THE McKELL INSTITUTE

Suffering in Silence

MAKING THE CASE FOR REPRODUCTIVE LEAVE IN AUSTRALIA

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ACKNOWLEDGEMENT OF COUNTRY

This report was written on the lands of the Darug and the Eora Nations and Karuna Land. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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ONE PAGE BRIEFING

Context

Reproductive leave is intended to provide workers with paid time to treat or manage a range of reproductive health issues including preventative screening for things like breast and prostate cancers; menstruation, perimenopause and menopause; chronic reproductive health conditions including poly-cystic ovarian syndrome and endometriosis; assisted reproductive health services including IVF; vasectomies; hysterectomies; and miscarriage and terminations. Reproductive leave is intended to be gender blind with access for assisted reproductive technology afforded to both parents and individuals.

The Policy Problem

The impact of reproductive health issues on the Australian workforce - and workers' health and wellbeing - has long been overlooked. In addition to causing serious physical and mental pain and logistical difficulties there is an ignorance, isolation and stigma around reproductive health issues that cause workers to suffer in silence, and is linked to high rates of missed work and work opportunities. Impacts from delays in diagnosis can result in significant health implications for both men and women.

The Recommendation

This paper calls for the inclusion of one day per calendar month of paid reproductive leave in the Fair Work Act so that every worker who needs it can access paid reproductive leave.

Beneficiaries of the Reform

The introduction of paid reproductive leave would level the playing field for workers experiencing, treating, and managing reproductive issues. It would help to address the stigma around many of these issues, allow for earlier diagnoses, reduce absenteeism, and increase productivity – to say nothing of making happier, healthier, and more inclusive workplaces..

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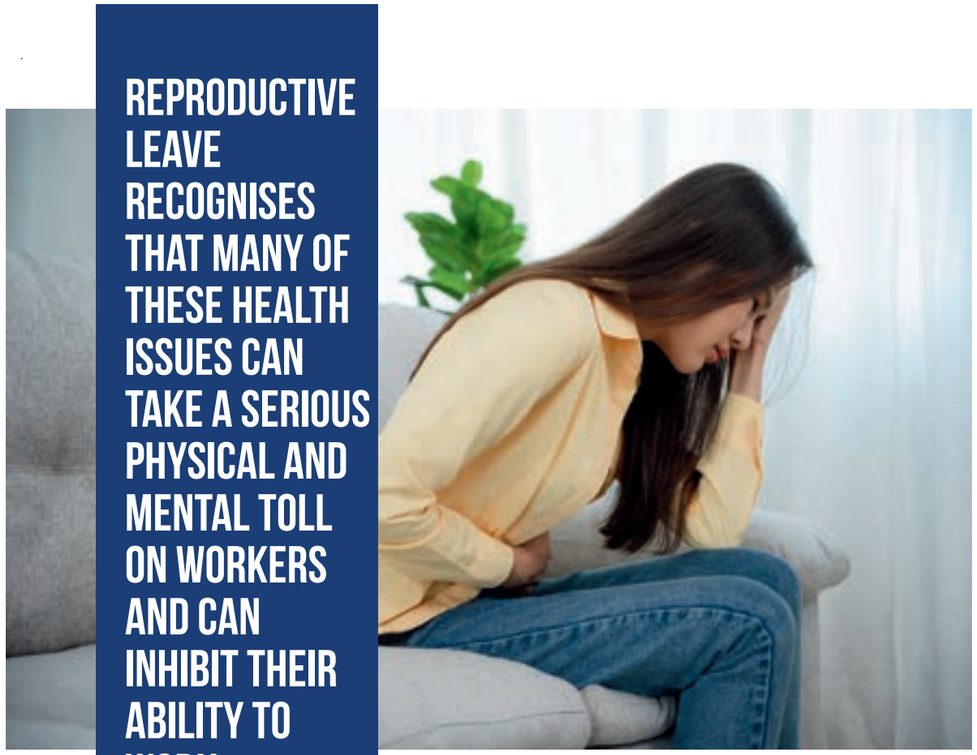
INTRODUCTION

There is growing momentum to enshrine paid reproductive leave in the *Fair Work Act (2009)*. Building on the momentum in the private sector, the Queensland Government has committed to introducing 10 days of paid reproductive leave for public service workers before September year.

