

# Changing rooms for gender diversity

*An issues paper regarding gender identity discrimination in public facilities*



# Acknowledgment of Country

Curtin University and the Equal Opportunity Commission Western Australia acknowledges and pays respect to the past, present and future Traditional Custodians and Elders of this nation and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

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# 1 Introduction

The Equal Opportunity Commission (the Commission), with assistance from Curtin University School of Design and Built Environment student Maya Yamamoto-Portelli, conducted a survey as part of a broader research project to ascertain what types of discrimination impacted the WA community when it came to shared public facilities such as change rooms, bathrooms and toilets.

The survey was completed by 474 people which included Trans and gender diverse individuals, cis-gender individuals, people with disability and carers of people of a different gender. The survey explored the challenges of accessing public facilities such as toilets, changing rooms and showers, as well as the idea of having more all-gender facilities in Perth.

The term 'gender diverse' was used in the survey to represent the diverse ways people experience gender and to be inclusive of those who identify as non-binary or who do not identify as the gender they were assigned at birth. The term transgender was used to describe individuals who identify and experience gender differently to the one assigned to them at birth or by society.

About 10 percent of survey participants identified as carers of people of the opposite sex who felt negatively impacted by gendered public facilities because of their caring responsibilities. About six percent of people who identified as having a disability felt they were impacted by gender public facilities because of their disability.

Overwhelmingly, responses indicating a negative impact from using gendered public facilities came from those who identify as gender diverse and it is for this reason the issues paper will focus on the barriers gendered public facilities place on WA's gender diverse community.

Many people also used the survey as an excuse to be transphobic, which gives us some insight into why gender diverse, people need safe public spaces, and highlights the need for more robust laws to protect gender diverse people from transphobic attitudes in Western Australia.

I encourage local governments to read this paper and consider the impacts of gendered public facilities on the vulnerable gender diverse communities throughout the state.

A handwritten signature in black ink that reads "John Byrne". The signature is written in a cursive, flowing style.

Dr John Byrne  
Western Australian Commissioner for Equal Opportunity

## 2 Context

### 2.1 Terms used

The following terms have been obtained from the Australian Human Rights Commission. The Equal Opportunity Commission recognises definitions are continuously changing to better respect and provide equal opportunity for members of the LGBTIQ+ and disability communities.

**Transgender (trans):** Umbrella terms for people whose gender is different to that which was legally assigned to them at birth.

**Cisgender (or cis):** Refers to people whose gender is the same as was legally assigned to them at birth.

**Non-binary:** When a person does not identify as either male or female.

**Sex:** the physiological make-up of a person, commonly expressed as a binary.

**Gender:** How a person thinks, acts, dresses, and speaks which distinguishes them as masculine or feminine.

**Gender identity** label or name one uses to define and identify their gender and the sense of oneself regarding gender

**Gender Diverse:** not identifying as the gender assigned to a person at birth

**Gendered facilities:** public sanitary facilities that are 'Male' and 'Female' segregated.

**All gender facility:** public sanitary facilities that are designed for all genders. Also called 'all inclusive', 'gender neutral', 'universal access' and 'accessible' toilets.

They often also provide access for people with disability. Trans individuals who exist on the gender binary may still not feel comfortable using the restroom that aligns with their gender identity.

### 2.2 Gendered public facilities

Toilets and bathrooms became gender-segregated by law in the 1880s, in the United States. Previous to this, all gender bathrooms were the norm in most parts of the world.

The decision to introduce gendered bathroom facilities was not directly in the best interest of women's safety against assault; rather it was to further contribute the social standing women had in society at the time. Women were considered weaker than men and thus needed to be coddled in the public sphere.

Historically and currently, toilet cubicles in both the men and women's bathrooms offer moderate levels of privacy. Stalls almost always have a gap at the top and bottom of the door, and the stall itself rarely reaches the ceiling and this level of privacy is considered adequate.

Shower facilities at gyms and swimming pools often provide the same moderate level of privacy, with either shower curtains or doors with gaps

There are several reasons for the use of small toilet stall doors. Having a gap of visibility allows for others to notice if someone is experiencing an emergency, such as a loss of consciousness or sexual assault. It also allows an individual to crawl underneath to access the person in danger.

Making doors that fit to different ceiling heights is more costly for manufacturers and clients, so providing a small range of universal sizes is ideal.

