



**SUBMISSION TO INQUIRY INTO ISSUES RELATED TO
MENOPAUSE AND PERIMENOPAUSE BY THE SENATE
COMMUNITY AFFAIRS REFERENCES COMMITTEE**

Submitted by:	Victorian Women Lawyers Association Inc
Submitted:	By email on 15 March 2024
Contact:	Joanna Abraham, President, VWL Email: vwl@vwl.asn.au
Written by:	Joanna Abraham (President) and members of the VWL Law Reform Committee and Work Practices Committee: Co-chair Casey Guilmartin, Rebekah Glover, Madeleine Stratmann and Anupama Baker

Submission

About Victorian Women Lawyers

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community of women lawyers.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and has promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating gender-based and sex-based discrimination, to achieve justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au.

Introduction

Victorian Women Lawyers appreciates the opportunity to make a submission to the Senate Community Affairs Referencing Committee regarding the inquiry into issues related to menopause and perimenopause. As an organisation of women lawyers established to promote equity for women through the law, VWL's submission focuses on the inclusion and equality of people who identify as women and gender diverse individuals who may undergo perimenopause and menopause. Further, drawing on our expertise, VWL's submission is informed by legislation and case law from Victoria and Australia.

Throughout this submission, VWL draws on research which demonstrates the economic consequences of menopause and perimenopause on women*, organisations, and society at large are significant and cause harm. There is in general a low level of awareness among employers and workers of the symptoms of menopause and perimenopause, and as a result there are insufficient workplace supports for women. VWL was unable to determine the awareness and usage of such supports, due to both their absence in the first place and the stigma associated with accessing the supports that do exist. Although there are existing Commonwealth, state and territory programs and initiatives addressing menopause and perimenopause, they are in their infancy and require continued government commitment to properly understand and address the issues raised in this submission. Several other countries support women experiencing menopause and perimenopause, at both a legal and organisational level, and Australia has much to learn from those countries.

VWL provides some brief recommendations based on our research, the lived experience of the women in our networks and this submission below:

- The Commonwealth undertake further research into the economic consequences of menopause and perimenopause on individual women and on the Australian economy more broadly;

- Workplace legislation be updated to include protections and support requiring that organisations implement policies and procedures that:
 - educate the workforce on the symptoms of menopause and perimenopause;
 - train managers and leaders in support and care for women experiencing those symptoms;
 - allow for flexible working arrangements or workplace modification requests; and
 - ensure adequate workplace infrastructure for women experiencing those symptoms.

* Throughout this submission, VWL uses the term “women” to refer to people who identify as women as well as non-binary individuals or anyone one else who experiences menstruation, menopause, perimenopause, and other reproductive health related issues, with the knowledge that sex and gender are not the same.

Scope of submission

Noting our legal expertise and role as an advocacy body for women working in the legal profession, this submission addresses the following terms of reference explicitly:

- a. the economic consequences of menopause and perimenopause, including but not limited to, reduced workforce participation, productivity and retirement planning;
- g. the level of awareness amongst employers and workers of the symptoms of menopause and perimenopause, and the awareness, availability and usage of workplace supports;
- h. existing Commonwealth, state and territory government policies, programs, and healthcare initiatives addressing menopause and perimenopause;
- i. how other jurisdictions support individuals experiencing menopause and perimenopause from a health and workplace policy perspective; and any other related matter.

The terms of reference ((b), (c), (d) and (f)) are addressed to the extent that they are relevant to the terms of reference above.

Please feel free to contact Joanna Abraham, VWL President, at vwil@vwil.asn.au for further detail.

Submission – Issues related to menopause and perimenopause

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

Menopause is medically defined as when a person's periods have stopped for more than 12 months due to lower hormone levels. As part of this process, women or people may experience a range of physical and mental health symptoms including anxiety, sleep difficulties, palpitations, joint pain, migraines, low mood, UTIs, hot flushes and brain fog. This usually affects women or people who have

periods between the ages of 45 and 55. Perimenopause is the stage prior to menopause and often shares the same symptoms of menopause and may last months or years before menopause begins.