In this report we call for twelve days (one day per calendar month) of paid reproductive leave to be included in the *Fair Work Act*. The *Fair Work Act* sets out the minimum employment entitlements to be provided to all Australian employees. Among a range of standard entitlements, it contains other forms of paid leave including (but not limited to) parental, carers and annual leave.

Reproductive leave recognises that many of these health issues can take a serious physical and mental toll on workers and can inhibit their ability to work. It acknowledges the need for paid time to treat or manage a range of reproductive health issues.



REPRODUCTIVE LEAVE RECOGNISES THAT MANY OF THESE HEALTH ISSUES CAN TAKE A SERIOUS PHYSICAL AND MENTAL TOLL ON WORKERS AND CAN INHIBIT THEIR ABILITY TO WORK.

WHAT IS REPRODUCTIVE HEALTH LEAVE?

Reproductive leave is not a new idea. Women workers in the Soviet Union were able to access several days of paid menstrual leave (Duffy et al., 2022). Japan introduced *seirikyuuka*, a Japanese phrase for menstrual leave, in 1947 (Duffy et al., 2022). The following year Indonesia introduced menstrual leave policy (restructured in 2003) enabling women and girls experiencing menstrual pain to access two paid leave days during their cycle (Masih, 2023). In 2020, Vietnam granted all menstruating women an extra 1.5 hour-break, three days a month, fully paid. And in 2022, Spain became the first country in Europe to grant paid leave for period pain, provided sufferers have a doctor's note (NDTV World, 2023).

In Australia we are starting to see momentum grow around this subject. In early 2024 the Queensland Government introduced 10 days of paid reproductive leave for public service workers. The Victorian Women's Trust provide 12 days paid menstruation leave and, in 2022, the Victorian Public Mental Health Services enterprise agreement was extended to include compassionate leave for workers who have a pregnancy termination. In addition to reports of an increasing uptake in the private sector.

Reproductive leave is intended to provide workers with paid time to treat or manage a range of reproductive health issues including preventative screening for things like breast and prostate cancers; menstruation, perimenopause, and menopause; chronic reproductive health conditions including poly-cystic ovarian syndrome and endometriosis; IVF; vasectomies; hysterectomies; and miscarriage and terminations.

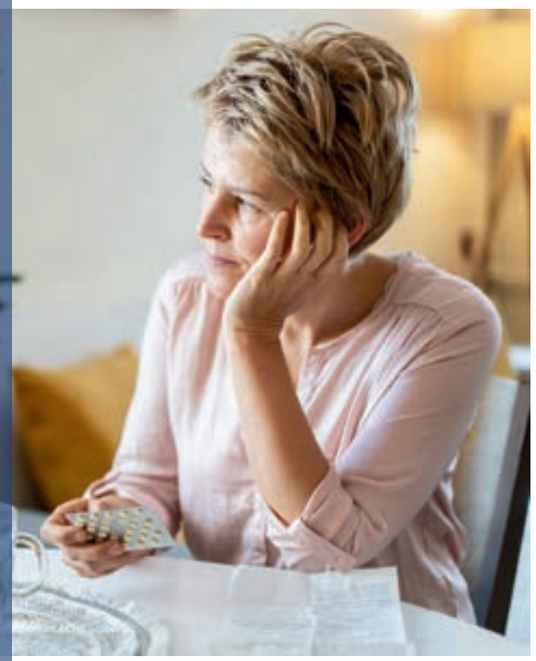
It recognises that many of these health issues can take a serious physical and mental toll on workers and acknowledges the need for paid time to look after themselves. Women have led the charge for these changes for a long time, but it is important to acknowledge that this leave is not just for women. As such, although much of the research conducted in this space is grounded in women's health not everyone who experiences reproductive health issues are women. Trans men and gender diverse workers also experience menstruation, menopause, endometriosis, and pregnancy loss. And the leave also includes health issues like vasectomies relevant to men, trans women and gender diverse workers.

