



**Submission to the Senate Community Affairs
References Committee on Issues related to menopause
and perimenopause**

1st March 2024

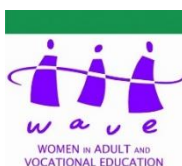
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The Equality Rights Alliance (ERA) is one of the six National Women’s Alliances funded to advise the Office for Women on gender policy in Australia. ERA is Australia’s largest network of organisations advocating for gender equality, women’s economic security, women’s leadership, and recognition of women’s diversity. We are advised by our 70 members, who are national-level or expert NGOs with a focus on the impact of policy or service delivery on women. This submission has been specifically endorsed by the following organisations:



Introduction

ERA welcomes the opportunity to provide this submission to the Senate Community Affairs References Committee and applauds the committee for investigating these issues.

While this submission will predominantly refer to women in relation to experiences of perimenopause and menopause, we recognise that Trans men, non-binary, gender diverse and non-gendered people may also experience these life events. Any consideration of the impact of menopause and perimenopause on Australian lives should be mindful of the experiences of those with marginalised genders.

Furthermore, the appropriate response to issues related to menopause and perimenopause may change depending on the gender identity and circumstances of the individual.

This submission focuses specifically on issues related to menopause and perimenopause in the workforce, as articulated in the following terms of reference:

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

i. how other jurisdictions support individuals experiencing menopause and perimenopause from a health and workplace policy perspective; and any other related matter.

As the National Women's Alliance focused on economic security, ERA has chosen to respond to those areas of the inquiry related to access to paid work. We note that the barriers faced during perimenopause and menopause form part of a broader pattern of gendered economic disadvantage that impacts women at all stages of life.

The right to work is an inalienable socioeconomic right enshrined in both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW).¹ While these treaties do not explicitly mention menopause or perimenopause, the potential impact of these life events on women's human right to work should be a key consideration for policymakers.

We also note that the issues highlighted in this submission will be experienced differently depending on intersectional factors such as race, class, disability, age, and gender expression. We note particularly the impact of ageism, the effects of which may be difficult to disentangle from bias against perimenopause and menopause more specifically.

Perimenopause and menopause should not be understood as 'only' a health issue, but rather as a "simultaneous health, social and cultural experience."² To this end, ERA acknowledges the need for further and ongoing research into diverse experiences of gendered health issues in the workplace.

Current research on perimenopause and menopause may not capture the experiences of women who have left the workforce due to associated symptoms. Furthermore, much of the existing academic literature is confined to the UK and EU-member countries.³ We also note the lack of research into the menopause experiences of women who have experienced abuse or medical mistreatment over their reproductive life course, including the ongoing effects of obstetric violence and other intersectional experiences of medical discrimination. We believe, therefore, that Australian-specific research that captures both paid and unpaid work will be necessary to create the most effective policy response.

¹ Colussi S, Hill E and Baird M, 'Engendering the Right to Work in International Law: Recognising Menstruation and Menopause in Paid Work', *University of Oxford Human Rights Hub Journal*, vol. 5, 2023, <https://ohrh.law.ox.ac.uk/wp-content/uploads/2023/10/U-of-OxHRH-J-Engendering-the-Right-to-Work-2.pdf>.

² Riach, K and Jack, G, 'Women's Health in/and Work: Menopause as an Intersectional Experience', *Int. J. Environ. Res. Public Health*, vol. 18, 2021, <https://pubmed.ncbi.nlm.nih.gov/34682537/>.

³ Howe D, Duffy S, O'Shea M, Hawkey A, Wardle J, Gerontakos S, Steele L, Gilbert E, Owen L, Ciccio D, Cox E, Redmond R, Armour M. Policies, 'Guidelines, and Practices Supporting Women's Menstruation, Menstrual Disorders and Menopause at Work: A Critical Global Scoping Review', *Healthcare (Basel)*, 2023, <https://pubmed.ncbi.nlm.nih.gov/37998437/>.

