

A Policy of Equality: Painful Periods as a Workplace Issue



About this report

This report was written by Shannen Bethune, Tim Cronin, Abbey Dalton, Sophie Lloyd and Sophia McNamara as part of Liberty Victoria's Rights Advocacy Project (RAP). It was designed by Jessie Jones with illustrations by Sophie Louchart.

RAP is a community of lawyers and activists working for fairer laws for all Australians. RAP strives to influence positive law reform and has played a significant role in legislative change across a broad range of social issues.

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We acknowledge the Wurundjeri Woi Wurrung peoples of the Kulin Nations, the Traditional Custodians of the unceded land on which we wrote this report. We pay our respect to Elders, past and present.

A note on language: This report uses gender-inclusive language and pronouns, such as 'they', 'them' and 'their', except when discussing sex-based discrimination. We recognise that people of all genders and different biology may menstruate and endeavour to reflect this in our work.

About Liberty Victoria

Liberty Victoria is one of Australia's leading civil liberties organisations, working to defend and extend human rights and freedoms in Victoria since 1936. Liberty Victoria aims to secure the equal rights of everyone and oppose any abuse or excessive power by the state against its people by influencing public debate and government policy on a range of human rights issues. Liberty Victoria's work spans across a broad range of issues including equality, government accountability, refugee and asylum seeker rights and criminal justice reform.

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Foreword

It is a privilege to support this report from the Rights Advocacy Project team who are driven to make our workplaces better and more inclusive for all individuals. Menstruation has been an issue shrouded in stigma and taboo in many spheres of life, and the workplace is no exception. This report outlines many of the barriers that people who menstruate face in the context of employment, as well as the simple changes we can make to create more inclusive, comfortable and efficient workplaces – for employees and employers.

At a time when the COVID-19 pandemic has shown us how feasible flexible working arrangements are, and how adaptable we can be as a society, the proposed policies outlined in this report could seamlessly be adopted in many workplaces. As we embrace a new normal, we have concrete evidence that accommodating the differing needs of employees, whether it be due to pandemic, disability, caring responsibilities, or menstruation, is not only possible, but highly beneficial to how we function as an interdependent society.

However, it is equally as important to recognise that COVID-19 is an inherently gendered crisis; and while menstruation is not experienced exclusively by women, its close association with women results in it being treated in a similar way to issues of gender equality. Healthcare, being a workforce made up predominately of women, has placed women on the frontlines of this crisis; often working long shifts without appropriate accommodations. Women were disproportionately tasked with managing greater caring and domestic responsibilities, including caring for sick family members or home-schooling, alongside existing employment commitments. Early research indicates this can lead to financial hardship and economic stress for women. Moreover, extended lockdowns and time spent at home due to social distancing and isolation often exacerbated existing risks of domestic violence and abuse.

Further to this, the effects of long COVID on previously able-bodied people mean that our existing employment structures, which demand a certain kind of labour at a particular time and location, are no longer appropriate. While not all people who menstruate are disabled by their conditions and environment, it is equally as important to consider the disability rights implications of menstruation in the workplace, and understand how gender and disability are intrinsically linked in any reform to workplace structures. In the wake of such a gendered crisis that also demands we engage with disability rights, policy levers such as this one are essential in realising true gender and disability equality in the workplace.

As the Victorian government focuses on how to achieve gender equality through the Gender Equality Act, practical steps such as these are pivotal in fostering the change we desire. The new Act and broader strategy is intended to guide Victoria to achieving equal social, civic and economic participation for men, women and gender-diverse people in the workplace. To achieve such a goal, strategies must be paired with practical initiatives. The social attitudes that underpin the taboo surrounding menstruation also share links with the widespread violence and discrimination experienced by women and gender-diverse people in the workplace, the medical sphere, and society more broadly. Therefore, if workplaces seek to promote gender equality, this must be accompanied by practical steps such as flexibility for caring commitments, chronic illness, domestic violence, and as this report convincingly makes the case, menstruation.

I hope that this report can stimulate further discussion on gender equality and continue to the fight to dismantle the stigma surrounding menstruation. As the authors rightly indicate, I believe the time for menstrual reform is now.

Jess Hill

Author and Journalist

Glossary

Absenteeism	Physical absence from work when one is expected or was intending to be present. ¹ This is contrasted to presenteeism, as defined below.
Adenomyosis	Adenomyosis is a gynaecological condition where cells similar to those that line the uterus grow within the uterus' muscle wall. ² It can cause heavy, painful periods and intermittent bleeding between periods. ³ Diagnosing adenomyosis involves removing the uterus and examining it under a microscope. ⁴ People who menstruate may have both endometriosis and adenomyosis.
Dysmenorrhea	Dysmenorrhea is the experience of pain during menstruation. ⁵ Primary dysmenorrhea refers to pain during menstruation caused by the bodily process of menstruating. ⁶ Secondary dysmenorrhea refers to pain during menstruation connected to an underlying condition such as endometriosis, adenomyosis and fibroids. ⁷
Endometriosis	Endometriosis is a gynaecological condition where uterine lining grows outside the uterus forming cysts. ⁸ The main symptom is pain, which can occur at any time during the menstrual cycle. Endometriosis affects 1 in 9 women in Australia. ⁹ It can constitute a disability under section 4 of the <i>Disability Discrimination Act 1992</i> (Cth). ¹⁰
Employee	Someone employed under a contract of service.
Employer	Someone who employs an employee under a contract of service.
FW Act	<i>Fair Work Act 2009</i> (Cth)
National System Employer	Under section 14 of the FW Act, a “national system employer” is an employer that is covered and bound by the national workplace relations laws. The overwhelming majority of employers are national system employers with limited exceptions in relation to State public sector employees.
National system employee	Under the FW Act, a “national system employee” is an individual that is employed, or usually employed by a national system employer. ¹¹
NES	National Employment Standards (NES) are Australia’s minimum employment entitlements, provided by and described in Chapter 2, Part 2-2 of the FW Act.

1 D Harrison and K Price, 'Context of consistency in absenteeism: Studying social and dispositional influences across multiple settings' (2003) 13 *Human Resource Management Review* 203–225.

2 'Adenomyosis', *Health Direct* (Web Page) <www.healthdirect.gov.au/adenomyosis>.

3 'Adenomyosis', *Health Direct* (Web Page) (n 2).

4 Jason Abbott, 'Adenomyosis – Sister to Endometriosis or Distant Cousin?', *Endometriosis Australia* (Blog post, 11 August 2020) <<https://www.endometriosisaustralia.org/post/2016/11/08/adenomyosis-sister-to-endometriosis-or-distant-cousin>>.

5 'dysmenorrhea', *Macquarie Dictionary* (online at 25 September 2020); see also Asvini Subasinghe et al, 'Prevalence and Severity of Dysmenorrhoea, and Management Options Reported by Young Australian Women' (2016) 45(11) *Australian Family Physician* 829–34.

6 Asvini Subasinghe et al, 'Prevalence and Severity of Dysmenorrhoea' (n 5).

7 Asvini Subasinghe et al, 'Prevalence and Severity of Dysmenorrhoea' (n 5).

8 'endometriosis', *Macquarie Dictionary* (online at 25 September 2020); 'endometriosis', *Health Direct* (Web Page) <www.healthdirect.gov.au/endometriosis>.

9 'Research', *Endometriosis Australia* (Web Page) <<https://www.endometriosisaustralia.org/research>>.

10 See *Berry v South Australia* [2017] FCA 702.

11 FW Act s 13.

<p>Personal leave</p>	<p>The term “personal/carer’s leave” is leave intended for both sick leave and carer’s leave.</p> <p>The NES entitles all Australian workers to 10 days of personal leave each year.</p> <p>A part-time or full-time employee may take personal leave where:¹²</p> <ul style="list-style-type: none"> (i) they are unfit for work because of their own personal illness or injury; or (iii) to provide care or support to a member of their immediate family or household, because of a personal illness, injury or unexpected emergency affecting the member.
<p>PMDD</p>	<p>Premenstrual dysphoric disorder (PMDD) is a health condition associated with menstruation that causes severe irritability, depression or anxiety throughout the menstrual cycle. It is considered to be a seriously debilitating version of PMS, as defined below.</p> <p>PMDD affects between 3% to 8% of people who menstruate in Australia.¹³</p>
<p>PMS</p>	<p>Premenstrual syndrome (PMS) is a term used to refer to the physical and emotional symptoms that people who menstruate experience for one to two weeks before menstruation.</p> <p>Most people who menstruate experience PMS, with around 75% experiencing mild symptoms and 20% to 30% experiencing severe symptoms.¹⁴</p> <p>Symptoms may include: abdominal pain, acne, clumsiness, digestive upsets such as constipation and diarrhoea, fluid retention, weight gain, breast tenderness or swelling, joint or muscle pain, fatigue, poor sleep, food cravings, headache and migraine, hot flushes or sweats, increased appetite, increased sensitivity to sounds, light and touch. Additionally, it can include anxiety, confusion, lowered mood or depression, difficulties concentrating, memory lapses, drop in self-esteem and confidence, drop in sexual desire, feelings of loneliness and paranoia, irritability and mood swings.</p>
<p>Presenteeism</p>	<p>Presence at work while impaired by physical or psychological health problems.¹⁵</p> <p>This is to be contrasted with absenteeism, as defined above.</p>

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12 Fair Work Commission, 'Minimum workplace entitlements' (Factsheet) <<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/personal-leave-and-compassionate-leave>>.

13 Better Health Victoria, 'Premenstrual syndrome (PMS)' (Web Page) <<https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/premenstrual-syndrome-pms>>

14 Better Health Victoria, 'Premenstrual syndrome (PMS)' (Web Page) (n 13).

15 E Gosselin, L Lemyre, and W Corneil, 'Presenteeism and absenteeism: Differentiated understanding of related phenomena' (2013) 18(1) *Journal of Occupational Health Psychology* 75–86.

I. Executive Summary

Now is the time to talk about menstruation in the context of employment. While Australia is making significant progress with respect to gender equality,¹⁶ the topic of menstruation remains archaically taboo within the workplace. This report makes a case for why and how employers can, and should, address menstruation and menopause as employment issues. We propose employers adopt policies of paid menstrual leave and/or flexible working arrangements to support employees who experience debilitating menstrual symptoms.¹⁷

It is important to acknowledge that while menstruation is a naturally occurring process within female reproductive systems, it is not exclusively experienced by women. Transgender, non-binary and intersex people also menstruate, and face a unique set of barriers in managing their menstrual symptoms. Accordingly, we use inclusive language throughout this report, noting that many of the existing studies and other materials referred to do not; menstrual health is traditionally a heavily gendered issue, and research to date focuses on cis-gendered women and uses gendered language. We hope this attitude will change and recognise that inclusive language is only one small step forward.

From the outset, we emphasise that Australia's current leave entitlements under the FW Act are inadequate for many employee demographics, with people who menstruate being just one. In particular, we recognise that many people with disabilities and chronic health issues would benefit from broader leave entitlements

and flexibility. These people constitute nearly 20% of the working population, and should be adequately accommodated at work.

We hope menstrual leave is a starting-point for broader leave entitlements that accommodate people with disabilities and chronic health issues that prevent their full participation in a one-size-fits-all employment system.