Perimenopause is the onset of the loss of ovarian function. Menopause marks the transition from perimenopause and is characterised as the end of the ovulation cycle, meaning a person will not have periods for 12 months. Perimenopausal symptoms generally begin to arise at the age of 45 years, and for some even earlier. In this part of the submission, VWL draws a link between the retirement age of women from the workforce and perimenopause and menopause (referred to in this submission as **((peri)menopause)**).

The Australian Bureau of Statistics¹ reported that for the 2020-21 financial year, of the 4.1 million retirees in Australia of people aged 45 years and over, 2.3 million of those were women compared to 1.8 million men. In the preceding financial year, of the 3.8 million retirees, 2.1 million were women compared to 1.7 million men. This is an astonishing loss of women from the workplace and VWL submits that the statistics fail to reveal the underlying reasons for the disparity in retirement age between the sexes and supports further research to determine the cause of women leaving the workplace on the whole, much earlier than men. Of particular concern is the persistent gap in superannuation of women and men at retirement age and the risk that retirement without adequate superannuation support has the potential to lead to women being in financial distress in old age. To this end, VWL welcomes the Federal Government's pledge to pay 12% superannuation on all publicly funded parental leave as of 1 July 2025. This however does not close the gap for those who will not have access to this.

(Peri)menopause can be debilitating, and its symptoms can be complex. Many women do not receive appropriate care, and research published by the Medical Journal of Australia reveals that:

- a) General Practitioners (**GPs**), gynaecologists and pharmacists understand that some women have severe symptoms that may last many years; and
- b) GPs and specialists mostly lack the skills and confidence in managing menopause, in part because information about menopause treatment is omitted from most undergraduate and post-graduate medical and allied health training.²

The article further comments that over 85% of women with symptoms are not receiving approved, effective therapy.³ VWL submits that this is a stark reality for women experiencing (peri)menopause.

¹ <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/retirement-and-retirement-intentions-australia/latest-release#>

² Advancing Menopause Care in Australia. © 2023 The Authors. Medical Journal of Australia published by John Wiley & Sons Australia, Ltd on behalf of AMPCo Pty Ltd

³ Advancing Menopause Care in Australia. © 2023 The Authors. Medical Journal of Australia published by John Wiley & Sons Australia, Ltd on behalf of AMPCo Pty Ltd

An author of this VWL submission with firsthand experience comments “*symptoms can be physical, but it is the mental health impact that can be the most confronting, particularly for high-achieving women who have built careers on their mental acuity.*”⁴ In the author’s experience, perimenopause lead to memory issues, difficulties in processing simple information, loss of concentration, anxiety and depression. She notes that physical symptoms such as hot flushes, muscular aches and pains, weight gain, insomnia, fatigue were just as daunting; all of which could perceivably contribute to a loss in confidence, decline in motivation and depression.

VWL submits that many women in the workplace are suffering with symptoms of (peri)menopause which can last for ten years or more. With the stigma of speaking about symptoms or seeking reasonable adjustments because of them leading many women to suffer in silence rather than risk being thought of as less capable than male counterparts or younger colleagues. The onset of (peri)menopause can often occur during crucial points in a women’s career, including when they are in senior roles or at “the height” of their career, having reached management level, the board of companies, or partnership in a law firms. In order to avoid the hardship and economic loss faced by both the women and businesses, VWL submits that the physical and mental burden, which can be overwhelming and is often silently endured, needs to be legislatively addressed. In VWL’s view, such reform must be focused on ensuring women have access to appropriate support, protection, and medical care.