### 2.3 All gendered public facilities

Most facilities that have 'all gender' bathrooms separate to the gendered options are not intended to be exclusively used for one target group. Many are called 'all inclusive' or 'accessible', which groups together trans and gender diverse people, people with disabilities and families. In an attempt to be inclusive but aware of cost and space constraints these groups often have to share bathroom facilities in newer builds.

In 2020, the Hayman Theatre upgrade at Curtin University was completed by With\_Architecture Studio. The focus of the project was to promote accessibility through innovative universal design. This upgrade is significant as it includes WA's first all gender facility.

The design of the facility does not compromise on safety and privacy. The washroom area is very open to the rest of the building as to allow for passive surveillance for the safety of people, particularly women, trans and gender diverse people, who may be at risk of harassment and assault. In a sense, this allows the washroom area to become a sort of public and communal space. To ensure privacy, the toilet cubicles have floor to ceiling doors.

Countries such as Denmark, Sweden and Norway are rapidly moving away from the separation of gender and the gender binary in public facilities.

In Copenhagen, all-gendered restrooms are the norm. Some facilities resemble the Hayman Theatre restrooms, yet most will contain a washbasin within the toilet cubicle. Gendered bathrooms are often not provided in addition to all-gender bathrooms.

## 3. Relevant laws, regulations and policies

### 3.1 The Equal Opportunity Act 1984

Under the Western Australian Equal Opportunity Act, a trans individual can only be protected against discrimination if they obtained a gender recognition certificate from the Gender Reassignment Board of Western Australia, established under the *Gender Reassignment Act 2000*.

Both Acts fail to recognise the nuances of trans and gender diverse identities. If an individual who is trans or gender diverse but not recognised as such by the State, they cannot be protected by the *Equal Opportunity Act 1984* and must therefore use the Federal *Sex Discrimination Act 1984*.

### 3.2 Sex Discrimination Act 1984

The Sex Discrimination Act (SDA) makes it unlawful to discriminate against a person because of their sex, gender identity, intersex status, sexual orientation, marital or relationship status, family responsibilities, because they are pregnant or might become pregnant or because they are breastfeeding.

It protects people across Australia in a number of areas of public life, including employment, education, getting or using services, or renting or buying a house or unit.

### **3.3 Building standards and access**

#### **Changing Places**

Changing Places provide accessible facilities for those who are unable to use common accessible toilets, change rooms and showers. There are currently 37 Changing Places in Western Australia, 23 of which belong to the Perth and Peel Region.

Currently, an LGBTIQ+ Plan or Public Toilet Plan or Policy is not required by each local government authority to implement.

Recent local government plans regarding public facilities may mention all gender options, but do not provide information on what all gender options may look like. It is clear solutions to removing the barriers to accessibility for trans and gender diversity have not been seriously considered at this level.

#### **National Construction Code (NCC)**

The NCC provides the minimum requirements for the design and construction of buildings in Australia. It is provisioned by the Australian Building Codes Board (ABCB). The most recent NCC was released in 2019.

NCC uses the term 'unisex' in regards to facilities for people with disability.

The NCC requirement for 'unisex' facilities is dependent on the number of male and female toilets needed for each building class. This requirement is based on the need for unisex disabled toilets, and thus the accommodation of trans and gender diverse people is not the intention of this requirement.

The NCC does not include any acknowledgment of trans and gender diverse people or the minimum requirement for providing facilities that may cater to them.

The ABCB updates the NCC every three years in accordance with regulatory practices, research and public feedback. Currently, there is no proposal from the ABCB to review and update its requirements on sanitary facilities. Thus, the onus is on local governments to implement inclusive bathrooms and change room options where it is deemed necessary. A new NCC will be released for 2022.

The City of Perth has released a LGBTIQ+ Plan 2021 – 2024 created by the LGBTIQ+ Advisory Group. It features a statement by City of Perth Mayor Basil Zempilas in which he expresses his commitment to inclusivity in Perth.

### **3.4 National Public Toilet Map**

A National Public Toilet Map is a service provisioned by the National Continence Program (NCP) of the Australian Government. It indicates the location of toilet facilities, including the availability of unisex, disabled, baby changing and Changing Places facilities.

### **3.5 Guidelines for inclusive public facilities in other jurisdictions**

Victorian Equal Opportunity & Human Rights Commissioner Ro Allen, has been notable for advocating for "single-cell, all-gender, all-ability" toilets, with doors that are completely visually impenetrable.

The Victorian Equal Opportunity & Human Rights Commission contains guidelines on the appropriate inclusion of transgender and gender diversity which includes a section on toilet and change room access.