We chose to focus this report on menstrual policies given the recent political and social momentum. In 2019, the Australian Government stopped taxing menstrual products and the Victorian Government announced a \$20.7 million initiative to improve menstrual health and reduce associated stigma across public schools. In 2020, Victoria introduced the *Gender Equality Act 2020* (Vic) and appointed Dr Niki Vincent as the inaugural Public Sector Gender Equality Commissioner.¹⁸ Concurrently, some employers – such as Modibodi, the Victorian Women's Trust (VWT) and Future Super – introduced menstrual and menopause leave policies.

As there is limited research into the impact of menstruation at work, we facilitated a survey. From 464 responses, 88% reported menstruation impacted their performance at work. Over 65% of these people had no access to viable leave options or flexible working arrangements. The survey confirmed that menstruation can be a barrier to meeting workplace expectations and the current one-size-fits-all model should be reconsidered. Respondents' personal anecdotes provided stark examples of these barriers, some of which are included throughout the report and in **appendix A**.

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¹⁶ Recent examples of the Victorian Government's commitment to equality are the \$20.7 million dedicated to providing free sanitary products in public schools in 2019, and appointing the inaugural Gender Equality Commissioner in 2020. At a federal level, the Government dedicated \$9 million to endometriosis research in 2019. In the commercial space, Libra, a producer of sanitary products, has started showing menstrual blood in its Australian advertisements, rather than blue fluid.

¹⁷ Symptoms include cramps, pain, dysmenorrhea, digestive issues, diagnosed and undiagnosed endometriosis, adenomyosis, and psychological symptoms.

¹⁸ The authors note the *Gender Equality Act 2020* is intended to be intersectional and address the ways in which diverse characteristics such as race, sexuality and disability impact the experience of gender in the workplace.

From a legal perspective, the current NES leave and flexibility entitlements may be discriminatory on the basis of disability and sex. We suggest employers mitigate the risk of discrimination claims by providing workplace entitlements that accommodate menstrual symptoms. Legal solutions for supporting employees with menstrual symptoms are discussed in **part II**. We suggest individual employers implement menstrual leave and flexibility policies. These policies could allow employees to manage the impact of their symptoms on workplace productivity by taking paid or unpaid leave or alter their working hours. With the recent formalisation of work-from-home practices, and the requisite trust between employer and employee, menstrual leave and flexibility should be straightforward to implement.

The benefits of menstrual policies for employees, employers and society are respectively addressed in **parts III, IV and V**.¹⁹ There are clear commercial, social and ethical arguments for introducing menstrual policies; a large portion of the workforce will be positively impacted, psychologically and physically, which will improve their workplace productivity and loyalty. Workplace culture will be safer and more inclusive. That said, there are also criticisms, which are addressed in **part VII**.

Menstrual policies are a necessary step towards genuine equality in the workplace. The time to introduce these policies is now. The report presents example clauses for both menstrual leave and flexibility that can be added to policies, contracts and enterprise agreements.



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¹⁹ Accompanying the report are factsheets for employers, unions and employees. They are intended to assist in the effective design of, agitation for, and implementation of a menstrual policy.

II. Background

Say it aloud – *menstruation*. If the word feels uncomfortable, you're not alone. For too long menstruation has been perceived as undignified, unclean and shameful. It has been conspicuously underexplored in medical, legal and social research. It has led to feelings of anxiety, discomfort and alienation.²⁰ Now, we must take action to overcome the stigma and stand in solidarity with our friends, children and colleagues who menstruate.

Approximately half the Australian population menstruate for four decades of their life. Most people who menstruate experience mild to severe menstrual and premenstrual symptoms.²¹ Around 80% of people who menstruate experience moderate to severe abdominal pain or cramps, referred to as period pain in this report.²² Of our survey respondents, 50% reported severe period pain frequently or occasionally, and 36% experienced mild period pain frequently or occasionally. Less than 1% experienced no pain as a result of menstruation.

Other symptoms may include digestive issues such as constipation and diarrhoea, joint or muscle pain, poor sleep, fatigue, headaches and migraines, anxiety, confusion, depression, difficulties concentrating, drop in self-esteem and confidence, irritability and mood swings. Of those enduring period pain, it is estimated that 94% experience additionally psychological and physical symptoms.²³

In Australia, between 7% and 11% of people who menstruate are formally diagnosed with endometriosis, amounting to roughly 700,000 people.²⁴ The dominant symptom of endometriosis is pain, which can occur at any stage during the menstrual cycle. From 2016 to 2017, over 34,000 Australians were hospitalised due to endometriosis.

While further research needs to be funded and conducted, it appears that the impact of menstruation in the workplace is significant. Our survey – conducted via social media for period of two weeks – received 464 responses, indicated that there are many people eager to speak to their personal experience.²⁵ Survey respondents recounted severe cramps, bloating, back pain, fatigue, difficulty standing, migraines, dizziness, brain fog, nausea, vomiting and exhaustion. Others experienced psychological changes around or during menstruation and menopause. Approximately 63% of respondents took at least one day of leave each year to manage menstruation and many reported that they would take more if they were better supported by their employer.

Menstrual symptoms affect more than those who menstruate. It impacts the entire Australian workforce and economy. Workplace impacts can be characterised as absenteeism and presenteeism, where workers respectively take time off work to manage menstrual symptoms or continue to work whilst managing debilitating symptoms. Both situations result in inequality and productivity loss. Workplace menstrual policies are a solution that benefits individuals, employers and society.

20 The Victorian Government's 2019 menstrual health initiative to reduce the 'stigma, anxiety and discomfort associated with menstrual hygiene management', <<https://www.education.vic.gov.au/about/programs/Pages/free-sanitary-pads.aspx>>.

21 Around 75% experiencing mild PMS and 20% to 30% experiencing severe PMS, see Better Health Victoria, 'Premenstrual syndrome (PMS)' (Web Page) (n 13).

22 Asvini Subasinghe et al, 'Prevalence and Severity of Dysmenorrhoea' (n 5).

23 Ernst and Young, *The Cost of Endometriosis in Australia* (Report, 29 May 2019).

24 Gabrielle Golding and Tom Hvala, 'Paid Period Leave for Australian Women: A Prerogative Not a Pain' (September 2021) 43(3) *Sydney Law Review* 354, citing Australian Institute of Health and Welfare, 'Endometriosis in Australia: Prevalence and Hospitalisations' (Report, August 2019) 3 <<https://www.aihw.gov.au/getmedia/a4ba101d-cd6d-4567-a44f-f825047187b8/aihw-phe-247.pdf.aspx?inline=true>>; Susan Treloar, Daniel O'Connor, Vivienne O'Connor and Nicholas Martin, 'Genetic Influences on Endometriosis in an Australian Twin Sample' (1999) 71(4) *Fertility and Sterility* 701; see also see also Department of Health (Cth), 'What We're Doing About Endometriosis' (Web Page, 7 September 2021) <<https://www.health.gov.au/health-topics/chronic-conditions/what-were-doing-about-chronicconditions/what-were-doing-about-endometriosis>>.

25 See appendix A for further details about the survey.

Ella* was working at a restaurant when she started to experience severe menstrual cramps and felt dizzy. She took painkillers and sat down for twenty minutes but soon realised the pain was not dissipating. When Ella told the male manager she had bad period pain and needed to go home, he told her to wait. He then asked another female colleague if period pain could actually be so bad someone would need to go home. Ella felt humiliated and guilty. The manager eventually agreed she could leave, but treated her suspiciously.**



Since being a teenager, Tanya's* period pain impacted their ability to work. They experience severe pain during menstruation every month. Recently, Tanya had to leave a job they felt passionate about because the workplace was not willing to provide the support they needed and they were made to feel like a problem. Tanya is still looking for a supportive and accommodating workplace, where they don't feel like a burden on the organisation.**

*all names have been changed to protect the identity of survey respondents.

**The source of all case studies are responses to RAP's survey (2020).

A. What is menstrual leave?

Menstrual leave is paid leave to accommodate the physical and psychological symptoms of menstruation. Ideally, menstrual leave would be available on an as-needed basis. Alternatively, it may be a number of days – we suggest 12 days – of non-accumulative leave each year or one day per month, reflecting a typical menstrual cycle.

Several countries – including Japan, Indonesia, South Korea, China and Taiwan – provide menstrual leave in national employment entitlement frameworks.²⁶ Whilst research into the effectiveness and utilisation of these entitlements is limited, results are mixed.²⁷

In Japan, article 68 of the Labour Standards Law requires employers to provide unpaid leave for women experiencing menstruation.²⁸ Utilisation of the policy has been limited with some reports stating that a mere 0.9% of the workforce claim leave, citing fear of harassment and discrimination as deterrents.²⁹ In South Korea, article 71 of the *Labour Standards Act* provides for paid menstrual leave. As in Japan, stigmatisation and fear of negative treatment from employers has seen limited utilisation of the leave. Usage of menstrual leave decreased from 23.6% in 2013 to 19.7% in 2017.³⁰ Both Taiwan and China's Anhui province also offer paid menstrual leave. However, the evidentiary burden of providing a medical certificate each time leave is taken results in limited usage of the leave.³¹ Despite the issues mentioned above, Asia leads the world in the implementation of progressive workplace menstrual policies, with examples from Europe and North America almost non-existent.

There appear to be few examples of menstrual leave in countries comparable to Australia. In 2017 a proposal for three days of paid menstrual leave for severe menstrual pain was tabled in the Italian Parliament. The proposal was eventually withdrawn due to fierce criticism and concern amongst women's rights groups that such a policy would further stigmatise women for their biology.³² It is important to note that Italy has one of the lowest ratios of female to male workplace participation of the OECD countries.³³

Whilst the above examples present a cautionary tale for countries attempting to implement menstrual leave, they also provide useful information as to what has and has not worked, and the potential universal application of an effective menstrual policy.

A number of companies have successfully introduced menstrual leave. At Australia's Future Super, 22% of eligible employees have used the menstrual policy since its introduction in January 2021.³⁴ At the Indian marketing company Gozoop, a company of over 200 employees, 75% of eligible employees have worked from home one day every month to manage menstrual symptoms since the policy's introduction in 2007.³⁵ Coexist, a company in the UK, and the VWT in Victoria, Australia, have also seen high uptake of menstrual leave. These companies, however, are small and may not be representative of most workplaces. Perhaps the largest example is Zomato in India. With over 5000 staff, Zomato offers workers who menstruate 10 days menstrual leave per year. As it was introduced in 2020, an evaluation of the policy's effectiveness is still outstanding.³⁶

26 For example, Japan introduced menstrual leave in 1947 within the Labour Standards Act. The Act states '[w]hen a woman for whom working during menstrual periods would be especially difficult has requested leave, the employer shall not have the said woman work on days of the menstrual period.' See Labour Standards Act 1947 (Japan) art 68 (online translation) <http://www.japaneselawtranslation.go.jp/law/detail_main?id=5&vm=2&re>.

27 Rachel Levitt and Jessica Barnack-Tavlaris, 'Addressing Menstruation in the Workplace: The Menstrual Leave Debate' in Chris Bobel et al (eds), *The Palgrave Handbook of Critical Menstruation Studies* (2020) Palgrave Macmillan; Mari Pangestu and Medelina Hendyitio, 'Survey Responses from Women Workers in Indonesia's Textile, Garment, and Footwear Industries' (1997) World Bank; Beth Goldblatt and Linda Steele, 'Bloody Unfair: Inequality Related to Menstruation – Considering the Role of Discrimination Law' (2019) 41(3) *Sydney Law Review* 293.