The contemplated early exit of women from their careers due to (peri)menopause has significant economic consequences for both women, organisations, and society at large. Relevantly, as explained by Rebecca Mitchell from Macquarie University’s Health & Wellbeing Research Unit in the School of Business, “*if 10% of women exit the workforce due to menopause, it’s costing organisations about \$5 billion.*”⁵ Further, in Australia, the Australian Institute of Superannuation Trustees has conducted its own research and identified “*the collective loss of earnings...was more than \$17 billion per year, if a modest estimate of 10% of women retiring early due to menopausal symptoms was used, but the economic loss was more than \$35 billion if 21.25% difference was used.*”⁶ VWL emphasises the magnitude of this figure, which depicts that the total estimated loss may be more than double at a conservative estimate, signalling lost opportunity not only for women, but employers and the broader economy. VWL submits that the loss of women in the workforce including experienced, qualified and trained women has considerable and indeterminate negative impacts, including in respect to the known benefits of gender diversity in workplaces.

⁴ De-identified author of VWL submission to this parliamentary enquiry into issues related to menopause and perimenopause by the senate standing committees on community affairs.

⁵ https://www.abc.net.au/news/2023-10-18/menopause-womens-health-policy-in-workplaces/102976708?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

⁶ <https://financialnewswire.com.au/financial-planning/aist-menopause-costs-women-over-17bn-a-year/>

VWL acknowledges that industry changes are taking effect. Australian superannuation providers AIA, Future Super, Cbus, Aware Super have put in place (peri)menopause policies, some of which are publicly available, and therefore enable other organisations to model and adapt those policies with the aim of retaining women in the workforce. VWL has not identified any law firms in Australia which have implemented any such policies.

Internationally, Channel 4, the UK broadcasting company introduced its own menopause policy in October 2020, which acknowledges the symptoms women suffer during perimenopause can be severely debilitating,⁷ as have several other UK organisations including global law firm Linklaters, Lululemon and Royal Mail.⁸ VWL submits that the current law and (publicly available) workplace policies do not sufficiently serve women experiencing (peri)menopausal symptoms. Insofar as workplace policies do exist, VWL submits that these are not likely to be fully utilised, as there remains a stigma for women revealing their symptoms at work. VWL notes that while workplaces are required to provide for maternity leave, personal carers' leave, and more, there are no comparable requirements which assist women in managing (peri)menopausal symptoms. VWL submits that this results in the unnecessary suffering of women experiencing (peri)menopausal symptoms, often in silence and without appropriate support, which can result in premature career departure.

g. the level of awareness amongst employers and workers of the symptoms of menopause and perimenopause, and the awareness, availability and usage of workplace supports

VWL submits that there is a low level of awareness among employers and workers of the symptoms of (peri)menopause. Further, the awareness of workplace supports leaves much to be desired, and the availability and usage of those supports is difficult to examine due to the stark absence of said supports. In our research, VWL has found that the overwhelming data shows that "*there is a culture of ignorance and isolation around menopause in the workplace, and a glaring lack of support for employees and their managers*".⁹

Research conducted in 2021 by Circle In and supported by the Victorian Women's Trust (**Circle In Survey**) set out to understand levels of awareness around menopause in the workplace and determine what resources are currently available to people experiencing menopause. 60% of respondents said that the support received from their workplace during menopause was either "poor" or "below average".¹⁰

⁷ https://assets-corporate.channel4.com/_flysystem/s3/202010/Channel%20%20Menopause%20Policy%202020.pdf

⁸ [https://www.fertifa.com/post/companies-that-offer-the-best-menopause-benefits#:~:text=Timpon,HRT\)%20prescriptions%20for%20their%20employees](https://www.fertifa.com/post/companies-that-offer-the-best-menopause-benefits#:~:text=Timpon,HRT)%20prescriptions%20for%20their%20employees)

⁹ Report, *Driving the change: Menopause and the workplace*, Circle In, supported by the Victorian Women's trust

¹⁰ Circle In, p 4

Although it has been determined that women's work outcomes are on the whole not negatively affected by (peri)menopause, due to the lack of support there is a glaring correlation between (peri)menopausal symptoms such as hot flushes and the intention to stop working.¹¹ Almost half of the Circle In Survey respondents said they considered leaving the workplace due to their (peri)menopausal symptoms, which could have been prevented by better understanding and support received from their colleagues and workplaces.¹² Confirming this result, in a further Australian survey of approximately 1000 women who had experienced menopause, symptoms like hot flushes and night sweats were directly associated with "*reduced job satisfaction, work engagement, organisational commitment and a higher intention to quit their job.*"¹³

