



Inquiry into issues related to menopause and perimenopause

Senate Community Affairs References Committee

18 March 2024

Acknowledgements

We acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water, and community, and pay respect to Elders past and present.

We acknowledge the victim-survivors of domestic, family, and sexual violence who we work with and their voices and experiences which inform our advocacy for justice, equality, and safety for women.

About Women's Legal Services Australia

Women's Legal Services Australia (**WLSA**) is the national peak body for 13 specialist Women's Legal Services in each state and territory across Australia, including two First Nations Women's Legal Services. We provide a national voice for Women's Legal Services to influence policy and law reform, and advocate to increase access to gender-specialist, integrated legal services for women.

About Women's Legal Services

Women's Legal Services provide high quality free legal services for women, including legal advice and representation, support services and financial counselling, community legal education, training for professionals, and engage in advocacy for policy and law reform. Some Women's Legal Services have operated for more than 40 years.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wurringa Baiya Aboriginal Women's Legal Centre NSW
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

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Executive Summary

1. Women's Legal Services Australia (WLSA) welcomes the Senate Community Affairs References Committee inquiry into the issues related to menopause and perimenopause. There are a range of issues related to menopause and perimenopause affecting Australian women every day.
2. There are six Women's Legal Services across Australia funded to assist women with employment, discrimination, and sexual harassment legal issues at work, and regularly encounter women who are experiencing problems at work relating to sexual and reproductive health issues, including in relation to menopause and perimenopause.
3. Investing in sexual and reproductive health is a gender equality measure, and is cost effective, with the potential to minimise future health system costs and to realise significant benefits at the personal, family, and societal levels.
4. Workplaces have an important role to play in supporting employees to address reproductive health issues and should do so without imposing penalties on women. Most women will experience menopause and perimenopause in their lifetime, and it is important that workplaces are not penalising women based on their gender.
5. We are concerned existing entitlements in the workplace to take paid personal/carer's leave are inadequate to support reproductive health. Unfortunately, existing leave entitlements only cover illness or injury. Leave entitlements should be expanded to cover menopause and perimenopause, or in the alternative, there should be a new form of universal reproductive health leave entitlement that would allow additional paid days of leave for reproductive and sexual health reasons, including menopause and perimenopause.
6. We are also concerned employers are refusing to allow women to engage in flexible work arrangements despite the benefits of working from home, and the impacts of menopause and perimenopause on women. Reproductive health should be added as an additional circumstance that supports a right to request a flexible work arrangement.

Menopause symptoms:

- 20% of women will have serious symptoms
- 60% of women will have mild symptoms
- 20% of women will have no symptoms

Recommendations

- That the paid personal/carer's leave provision in section 97 of the *Fair Work Act 2009* (Cth) be amended to extend coverage beyond personal illness or injury, to include reproductive health issues, and to provide care and support to a member of the employee's immediate family, or a member of the employee's household who requires care and support because of reproductive health issues.
- That the Fair Work Ombudsman develop easy to understand resources for employers and employees on how menopause, peri and post-menopause, and other reproductive health conditions, can create the ability for employees to access their personal/carer's leave entitlements. These resources should include material on how to sensitively deal with employees' personal health information.

- Add “the employee has reproductive health grounds” as a ground in section 65 (1A) of the *Fair Work Act 2009* (Cth) as circumstances in which an employee may request a flexible working arrangement.
- That the Commonwealth Government introduce a new form of paid reproductive health leave entitlement of up to 10 days per year for all employees on the same terms and conditions as the paid family and domestic violence leave provisions.



Importance of women's sexual and reproductive health

7. The Australian Medical Association (AMA) has endorsed the World Health Organisation's working definition of sexual and reproductive health¹:

Reproductive health refers to a state of physical, mental and social wellbeing – and not merely the absence of disease or infirmity – in all matters relating to the reproductive system and to its functions and processes, and across all stages of life. Reproductive health, therefore, implies that people are able to have a responsible, satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this is the right to be informed of, and to have access to, safe, effective, affordable and acceptable methods of fertility regulation, and the right to access health care services to support a safe and healthy pregnancy and childbirth, and to provide parents with the best chance of having a healthy infant.

Sexual health refers to a state of physical, emotional, mental and social wellbeing related to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. While sexual health is vital for (and therefore a part of) reproductive health, it is important to also consider sexual health in its own right.