ERA recommends that:

- 1. the Commonwealth government commission research into the impact of perimenopause and menopause on access to work and participation in workplaces across sectors, including those fields dominated by casual and part-time workers;**
- 2. the Commonwealth government examine the adequacy of existing leave entitlements to cover menopause and perimenopause under the National Employment Standards;**
- 3. the Commonwealth government work with national and specialist health and women's organisations (including organisations of older women, Aboriginal and Torres Strait Islander-led organisations, organisations representing migrant and refugee women, organisations representing people of diverse genders, and organisations representing women with disability) to develop educational resources for women in workplaces about their rights at work while experiencing perimenopause and menopause;**
- 4. the existing Federal anti-discrimination Acts be consolidated into a single Act which enables complaints to be lodged on the basis of intersecting discrimination, including discrimination on the basis of menopause and age; and**
- 5. consideration be given to amending the definitions of 'direct' and 'indirect' discrimination in a consolidated anti-discrimination act in line with the model used in the *Discrimination Act 1991* (ACT), to make it easier to complain about behaviour or conditions which constitute both direct and indirect discrimination.**

Submission

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

Data from the Workplace Gender Equality Agency shows that Australia's total remuneration gender pay gap is 21.7%.⁴ This economic disparity extends into retirement, with Australian women retiring with an average of \$136,000 less in superannuation.⁵ Ageing populations and a rise in workforce participation from women aged 45-64 in OECD countries makes recognising the impact of menopause on paid employment an increasingly pressing issue.⁶

In *Working Future: The Australian Government's White Paper on Jobs and Opportunities*, the government identified "Reducing barriers to work by addressing disincentives to participate, improving the quality of support for people with disability, and promoting gender equality" as a key policy area.

The White Paper also noted that the future labour market will require more highly skilled people "to meet our rising demand for quality care and support, to harness the technological and digital transformation, and to support our net zero transformation." Supporting women to stay in the workforce longer – noting perimenopause and menopause are often experienced at career and skill peaks – can help meet these economic needs.

The impact of menopause and perimenopause on gendered wage gaps remains understudied, however early data shows a relationship between these life events and decreased earnings. For example, the Australian Institute of Superannuation

⁴ Workplace Gender Equality Agency, 'Gender pay gap data', <https://www.wgea.gov.au/pay-and-gender/gender-pay-gap-data>.

⁵ The Guardian (2023), 'Women earn \$1m less than men over lifetime and retire with \$136,000 less super, study finds', Paul Karp, March 8th, <https://www.theguardian.com/australia-news/2023/mar/08/women-earn-1m-less-than-men-over-lifetime-and-retire-with-136000-less-super-study-finds#:~:text=10%20months%20old-,Women%20earn%20%241m%20less%20than%20men%20over%20lifetime%20and,%24136%2C000%20less%20super%2C%20study%20finds&text=Women%20in%20Australia%20earn%20%241,released%20on%20International%20Women's%20Day>.

⁶ Riach, K and Jack, G, 'Women's Health in/and Work: Menopause as an Intersectional Experience', *Int. J. Environ. Res. Public Health*, vol. 18, 2021, <https://pubmed.ncbi.nlm.nih.gov/34682537/>.

Trustees have estimated menopause costs women more than \$17bn per year in lost earnings and superannuation.⁷

Outside of superannuation, menopause has been shown to impact women's productivity and wellbeing at work. A 2021 study found that although 83% of women experiencing menopause were affected at work, only 70% would feel comfortable speaking with their manager about it.⁸

The impact of perimenopausal and menopausal symptoms appears to vary depending on the kind of work women are engaged in. In the United Kingdom, a survey by the British Medical Association found a significant number of healthcare workers had reduced their hours, left management roles, or considered early retirement because of issues related to menopause.⁹ Another study observed that menopausal women in casual work appeared to be more frequently and more severely affected by musculoskeletal symptoms than those in comparable secure work.¹⁰ It is important to note that research in this area is still early and ongoing, and ERA does not have sufficient evidence to claim that specific sectors handle perimenopause and menopause better or worse than others.

The need for greater research into women's health at work was acknowledged by the Senate Standing Committees on Community Affairs in their 2023 report *Ending the postcode lottery: Addressing barriers to sexual, maternity and reproductive healthcare in Australia*. The committee recommended:

“...that the Australian Government considers commissioning research and policy responses on the impact of reproductive health on women's participation in the workforce and the adequacy of existing leave entitlements under the National Employment Standards.”¹¹

⁷ The Australian Institute of Superannuation Trustees (2023), *Measuring what matters: Understanding our economy and society while informing policy making: AIST Submission to Treasury*, https://treasury.gov.au/sites/default/files/2023-03/c2023-379612-australian_institute_of_superannuation_trustees.pdf.