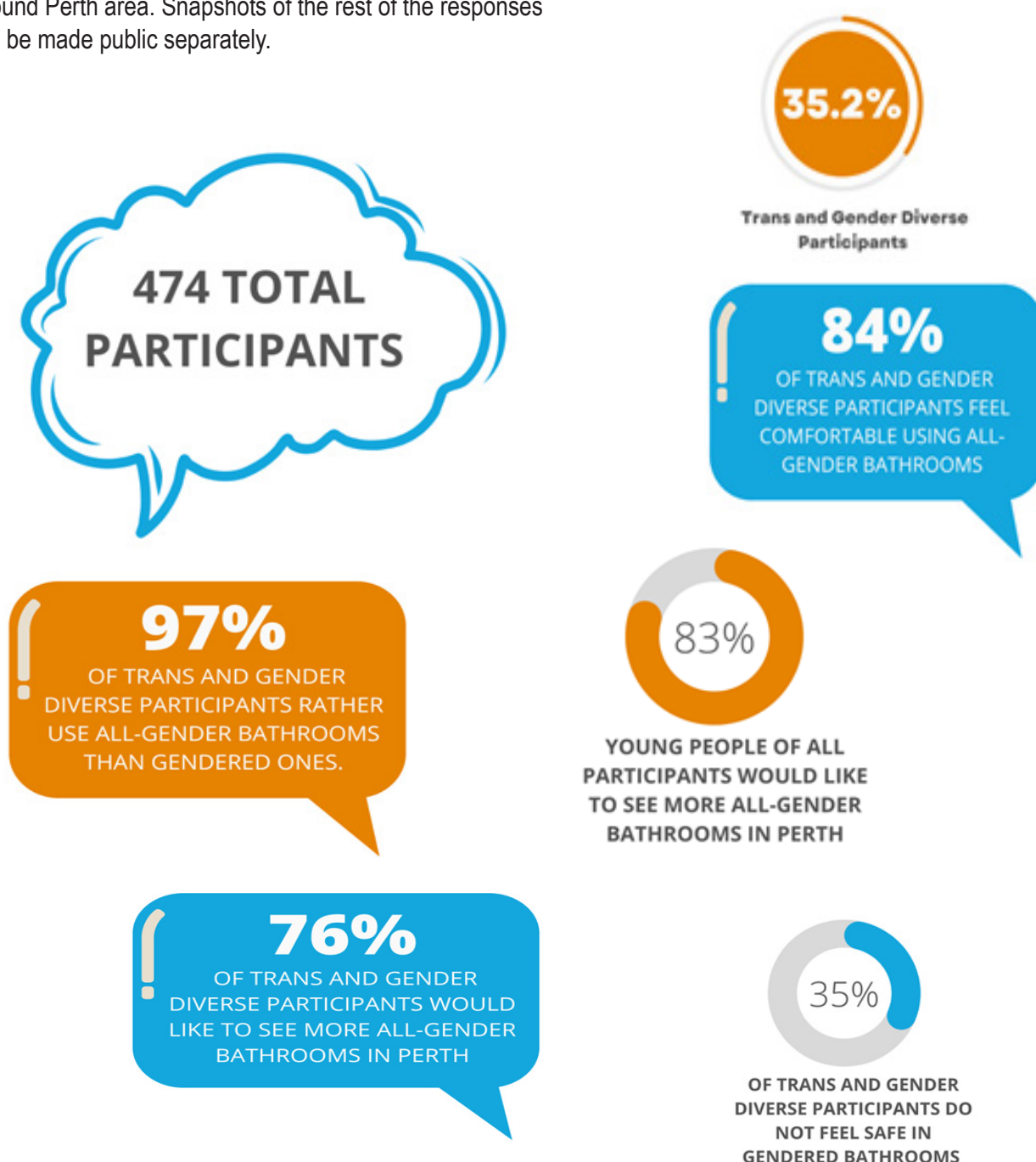
## 4 The survey

### 4.1 Methodology

The community survey was an online survey designed by Maya Yamamoto-Portelli with the guidance from Alyce Schotte in January and it was launched in January/ February 2022. The survey was promoted using the Equal Opportunity Commission's platforms including Facebook, newsletters and by reaching out to a number of communities and networks around Perth. The survey was designed and conducted online using Qualtrics.

