



**Submission to the
Senate Inquiry
Into Issues Related to Menopause and
Perimenopause**

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Introduction

The Queensland Council of Unions (the QCU) is the peak council of registered unions in Queensland representing 25 affiliated unions and 400,000 workers. Our objective is to represent the industrial and economic objectives of Queensland working families.

The QCU has represented the interests of workers since 1885 and has expertise in all work-related legislation and policy areas – from fair work and industrial relations laws, work health and safety, training and skills, to discrimination law.

This submission will primarily address the first term of reference (a) for the Senate Inquiry into Issues related to Menopause and Perimenopause from a workplace perspective, specifically –

- the economic consequences of menopause and perimenopause, including but not limited to, reduced workforce participation, productivity and retirement planning.

Survey Data

In 2022, a survey on menopause in the workplace conducted by Circle In and the Victorian Women's Trust found around eight in ten respondents work had been negatively affected by menopause (83 per cent).

Almost half (45 per cent) said they had considered either retiring or taking a break from work when their menopausal symptoms were severe – but of those, 72 per cent did not go through with it, largely due to financial reasons.

A similar 2023 survey of six national unions conducted by the law firm Maurice Blackburn indicated –

- one in three women (36 per cent) experienced daily symptoms from menopause;
- a further one in three (36 per cent) had experienced symptoms multiple times a week;
- one in five (18 per cent) indicated other levels of frequency of symptoms; and
- one in ten had symptoms once every month

Significantly, two thirds of those surveyed (66 per cent) said their menopause symptoms impacted on their ability to perform their work in any way, while a further three quarters (76 per cent) said they did not feel comfortable talking to their line manager about taking leave or requesting flexible work arrangements due to their menopause symptoms.

Economic Consequences of Women Retiring Early

Data from the Australian Bureau of Statistics indicates that the main factor for all employees that influences a decision about when to retire is financial security.¹ But with one third (34 per cent) of retired women reliant upon their partner's income to meet their living costs at retirement (compared to 7 per cent of men), the fact that Australian women are still retiring an average 7.4 years earlier than men indicates other factors are at large.

A new Report by the Association of Superannuation Funds of Australia (ASFA) released in March 2024 'Impact of Menopause on Retirement Outcomes – Research Paper' shows that one in seven Australian women will pay a superannuation savings penalty as they transition through menopause by taking time out of the workforce, or retiring prematurely, standing to lose an estimated \$60,000 in retirement savings when they cut back on work or retire early.

ASFA's research has also found that a 51-year-old woman on an average wage who reduces their hours to work part time will be \$25,000 worse off at retirement for working part time over a four-year period, and if women are forced to retire five years earlier than planned, they could forgo around \$60,000 from their superannuation payout because they are unable to continue working with menopausal symptoms.

It is clear that women's experiences of menopause and early exiting or reduction in their hours means they pay both an economic and social cost on their quality of life, particularly at retirement.

Industrial Arrangements

From the 1907 Harvester Judgment onwards it is clear that Australia's traditional approach to wages, hours of work and leave arrangements was designed to accommodate a working male supporting a wife and children.

However, with more women entering the workforce from the 1960s onwards, these arrangements have gradually changed with additions of new leave arrangements such as parental leave, carer's leave, and family and domestic violence leave emerging as new standards, along with more flexible work arrangements including part time work, work from home, or other flexible hours provisions.

¹ Australian Bureau of Statistics (2020-21), Retirement and Retirement Intentions, Australia, ABS Website, accessed 15 March 2024.

Many of these arrangements have recognised the need to accommodate growing proportion of women working and seeking to balance their work and family needs.

More recent changes to the federal laws have also included positive measures to remove discrimination against women in the workforce through for example, the new positive duty contained within the *Sex Discrimination Act 1994* (Cth) requiring employers and persons conducting a business or undertaking to eliminate sex discrimination so far as possible.

Other significant changes have also recently occurred in the *Fair Work Act 2009* (Cth) (the *FW Act*) recognising gender equality as a new object of the Act, among other things.