⁸ Circle In (2021), *Driving the change: Menopause and the workplace*, <https://circlein.com/research-and-guides/menopause-at-work/>, via Menopause Australia.

⁹ British Medical Association (2022), *Challenging the culture on menopause for working doctors report*, <https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/gender-equality-in-medicine/challenging-the-culture-on-menopause-for-working-doctors-report>

¹⁰ Yoeli H, Macnaughton J, McLusky S, 'Menopausal symptoms and work: a narrative review of women's experiences in casual, informal, or precarious jobs', *Maturita*, vol. 150 2021, <https://pubmed.ncbi.nlm.nih.gov/34219903/>.

¹¹ Senate Standing Committees on Community Affairs, (May 2023) *Ending the postcode lottery: Addressing barriers to sexual, maternity and reproductive healthcare in Australia*,

ERA believes that the work of the Standing Committee can be built upon by extending this recommendation to explicitly include the impact of perimenopausal and menopausal health on access to the workforce.

To that end, **ERA recommends that the Australian government commission research on the impact of perimenopause and menopause on access to work and participation in workplaces across sectors, including those fields dominated by casual and part-time workers.** Data from the Workplace Gender Equality Agency shows women are twice as likely as men to be working part-time and casually from age 35,¹² making it more pressing to have needs across employment types examined.

ERA also supports the call to examine the adequacy of existing leave entitlements in relation to reproductive health, and encourages the committee to extend this part of the recommendation to perimenopause and menopause.

As such, **we recommend that the government examine the adequacy of existing leave entitlements to cover menopause and perimenopause under the National Employment Standards.**

Explicitly including menopause and perimenopause in existing categories of leave would ensure the provision of superannuation, helping to ease the economic burden on individuals and reducing the gendered superannuation gap. As the financial impacts of menopause and perimenopause can extend well beyond the period of symptoms, it is important to ensure that the government take steps to ensure women's economic wellbeing into retirement.

ERA notes that there is ongoing discussion among advocates regarding the appropriateness and efficacy of establishing specific 'menopause leave' beyond the existing entitlements in the National Employment Standards. We would encourage the government to consider how best to support perimenopausal and menopausal workers who may feel especially reluctant to name menopause as their reason for leave, including (but not limited to) transgender people, non-binary people, and

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ReproductiveHealthcare/Report/List_of_recommendations.

¹² Workplace Gender Equality Agency, 'New data shows Australian workers face a 'part-time promotion cliff', 15th November 2023, <https://www.wgea.gov.au/newsroom/New-data-Australian-workers-part-time-promotion-cliff#:~:text=Research%20has%20shown%20that%20at,and%20casually%20from%20age%2035>.

others marginalised by gender. We also note that many women may feel uncomfortable raising menopause and perimenopause symptoms in the workplace due to cultural differences in the perception of these life events, which may be exacerbated by difficulties finding culturally appropriate health care.

Interpersonal and sector-specific barriers make it more important to have women's rights related to menopause and perimenopause in the workplace clearly articulated, so that employees are not required to negotiate for support on an individual basis. Workplace change should not be limited to formal institutional support, but rather should include formal policies as part of a wider cultural shift. Indeed, informal social networks have been observed to be among the most crucial components of supporting women experiencing perimenopause and menopause at work.¹⁵

Government can take on a leadership role in this cultural space, both by modelling best practice standards within Australian Public Service agencies, and through the creation of resources for both employees and employers. ERA recognises the expertise of women's health organisations, and notes that changes to workplaces should involve consultation with the women's health sector and other specialist organisations.

We recommend that the Australian government work with national and specialist health and women's organisations (including organisations of older women, Aboriginal and Torres Strait Islander-led organisations, organisations representing migrant and refugee women, organisations representing people of diverse genders and organisations representing women with disability) to develop educational resources for women in workplaces about their rights at work while experiencing perimenopause and menopause.

We note the importance of ensuring these materials are made available in languages other than English and in easy read formats. Materials should be designed with the understanding that perceptions of perimenopause and menopause will vary between (and within) cultural groups. The government should

¹⁵ The Conversation (2023), 'Why it'd good to talk about women's health at work, according to research,' Belinda Steffen, September 14th, <https://theconversation.com/why-its-good-to-talk-about-womens-health-at-work-according-to-research-212591>.

work in consultation with expert organisations to ensure, for example, that information tailored specifically to Aboriginal and Torres Strait Islander and culturally and linguistically diverse people is available.