28 'Comparison of the Japanese Laws and Model CBA of UI ZENSEN on Maternity Protection' (2011) <<https://www.pdfsearch.io/document/Comparison+of+the+Japanese+Laws+and+Model+CBA+of+UI+ZENSEN+on+Maternity+Protection>>.

29 'Comparison of the Japanese Laws and Model CBA of UI ZENSEN on Maternity Protection' (2011) (n 28).

30 Sally King, 'Menstrual Leave: Good Intention, Poor Solution' in Juliet Hassard and Luis D Torres (eds), *Aligning Perspectives in Gender Mainstreaming. Aligning Perspectives on Health, Safety and Well-Being* (2021) Springer.

31 Sally King, 'Menstrual Leave: Good Intention, Poor Solution' (n 30).

32 Sally King, 'Menstrual Leave: Good Intention, Poor Solution' (n 30).

33 Rachel Levitt and Jessica Barnack-Tavlaris, 'Addressing Menstruation in the Workplace' (n 27).

34 Housnia Shams, 'Menstrual leave adopted by more Australian businesses as debate grows around policy' (24 June 2021) *ABC News* <<https://www.abc.net.au/news/2021-06-24/menstrual-leave-australia-womens-health-employment-workplace/100235920>>.

35 Jelisa Castodale, 'Some Companies Are Finally Offering Period Leave' (August 2020) *Vice* <<https://www.vice.com/en/article/akzaea/some-companies-are-finally-offering-period-leave>>.

36 Julia Wuensch, 'The Economic and Moral Case For Menstrual Leave' (August 2020) *Forbes* <<https://www.forbes.com/sites/juliawuensch/2020/08/17/the-economic-and-moral-case-for-menstrual-leave/?sh=6ea9dbcf7019>>; Geneva Abdul, 'Company's Paid Leave for Period Takes On a Workplace Taboo' (August 2020) *The New York Times* <<https://www.nytimes.com/2020/08/11/business/india-zomato-period-leave.html>>.

B. The inadequacy of statutory leave entitlements

Australia's NES entitle employees to 10 days of paid personal leave per year.³⁷ While employers can provide additional paid leave, most only offer the statutory minimum.³⁸

Are current leave entitlements discriminatory?

What is discrimination?

Australia has a suite of anti-discrimination legislation protecting against direct and indirect discrimination on the basis of certain attributes, such as sex and disability.

Direct discrimination is treating someone less favourably because of a characteristic or status they have or are believed to have.

Indirect discrimination is the imposition of a requirement or condition that is neutral and fair on its face yet has, or is likely to have, the effect of disadvantaging people with certain attributes.

This report highlights indirect discrimination within the leave entitlements under the FW Act.

As a casual, Amal* fears their employer could let them go 'whenever without notice' because they have to spontaneously take time off due to pain.**

Although the universal entitlement to 10 days of personal leave may seem fair, it is not what equality requires. This entitlement ignores important characteristics that mean some people need more leave than others. Forty-seven percent of survey respondents stated they rely on leave without pay to manage debilitating menstrual symptoms, with a slightly smaller proportion working through the pain. In general, the reasons cited for this were that either an individual's personal leave entitlements had been exhausted or they chose not to use paid leave in case they needed it for when they or their dependants were unwell throughout the year. In this sense, the universal 10 days of personal leave may amount to discrimination on the basis of sex or disability.³⁹

Menstruation usually occurs every 28 days. Even if an employee takes only one day off every second menstrual cycle, they would use six to seven days of personal leave each year. The employee would have significantly reduced personal leave to use when they were actually unwell. This could force them to take annual leave, unpaid leave, or remain at work in pain.

Stress associated with exhausting leave entitlements was evident in our survey responses. Reduced income was particularly stressful for respondents with casual employment or who owned a small business. Others feared for their job security if their employer became aware of their ongoing need to take leave.

³⁷ FW Act s 61; the entitlement to personal/carer's leave does not apply to casual employees or those on a vocational placement, see FW Act ss 13, 14, 95.

³⁸ For example, the *Cleaning Services Award 2010*, *Children's Services Award 2010* and the *Security Services Industry (General) Award 2010* do not include additional personal/carer's leave.

³⁹ We refer to 'indirect discrimination' which occurs if an employer proposes to impose, a requirement, condition or practice that is neutral and fair on its face yet has, or is likely to have, the effect of disadvantaging employees with a protected attribute. Protected attributes include sex and disability in every Australian state and territory. See FW Act s 351; *Equal Opportunity Act 2010* (Vic) ss 6, 9; *Sex Discrimination Act 1984* (Cth) s 5; *Disability Discrimination Act 1992* (Cth) ss 4, 6; *Anti-Discrimination Act 1977* (NSW) ss 25, 49D; *Anti-Discrimination Act 1991* (Qld) s 7; *Equal Opportunity Act 1984* (WA) ss 8, 66A; *Equal Opportunity Act 1984* (SA) ss 30, 67; *Anti-Discrimination Act 1988* (Tas) s 16; *Discrimination Act 1991* (ACT) ss 7, 10; *Anti-Discrimination Act 1988* (NT) s 16.

Claudia* takes unpaid leave. Claudia reported that even though the workplace knows about her menstrual pain, her manager says there's no other way around it.**

Ruvi* uses the contraceptive pill to skip periods to avoid having to take time off work**

Jess* was faced with the choice of taking unpaid sick leave, or going to work in pain to sit at a desk and get nothing done.**

When Charlie* had severe period pain, they had to work because they couldn't afford not to. Charlies says 'despite being in severe agony I don't really have a choice. There have been times where I would run to the bathroom to vomit or times when I would faint because of the pain.'**

Discrimination on the basis of sex

Section 5(2) of the *Sex Discrimination Act 1984* (Cth) states discrimination on the basis of sex occurs when someone "imposes, or proposes to impose, a ... practice that has, or is likely to have, the effect of disadvantaging persons of the [particular] sex". Section 4 of the *Sex Discrimination Act* distinguishes between sex and gender identity, noting that the latter may differ from an individual's assigned sex at birth. Therefore, we understand references to sex to refer to a person's biological characteristics at birth.

Paid leave entitlements under the NES may amount to indirect sex-based discrimination. Menstruation is overwhelmingly experienced by people with female reproductive systems. Due to caring responsibilities, these employees are more likely to exhaust their leave entitlements or have insufficient leave entitlements to be able to manage symptoms of menstrual pain. These employees are, therefore, more likely to take leave without pay, endure work while in pain, and be perceived as unreliable due to their recurring need to take leave. This may result in reduced pay, increased workplace stress and fewer opportunities for promotion. These employees may, therefore, be unreasonably disadvantaged compared to their able-bodied, cis-gendered male colleagues when it comes to both the sufficiency and availability of leave entitlements.

Discrimination on the basis of disability

In 2017, the Federal Court ruled that endometriosis and severe dysmenorrhea were considered disabilities for the purposes of the *Disability Discrimination Act 1992* (Cth).⁴⁰ A failure to provide adequate and reasonable flexible working arrangements for employees with endometriosis and severe dysmenorrhea was found to amount to disability discrimination.⁴¹

Given that at least one in nine people who menstruate are diagnosed with endometriosis, many employers could find themselves liable for claims of disability discrimination where they do not provide flexible working arrangements.⁴² Moreover, due to the barriers for diagnosing endometriosis, employers may be liable for disability discrimination even when an employee's severe dysmenorrhea is not formally diagnosed as endometriosis. Our survey showed that roughly 50% of respondents experienced frequent or occasional menstrual pain that was severe and debilitating.

⁴⁰ *Berry v State of South Australia* [2017] FCA 702; see also *Disability Discrimination Act 1992* (Cth) s 4.

⁴¹ *Berry v State of South Australia* [2017] FCA 702 (n 40) [1.1]–[1.4], [13].

⁴² Australian Institute of Health and Welfare, 'Endometriosis in Australia: prevalence and hospitalisations' (August 2019) <<https://www.aihw.gov.au/reports/chronic-disease/endometriosis-prevalence-and-hospitalisations/summary>>.

C. Accessibility of flexible working arrangements

Anecdotal evidence collected through our survey demonstrated that many people believe flexible working arrangements would assist in managing menstrual symptoms.

Throughout Australia, the NES entitles employees, including long-term casuals, to request flexible working arrangements in certain circumstances.⁴³ As specified by the FW Act, requests are only available for people over 55 years of age, or those seeking to manage parenting or caring responsibilities, disability and domestic violence.⁴⁴

Unless menstrual-related symptoms are classified as a disability, employees are not entitled to request flexible working arrangements to manage menstrual symptoms. As previously outlined, diagnosed endometriosis and severe dysmenorrhea is considered to be a disability.⁴⁵ However, significant barriers exist to obtaining a diagnosis.

Diagnosing endometriosis requires invasive surgery and time off work.⁴⁶ Diagnosing adenomyosis is near impossible, requiring expensive, specialist ultrasounds and, in many cases, a hysterectomy.⁴⁷ Therefore, people in their working and child-rearing years may choose not to embark on the journey to diagnosis.

Tess* works in a factory. She says she'd like 'more work from home options as I could work from a lying down position, wear clothes that aren't as restrictive around the uterus compared to the jeans or work pants I normally wear, or take more frequent breaks to stretch or curl up as required.' Tess also wants an option for shorter shifts as she 'can generally make it through half a day in moderate pain', and 'modified work during pain flares so instead of being on the manufacturing shop-floor, [she can do] office-based tasks'.**



43 Long-term casuals are those who have continuously worked for the employer for 12 or more months, see FW Act s 65(2); FW Act s 65.

44 FW Act s 65(1A).

45 In *Berry v State of South Australia* (n 40), Charlesworth J held that a diagnosis of endometriosis and severe dysmenorrhea was a disability under the *Disability Discrimination Act 1992* (Cth).

46 Endometriosis Australia states that while 1 in 10 women experience endometriosis, diagnosis is usually delayed by an average of 7 years from the onset of symptoms, see 'Research', *Endometriosis Australia* (n 9); see also Kelechi Nnoaham et al, 'Impact of Endometriosis on Quality of Life and Work Productivity: A Multicenter Study Across Ten Countries' (2011) 96(2) *Fertility and Sterility*.

47 Jeffrey Seidman and Kristen Kjerulff, 'Pathologic Findings from the Maryland Women's Health Study: Practice Patterns in the Diagnosis of Adenomyosis' (1996) 15(3) *International Journal of Gynaecological Pathology*.

In Australia, people wait an average of 6.4 years to be diagnosed with endometriosis.⁴⁸ The requirement of a diagnosis presents an unrealistically high bar, unreasonably excluding people with undiagnosed menstrual conditions or who just have painful menstruation from accessing flexible working arrangements.

Even for those that do have a diagnosis, existing flexible work arrangement entitlements may still be inaccessible. The entitlement provides merely a right to request flexibility. The employer can refuse the request on ‘reasonable business grounds’.⁴⁹ Further, an employer may take weeks to respond to a request, while menstrual symptoms can be unpredictable and sudden, requiring a comfortable space to work where employees can lie down, take a break or go to the toilet at short notice.

The shift to remote working during the current pandemic demonstrates employees can be trusted to work from home without lost productivity. Australia’s Productivity Commissioner, Michael Brennan stated there is ‘scant evidence so far of a large drop in productivity as a result of increased working from home’.⁵⁰ Without lowering productivity, remote working would allow people to manage menstrual symptoms by, for example, wearing comfortable clothing, working whilst lying down, using heat packs and going to the toilet regularly. Making remote working available to people with menstrual symptoms may increase productivity by reducing the number of people taking leave.