REPRODUCTIVE LEAVE IS INTENDED TO PROVIDE WORKERS WITH PAID TIME TO TREAT OR MANAGE A RANGE OF REPRODUCTIVE HEALTH ISSUES

HISTORY OF REPRODUCTIVE LEAVE

The impact of menstruation and other reproductive health issues on the Australian workforce - and workers' health and wellbeing - has long been overlooked. Reproductive leave began with calls for paid menstrual and menopause leave, recognising that menstruation is a normal and unavoidable part of life for half of the working population; a core component of reproductive health; and a necessary component of human reproduction. Reproductive leave acknowledges that menstruation and menopause are not the only reproductive health issues that impact workers lives and expands the entitlement accordingly

REPRODUCTIVE LEAVE ACKNOWLEDGES THAT MENSTRUATION AND MENOPAUSE ARE NOT THE ONLY REPRODUCTIVE HEALTH ISSUES THAT IMPACT WORKERS LIVES AND EXPANDS THE ENTITLEMENT ACCORDINGLY.



WHAT IS THE PROBLEM?

Dysmenorrhea more commonly known as painful period cramps has been severely dismissed and stigmatised. Research has consistently found that, outside of chronic pain conditions like endometriosis and poly-cystic ovarian syndrome **(PCOS)**, almost every person who menstruates feels significant pain in the abdomen, lower back, and lower limbs (Rodrigue et al., 2022). An Australian study of more than 20,000 people found 90 percent of working women experience debilitating pain from their periods, and 40 percent were forced to take days off or hide symptoms, compounding and exacerbating an already unpleasant experience (Armour et al., 2019b). This is further supported by an Irish study which found that 95% of people who menstruate experience physical and psychological pain so severe that that they are unable to fully participate in key aspects of their life (Ní Chéileachair, McGuire and Durand, 2022).

It is well established that chronic reproductive issues like endometriosis and PCOS can cause debilitating physical pain and are linked with serious psychological symptoms including fatigue, dysphoria, depression, and anxiety (Golding and Hvala, 2021). Kevin et al. (2021) found that the psychological and physical issues caused by endometriosis severely impair quality of life and work productivity. People with endometriosis have a lower likelihood of working in their desired profession and report a loss of - or decrease in - income, as a result of having to take time off or work part-time (Sperschneider et al., 2019). A large-scale Australian study into the cost of endometriosis and chronic pelvic pain found endometriosis cost $20,898 per person and $6.5 billion over the total economy (Armour et al., 2019a). The same study examined the cost of these illnesses and found lost productivity accounted for between 75 and 83 per cent of the total cost of illness for working women (due to presenteeism and absenteeism), highlighting the significant impact of endometriosis on individuals as well as the wider economy.

Menstruation and endometriosis have also been liked to severe migraines (Spierings and Padamsee, 2015). Research into migraines found that women aged between 18 and 49 record the highest prevalence of severe migraines, and that they generally occur when they have their periods. Severe migraines have been associated with menorrhagia (menstrual bleeding that lasts more than 7 days), dysmenorrhea (severe and frequent menstrual cramps and pain), and endometriosis, the latter particularly in chronic migraines (Spierings and Padamsee, 2015).

Menopause occurs when someone who menstruates has not had a menstrual cycle for 12 months. Perimenopause is the transition phase before menopause brought on by a hormone imbalance, it begins at a median age of 47 years and can last from anywhere between 5 and 8 years (McNamara et al., 2015). Experiences vary, but perimenopause is linked with a range of serious physical and psychological symptoms. Physical symptoms include vasomotor symptoms (VMS) - hot flashes, night sweats, palpitations, and anxiety – as well as sleep disruption and genitourinary symptoms. VMS can range in frequency from an average of 1 per day to 1 per hour and can last up to 30 minutes (Carter and Merriam, 2023). Psychological symptoms include anxiety and depression, and emotional lability - intense feelings of anger, agitation, irritation, and general upset (O'Reilly et al., 2024). These symptoms can have detrimental impacts on work and home life, one study found anxiety

and depression, including panic attacks, became "all too consuming" (O'Reilly et al. 2024). Stigma and a lack of research mean that it is common for symptoms to be misattributed to a mental health disorder leading to inappropriate and delayed treatment (Molloy et al., 2021). A 2021 survey of Australian workers found that there was an 'ignorance and isolation' around menopause in the workplace and that 83 per cent of people surveyed said their work was negatively impacted and 46 per cent felt stressed about having to hide their experience (Circle In, 2021).