8. The AMA position statement notes:

The impacts of sexual and reproductive health are human and economic, and direct and indirect. Unwanted pregnancy, sexual violence, sexually transmissible infections (STIs) and infertility are major contributors to morbidity and associated costs in Australia. The incidence and impacts of poor sexual and reproductive health in turn varies among different population groups and according to age, sex, socioeconomic background and geographic location. There is evidence that investing in sexual and reproductive health is cost effective, with the potential to minimise future health system costs and to realise significant benefits at the personal, family and societal levels.²

9. WLSA adopts the same definitions. We will use the term “reproductive health” in this submission as an overarching term that encompasses reproductive and sexual health for all people across their lifecycles.

10. As the 2018 study conducted by Women's Centre for Health Matters Inc³ in the ACT noted:

“Sexual and reproductive health is a priority health issue for women, affecting them at every life stage. Good sexual and reproductive health is recognised as the complete state of physical, emotional, mental and social wellbeing relating to reproduction and sexuality, and is fundamental to the overall health of the individual and population at large.

¹ Australian Medical Association, 'AMA position statement: Sexual and Reproductive Health – 2014', accessed at <<https://www.ama.com.au/position-statement/sexual-and-reproductive-health-2014>> on 12 February 2024.

² Ibid.

³ Julia Tran, 'Improving choices and options – The views of ACT women about their sexual and reproductive health needs', October 2018, accessed at '<https://www.womenshealthmatters.org.au/resources/reports/#the-views-of-act-women>' on 12 February 2024.

*The human rights of women include their right to have safe and satisfying sex lives free from coercion, discrimination, violence, and the capability and freedom to reproduce, if, when and how often they choose. While sexual health is inextricably linked to reproductive health, it is important to consider them separately in their own right, particularly when it comes to policy and legislative changes and development.*⁴

*For women to be able to maintain their own sexual and reproductive health, **it is critical that they have access to accurate information and safe, effective, affordable and acceptable health services** including but not limited to contraception, sexually transmitted infection (STI) testing, health screening including mammograms and pap smear, fertility and maternity care as well as termination of pregnancy (TOP) services and support. Women need to be well-informed and empowered to be able to take control and make their own decisions about their sexual and reproductive health and wellbeing.*

.....

*There is substantial evidence indicating that **investment in women's sexual and reproductive health has the potential to significantly minimise costs to the healthcare system as well as demonstrated benefits at a personal, family and community level.** The broad benefits of ensuring improved access to and provision of contraceptives and family planning service alone is considerable, including the prevention of high-risk pregnancy and obstetric complications, the reduction in the number of unsafe abortions and its consequences, reduced morbidity and mortality from cancers of the reproductive system, reduced transmission of STIs, and greater control of the timing and spacing of children.*

*And if women can successfully plan and space the birth of their children they are more likely to have **higher educational attainment, increased opportunities for employment and higher social and political participation in their community.** More broadly, investment in the sexual and reproductive health of women contributes **to improving the status of women, reducing poverty and inequality as well as contributing to economic growth.** [Our emphasis added.]*

11. WLSA considers that addressing women's sexual and reproductive health is a contributing factor to achieving gender equality. Menopause and perimenopause fall within reproductive health.

Insufficient legal supports in the workplace

Expanding grounds for taking personal/carer's leave

12. Currently non-casual employees are entitled to paid personal/carer's leave under the *Fair Work Act 2009* (Cth) if they are not fit for work because of a **personal illness, or personal injury** affecting the employee, or to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support **because of a personal illness or personal injury** affecting the member.
13. **Perimenopause and menopause are not "illnesses"** in the same way that being pregnant is not an illness.

⁴ Ibid.

14. Women on the whole will experience reproductive health issues during their life course, such as perimenopause, menopause and post menopause, with research showing that about 20% of women have no menopause symptoms at all, 60% will have mild to moderate symptoms, and the remaining 20% will have severe symptoms that will interfere with their daily life.⁵ This is in addition to other reproductive health issues such as pregnancy, assisted reproductive procedures, and menstruation.
15. All genders experience reproductive health issues, and all genders may experience the need to care for someone in their immediate family or household who is experiencing reproductive health issues.
16. While some employers may be prepared to apply an expanded coverage to the paid personal/carer's leave provision to cover times when an employee cannot work due to a reproductive health issue that is not classified as an illness, strictly speaking they do not legally have to do so. This results in employees being forced to either take unpaid leave, or not take time off work to address their reproductive health issues.
17. The Women's Health Centre for Health Matters Inc⁶ survey did not specifically canvas issues relating to menopause; however, it did look at other reproductive health issues including contraception and termination of pregnancy. It found there were barriers for women accessing contraception that included affordability and time barriers. WLSA consider that similar issues would apply in relation to menopause and perimenopause.
18. Comments from survey participants included:
 - "Affordability"**