Fair Work Act Entitlements

The National Employment Standards under the *FW Act*, among other things, entitles employees to access 10 days personal/carer's leave,² where an employee is not fit for work because of a personal illness, or personal injury, affecting the employee.³

However, having menopausal or perimenopausal symptoms does not mean an employee is unfit for work because of a personal illness, even if they are unfit for work.

In addition, while employees may request changes to their working arrangements they only have a right to do so where they are –

- pregnant,
- a parent of, or has responsibility for the care of a child, if the child is of school age or under;
- the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- the employee has a disability;
- the employee is 55 or older;
- the employee is experiencing family and domestic violence; or
- the employee provides 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 the member is experiencing family and domestic violence⁴

² Fair Work Act 2009 (Cth) s 96.

³ Ibid s 97.

⁴ Ibid s 65.

A change in working arrangements can include changes in hours of work, patterns of work, or location of work.⁵

However, not all women experiencing menopausal or perimenopausal symptoms, fit within the categories to request flexible work arrangements i.e., many women under the age of 55 also experience these symptoms. Menopause and perimenopause are also not a disability.

It is also not clear that there are rights to request other workplace changes or accommodations for women experiencing menopause or perimenopause symptoms, like having regular access to toilets with amenities, or to additional cooling in their work environment, which may help alleviate symptoms.

Industrial Relations Act 2016 (Qld)

The *Industrial Relations Act 2016* (Qld) (the *IR Act*) cover employees employed within the Queensland public sector and local government areas.

Similar to the National Employment Standard, employees under this Act are entitled to ten days paid sick leave,⁶ and to an additional two day's unpaid carer's leave where the employee's sick leave entitlement is exhausted.⁷ Long term casual employees are also entitled to up to ten days unpaid carer's leave annually.⁸

Employees covered under the *IR Act* are also entitled to ask for a flexible work arrangement which includes a change in the way the employee works, including –

- the employee's ordinary hours of work;
- the place where the employee works; and
- a change to the way the employee works, for example, the use of different equipment as a result of a disability, illness or injury.⁹

A request for a flexible work arrangement under the *IR Act* however must be consistent with a key object of the Act which includes promoting diversity and inclusion in the workforce, including by providing a right for employee to request flexible working arrangements to help balance their work and family responsibilities.¹⁰

⁵ Ibid.

⁶ IR Act s 40.

⁷ Ibid s 42.

⁸ Ibid s 43.

⁹ Ibid s 27.

¹⁰ Ibid s 4(k).

It is not clear whether this necessarily includes accommodating an employee to manage their work and reproductive health issues associated with menopause or perimenopause.

On that basis, neither the current provisions within the *FW Act* or the *IR Act* are fit for purpose to accommodate the needs of many women employees who experience menopausal or perimenopausal symptoms where there is an identified need for recognised leave or flexible work arrangements.

Reproductive Health Leave

During and since the times of COVID, organisations have strongly encouraged employees to not attend work if they are sick, or to avail themselves of carer's leave if their child is sick so as not to transmit sickness in the workplace, schools or childcare centres.

This measure is also consistent with the primary duty of care of a person conducting a business or undertaking to ensure the health and safety of workers and other persons, so far as is reasonably practicable, while at work, or from work carried out as part of the business or undertaking.¹¹

Many women, in particular working women with families, are therefore disadvantaged when it comes to access to additional leave for reproductive health issues, including perimenopause or menopause symptoms or associated conditions, if these are recognised as an illness for the purposes of sick leave.

Broader Reproductive Health Issues

In addition to menopause and perimenopause, there are a range of other reproductive health issues that affect many Australians. For instance –

- one million Australian women are estimated to have endometriosis
- one in six Australian couples experience fertility issues with 1 in 18 Australian babies now being born as a result of IVF treatment
- one in four men over the age of forty are having a vasectomy
- between two thirds and three quarters of Australian women will have a termination
- the National Cervical Screening Program has halved cervical cancer incidence and mortality since its introduction in 1991

¹¹ *Work Health and Safety Act 2011* (model laws) s 19.

- breast cancer is the most common form of cancer diagnosed for Australian women with around 8 deaths prevented for every 1000 women screened every two years
- one in seven Australian men will experience prostate issues and early diagnosis and treatment can help before it causes symptoms or spreads

It is clear from just this overview of statistics that reproductive health related issues affect many people throughout their working lives.

