 4, 5 and 7.

Clause 11 amends schedule 5A, section 7 (Drinking water).

Section 7(1) is updated to omit the term *construction work* and replace it with *construction project*.

Section 7(2) is amended to reflect that the supply of drinking water provided for construction workers should not be located in a block room or cubicle where a toilet is located.

Clause 12 amends schedule 19 (Dictionary). The definitions of *designated female toilet* and *female construction person*, as defined in Clause 4, are inserted in the Dictionary. The definitions for *construction person* and *reasonably available* are consequentially amended to reflect Clauses 4 and 5, respectively.