*"It's ridiculous that I need to pay so much to see a doctor to get the script then to pay for the medication I have taken daily for over 20 years. Often I put it off **as I don't have the time or money to see a doctor. Men don't incur this expense.**" (30-39 age)*

***"Cost of device and multiple Dr appointments (to get script, buy implanon, additional appointment for insertion)."** (30-39 age)*
 - Time**

*"I have to get a script from my GP - **with small children and working it is very hard to get an appointment** if I need my script updated yet they won't give me an emergency script if there are no appointments available." (19-29 age)*

*"Just that you have to go to the doctor to discuss options which is annoying, **time off work and affordability.**" (30-39 age)*

*"time, amount of time needed to book ahead to get it fitted, **needing to take time off work to do it,....."** (30-39 age) [Our emphasis added].*
19. Making access to paid personal/carer's leave available for appointments related to reproductive health would assist all employees, but particularly women, with both the affordability of care and access to appointments during work time to attend to their health needs.

⁵ Jean Hailes for Women's Health, 'Symptoms of menopause', accessed at <https://www.jeanhailes.org.au/health-a-z/menopause/menopause-symptoms> on 12 February 2024.

⁶ Julia Tran, 'Improving choices and options – The views of ACT women about their sexual and reproductive health needs', October 2018, accessed at <https://www.womenshealthmatters.org.au/resources/reports/#the-views-of-act-women> on 12 February 2024.

20. The right to take carer's leave to provide care or support should also be extended to providing care or support to those members of the employee's immediate family, or members of the employee's household, who require care or support because of their reproductive health issues.
21. An expanded coverage of the right to take carer's leave to providing care or support to those members of the employee's immediate family, or members of the employee's household, who require care or support because of their reproductive health issues will also support those family or household members.

Recommendation 1

That the paid personal/carer's leave provision in section 97 of the Fair Work Act 2009 (Cth) be amended to extend coverage beyond personal illness or injury, to include reproductive health issues, and to provide care and support to a member of the employee's immediate family, or a member of the employee's household who requires care and support because of reproductive health issues.

Education to address stigma and increase awareness of reproductive health

22. There is stigma and embarrassment attached to speaking to employers about reproductive health or seeking advice on reproductive health. For example, one woman said:
"It was a little bit expensive and I had to take an afternoon off work after having my IUD inserted. My regular GP didn't feel confident doing the procedure and recommended I have it done at SHFPACT. I felt embarrassed giving my (male) boss a medical certificate from SHFPACT [Sexual Health and Family Planning ACT]." (19-29 age)⁷
23. Reproductive health issues need to be normalised and de-stigmatised, but with adequate protections around an employee's privacy. Information also needs to be made available to employers so that it lessens any stigma or embarrassment attached to requesting and taking leave for these purposes, but reinforces the need for sensitive handling of employee personal information.

Recommendation 2

That the Fair Work Ombudsman develop easy to understand resources for employers and employees on how menopause, peri and post-menopause, and other reproductive health conditions, can create the ability for employees to access their personal/carer's leave entitlements. These resources should include material on how to sensitively deal with employees' personal health information.

⁷ Julia Tran, 'Improving choices and options – The views of ACT women about their sexual and reproductive health needs', October 2018, accessed at <https://www.womenshealthmatters.org.au/resources/reports/#the-views-of-act-women> on 12 February 2024.

Case example

Mai is experiencing extreme menopause symptoms including frequent hot flushes, feeling anxious, having difficulty concentrating, and poor sleep. It is affecting her performance at work and Mai is worried that she may be performance managed. She has been to see her GP who has referred her for further testing and then a follow up consultation. The appointments can only be scheduled during her work hours, and Mai is concerned about having to take unpaid leave or use her annual leave in order to get to the appointments.

If Mai could take paid personal leave for reproductive health issues, she would be able to access this form of leave rather than either be unpaid, or eat into her annual leave every time she needed to see her GP or have menopause related testing.

Mai provides a medical certificate from her GP to her employer, who keeps it in a way that limits access to other employees.

Her employer has read the fact sheet on reproductive health issued by the Fair Work Ombudsman and understands what the entitlement is, and how to sensitively deal with the supporting evidence provided by the employee.