It is clear that one pivotal workplace support should come in the form of managerial support at the workplace, with over half of the respondents to the Circle In Survey considering that manager support was "important" or "very important".¹⁴ Despite this, 70% who had experienced menopause said they did not feel comfortable talking to their manager about their needs.¹⁵ Further, a recent study by the University of Nottingham determined that approximately half of women experiencing menopause had difficulty coping with symptoms at work, and that two thirds did not think they would be able to discuss their menopausal status and symptoms with their bosses.¹⁶ The Circle In Survey found that this was often due to the manager's gender, with 22% of respondents explicitly saying "*they would not feel comfortable sharing their challenges with their manager because he is male, or because the workplace was male dominated*" (Circle In, p 10). This study found there was an overwhelming perception that male bosses or employers would "*not be approachable, understanding or would penalise the employee for appearing 'weak'*" (Circle In, p 10).

These statistics provide evidence that there is a low level of awareness of menopause within the workplace, partly due to lower levels of female leadership in many industries, and that people experiencing menopause require better workplace supports and visibility. This is supported by the Circle In Survey which found that 76% of respondents would have liked "*information or advice from their employer about available support, or access to a network at work ... to aid them through this challenging period*" (P 13). VWL also supports the conclusion that a culture of better understanding of (peri)menopause could make a significant difference to those experiencing (peri)menopause in the workplace (*About Bloody Time*, Karen Pickering and Jane Bannet).

¹¹ <https://womensmidlifehealthjournal.biomedcentral.com/articles/10.1186/s40695-018-0036-z>

¹² Circle In, p 9

¹³ Hardy, C., Thorne, E., Griffiths, A. et al. Work outcomes in midlife women: the impact of menopause, work stress and working environment. *womens midlife health* 4, 3 (2018). <https://doi.org/10.1186/s40695-018-0036-z>

¹⁴ Circle In, p 10

¹⁵ Circle In, p 3

¹⁶ Amanda Griffiths, Sara MacLennan, and Juliet Hassard, "Menopause and work: An electronic survey of employees' attitudes in the UK" *Maturitas* 76, no. 2 (June 2013): https://www.researchgate.net/publication/256099650_Menopause_and_work_An_electronic_survey_of_employees%27_attitudes_in_the_UK

An important support for people experiencing (peri)menopause that is slowly emerging in Australia is a workplace policy that provides for dedicated leave and flexible work arrangements. In recent years, there has been an increased interest in supporting people experiencing (peri)menopause through such policies, as shown by the uptake of menstrual and (peri)menopausal leave policies by organisations such as Future Super, Victorian Women's Trust, and the Australian Financial Complaints Authority. In November 2022, a number of Australian unions (the Australian Workers' Union (**AWU**), the United Workers' Union (**UWU**), the Transport Workers' Union (**TWU**), the Rail, Tram and Bus Union (**RTBU**) and the Australian Workers' Manufacturing Union (**AWMU**)) began surveying their members ahead of a national campaign to introduce menstrual and menopausal leave. These unions campaigned that *"10 days personal leave per year, and the current flexibility arrangements under the Fair Work Act (FWA) are insufficient in recognising the health concerns women face, in contrast to men - who receive the same entitlements but experience none of those health hurdles."*¹⁷

In pushing for the policies, the unions said women are currently being *"forced to take hard pain killers rather than ask for concessions like flexible work arrangements"* and that this issue is particularly pertinent in *"blue collar jobs, like the transport industry, where women know menstrual issues aren't even on the radar of their employer"*. One concern that industry stakeholders have with introducing menstrual and menopause leave policies are that there is *"a risk of reinforcing biological stereotypes and the idea that women are less capable of paid work than men due to their biology"* and that there is a concern that the policies could act as a hiring disincentive if employers view female labour as more expensive than male labour.¹⁸ Critics have indeed deemed that menstrual and menopausal leave policies are "paternalistic", reducing women to their biological attributes and reinforcing gender bias in the workplace.¹⁹ Others, however, consider this could be avoided if the policies are introduced *"in conjunction with education and training initiatives for staff and managers to make sure that these new policies are introduced at the same time as it's being made clear to workers that negative gender stereotypes related to these issues will not be tolerated."*²⁰ VWL submits that given the lack of currently available supports for women experiencing (peri)menopause, policies providing for flexible working arrangements, better workplace infrastructure (such as fans and accessibility to rest areas), and paid leave days, would be instrumental in supporting workers during this period. VWL also understands the critics' perspective that such policies may on surface be seen as "paternalistic" or a