Aliyah* said ‘working from home options would improve the situation – [I] often feel up to working but need a day without tight clothes and people.’**

Taylor* experiences short, sharp pain during menstruation. Taylor says ‘I would like the option of a break room to lie down in when in pain. But I’m also cautious of my colleagues knowing.’**

48 Melissa Davey, ‘Australian Women with Endometriosis Face Six-Year Wait for Diagnosis, Study Finds’ (October 2020) *The Guardian* <<https://www.theguardian.com/australia-news/2020/oct/22/australian-women-with-endometriosis-face-six-year-wait-for-diagnosis-study-finds>>.

49 FW Act s 65(5).

50 Jessica Irvine, ‘Slacking off working from home? The productivity tsar doesn’t think so’ (12 July 2021) *The Sydney Morning Herald* <<https://www.smh.com.au/business/the-economy/slacking-off-working-from-home-the-productivity-tsar-doesn-t-think-so-20210709-p588er.html>>; Australian Government Productivity Commission, ‘Working from home – commissioner research’ (Web Page) <<https://www.pc.gov.au/research/current/working-from-home>>; see also Australian Government Productivity Commission, ‘Working from home research paper’ (Report, 16 September 2021).

III. What are the benefits for employees?

Menstrual policies have the potential to create a more inclusive workplace and equal society.

A. Creating inclusion by dismantling stigma

Menstrual stigma involves an attitude of disgust, ridicule and ignorance towards menstruation. It leads to shame and secrecy in those who menstruate. As Kathryn Lese notes, shame ‘affects self-esteem, with [people] reporting higher levels of bodily self-consciousness during their [menstruation] which can have larger ramifications for perceptions of [their] self-worth’.⁵¹ Shame can manifest in hiding menstrual products, limiting communication about menstrual symptoms, and embarrassment. In a workplace, menstrual stigma pits employees’ work responsibilities against their wellbeing. Employees feel compelled to hide their menstrual symptoms, which may involve taking time off work rather than asking for accommodations in the workplace.⁵²

Nancy* started work 10 days after a second laparoscopy, which finally diagnosed endometriosis. Nancy only disclosed to the new employer that she was having a “procedure” and stated she wouldn’t be at her normal capacity for the first few weeks in the role.

Nancy* remembers that in her first 1:1 with the new manager, she was asked how the procedure went. Nancy went out on a limb, and told her about the laparoscopy and the diagnosis. The manager disclosed that she had endometriosis as well, and had fibroids surgically removed at several surgeries earlier in her life. Nancy experienced a sense of relief that the manager understood the burden of menstrual health and took her seriously. Although Nancy never discussed it with the manager again, when Nancy had days off due to period pain knowing the manager understood and believed her alleviated a lot of stress.**

51 Kathryn Lese, ‘Padded assumptions: A critical discourse analysis of patriarchal menstruation discourse’ (Spring 2016) *James Madison University Scholarly Commons* 2, citing I. Johnston-Robledo, and J Chrisler, ‘The menstrual mark: Menstruation as social stigma’ (2013) 68 *Sex Roles* 9–18.

52 Jane Bennett and Karen Pickering, *About Bloody Time – The Menstrual Revolution We Have to Have* (2019) Victorian Women’s Trust 112.



Carla's* workplace is mostly male. Carla says 'I wouldn't be brave enough to ever mention [menstrual symptoms] because I have no idea how it would be received. I'd love for those in leadership positions to make the first move and tell us it's ok to need accommodations during our periods, like working from home or having to take sick days without fear of stigma.'**

Policies that actively acknowledge and address menstruation in the workplace have the capacity to play a key role in addressing society's menstrual taboo. By collectively acknowledging the impacts of menstrual cycles, and openly discussing menstruation as a workplace issue, employers can remove the 'oppressive silence' surrounding menstruation.⁵³ Reducing stigma was a motivation for Kristy Chong the CEO and Founder of Modibodi, a menstrual product company, to introduced menstrual, menopause and miscarriage leave.

*"We've introduced these policies as part of our commitment to talk openly and honestly about periods, to normalise conversations about menstruation and to remove any stigma and shame associated with a normal, natural part of life. To help change those attitudes, we need to start in our own office, and this new policy is one action we can take now to help do that." - Kristy Chong, CEO, Modibodi*⁵⁴

53 Jane Bennett and Karen Pickering, *About Bloody Time* (n 52) 100.

54 Modibodi, 'Modibodi launches menstrual, menopause and miscarriage paid leave' (4 May 2021) <<https://www.modibodi.com/blogs/womens-underwear-online/modibodi-launches-menstrual-menopause-miscarriage-leave>>.

Menstrual policies may support, empower and educate employees, leading to a more inclusive and compassionate workplace. It may help alleviate the emotional energy required to hide menstrual symptoms from teachers, employers, partners, colleagues and even friends.⁵⁵ By facilitating an understanding that menstruation is natural, normal and workplace appropriate, menstrual policies may improve people's acceptance and understanding of their own and others' bodily processes.⁵⁶

After implementing a menstrual policy, the VWT reported a significant increase in employee wellbeing, empathy and communication.⁵⁷ Similarly, Coexist – a small, UK-based social enterprise organisation – found the introduction of flexible working arrangements for menstrual symptoms increased employee wellbeing, organisational loyalty, as well as productivity.⁵⁸ It facilitated a culture of trust and relieved the stress, anxiety and shame associated with menstrual leave.⁵⁹

B. A step towards genuine equality

Article 1 of the *Universal Declaration of Human Rights* enshrines equality as the paramount principle of human rights. Equality is the principle that all people are born free and equal in dignity and in rights.⁶⁰ This principle is reflected in section 8 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Realising and promoting equality requires us to identify and overcome barriers to equal treatment and legal protection. Currently, menstruation can be a barrier to equal pay and career progression.

While the impact of menstrual symptoms on employees is poorly understood and possibly underestimated, it is clear that employees are taking leave to cope or suffering through their symptoms at work.⁶¹ Absence from work or low productivity has the potential to derail or hinder an employee's career progression;⁶² employees may be less competitive for promotions due to perceptions of laziness and unreliability.⁶³ Employees may also deplete their personal leave, resulting in financial loss and stress.

Accessible menstrual policies reduce the likelihood of economic and promotional disparity between employees.⁶⁴ They promote a better understanding of how menstrual symptoms can impact employees, leading to inclusive and more nuanced promotion practices. Furthermore, employees would not be unfairly required to deplete their personal leave due to pain associated with the natural, physical phenomenon of menstruation.

55 Jane Bennett and Karen Pickering, *About Bloody Time* (n 52) 100.

56 Jane Bennett and Karen Pickering, *About Bloody Time* (n 52) 100.

57 Victorian Women's Trust, *Menstrual Policy* (Policy document, undated) <<https://www.vwt.org.au/menstrual-policy/>>; Lara Owen, 'Menstruation and Humanistic Management at Work: The Development and Implementation of a Menstrual Workplace Policy' (2018) 25(4) *E-Organisations & People (Journal of the Association for Management Education & Development)*.

58 Bex Baxter, 'Ending a Workplace Taboo. Period.' (20 December 2017, public lecture) *Tedx Bristol* <https://www.youtube.com/watch?v=0wWUAX_1JDw>.

59 Bex Baxter, 'Ending a Workplace Taboo. Period.' (n 58).

60 *Charter of Human Rights and Responsibilities Act 2006* (Vic) preamble.

61 Mark Schoep et al, 'Productivity Loss Due to Menstruation-Related Symptoms: A Nationwide Cross-Sectional Survey Among 32,748 Women' (2019) 9(6) *British Medical Journal* 2, 8.

62 Jane Bennett and Karen Pickering, *About Bloody Time* (n 52) 134.

63 Triple J Hack, '40% of Women Are Taking Days Off. Should We Have Paid Period Leave?' (8 August 2018) ABC <<https://www.abc.net.au/triplej/programs/hack/should-we-have-paid-period-leave/10090848>>.

64 See **Part II(B)** for an analysis of sex-based discrimination and a discussion of the financial impacts of debilitating menstrual symptoms.

C. Menstruation as a human rights issue

The simple biological fact of menstruation should not be a barrier to gender equality or the realisation of the human rights of people who menstruate. The ability of people to manage their menstruation is fundamentally related to various human rights contained in international covenants to which Australia is a party. These include the right to the highest possible standard of physical and mental health,⁶⁵ education,⁶⁶ and the right to work.⁶⁷ Specifically, article 7 of the *International Covenant on Social, Economic and Cultural Rights* provides for just and favourable conditions of employment, notably ‘women being guaranteed conditions of work not inferior to those enjoyed by men’.⁶⁸

Australia’s current workplace entitlement system – which provides for a blanket 10 days of personal leave and no flexible work entitlement for menstruation – fails to meet the needs of workers who menstruate. People who menstruate may be disadvantaged economically and socially by having to take additional, unpaid leave when they are menstruating, unwell or caring

for dependents. This may amount to indirect discrimination on the basis of sex, gender or disability. This limits people’s internationally recognised right to equality, without a reasonable justification. As it is today, Australia’s employment structure systemically limits human rights.

Proper recognition of human rights requires the regulatory regime responsible for employment to consider and accommodate people who menstruate or people with chronic health conditions more generally. On a more pragmatic level, it requires individual employers to develop policies and processes that aligned with national standards accommodating people who menstruate and addressing the specific needs, challenges and realities of employees who menstruate in the particular industry. In an ideal world, employers would consider potential human-rights limitations of their decisions on particular employees and ensure limitations were not unreasonable. Finally, it would require us all to address menstrual stigma and the societal attitudes that prevent people from accessing workplace menstrual policies.

65 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12 (‘ICESCR’).

66 ICESCR (n 65) art 13.

67 ICESCR (n 65) art 6.

68 ICESCR (n 65) art 7(a)(i).

IV. What are the benefits for employers?

Menstrual policies are highly beneficial for employers, boosting productivity, increasing employee loyalty and improving workplace equality. A 2018 McKinsey report found companies in the top quartile for executive-level gender diversity are 21% more likely to out-perform less diverse companies in profitability.⁶⁹ Achieving gender diversity is ultimately only possible if diversity targets are supported by policies that make it feasible for females and gender-diverse people to thrive in the workplace. Maintaining equality requires pragmatic strategies to facilitate comfortable and accommodating workplace environments for both diverse leaders and employees.⁷⁰ Embracing and prioritising equality and inclusion serves to attract and retain high-quality employees.



A. Productivity

Menstrual symptoms are already being managed in most workplaces, whether a menstrual policy is introduced or not. Every year, menstrual symptoms account for around 8.9 days of lost productivity per person who menstruates, a 2017 Dutch-based study found.⁷¹ In Australia, the cost of productivity loss due to endometriosis alone is estimated to be approximately \$2.6 billion per year.⁷² The cost could be as high as \$7 billion per year if we include the people with undiagnosed endometriosis.⁷³

Lost productivity occurs when employees take leave or suffer through their symptoms at work. The former scenario is absenteeism and the latter is presenteeism. Menstrual policies would help to mitigate productivity lost due to absenteeism and presenteeism.