On how other jurisdictions support individuals experiencing menopause and perimenopause from a health and workplace policy perspective; and any other related matter.

While formal ‘menstrual leave’ policies have become more common internationally in recent years,¹⁴ formal menopause leave remains rarer.

A 2021 inquiry on menopause conducted by the United Kingdom Parliament noted that “almost 900,000 women in the U.K left their jobs over an undefined period of time because of menopausal symptoms.”¹⁵ The associated committee recommendations included a directive for government to:

“...bring forward legislation before the end of the current Parliament to make the right to request flexible working a day-one right for all employees.”

While specific ‘menopause leave’ was rejected, the U.K government accepted this recommendation and committed to supporting the *Employment Relations (Flexible Working) Act 2023* to deliver the recommended changes.¹⁶ We note that Australian legislation already enables support for flexible working conditions, however, take up of this support is often limited to senior management.¹⁷

Outside of government, some private employers in Australia already offer leave related to menopause. For example, the Victorian Women’s Trust, Future Super, Sustainability Victoria, and ModiBodi are all early Australian adopters of formal menopause (and menstrual) leave policies. These workplaces may offer possible models for broader national-level policies. However, it should be noted that most of

¹⁴ The Washington Post (2023), ‘Need time off work for period pain? These countries offer ‘menstrual leave,’ Niha Masih, February 17th, <https://www.washingtonpost.com/world/2023/02/17/spain-paid-menstrual-leave-countries/>.

¹⁵ Women and Equalities Committee (2022), UK Parliament, *Menopause and the workplace*, <https://committees.parliament.uk/work/1416/menopause-and-the-workplace/news/>

¹⁶ Women and Equalities Committee (2023), *Menopause and the workplace: Government Response to the Committee’s First Report of Session 2022–2023*, <https://publications.parliament.uk/pa/cm5803/cmselect/cmwomeq/1060/report.html>

¹⁷ The Conversation, 2024, ‘Symptoms of menopause can make it harder to work. Here’s what employers should be doing,’ January 23rd, Michelle O’Shea, Danielle Howe, Mike Armour, & Sarah Duffy, <https://theconversation.com/symptoms-of-menopause-can-make-it-harder-to-work-heres-what-employers-should-be-doing-219314>.

these employers sit in typically female-dominated sectors. There appears to be limited interest in menopause and menstrual leave policies in male-dominated industries. This is unfortunate, as negotiating leave and other accommodations is likely to be more daunting for women in male-dominated industries. Implementing such policies in male-dominated industries could be a useful means of encouraging women to take up non-traditional careers in critical areas such as scientific, engineering and technology sectors. ERA supports the view that all companies should have perimenopause and menopause explicitly articulated as a valid reason to access leave, while noting that appropriate support may vary based upon individual circumstances, sector, and working conditions.

While national-level policies are still uncommon globally, anti-discrimination cases related to menstruation and menopause in the workplace have been lodged in the United Kingdom, New Zealand, and the United States.¹⁸ The increase in such cases suggests a need for serious consideration of how Australian legislation can support working women throughout their lives.

In Australia there are some existing legislative protections for women affected by menopause in the workplace, particularly in anti-discrimination legislation at Federal and State level and under the *Fair Work Act 2009* (Cth) ('FWA'). Under anti-discrimination legislation, it is generally unlawful for an employer to impose conditions of work which would have the effect of discriminating against women because of a characteristic that appertains generally to women.¹⁹ Because menopause is a characteristic of being a woman, unlawful acts would include imposing requirements in the workplace with which menopausal women cannot comply, unless the requirement is reasonable in the circumstances.

For example, a requirement that all senior managers work from the office could disproportionately disadvantage female managers who are experiencing hot flashes and excessive sweating, especially where there is no pressing need for office attendance. Equally, an employee who is dismissed because of the effects of

¹⁸ The University of Sydney (2023), 'Workplace protections needed for menstruation and menopause', 8th November, <https://www.sydney.edu.au/news-opinion/news/2023/11/08/workplace-protections-needed-for-menstruation-and-menopause.html>

¹⁹ See for example s. 5(1)(b) *Sex Discrimination Act 1985* (Cth)

menopause symptoms may have a claim of discrimination and unfair dismissal under anti-discrimination legislation or the FWA.