Expanding the right to request flexible work arrangements

24. Section 65(1A) of the *Fair Work Act* sets out the circumstances in which an employee is entitled to make a request for a change in working arrangements due to those circumstances.
25. WLSA recommends adding reproductive health grounds to the list of circumstances. These grounds could be defined to include menstruation, perimenopause, menopause, any assisted fertility procedure, pregnancy and pregnancy-related complications, vasectomy, and other fertility management procedures.
26. Women experiencing menopause may wish to have more flexible working arrangements in place for a period of time to help them remain in work but manage their symptoms. A good example of such a policy is the Women's Health Matters Pilot Reproductive Health Policy⁸ which includes:
 - The possibility of working from home;
 - The opportunity to structure the workday in a way that considers and encourages the comfort and wellbeing of the employee e.g., no meetings;
 - The opportunity to stay in the workplace under circumstances which encourage the comfort of the employee e.g., resting in a quiet area;
27. Enshrining the right to request a flexible working arrangement based on reproductive health grounds would mean that employees feel more empowered to make a request on these grounds; have a process and rigour around making a request that extends to an ability to raise a dispute in the Fair Work Commission if their request is not accommodated; and are not just at the whim of their manager.

⁸ Women's Health Matters, 'Pilot Reproductive Health Policy', accessed at <https://www.womenshealthmatters.org.au/wp-content/uploads/2022/09/WHM-Reproductive-Health-Policy.pdf> on 12 February 2024.

28. It would also go towards normalising reproductive health issues as part of the employee life course, and allow for flexible work arrangements be in place, assisting employees to remain in paid work.
29. Employers would have the ability to refuse any request on reasonable business grounds, as with any other request for flexible work arrangements.

Recommendation 3

Add “the employee has reproductive health grounds” as a ground in section 65 (1A) of the Fair Work Act 2009 (Cth) as circumstances in which an employee may request a flexible working arrangement.

Case example

Mai has seen her GP now and is beginning to manage her menopause-related symptoms.

While she is working with her GP to get the treatment right, Mai makes a written request for some temporary workplace changes that would give her more flexibility.

Those changes include that for the next 3 months she be allowed to:

- Work from home 2 days week
- Move her desk in the office to a quieter location
- Increase her break times to 3 scheduled breaks throughout the day.

The request is supported by a letter from her GP.

Her employer considers the request and considers that it can accommodate the arrangements for the next 3 months. It responds to Mai’s written request in 21 days.

Having this flexibility allows Mai to get her treatment right and work in a way that balances her needs and those of her employer.

A new entitlement to reproductive health leave

30. As an alternative to expanding the coverage of the *Fair Work Act* paid personal/carer’s leave grounds to include reproductive health matters, WLSA recommends introducing a new form of leave into Part 2-2 Division 7 of the National Employment Standards in the *Fair Work Act*, being “reproductive health leave”.
31. This is an innovative response to the tensions between work and human reproduction that recognises the life cycle approach to health and well-being. This form of leave would potentially assist all workers, but particularly women, in balancing their paid work obligations with their reproductive needs and sexual health.

32. This leave would offer support to workers who are trying to start a family, or to anyone who is managing some of the complex needs of the human body, which requires different levels of attention and maintenance over the life course. While not limited to menopause and perimenopause, they are among the life stages that would be covered by such leave.
33. In particular, WLSA propose it would cover perimenopause, menopause, menstruation, In Vitro Fertilisation (IVF) and other assisted fertility treatments, and other forms of assisted reproductive health services such as vasectomy, hysterectomy and termination of pregnancy. While it is expected that more women than men may benefit from the leave, it would be gender-inclusive and cover all reproductive systems.
34. WLSA supports a similar model used for the new family and domestic violence leave provisions, being an up-front entitlement to 10 days of paid leave at the commencement of employment for all employees, including casual employees; any unused leave not accruing from year to year, and not being paid out on termination; 10 days reproductive leave granted on each anniversary date of commencement of employment; notice and evidentiary requirements in line with paid FDV leave, non-identification of type of leave on pay-slips, and the same record-keeping obligations.

Recommendation 4

That the Commonwealth Government introduce a new form of paid reproductive health leave entitlement of up to 10 days per year for all employees on the same terms and conditions as the paid family and domestic violence leave provisions.

Case example

Women's Legal Centre ACT introduced a paid reproductive health leave policy in 2023, with employees able to access up to 5 day paid reproductive leave days per annum. The Policy states:

Reproductive Health Leave

The Centre will support staff in supporting their reproductive health, including but not limited to menstruation, menopause, fertility care, pregnancy, miscarriage and termination of pregnancy.

In addition to personal leave entitlement, the Centre will provide 5 paid days of reproductive health leave per year. There is no requirement to provide a medical certificate for this type of leave.

With an all-female workforce the Women's Legal Centre recognised that it wanted to support its employees to look after their reproductive health, and that the *Fair Work Act* entitlement of 10 days of paid personal leave per annum was not sufficient to do this given the reproductive health issues that women will experience across their lifecycle.