

Advisory Service
WorkSafe Victoria

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CC: The Hon. Ingrid Stitt, Minister for Workplace Safety
Todd Fernando, Acting Commissioner for LGBTIQ+ Communities

25 June 2021

Dear Advisory Service Team,

Re: Compliance Code: Workplace Facilities, Amenities and Work Environment

We write in relation to the draft Compliance Code: Workplace Facilities, Amenities and Work Environment (“the Code”), and welcome the opportunity to make this submission.

Who has duties?

A number of our submissions recommend changing language from “should” to “need to” so as to indicate a recommended course of action in accordance with duties and obligations under Victorian legislation.¹

The *Equal Opportunity Act 2010* requires that an employer must not discriminate against any employee by subjecting them to any detriment on the basis of their gender identity.² Arguably, failing to provide toilet, change room and shower facilities for gender diverse workers is discrimination, even if indirect, and does not accord with the duties and obligations of employers under Victorian legislation.

Discrimination against workers because of their gender identity creates a risk to health and safety. Therefore, we recommend that the language be strengthened to create a positive duty for employers to provide facilities for gender diverse workers.

Toilets

The previous Code recommended that ‘separate toilets need to be provided in workplaces where there are both male and female employees’ and the total number of workers is greater than ten,³ and did not provide any positive encouragement for the use

¹ WorkSafe Victoria, *Compliance Code: Workplace Facilities, Amenities and Work Environment* (draft) 6.

² *Equal Opportunity Act 2010* s 18(d).

³ WorkSafe Victoria, *Compliance Code: Workplace Amenities and Work Environment* (2008) 9.

of gender neutral toilets, which are important for the inclusion of trans and gender diverse people at work. The draft Code stipulates that in large workplaces, ‘employers should also provide an all gender accessible toilet.’⁴ However, we recommend that “should” be replaced with “need to”, so as to create a positive duty for employers to provide toilets for gender diverse workers. Consideration should also be given to not conflating accessible toilets for workers with a disability with all gender toilets for gender diverse workers, as outlined in the submission from Transgender Victoria.

The previous Code used the term “unisex”, which is not inclusive and is out of date. Instead, the Australian Workplace Equality Index encourages large employers to have “gender neutral” or “all gender” bathrooms and/or facilities with clear and visible signage available to employees.⁵ The draft Code uses this language and thus accords with the recommendations of the Australian Workplace Equality Index.

Though there is a note about all gender toilets appended to the table on page 14 of the draft Code, we recommend that the table be updated to include all gender toilets on each storey (or where a storey has more than one bank of toilets, at least half of those banks) in each type of building, with one toilet pan and one washbasin.⁶

Design

We recommend that clause 55 be updated to read ‘clearly marked to indicate the facilities therein.’ We also recommend the inclusion of figures to provide examples of signs, and have attached examples to this effect. Though we understand that AS 1428.1 requires that accessible all gender toilets be marked with a wheelchair symbol and a male and female symbol, we generally prefer that the signage indicate the facilities therein.

Facilities for toilets

The previous Code recommended that there be ‘means for disposing of sanitary items for toilets used by female employees’,⁷ but ignored the fact that trans men and non-binary workers may also use sanitary items. The draft Code stipulates that toilet facilities include ‘means for disposing of sanitary items’, not just in female toilets.⁸ We welcome this update.

⁴ WorkSafe Victoria, *Compliance Code: Workplace Facilities, Amenities and Work Environment* (draft) 13.

⁵ Pride in Diversity, *Australian Workplace Equality Index: Standard Employer Submission (501 or more employees)* (2021) 11.

⁶ Australian Building Codes Board, *Building Code of Australia* (2019) 253.

⁷ WorkSafe Victoria, *Compliance Code: Workplace Amenities and Work Environment* (2008) 11.

⁸ WorkSafe Victoria, *Compliance Code: Workplace Facilities, Amenities and Work Environment* (draft) 16.

Change rooms

In regards to change rooms, the draft Code includes a new stipulation that, in addition to gendered change rooms, ‘where possible, employers should provide at least one all gender single-user, lockable changing area.’⁹ We welcome this update; however, we recommend that “where possible” be deleted and that “should” be replaced with “need to”, so as to create a positive duty for employers to provide change rooms for gender diverse workers.

Shower facilities

In regards to showers, there is a new stipulation that, ‘where possible, in addition to the showers for males and females, employers should provide at least one private all-gender shower.’¹⁰ We welcome this update; however, we recommend that “where possible” be deleted and that “should” be replaced with “need to”, so as to create a positive duty for employers to provide shower facilities for gender diverse workers.

Conclusion

We welcome the updates to the Code to be more inclusive of trans and gender diverse people at work and would welcome the opportunity to consult with you further.

Yours sincerely,

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Co-Convenors, Victorian Pride Lobby

Brenda Appleton
Chair, Transgender Victoria

⁹ WorkSafe Victoria, *Compliance Code: Workplace Facilities, Amenities and Work Environment* (draft) 22.

¹⁰ WorkSafe Victoria, *Compliance Code: Workplace Facilities, Amenities and Work Environment* (draft) 23.