The survey targeted three communities and their experiences when accessing public facilities in Perth. These communities included trans and gender diverse people, people caring for individuals of a different sex or gender, and people with a disability. Participants had to be 18 years of age or older and in Perth area to participate.

After examining responses, this report focuses on responses from trans and gender diverse people regarding their experiences in toilets and change room facilities, with a particular focus on what people thought about the idea of providing more all-gender bathrooms/toilets in and around Perth area. Snapshots of the rest of the responses will be made public separately.





## 4.2 Findings

Appropriately addressing trans and gender diverse people and people in the survey is significantly important.

Australian Bureau of Statistics, Intersex Human Rights Australia and LGBTIQ+ Health Australia provide guidelines on the respectful collection of data from LGBTIQ+ individuals. Respectful language in regards to people with disability was obtained from the People with Disability Australia Language Guide.

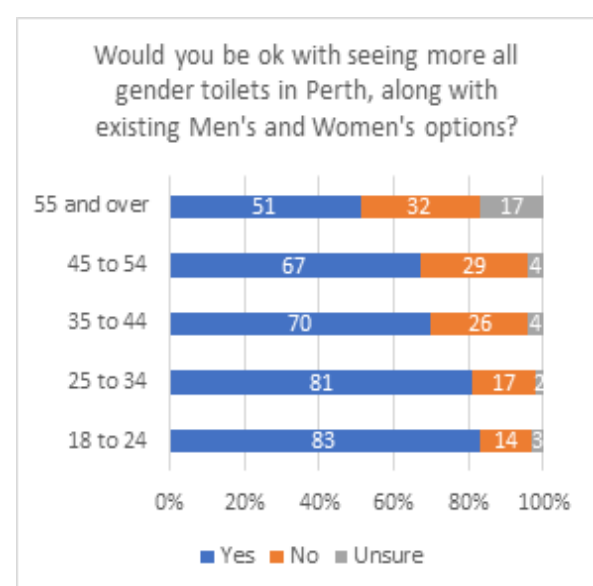
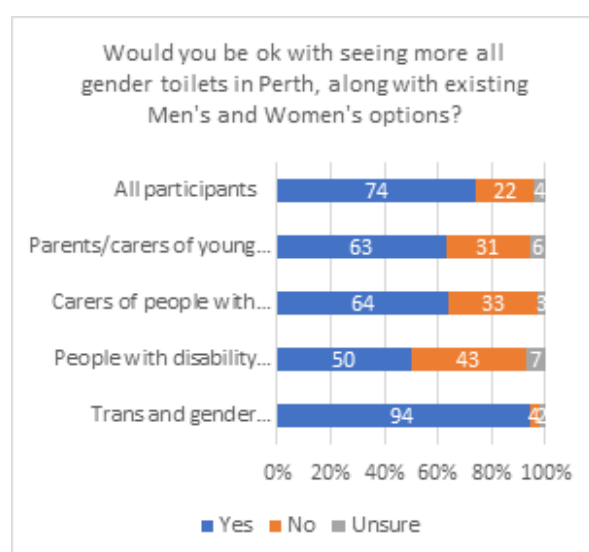
Before being released, the survey was reviewed by several trans and gender diverse individuals who assisted in the appropriate and considerate design of questions. The survey was open over a three week period.

Of those who completed the survey 167 identified as trans and gender diverse. This is a breakdown of their responses.

- 19 percent do not use the public toilet/bathroom that aligns with their chosen gender.
- 27 percent use the bathroom that aligns with their chosen gender
- 32 percent selected 'Sometimes/depends'. Several people who selected 'Sometimes/depends' qualified their choice by stating the bathroom they choose to enter varies on the type of people in the facility.
- 22 percent use the unisex or disabled bathroom.
- 84 percent said they would use an all gender bathroom
- 97 percent of those who said they would feel comfortable using an all gender bathroom also said they would prefer to use one over common gendered facilities.
- 76 percent said they would feel comfortable using an all gender change room and shower facility
- 10 percent said they wouldn't feel comfortable using an all gender public facility, and 14 percent unsure.

The majority trans and gender diverse people surveyed want all gender facilities and believe they are necessary for their safety and comfort. Many trans people stated all gender facilities would provide a more comfortable option for them when transitioning gender and don't present feminine or masculine enough (for others and themselves).

Non-binary individuals felt all gender bathrooms would represent their identity better than the binary options.