Absenteeism

Absenteeism refers to absence from work.⁷⁴ Absences due to endometriosis are estimated to be six days per year per person.⁷⁵ Between 40 and 50% of people who menstruate take leave to manage their symptoms.⁷⁶ However, the frequency of leave is unknown due to limited quantitative research on the matter. Menstrual policies allow for the collection of data and statistics, addressing the research deficit to identify the financial impact of menstruation.

69 Vivian Hunt et al, 'Delivering Through Diversity' (18 January 2018) McKinsey Global Institute <<http://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity/>>.

70 Victorian Women's Trust, *Menstrual Policy* (n 57); Lara Owen, 'Menstruation and Humanistic Management at Work' (n 57).

71 Mark Schoep et al, 'Productivity Loss Due to Menstruation-Related Symptoms' (n 61), which presents findings from a 2017 internet-based study of 32,748 women aged 15 to 45 in the Netherlands.

72 Ernst and Young, *The Cost of Endometriosis in Australia* (n 23) 7.

73 Ernst and Young, *The Cost of Endometriosis in Australia* (n 23) 7.

74 Australian Public Service Commission, *State of the Service Report 2012-13* (Report, 2 December 2013) 84.

75 Ernst and Young, *The Cost of Endometriosis in Australia* (n 23) 18.

76 Ernst and Young, *The Cost of Endometriosis in Australia* (n 23) 18; see also Mike Armour et al, 'Prevalence and Academic Impact of Dysmenorrhoea in 21,573 Young Women: A Systematic Review and Meta-Analysis' (2019) 28(8) *Journal of Women's Health* 116.

Menstrual policies that allow for both leave and flexible working arrangements can improve productivity by decreasing dependence on leave. By facilitating an open and compassionate workplace culture, employees may feel empowered to communicate what they need in order to minimise any factors that aggravate their menstrual symptoms. For example, employees may need to work from home, take time off to rest, or take leave for half a day.

Bex Baxter, the founder of Coexist discovered that flexible working arrangements allowed her usually very painful period to become less debilitating and impactful on her output. “By listening to my body and resting when I needed to,” she stated, “I recovered quicker, and was more effective and productive”.⁷⁷ She successfully implemented a menstrual policy for flexible working arrangements so the organisation and its employees could benefit.

Presenteeism

Presenteeism involves remaining at work whilst enduring debilitating menstrual symptoms.⁷⁸ A 2019 Dutch study found 80% of people continued to work with debilitating symptoms.⁷⁹ The Royal Australian College of General Practitioners’ survey found 77% of respondents’ symptoms substantially impacted their productivity at work.⁸⁰ Whilst presenteeism associated with menstruation is also under-researched, it has been estimated to account for a loss of 8.9 days per year for each employee who menstruates.⁸¹

Menstrual leave or flexibility result in a net benefit to employers. Productivity and profit will increase where employees can recover faster, manage their symptoms better and feel adequately supported, resulting in long-term employee retention.⁸² The Nous Group considered flexible working arrangements

to result in a 4% increase in revenue due to costs associated with direct labour productivity, recruitment, retention and reduced absenteeism.⁸³ Australia’s Productivity Commissioner, Michael Brennan stated there is ‘scant evidence so far of a large drop in productivity as a result of increased working from home’.⁸⁴ Making remote working available and accessible for people with menstrual symptoms may increase productivity by reducing the number of people taking leave.

A menstrual policy acknowledges the fact that menstruation is not an illness; it is a natural, biological process which can result in pain and other symptoms. However, like many disabilities, society currently creates a range of environmental and attitudinal barriers which means that the effects of menstruation can be disabling. While most research prioritises the medical model of disability that suggests menstruation is not a disability, the implications of menstruation could be viewed as disabling in line with the social model of disability which states that people are not disabled by their impairment but rather by the environmental, structural and attitudinal barriers that exist within society.

Therefore, these policies address the social and attitudinal barriers encountered by people who menstruate, and allow personal leave to be retained and used for its intended purpose: to look after oneself or others who are unwell. Personal leave needs to be reserved for this purpose to ensure that sick employees stay at home or take the time off they need to recover. This way, all employees will remain as healthy and consistently productive as possible. This is particularly pertinent in the context of COVID-19, where it is abundantly clear that employees need access to adequate leave to mitigate the risks of communicable sickness and associated public health crises.

77 Bex Baxter, ‘Ending a Workplace Taboo. Period.’ (n 48).
78 Australian Public Services Commission, *State of the Service Report 2012–13* (n 74) 86.
79 Mark Schoep et al, ‘Productivity Loss Due to Menstruation-Related Symptoms’ (n 61); see also Mike Armour et al, ‘Prevalence and Academic Impact of Dysmenorrhoea’ (n 65).
80 Asvini Subasinghe et al, ‘Prevalence and Severity of Dysmenorrhoea’ (n 5); see also YouGov staff, ‘75% of Aussie Women who have Suffered from Period Pain say it has Affected their Ability to Work’ (12 October 2017) *YouGov* <<https://au.yougov.com/news/2017/10/12/period-pain-suffer/>>.
81 Mike Armour et al, ‘Study Finally Shows How Disruptive Period Pain Really Is, and We Need to Talk About it’ (29 June 2019) *Science Alert* <<https://www.sciencealert.com/period-pain-is-probably-causing-days-of-lost-productivity-each-year>>.
82 Australian Public Services Commission, *State of the Service Report 2012–13* (n 74) 93.
83 Tanya Smith, ‘The Benefits of Flexible Workplaces: From Intuition to Evidence’ (2018) *The Nous Group* <<https://www.nousgroup.com/insights/benefits-flexible-workplaces-intuition-evidence/>>.
84 Jessica Irvine, ‘Slacking off working from home? The productivity tsar doesn’t think so’ (12 July 2021) *The Sydney Morning Herald* <<https://www.smh.com.au/business/the-economy/slacking-off-working-from-home-the-productivity-tsar-doesn-t-think-so-20210709-p588er.html>>; Australian Government Productivity Commission, ‘Working from home – commissioner research’ (Web Page) <<https://www.pc.gov.au/research/current/working-from-home>>

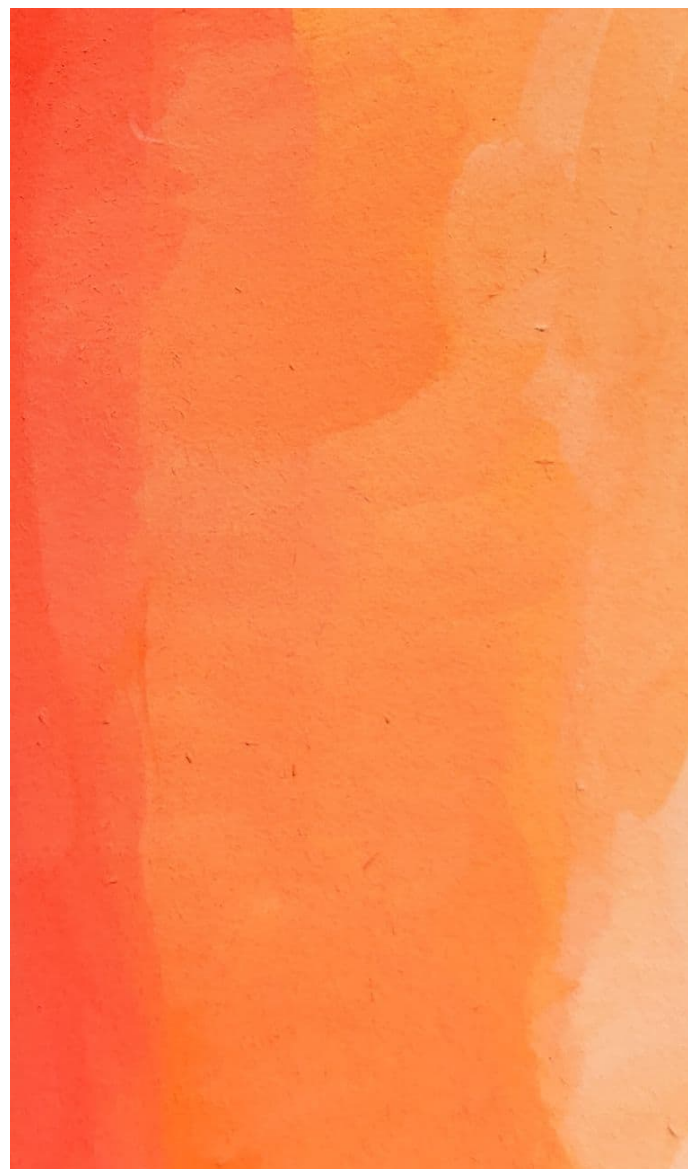
B. Employee and brand loyalty

Maintaining a good reputation has never been more important. Employers can attract clients, customers and high-quality employees with inclusive workplace policies.

Menstrual policies could be utilised to demonstrate an employer's corporate social responsibility and commitment to gender equality. Younger workers are becoming increasingly conscious of a prospective employer's social impact. For example, 86% of millennials believe an employer's success should be measured in terms of its positive social impact as well as its financial performance.⁸⁵ 77% of consumers have stated that they would pay more for products from companies that are socially responsible or ethical.⁸⁶

Accessible menstrual policies support employees to take care of their bodies, recognising individual needs and fostering loyalty. Menstrual policies will help to attract and retain employees who menstruate and have caring responsibilities. By facilitating a work-life balance that is sustainable and supportive, employers have the best chance at attracting and retaining employees.

The effects of workplace conditions on the workforce is evident in the contrast between the below case studies. A report by the Centre for Talent Innovation found that '40% of women leave tech companies after ten years compared to 17% of men'.⁸⁷ This was not attributed to family reasons or dissatisfaction with the work but rather because of 'workplace conditions', 'undermining behaviour from managers' and 'a sense of feeling stalled in one's career'.⁸⁸



In contrast, the Victorian Public Sector's introduction of domestic-violence leave and home-schooling leave during the pandemic demonstrates awareness of the challenges employees, and particularly female employees, face. These workplace changes have likely improved employee loyalty and workplace desirability in the same way that a menstrual policy may.

85 Deloitte, 'The 2017 Deloitte Millennial Survey: Apprehensive Millennials: Seeking Stability and Opportunities in an Uncertain World' (Survey, 2017) 7.

86 Deloitte, 'The 2017 Deloitte Millennial Survey' (n 85) 14.

87 Caroline Perez, *Invisible Women: Exposing data bias in a world designed for men* (2019) Chatto and Windus 94–5.

88 Caroline Perez, *Invisible Women* (n 87) 94–5.

V. What are the benefits to society?

Our survey shed light on the impact of menstrual stigma and how it masks the true impact of menstruation in the workplace. Despite a significant majority of respondents stating menstrual pain impacted their ability to work, many reported feeling unable to disclose this fact to anyone. Some had never voiced their workplace menstrual issues prior to completing the survey.

The inability to speak about menstruation in the workplace may be due to stigma and misogyny. Much like people who are pregnant or have a disability, people may be reluctant to disclose to their employer the details of menstrual symptoms despite their need for adjustments. Even when menstrual pain is severe, our survey results showed that people internalise a widespread belief that it does not justify their absence from work.