Research indicates that the problems experienced by many who menstruate extends beyond the (often significant) physical pain and includes the burden of logistical planning, isolation, and missing work (Lufadeju, 2018; Barnack-Tavlaris, et al., 2019; Day, et al., 2020). In addition to serious and sometimes debilitating pain and discomfort, and logistical complications, a failure to provide paid leave and a safe environment to raise these health issues leads to absenteeism and, in some severe cases, workers exiting the workforce. In their recent article, Duffy et al. (2022) make a point that a significant number of women must reduce their work hours to manage menstrual symptoms. While others have reported workers taking pain medication before work in attempt to hide the fact that they are in pain out of fear of it negatively impacting their work (NDTV World, 2023). Likewise, Endometriosis Australia conducted a national survey and found 70% of women take unpaid time off work to manage their symptoms, one in three had been passed over for a promotion, and one in six had lost their job as a result of endometriosis (Wardle, 2024). And an alarming 45 per cent of surveyed people said they considered retiring or taking a break from work because of menopause (Circle In, 2021).

The pain of endometriosis and PCOS is often exacerbated by an extended delay in diagnosis. A study conducted by the UQ School of Public Health looked at data from 7,606 women born between 1973 and 1978. It found that women with endometriosis can experience severe pain for an average of 7 to 11 years before receiving a diagnosis (Gete et al., 2023).

Reproductive leave is also designed to provide workers much needed time to access a range of reproductive health services and medical appointments for workers experiencing fertility issues. One in six Australian couples experience fertility issues, and one in eighteen babies are now being born as a result of IVF treatment. Many assisted reproductive health services are time sensitive and range from simple to invasive procedures and multiple procedures are often required.

Reproductive leave would also support workers needing leave for other reproductive procedures including, but not limited to, vasectomies, hysterectomies, miscarriages and terminations, and pelvic organ prolapses.

Stigma around these issues means workers are often afraid to share a diagnosis or discuss symptoms - including ongoing pain - with management out of fear their employer will see them as unreliable. These issues are compounded in male dominated industries where menstrual issues are not discussed.

REGULATING 12 DAYS PAID REPRODUCTIVE LEAVE

Unfortunately, current legislation does little to alleviate the burden of reproductive health issues for Australian workers, the majority do not have access to paid reproductive leave, and the current policies do not create safe environments for workers to manage symptoms in the workplace, with dignity including flexible working arrangements.

Responding to a dearth of Australian research addressing the topic, legal researchers Golding and Hvala (2021) advocate for Australian workers being afforded a legislative entitlement of 12 paid menstrual leave days a year. They argue that in order to access paid personal/carers leave under the Fair Work Act a worker must be ill or injured and that is not true for people experiencing the debilitating effects of menstruation – that it is an ordinary part of the biological process (Golding and Hvala, 2021). This is especially pertinent for undiagnosed reproductive health issues – which is relevant given it takes an average of 6.5 years to be diagnosed with Endometriosis and anywhere between 45 percent and 93 per cent of menstruation pain is difficult to attribute to a single pathology (Golding and Hvala, 2021; Wardle, J, 2024).

Golding and Hvala (2021) argue that the Australian Government should introduce a uniform legislative standard for paid menstrual leave under the Fair Work Act. A regulatory approach provides all workers have access to this much needed entitlement and ensures compliance in a way individual workplace agreements do not. It is our recommendation that this entitlement be extended from menstrual leave to reproductive leave in acknowledgement of the broad range of reproductive health issues that impact workers lives beyond menstruation. In addition to being enshrined in the Fair Work Act it should also be articulated in the National Employment Standards (NES). The NES clearly set out the minimum employment entitlements to be provided to all Australian employees. Among other standard entitlements it contains other forms of paid leave including parental, carers, and annual leave. By setting out the standards clearly the NES assist employers and employees in understanding their rights and – in doing so - assists with compliance.

The launch of the Australian Government's Women's Health Strategy 2020–2030 three years ago signalled an increasing national awareness that women's economic participation is central to both the continued well-being of women and broader ambitions surrounding gender equality (Riach & Jack, 2021). A range of measures aimed at addressing the issue and raising awareness include a national action plan for endometrosis launched by the Federal Government in 2018 and the commitment to endometriosis and pelvic pain clinics announced in the 2022-23 Budget and delivered in 2024. These measures only go partway to addressing the issue. The introduction of paid reproductive leave would continue this important work by levelling the playing field for workers experiencing reproductive issues. It would help to address the stigma around many of these issues, reduce absenteeism, and increase productivity – to say nothing of making happier, healthier and more inclusive workplaces.

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