¹⁷ Maurice Blackburn Lawyers, *Unions in ground-breaking push to secure menstrual and menopause leave*, <https://www.mauriceblackburn.com.au/media-centre/media-statements/2022/unions-push-to-secure-menstrual-and-menopause-leave/>

¹⁸ <https://www.hcamag.com/au/specialisation/employment-law/should-australia-consider-workplace-protections-around-menopause-and-menstruation/466984/>

¹⁹ Dutt, B. 'I'm a feminist. Giving women a day off for their period is a stupid idea' (4 August 2017) The Washington Post <https://www.washingtonpost.com/news/globalopinions/wp/2017/08/03/im-a-feminist-but-giving-women-a-day-off-for-theirperiod-is-a-stupid-idea/>

²⁰ <https://www.hcamag.com/au/specialisation/employment-law/should-australia-consider-workplace-protections-around-menopause-and-menstruation/466984/>

reinforcement of biological stereotypes, and therefore considers that education and training of the workforce in conjunction with the introduction of those policies is essential.

VWL concludes by submitting that there is a low level of awareness of (peri)menopausal symptoms in the workplace. This may be in part due to low levels of women in leadership, particularly in certain blue collar and typically male-dominated industries. This degree of male versus female leadership may also go to the difficulty that women have often found in requesting or seeking support for their menopausal symptoms; support that is clearly still lacking in many organisations. VWL notes that it is difficult to analyse the "awareness" and "usage" of workplace supports when it appears that such supports are scarce. VWL submits that women experiencing (peri)menopause therefore require better workplace supports, including better awareness, knowledge and training on the part of managers, as well as the introduction of workplace policies providing for leave and flexible work arrangements to support those experiencing menopause.

h. existing Commonwealth, state and territory government policies, programs, and healthcare initiatives addressing menopause and perimenopause

Victoria

The Victorian Department of Health has a suite of programs and initiatives aimed at improving and supporting women's health, most notably including:

- the Women's Health and Wellbeing Program (including the development of wellbeing support groups and programs);
- the enquiry into Women's Pain; and
- the establishment of the Women's Health Advisory Council.

VWL supports the continuation and development of these initiatives and programs. VWL views the programs as a necessary step in the development of state policies which provide tangible outcomes for women experiencing (peri)menopause, both through direct impacts and indirect benefits of increased awareness and support mechanisms utilised by employers, health providers and society more generally. In VWL's view, these programs (in so far as they relate to (peri)menopause), are in their infancy and require continued government commitment to understanding and addressing the issues faced.

There remains a distinct lack of regulation in Victoria regarding (peri)menopause. While indirect protection against discrimination exists, VWL has not identified law which specifically provides protection, regulates workplaces or assists women experiencing (peri)menopause. VWL considers that such protections and support should be embedded in federal, state and territory law including for example an entitlement to additional leave, flexible working arrangements or workplace modification requests to support women experiencing (peri)menopause. In the same vein, any such regulation

should support workplaces and health providers in becoming educated in these issues, for example by establishing or charging a department with an educative role in providing resources and training material, including informing employers of their obligations under the contemplated regulation.

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

VWL submits that there is a growing call from employees for (peri)menopause leave across Australia. Due to the impact that (peri)menopause has on women and individuals with periods, there is a strong push to amend the *Fair Work Act 2009* (Cth) or to implement a new Australia wide policy to provide employees who experience (peri)menopause symptoms or painful periods one day per month of paid leave, or 12 days of paid leave per year.