While our employment framework has changed incrementally throughout the last few decades to accommodate an increasingly diverse workforce, our standard working hours, leave entitlements and social expectations continue to prioritise the cis-male, able-bodied worker. Until 1972, the minimum wage was much lower for women than men, and paid parental leave was introduced in 2011. The standard employment framework is based on the needs of the able-bodied male, and must now be altered to meet the needs of others, such as people who menstruate.⁸⁹

Some people suggest menstrual policies would disincentivise employers from hiring those who menstruate, preferring people who are perceived to be more reliable and productive.⁹⁰ This argument neglects the importance of creating more inclusive workplaces where there is diversity of thought and experience. Similar arguments were raised against the introduction of equal pay, and later, the introduction of paid parental leave. Over time, workplaces have seen the economic and social value in supporting diversity in the workplace. Menstrual policies are a step towards creating a more inclusive workforce that accommodates the needs of all workers, not just those who menstruate.

⁸⁹ See *Ex parte H.V. McKay (Harvester Case)* (1907) 2 CAR 1, Higgins J.

⁹⁰ See, eg, Kylie Lang, 'As a working woman in Australia I'm insulted by this crazy plan' (2 June 2017) *Courier Mail* <couriermail.com.au/rendezview/as-a-working-woman-in-australia-im-insulted-by-this-crazy-plan/news-story/4fedf54e5722d1e5812da901a9da10f7>.

VI. Policy reform

For the benefit of society, employees and employers, menstrual policies should be introduced. However, there is no one way to implement an effective policy. Employers should consider a range of factors when determining which policy best suits their workplace. Below is a template menstrual policy, as it provides the most universal, flexible and accessible version of menstrual policy and, therefore, equality.

We have focused on employers changing internal policy rather than reform to the FW Act and Award changes for a variety of reasons. Reforming the FW Act or awards would require immense campaigning and advocacy, and may stimulate political backlash. Instead, we have decided to empower employees to seek menstrual policies from their employers and union advocacy, and to provide employers with the tools to recognise internal accommodations as a favourable commercial move. We hope that as more organisations successfully implement menstrual policies, more will follow. This is our theory of cultural change to improve workplace equality. Menstruation in the workplace is just as much a cultural issue as it is an issue of discrimination and workplace rights. We therefore believe that internal policies are the best way to facilitate the attitudinal shift that is required to make menstrual policies effective and operable.

Template menstrual leave and flexibility policy clause

The clauses below are for both menstrual leave and menstrual flexibility. They can be added to a workplace policy, enterprise agreement or individual employment contract.

We encourage employers to adopt both leave and flexibility options and to ensure that employees have agency over which they choose to utilise. This is important as no one but the person in pain knows what they need to manage it. If employees feel pressure to utilise flexible working arrangements instead of leave when they actually require leave – and vice versa – this may undermine the accessibility of the policy.

Employers should facilitate a dialogue with employees to determine what is needed. The introduction of a menstrual policy is not a one-size-fits-all approach. Each industry and workplace has unique characteristics and challenges, and may require the adaptation of our proposed clause.

These clauses can be inserted into enterprise agreements and individual employment contracts, or form the basis for workplace policies.

Menstrual Leave

This draft clause is based on the current NES entitlement under the FW Act, the Goodstart Early Learning Enterprise Agreement 2016, and Future Super's Menstrual and Menopause Leave Guidelines.⁹¹

Menstrual and menopause leave

- (1). Full- and part-time employees will be entitled to 12 days (pro rata for part-time employees) paid menstrual/menopause leave for debilitating menstrual or menopause symptoms, including physical and psychological symptoms.
- (2). Casual employees are entitled to 2 days of paid menstrual leave annually. Where a casual employee exhausts 2 days of paid menstrual leave, they may request unpaid menstrual leave. The employer must not unreasonably refuse a request for unpaid menstrual leave.
- (3). The employee taking menstrual leave must either:
 - a. Be experiencing debilitating menstrual or menopause symptoms; or
 - b. have a well-founded belief that they will be experiencing debilitating menstrual or menopause symptoms that render them unable to work.
- (4). The employee must notify their employer of their inability to attend work as early as practicable.
- (5). The employee is not required to provide the employer with medical evidence in order to utilise paid menstrual leave entitlements.
- (6). Menstrual leave entitlements do not accumulate from year to year.
- (7). Menstrual leave entitlements operate in addition to other leave entitlements.

⁹¹ FW Act ss 95–101; *Goodstart Early Learning Enterprise Agreement 2016* cl 42; Future Super, 'Menstrual and Menopause Leave Guidelines' (February 2021) < https://docs.google.com/document/d/1Aafj2Q_t2JghLjgwLoIHNIvq53v4A1vdfNk6Uqakhag/edit>.

Menstrual Flexibility

This clause is based on the flexible work arrangement provisions under the FW Act and New Zealand's *Domestic Violence – Victims' Protection Act 2018*.⁹² It takes into account the barriers for diagnosing endometriosis and adenomyosis, and the unreasonable requirement of evidence for predictable, chronic and short-lived pain for which a doctor will not provide an ongoing medical certificate. It also recognises that people will not need the same accommodations as each other or for every menstrual cycle.

Flexible working arrangements for employees experiencing menstrual or menopause symptoms

- (1). Employees are entitled to short-term (2 days) flexible working arrangements if:
 - a. the employee is experiencing or is expecting to experience menstrual or menopause symptoms; and
 - b. the employee would like to change their work arrangements because of those circumstances; and
 - c. the employee has made a request for a change in work arrangements relating to those circumstances.
- (2). The employee requesting a change to work arrangements must either be experiencing menstrual or menopause symptoms or have a well-founded belief that they will be experiencing symptoms.
- (3). Flexible working arrangements may include one or more of the following:
 - a. change in hours of work;
 - b. change in patterns of work;
 - c. change of days of work;
 - d. change in location of work, such as working from home;
 - e. change in duties at work;
 - f. longer or more frequent breaks; and
 - g. any other change.
- (4). Casual, part-time and full-time employees have the ability to request flexible working arrangements for menstrual or menopause symptoms regardless of the length of their continuous employment.
- (5). Employees may request ongoing flexible working arrangements to establish a pattern of work to accommodate recurring or chronic menstrual symptoms.

Formal requirements

- (6). The request must set out details of the change sought and of the reason for the change, and would ideally be in writing.
- (7). A medical certificate or other evidence is not required.

Agreeing to the request

- (8). The employer cannot refuse the request, unless:
 - a. The employee would be unable to perform the inherent requirements of the position, even with the introduction of a flexible work arrangement; or
 - b. Agreeing to the request would impose unjustifiable hardship on the employer.

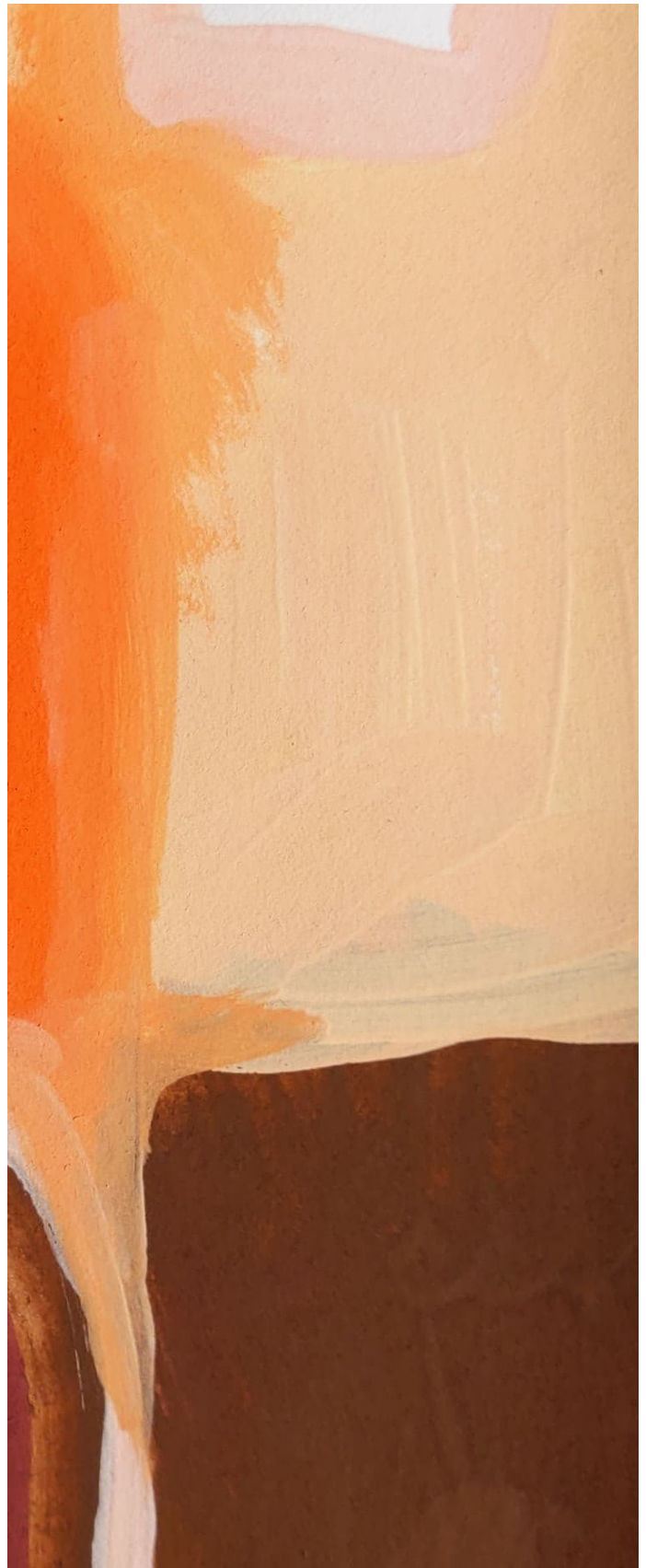
⁹² FW Act ss 65–66; *Domestic Violence – Victims' Protection Act 2018* (NZ) ss 69AB–69ABK.

Other reforms

We considered reforming the FW Act to include an entitlement to 12 days of paid menstrual leave. This could be included in the NES for all employees who menstruate, including casual employees. The inclusion of casual employees is important as the current casual loading could not offset leave that is not uniformly available. Furthermore, menstrual leave should not accrue year-to-year, as other leave entitlements do; this reflects the cyclical, predictable nature of menstruation.

The eligibility criteria for requesting flexible working arrangements under section 65 of the FW Act could be expanded to include employees experiencing ‘debilitating menstrual or menopause symptoms’. However, the fact that it is merely a request, may require monthly medical certificates and provides employers with 28 days to respond makes it inaccessible. A new section, similar to the menstrual flexibility policy above, could be introduced to the FW Act to facilitate flexible working arrangements for menstrual symptoms.

Alternatively, modern awards could include menstrual leave and flexibility entitlements, in similar form to the above clauses. This could address menstrual stigma and the impacts of menstrual symptoms by strategically targeting industries dominated by people who menstruate.⁹³ Alternatively, industries that have fewer employees that menstruate could introduce it with little risk of productivity loss. This could inform other industries of the benefits and ease of introducing menstrual leave and flexibility.



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 93 Childcare services, for example, and its *Children's Services Award 2010*.

VII. Implementation considerations and challenges

There may be a range of practical, legal and social challenges when implementing an effective menstrual policy. People may raise oppositional arguments - or counter arguments - to menstrual leave and flexibility policies. Below we address some key counter arguments to help others respond to them in their workplace.

A. Counter arguments

“It is too expensive for employers”

Although employers may think that a menstrual policy will increase the financial burden on them, the reality is that productivity is already being lost due to debilitating menstrual symptoms, in the form of absenteeism and presenteeism (discussed in **Part IV(A)**).