The survey also captured the opposition some people had against the idea of having all gender bathrooms in Perth. People who said 'No' to being ok with seeing all gender facilities or using all gender facilities in Perth were more likely to be cisgender and non-gender diverse. Generally, the opposition to all gender facilities increased with age. Fourteen percent of young people between the age of 18 to 24, and 32 percent of those aged 55 and over opposed the idea.

Further to this, some people also expressed transphobic views on the survey, which provides more reason why gender diverse people need safe public spaces.

In addition to safety of those facilities, trans and gender individuals also expressed the need for appropriate facilities such as sanitary bins in spaces they are forced to use especially male toilets.

## 5. The Issues

### 5.1 How do gendered public facilities affect trans and gender diverse folk?

The discussion around all gendered public facilities exists mainly in relation to trans and gender diverse communities. However, it is important to address that transphobia cannot be eliminated through the implementation of all gender facilities or the increased privacy in gendered facilities.

When an individual has experienced discrimination or knows people like themselves have experienced discrimination, anxiety around the potential for it occurring can arise.

This can cause people to avoid certain situations or actions in which they believe they will be discriminated against and can lead to psychological distress.

Anticipated discrimination was a shared anxiety amongst many people in the trans and gender diverse community who completed the community survey. Several people expressed that although they had not experienced discrimination yet, they are worried it will happen in the future.

**“(There) is a constant low-level fear that someone will clock me as trans, and then start acting in a hostile manner (verbally or physically) for using the ‘wrong’ bathroom no matter how i am presenting at the time,”**



### 5.2 Gender reassignment and the concept of 'passing'

In mainstream societies, there is an expectation that if you are a man or a woman, you must present in a certain way that aligns with traditional gender stereotypes.

When a trans individual is 'passing', this means they 'pass' as the gender they identify as in a physical and vocal sense and can thus avoid harassment from transphobic people. Passing is a necessity for some trans people for them to alleviate their dysphoria or to appear to others as the gender they exist as.

Consequently, passing has ramifications when using public bathrooms, showers and changing rooms. The experience of someone who has undergone medical transitions and someone who has not can be very different.

Passing should never be a requirement for trans people to exist and feel safe within society. Aside from the expense of feminising or masculinising surgeries and medication, the concept of passing enforces outdated gender stereotype and the gender binary that humans in general should not be held to.

A trans person should not have to pass, experience dysphoria, undergo hormone therapy or get surgeries to be the gender they exist as in a legal, personal and societal sense.

However, the reality of trans people in Western Australia is very different. For a trans person to be legally identified as their correct gender, they must undergo a 'reassignment procedure', as per the Gender Reassignment Act 2000. Although this does not mean a total change of all gender characteristics, a medical or surgical procedure must be undertaken.

### **5.3 Fear of assault perpetrated by men**

From the survey findings, the most significant argument against the provision of all gender public facilities is the potential for assault from men. This was expressed both in the context of sharing facilities with cisgendered men, transitioning men and people who identified as male. The concerns were raised mostly by cisgendered women.

**"I feel safer in female only spaces when changing or toileting, and this extends to my male child until he is old enough to protect himself. Male adults, no matter how they identify, are more likely to be the perpetrators of violence so female only spaces (and accompanied children) need to be protected."**  
(Cisgender woman aged 35 to 44)

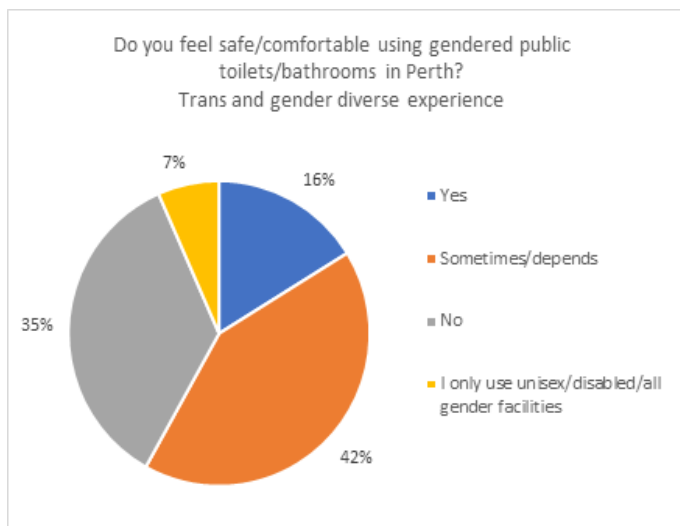
Several survey respondents mentioned they believed all gender bathrooms increase instances of sexual harassment and assault. Though there is no evidence of this in occurring Western Australia (Sexual Assault Resource Centre), it is important to acknowledge people may feel at risk of sexual harassment and assault by men within all gender facilities and the aversion to all gender bathrooms can be attributed to a fear of those with masculine attributes.