As already explored in this submission, this amendment has gained support by a number of Australian unions and their members; including the AWU, UWU, TWU, RTBU and AWMU.

What is currently offered in Australia?

While there is no overall government legislation on menopause or perimenopause leave, several companies in the private sector have implemented their own menopause or perimenopause leave policies. For example, the Victorian Women's Trust have their own policy which provides for:

- the possibility of working from home;
- the opportunity to stay in the workplace under circumstances which encourage the comfort of the employee - e.g. resting in a quiet area; or
- the possibility of taking a day's paid leave.

In the case of paid leave, employees are entitled to a maximum of 12 paid days of leave per calendar year, in the event of inability to perform work duties because of menopause and the associated symptoms.

(i) How other jurisdictions support individuals experiencing menopause and perimenopause from a health and workplace policy perspective; and any other related matter

Spain

Spain will shortly become the first European country with a government policy for menstrual and period leave. The Spanish government announced plans to legislate this policy across the country, giving people who have painful periods and menopausal symptoms up to three days of paid leave per month with a medical certificate.

As already explored in this submission, one concern that Cristina Antoñanzas of the General Union of Workers noted was that the policy could lead to women facing workplace discrimination. She said the idea that employees required time off work while menstruating risked "*stigmatising women*".²¹

Japan

Japan adopted menstrual leave in 1947, calling it the 'Serikyuuka' policy, which roughly translates to physiological leave. There is a push for this policy to include (peri)menopause symptoms.

While this policy has been in place for almost 80 years, a challenge that it faces is how often it is used. In March 2022, Nikkei Group conducted a study finding that less than 10 percent of women took menstrual leave, and more than 50 per cent felt there was a "*lack of understanding of menstruation in the workplace*".²² A common barrier Japanese women faced was the discomfort associated with asking male bosses to take the leave and the reluctance to take it because it is uncommon for people to do so.

South Korea

South Korea holds a policy in which employees are entitled to one day of leave per month for menstrual leave. This policy is strictly enforced with employers facing large fines for refusing employee requests to take it. To this effect, in 2021, South Korean court fined former Asiana Airlines CEO Kom Soo-cheon for refusing to allow flight attendants to take menstrual leave.²³

United Kingdom

It is only recently that the United Kingdom has taken steps to implement menstrual and menopause leave. London Mayor Sadiq Khan already introduced menopause leave for City Hall employees in March 2022.²⁴

The policies in relation to menopause are outlined below:

- Health & Safety at Work Act 1974 (HSWA) - *employers must ensure the health and safety of all their employees and provide adequate information, instruction, training and supervision to enable their employees to carry out their work safely*
- Workplace (Health, Safety & Welfare) Regulations 1992 - *stipulates general requirements on accommodation standards for most workplaces including requirements on temperature, ventilation, sanitary conveniences, washing facilities, and supply of water.*

²¹ <https://www.abc.net.au/news/2022-11-24/menstrual-and-menopause-leave-explained/101682538>

²² <https://www.abc.net.au/news/2022-11-24/menstrual-and-menopause-leave-explained/101682538>

²³ <https://www.bbc.com/news/world-asia-56877634>

²⁴ <https://www.euronews.com/next/2022/10/18/menopause-leave-is-it-time-to-break-stigma-around-menopause-in-the-workplace>

- *Management of Health & Safety at Work Regulation 1999 - requires employers to make a suitable and sufficient assessment of the workplace risks to the health and safety of their employees. This includes identifying groups of workers who might be particularly at risk. Employees also owe certain duties to contractors, including conducting risk assessments.*
- *The Health and Safety Executive (HSE) is the national regulator for workplace health and safety. Health and safety law is mostly enforced by the HSE or the local authority. If an employer fails to comply with health and safety regulations, this may amount to a criminal offence. The HSE's powers including providing advice, issuing an improvement notice or prohibition notice, or bring a prosecution against the employer. Individual employees can report breaches to HSE but cannot bring claims directly under the Health and Safety at Work Act 1974.*