Introducing a menstrual leave policy will likely have a positive impact on productivity and the issue of absenteeism and presenteeism. Overall, employers would actually benefit and create an environment where workers’ individual circumstances are considered and respected.

Menstrual policies would assist employers to understand the needs and true productivity of employees. It may lead to savings associated with employee productivity, office-space utilities and recruitment costs. The employer will be placed in a better financial position or, in the worst case, left in the same position.

The real benefit, however, is social. By establishing a supportive, open and accommodating workplace, employees will feel less ostracised and more committed to the workplace and their role within it.⁹⁴

“Leave and flexibility should be offered to all employees with any chronic health condition”

We hope advocacy in this space will lead to broader future change, with additional leave and flexibility extended to other classes of employees. We strongly believe that leave entitlements and flexible working arrangements should be broadened to meet the needs of all people living with chronic illness and health conditions. Menstruation is just one reason why the current 10 days of leave is insufficient.

Workplace challenges experienced by employees with painful periods are similar to the challenges of disabled or chronically ill employees. Similar taboos and systemic marginalisation occur across these demographics, and require targeted and nuanced responses to improve employment environments for these groups.

However, the diverse and nuanced experiences of chronic illness and disability go beyond the scope of this report. Instead, this report uses menstrual symptoms as a lens through which we can highlight the inadequacy of our current employment entitlements. We considered incremental change, building on the #metoo movement and the recent and loud advocacy for gender equality in the workplace, created a platform from which to make pragmatic progress towards more inclusive leave and flexibility policies.

94 See, for example, anecdotal responses to Future Super’s new menstrual and menopause leave, Khaila Prasser, ‘A bloody good policy’ (Blog post, 12 February 2021) <<https://www.futuresuper.com.au/blog/a-bloody-good-policy/>>.

“Employers will stop hiring people who menstruate”

Discriminatory hiring practices would not be a product of menstrual policies but rather the pervasive issue of gender and sex discrimination. If discrimination is linked to menstrual stigma, menstrual policies are one tool to dismantle the stigma and unconscious bias more generally. Employers should actively facilitate gender equality, assisting employees to overcome barriers to workplace participation. This requires educating employees of their conscious and unconscious biases, and the financial and social benefits of menstrual policies.

“Menstrual leave is not necessary. It isn’t feminist.”

Current minimum leave entitlements appear to be gender-neutral and consistent across the Australian workforce. People who require additional leave may be seen as unwell, weak or lazy, and a productivity liability for their employer. This is an assimilationist workplace model; the needs of all employees are considered to be equal and realising equality means providing the same conditions to everyone.⁹⁵

In the assimilationist model, menstrual policies may create barriers for female employment and promotion. Highlighting menstruation as a reason for leave or flexible working arrangements may be perceived as an inherent female weakness, rendering women inferior employees. We all know that isn’t true, and that’s why some people consider the policies to be anti-feminist.⁹⁶

However, what needs to be acknowledged is that menstrual policies challenge the assimilationist status quo.⁹⁷ Instead, menstrual policies recognise that true equality requires supporting classes of people and individuals to overcome barriers specific to them. It is a step towards more egalitarian leave entitlements generally, recognising the diversity of experience and needs within our communities.

While many people’s menstrual symptoms inhibit their ability to participate at work - as our survey demonstrated - they do not necessarily require the same workplace support; some may need to work from home, others may need to schedule a regular day off each cycle, and others may need to use a heat pack at work and take time to stretch or sit on the toilet while menstruating. These things should not be shameful or perceived as weaknesses, and should not be barriers to employment and promotion. All females, and all people, should be supported to openly communicate to their employer what they need to be productive and valued members of a workplace. In this sense, menstrual policies may create more realistic opportunities for females to be employed and promoted and contribute towards creating a more equal workplace structure.

“Ten days of personal leave should be enough”

Ten days of paid leave per year may be enough to address short-term, incidental illness and caring responsibilities. However, it fails to meet the needs of people with regular, debilitating and ongoing health issues. As outlined in **Part III(A)**, diagnosed endometriosis already results in an estimated six days of leave per year per person.⁹⁸ This does not account for those who remain at work with debilitating pain because they cannot afford to take time off. Evidently, ten days of leave limits people’s ability to either use leave for its intended purpose – to manage acute and chronic health issues or caring responsibilities – or for managing debilitating menstrual symptoms.

Some may suggest that accumulating leave makes it manageable. However, people with debilitating menstrual symptoms or chronic health issues are more unlikely to have this luxury compared to able-bodied, cisgendered male employees. Moreover, even if employees accrue leave, it is not a sustainable solution. In the contemporary job climate, people move jobs with increasing frequency. Rarely do industries allow people to carry leave entitlements between employers.

94 See, for example, anecdotal responses to Future Super’s new menstrual and menopause leave, Khaila Prasser, ‘A bloody good policy’ (Blog post, 12 February 2021) <<https://www.futuresuper.com.au/blog/a-bloody-good-policy/>>.

95 See *Ex Parte H.V. McKay (Harvester Case) (1907) 2 CAR 1*.

96 See, for example, Barkha Dutt, ‘I’m a Feminist. Giving Women a Day Off for Their Period is a Stupid Idea’ (4 August 2017) *Washington Post* <<https://www.washingtonpost.com/news/global-opinions/wp/2017/08/03/im-a-feminist-but-giving-women-a-day-off-for-their-period-is-a-stupid-idea/>>.

97 See *Ex Parte H.V. McKay (Harvester Case) (1907) 2 CAR 1*.

“Employees would misuse menstrual leave”

There is no reason to expect people who menstruate to misuse leave and flexibility entitlements. In fact, the VWT reports that none of its employees used up their menstrual and menopause leave, with the majority of eligible employees using none.⁹⁹ Similar policies involving trust, such as paid domestic-violence leave in New Zealand and remote working during the pandemic, demonstrate that people do not tend to misuse workplace entitlements.¹⁰⁰

Requiring medical evidence may mitigate the risk of employees misusing leave entitlements. However, obtaining medical certificates is burdensome; as doctors are unable to provide ongoing certificates for menstrual pain, employees have to visit the doctor every cycle even though they know it is a routine, benign and ephemeral experience.

It is preferable that employers establish trust with their employees, and do not create unnecessary barriers to equality. If employees feel supported and trusted, they may manage their menstrual symptoms in more creative and open ways, reducing the associated stress and lingering symptoms. For example, taking half an hour to lie down or use a heat pack may reduce employees’ need to take leave. Understanding the needs of employees and how best to support them to do their best work requires trust between employer and employee. Accessible menstrual policies is one step towards a trusting, inclusive workplace.

“Menstrual policies are sexist against men”

The Victorian Equal Opportunity and Human Rights Commission notes:

The Equal Opportunity Act 2010 recognises that when we treat everyone the same it can have a different outcome, or unequal results, for people. Therefore, the Act allows and encourages people and organisations to treat people differently in specific situations if those people or organisations are taking action to address genuine equality for disadvantaged groups. This action is called a special measure and it aims to achieve ‘substantive equality’.¹⁰¹

Special measures are about giving everyone a fair go. One example is a company that has very little disability representation among its employees. A special measure would be creating positions for and advertising to people with various disabilities to help address the diversity issue.

Workplaces where a class of people - such as people of the female sex - feel pressure to work whilst in debilitating pain or take personal leave for a natural, physical cycle may consider taking special measures to assist. Menstrual policies may be reasonable and proportionate to alleviate the barriers people who menstruate face with respect to employment, promotion and workplace impact. These policies would help place people who menstruate on equal footing to able-bodied workers who do not.

98 Ernst and Young, *The Cost of Endometriosis in Australia* (n 23) 18.

99 Triple J Hack, ‘40% of Women Are Taking Days Off. Should We Have Paid Period Leave?’ (n 63).

100 Jessica Irvine, ‘Slacking off working from home? The productivity tsar doesn’t think so’ (12 July 2021) *The Sydney Morning Herald* <<https://www.smh.com.au/business/the-economy/slacking-off-working-from-home-the-productivity-tsar-doesn-t-think-so-20210709-p588er.html>>; Australian Government Productivity Commission, ‘Working from home – commissioner research’ (Web Page) <<https://www.pc.gov.au/research/current/working-from-home>>; Domestic Violence – Victims’ Protection Act 2018 (NZ).

101 Victorian Equal Opportunity and Human Rights Commission, ‘Special Measures’ (Web page) <<https://www.humanrights.vic.gov.au/for-organisations/special-measures/>>; see also *Equal Opportunity Act 2010* (Vic) s 12; *Sex Discrimination Act 1984* (Cth) s 7D(1)(a).

B. Overcoming menstrual stigma

Even when available, employees may not use menstrual leave or flexibility entitlements.¹⁰² In Japan, menstrual leave has been available since 1947, yet appears to be underutilised.¹⁰³ Whilst there is inadequate research on why it is not used, anecdotal evidence suggests it is due to menstrual stigma, which is also preventing Australian young people from going to school.¹⁰⁴

Traditional attitudes to menstruation pervade our workplaces today.¹⁰⁵ Employees who are openly managing menstrual symptoms may be judged by others as unclean, unreliable and unprofessional. Alternatively, employees may merely fear adverse perceptions, judgement or losing opportunities for promotion if they ask for leave or flexibility to manage their symptoms.

Accessible and effective menstrual policies also require cultural change. As a society, and as employers or carers, we must encourage others to feel safe when talking about menstruation or menopause. We must encourage and facilitate open discourse around menstruation whilst respecting individuals' right to non-disclosure.

C. What about casual employees?

Casual employees account for around 25% of the Australian workforce.¹⁰⁶ It is, therefore, important to provide them with menstrual leave and flexibility. While casual employees are not entitled to leave under the NES, they receive an increased hourly pay rate or 'loading' of around 20 to 25% as reasonable compensation.

In the future, the casual loading could be increased to account for menstrual leave. While this may be problematic as not every casual employee would be eligible for menstrual leave, it may support people with wider chronic health issues. This may have the added benefit of disincentivising casual employment arrangements in favour of ongoing employment.

Alternatively, casual employees could be entitled to menstrual leave and flexibility. As outlined in the template clause above, casual employees could be entitled to request flexible working arrangements or access a prescribed number of days of paid menstrual leave each year, with the opportunity to request additional days if needed. While this strays from Australia's traditional casual employment remuneration system – being the loading system – it may be a pragmatic and economically viable way to accommodate a large portion of the workforce that experience debilitating menstrual symptoms.

102 See **Part II(A)** for further detail on the ineffective nature of menstrual entitlements in other countries.

103 Labour Standards Act 1947 (Japan) art 68 (online translation) <http://www.japaneselawtranslation.go.jp/law/detail_main?id=5&vm=2&re>, stating '[w]hen a woman for whom working during menstrual periods would be especially difficult has requested leave, the employer shall not have the said woman work on days of the menstrual period.'; see also Justin McCurry 'Period policy in Asia: time off 'may be seen as a sign of weakness'' (4 March 2016) *The Guardian* <<https://www.theguardian.com/lifeandstyle/2016/mar/04/period-policy-asia-menstrual-leave-japan-women-work>>.

104 Rani Hayman, 'Girls are staying away from school when they have their period, research shows' (27 April 2021) *ABC* <<https://www.abc.net.au/news/2021-04-27/girls-staying-away-from-school-because-of-period-research/100098630>>; Liz Gwynn, 'Tasmanian businesses urged to introduce menstrual, menopause leave to help remove stigma' (12 July 2021) *ABC* <<https://www.abc.net.au/news/2021-07-12/tasmanian-businesses-called-to-introduce-menstrual-leave/10028455>>.