Recent amendments to the *Sex Discrimination Act 1984* (Cth) ('SDA') could also offer protection to women facing hostile workplace environments due to menopause. The 2022 amendments²⁰ to the SDA make it unlawful to subject another person to a workplace environment that is hostile on the ground of sex. As noted above, as perimenopause and menopause are characteristic of being a woman, it is likely that an environment which is hostile to women experiencing menopause would be considered hostile on the ground of sex.

In addition, the amendments impose a new duty on employers to take reasonable and proportionate measures to eliminate sex-based harassment in the workplace context. Harassment of female employees on the basis of perimenopause and menopause is likely to be considered sex-based harassment. ERA is not aware of any attempt to use these provisions in this context, but the possibility exists.

However, anti-discrimination and Fair Work legislation may not be ideal vehicles for creating positive cultural change in workplaces. Anti-discrimination and harassment legislation generally requires individuals to shoulder the burden of making individual complaints, with employers often reacting defensively to a perceived attack. In addition, time limits that give complainants under two years to lodge a complaint under the SDA may not provide adequate time for individuals to link specific symptoms to perimenopause or menopause, particularly in instances where individuals have complex needs or conditions. As most women experience symptoms for five to ten years,²¹ individuals may not be able to identify unlawful behaviour as having been caused by their symptoms until after those symptoms have subsided. Furthermore, the intersection of sex and gender-based discrimination with ageism may make identifying any one cause of harassment at work extremely challenging.

We note that the structure of Federal anti-discrimination legislation, with separate Acts for different grounds for discrimination, is an ongoing barrier to bringing complaints of intersectional discrimination. For example, complaints on the

²⁰ *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth)

²¹ Australian Menopause Society (2023), 'Fact Sheets', <https://www.menopause.org.au/health-info/fact-sheets>.

intersectional grounds of menopause and age discrimination. **ERA recommends that the Federal anti-discrimination Acts be consolidated into a single Act which enables complaints to be lodged on the basis of intersecting discrimination.**

The current Federal anti-discrimination laws also creates an unnecessary distinction between ‘direct’ and ‘indirect’ discrimination. The Australian Human Rights Commission has noted that:

“[s]eparate provision for direct and indirect discrimination has led to the conclusion in most judicial interpretation that the concepts are separate and do not overlap. A need to choose which category of discrimination a particular situation falls within, introduces an unnecessary layer of complexity for the Commission in seeking to explain rights and responsibilities, and for people and organisations seeking to understand, use, or comply with the legislation.”²²

In the case of women experiencing perimenopause or menopause in the workplace, it is possible that women may experience both direct and indirect discrimination, particularly once age discrimination is added to the mix.

ERA recommends that consideration be given to amending the definitions of ‘direct’ and ‘indirect’ discrimination in a consolidated anti-discrimination act using a combination of the approaches taken in the ACT Discrimination Act 1991 and the RDA or the NT Anti-Discrimination Act 1992, to make it easier to complain about behaviour or conditions which constitute both direct and indirect discrimination.

Under the *Australian Human Rights Commission Act 1986* (Cth) (‘AHRA’) the Australian Human Rights Commission has power to inquire into a person’s compliance with the positive duty if it ‘reasonably suspects’ that a relevant person is not complying.²³ If research indicates that there are sector-wide issues with

²² Australian Human Rights Commission Submission to the Attorney-General’s Department *Consolidation of Commonwealth Discrimination law* 6 December 2011 paras [24] – [32] and recommendation 7 <https://humanrights.gov.au/our-work/legal/consolidation-commonwealth-discrimination-law#Heading162>

²³ Australian Human Rights Commission (2022), ‘Fact Sheet: Respect@Work – Changes to the Sex Discrimination Act 1984 and the Australian Human Rights Commission Act’, <https://humanrights.gov.au/our-work/complaint-information-service/fact-sheet-respectwork-changes-sex-discrimination-act-1984-ahrc-act-1986-december-2022>.

menopause, especially in male-dominated industries, the Commission could reasonably launch an investigation.

Considering these existing legislative protections, we reiterate our recommendation for government to widely share information and develop educational resources for women in workplaces about their rights at work while experiencing perimenopause and menopause.