Queensland Unions 'It's for Every Body' campaign

In recognition of these issues and access to leave and flexible work arrangements for a wider range of reproductive health issues for women and men, the Queensland Council of Unions launched its campaign on March 5, 2024, to seek new national and state minimum legislated employment standards around reproductive health.

This includes an additional ten days paid reproductive health leave for all employees, and a right to request flexible work arrangements for all employees experiencing reproductive health issues. See further details of this campaign at www.itsforeverybody.au.

The 'It's for Every Body' campaign seeks to highlight the need for all employees to have access to an additional ten days non-cumulative leave where they are either unfit for work or need to attend to something related to a reproductive health issue, including appointments or treatments.

The campaign also seeks to highlight the need for employees to undertake a range of preventative healthcare measures as a result of their reproductive health issues, with early screening and prevention of reproductive related cancers proven to result in access to better treatment options and survival rates.

Additionally, as outlined previously, the campaign is seeking a right to request a flexible work arrangement for an employee with a reproductive health issue.

These minimum employment standards recognise that all workers may be impacted at different points in time by reproductive health issues across their working lives.

For example, for young women dealing with endometriosis to dysmenorrhea, to those employees seeking to access IVF treatment, to women experiencing perimenopause or menopausal symptoms and conditions, to all employees seeking preventative

healthcare such as accessing leave for surgeries for matters such as vasectomies or other reproductive health surgeries, or for screening and treatment for reproductive health matters such as prostate, cervical or breast cancer – with the need at times to accommodate flexible work arrangements.

The entitlement

1. Where an employee has a reproductive health reason and –
 - a. is unfit for work because of that reproductive health issue; or
 - b. is required to attend to something to deal with the reproductive health issue and it is impractical to do so within their ordinary working hours;
2. Where an employee has a reproductive health reason; and
 - a. the employee needs to undertake a preventative reproductive healthcare measure; and
 - b. it is impractical for the employee to do that thing outside the employee's work hours.

A reproductive health reason includes –

- a condition or illness, whether temporary or permanent, related to reproductive health, including pregnancy, fertility, endometriosis, the menopause, or dysmenorrhea; and
- any other experience of pain or discomfort relating to menstruation.

For example, an employee needs to attend appointments to undergo exploratory surgery for the purpose of being diagnosed with a reproductive health issue or have a medical procedure for the purposes of IVF or IUI treatment.

A preventative reproductive healthcare procedure/measure includes:

- testing, screening, treatment and care for matters relating to the prostate, cervical or breasts.

Notice and Evidence Requirements

An employee, must if required by their employer, provide sufficient evidence that would satisfy a reasonable person they are unfit for work or of their need to take leave to attend to a reproductive health issue. This should include any pre-existing medical or other healthcare professional certificate where an employee has a chronic or recurring reproductive health issue.

Additional leave

As a National Employment Standard, the 10 days paid non-cumulative leave should not limit an employer and employees (and their unions) from negotiating additional leave provisions. The NES is intended to be a legislated minimum standard to ensure all employees have access to minimum leave provisions.

Flexible work arrangements

The National Employment Standard for the right to request a flexible work arrangement should also include employees with a reproductive health issue.

Key Recommendations

It is clear that peri menopause and menopause can significantly impact upon women and their economic and social security in their retirement, including being a factor in women's earlier retirement ages than men.

However, given the broader range of reproductive health issues experienced by all employees throughout various parts of their working lives, the QCU position is to ensure that all forms of reproductive health, including peri menopause and menopause symptoms are addressed through establishing a minimum legislated safety net for all workers – women, men, and others – who may experience a reproductive health issue in their working lives. This means access to additional paid leave and to a right to request flexible work arrangements.

The QCU therefore recommends the following minimum standards should be created within the *FW Act* and the *IR Act* –

1. That a new National and Queensland Employment Standard for 10 days non-cumulative leave for reproductive health reasons is adopted;
2. That the flexible work arrangements contained in the *FW Act* and the *IR Act* are amended to specifically create a right for an employee to request a flexible work arrangement in the case of a reproductive health reason.