One parent respondent believed trans people should have their own space and should not use women's facilities.

**"Women's changerooms and toilets need to be kept for WOMEN and girls. Give trans 'women' - especially those with penises their own space."** (Cisgender woman aged 45 to 54)

However, a different perspective raised by respondents was that all gender bathroom facilities may improve safety and comfort amongst individuals who are afraid of using the men's bathroom.

**"My (now adult) child is transgender and came out at age 13. Toilets became a massive issue - female toilets were wrong and told the world he was female; male toilets felt unsafe because he was transitioning and couldn't start hormones until 16. The best thing his new high school did was bring in [an] all gender toilet block. He said it was popular with all kinds of kids. Even cisgen (cisgender) boys feel unsafe in male toilets at school during adolescence."** (Cisgender woman, aged 45 to 54)



## 6. Exploring Solutions

### 6.1 Appropriate designs for all gendered facilities

There is no single way public toilets, change rooms and showers can look, whether they are gender specific or all gendered. The Curtin all gender bathroom facility was given as an example in the community survey to display to respondents about how the concept has been introduced to Perth. However, this example is not the only way for which all gender bathroom facilities can be designed.

As all gender facilities are not a requirement for buildings in the NCC, varying designs are being implemented across Perth. The provision of all gender facilities is in an experimental phase yet has slowly become more common in new developments. As all gender facilities do not have a specific guide or design, local governments are still exploring ways to implement them appropriately.

### 6.2 Don't make people compete for spaces

For some people with disabilities all gender bathrooms are not sufficient. Though all gender bathrooms can be made accessible, dedicated public facilities for people with disabilities should always be available.

An all gender facility should not override the provision of disabled facilities. They must be provided in addition as to not compromise the needs of people with disabilities.

Several trans and gender diverse people who do not have a disability mentioned they felt uncomfortable using disabled toilets, as they believe these spaces should be dedicated to people with disability. However, as disability access bathrooms are unisex, this option aligns better with some trans and gender diverse people than the gendered options.

In the community survey several trans people expressed they do not want to use facilities for people with disabilities but feel forced to do so.

**“(I) almost exclusively use disabled bathrooms but this feels wrong. My anxiety is valid, but so is their need for access.” (Trans man)**

### 6.3 BINS4Blokes

There is currently a movement by BINS4Blokes to implement sanitary bins in men's toilets in Australia for those who live with incontinence. BINS4Blokes may allow the issue of a lack of sanitary bins for trans men to be addressed. The argument for sanitary bins in Men's facilities could be strengthened by addressing this shared need between trans men and men living with incontinence.

## 7. Conclusions

Largely the information gathered supports the implementation of all gendered public spaces, however, public discussion on the most appropriate designs for all gender bathrooms and change rooms should be had.

There is a clear gap in the concept of accessibility within planning and policy. Accessibility for people with disability and parents with children has been implemented in a gender binary fashion which doesn't cater for gender diversity.

**“Perth desperately needs all-gender facilities to cater to non-binary people and to provide a safe place for transitioners and other gender diverse people who do not fit the binary images expected in binary spaces. This is important for our safety and comfort.” (Non-binary trans person aged 25 to 34)**

The lack of accessibility for trans and gender diverse people also indirectly affects people with disability and parents with children. Lumping these groups together within the provision of accessibility diminishes the nuanced issues of each group.

An overwhelming majority of trans and gender diverse people surveyed were in favour of all gender facilities and stated they would prefer to use them over gendered facilities. However, concerns over potential assault perpetrated by men within all gendered spaces must be considered.

Many survey respondents stated gendered public facilities are a necessity and should not be replaced with all gender facilities. However, the experiences of trans and gender diverse people within gendered facilities cannot be ignored.

Education about trans and gender diverse people was also raised as a way to improve trans people's experiences in public sanitary facilities.

**“I am always thankful for more facilities that cater to gender diverse folk, it does help alleviate a few of my anxieties. The other anxieties are in regards to how cisgendered-gendered people react to such and if they know and understand why these facilities are required. I hope that by having more all gender bathrooms and change rooms, people will be more aware of why these are important, and that queer folk deserve the same level of decency and dignity that any other person would need. “(Agender trans person aged 25 to 34)**

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