105 Jane Bennett and Karen Pickering, *About Bloody Time* (n 52) 94–6.

106 'Fact check: Has the Rate of Casualisation in the Workforce Remained Steady for the Last 20 Years?' (12 July 2018) *ABC News* <<https://www.abc.net.au/news/2018-04-17/fact-check-casualisation/9654334>>.

VIII. Conclusion

Achieving gender equality in the workplace requires the erosion of menstrual stigma. As a thriving country with an emphasis on workplace diversity, it is surprising that very few organisation – including Modibodi, Future Super and the VWT – have formally and publicly established menstrual policies.¹⁰⁷

This report demonstrates the individual, commercial and societal benefits of introducing menstrual policies. Whether you are an individual employee, an employer or a union representative, we encourage you to start talking about what form of menstrual policy suits your workplace or industry. Our factsheets - available on the Rights Advocacy Project website - provide some practical guidance for the development of your future policies.

Ultimately, we urge you to consider how you are facilitating menstrual stigma through action and inaction. The greatest source of stigma comes from within, and by overcoming our own internalised shame or judgement, we can encourage others to challenge theirs. With almost half the Australian workforce experiencing menstruation, and being increasingly employed across all industries, the moment for menstrual and menopause reform is now.



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¹⁰⁷ The authors are only aware of Modibodi, Future Super and the VWT's menstrual and menopause policies, yet acknowledge that others may exist.

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X. Appendices

Appendix A: Survey Data

We designed an online survey to collect data and anecdotal evidence about people's personal experience of dealing with menstruation in the workplace. A total of 464 responses were received.

While the results of the survey are useful to understand the lived experiences of people coping with menstruation and its symptoms in the workplace, we acknowledge that those who chose to participate were likely to be motivated by an existing interest in the topic or their experiences of severe menstrual pain. As such, the survey results should not be viewed as a representative sample, but rather as a snapshot of those who chose to share their experiences and assist with the creation of this report. The anecdotal and voluntary nature of the responses means that the data cannot necessarily be extrapolated to the broader population. However, it does provide important information about the underlying widespread issues of menstruation in the workplace and provides justification for further quantitative and qualitative research into this topic.

Scope and methodology

The survey was shared on Facebook and LinkedIn and participation was voluntary. The survey contained nine questions in total, with an additional question at the end to ask respondents whether they consented to us using their answers in our report and campaign.

Firstly, questions one to three were used to ask respondents about their current employment and whether they had been diagnosed with endometriosis or another menstrual-related condition. The exact questions and number of responses are detailed below:

Question one: Are you employed?

- Unemployed: 27
- Casual: 72
- Part time: 82
- Full time: 241
- Self-employed: 16
- Independent contractor: 6
- Other (please specify): 20

Question two: What industry are you working in?

- Agriculture: 3
- Construction: 9
- Accommodation and Hospitality: 32
- Retail: 38
- Professional, Scientific and Technical Services: 78
- Manufacturing: 4
- Education and Research: 68
- Healthcare and Social Assistance: 89
- Transport, Postal and Warehousing: 7
- Public Administration and Safety: 25
- Other: 107

Question three: Have you been diagnosed with endometriosis or a menstrual-related condition?

- Yes: 162 (35%)
- No: 301 (65%)

Managing period pain in the workplace

Secondly, questions four to six were used to ask respondents to describe their period pain, whether it had impacted their work or study, and whether they had taken personal or sick leave. For those who had taken time off, we asked them to specify how many days per year this tends to be.

Question four: How would you describe your period pain?

- Frequent severe pain: 98
- Occasional severe pain: 139
- Occasional mild pain: 74
- No pain: 4
- N/A: 3
- Other: 14

Question five: Has your period pain ever impacted your work or study?

- No: 54
- Yes (please describe): 410

Question six: Have you ever taken personal or sick leave due to period pain?

- No: 172
- Yes (please specify how many days per year): 292

The following bar graph shows how many days of personal or sick leave, on average, respondents believed that they were taking off from work each year due to period pain. Approximately 63% of respondents reported taking at least one day of leave a year.

Graph 1: Number of days taken off annually due to menstrual symptoms

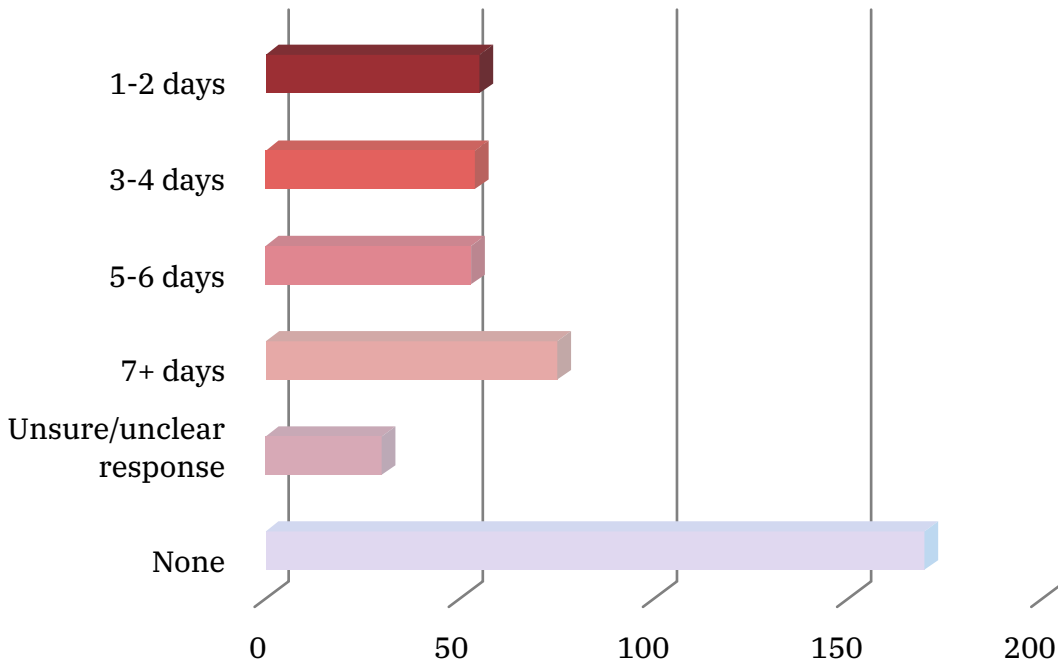


Image description: Bar graph showing approximately 55 responses for '1-2 days', 54 responses for '3-4 days', 53 responses for '5-6 days', 75 responses for '7+ days', 30 responses for 'unsure/unclear response' and 170 responses for 'none'.

One respondent, who has two part time jobs in youth work and social assistance, stated:

I have often had to take leave due to period pain and had the unfortunate experience of being bullied by a manager as a result of this. I worked at a law firm and was forced to endure a number of highly invasive and uncomfortable conversations around my needs for flexibility. For example, the ability to work from home was something I often requested but was denied. Had I been able to work from home during difficult periods, I wouldn't have had to take as much personal leave or exhausted my annual leave.

Respondents were then asked about what they did when they had exhausted all their leave but still had menstrual symptoms that interfered with their work.

Question seven: If you answered yes to the previous question - what did you do when you had exhausted all your sick/personal leave and still had menstrual symptoms that interfered with your work?

- Answered: 367
- Skipped: 97

The graph below presents the different methods that respondents used to cope with menstrual pain at work. Leave without pay was the most common method for coping with menstrual pain at work, representing about 47% of the 217 respondents.

Graph 2: Primary method of dealing with menstrual pain in the workplace

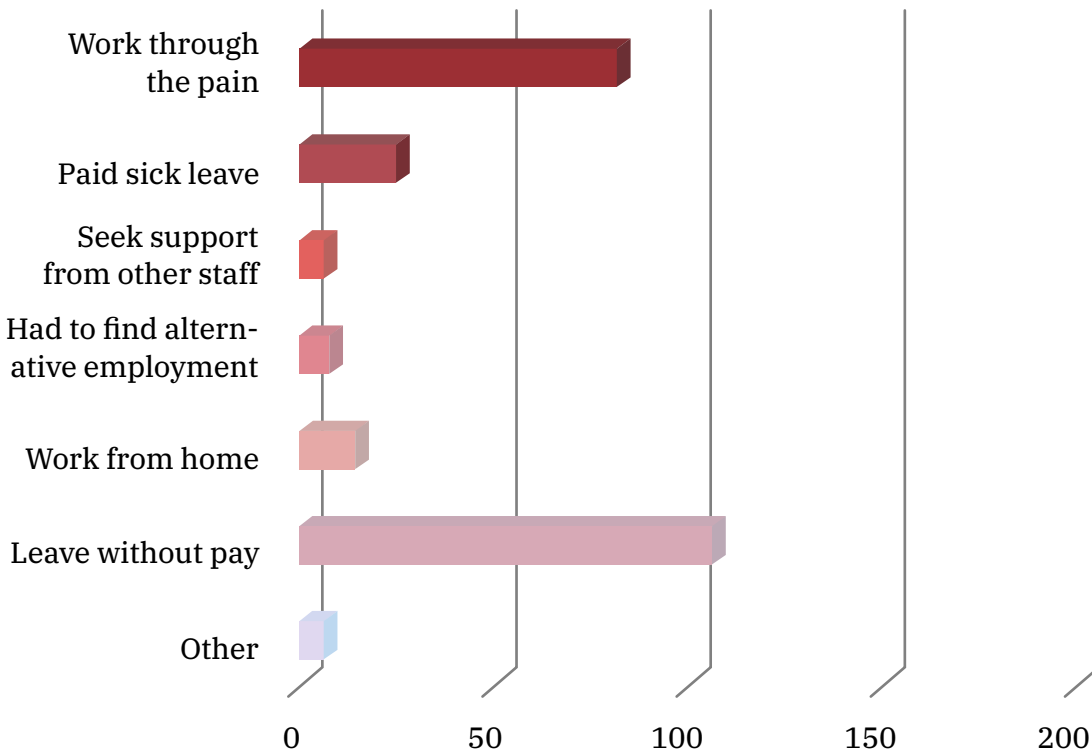


Image description: Bar graph showing approximately 80 responses for 'work through the pain', 20 responses for 'paid sick leave', 3 responses for 'seek support from other staff', 5 responses for 'had to find alternative employment', 10 responses for 'work from home', 103 responses for 'leave without pay' and 3 responses for 'other'.

Some respondents reported saving their personal leave and going to work when they were unwell to ensure they had enough available leave to manage menstrual symptoms. Others reported using the contraceptive pill to avoid having their period altogether, with menstrual pain being the primary reason that they were prescribed this. Some of those who ‘worked through the pain’ reported increases in bathroom visits, anxiety over bathroom access and vomiting at work as a result of the pain.

An issue that appeared repeatedly in the responses was the absence of paid sick leave for casual employees, freelance workers or independent contractors. This further demonstrates how the NES provides inadequate protections for the growing number of people who fall outside of the typical full-time employment model.

A significant theme across all responses was the impact of menstrual stigma. Respondents reported feeling uncomfortable discussing their symptoms in front of others, particularly male bosses, and feelings of embarrassment and anxiety about their menstrual symptoms at work. The experience of physical pain was clearly amplified by an additional mental burden of anxiety and shame, and the need to hide one’s menstruation from work colleagues.

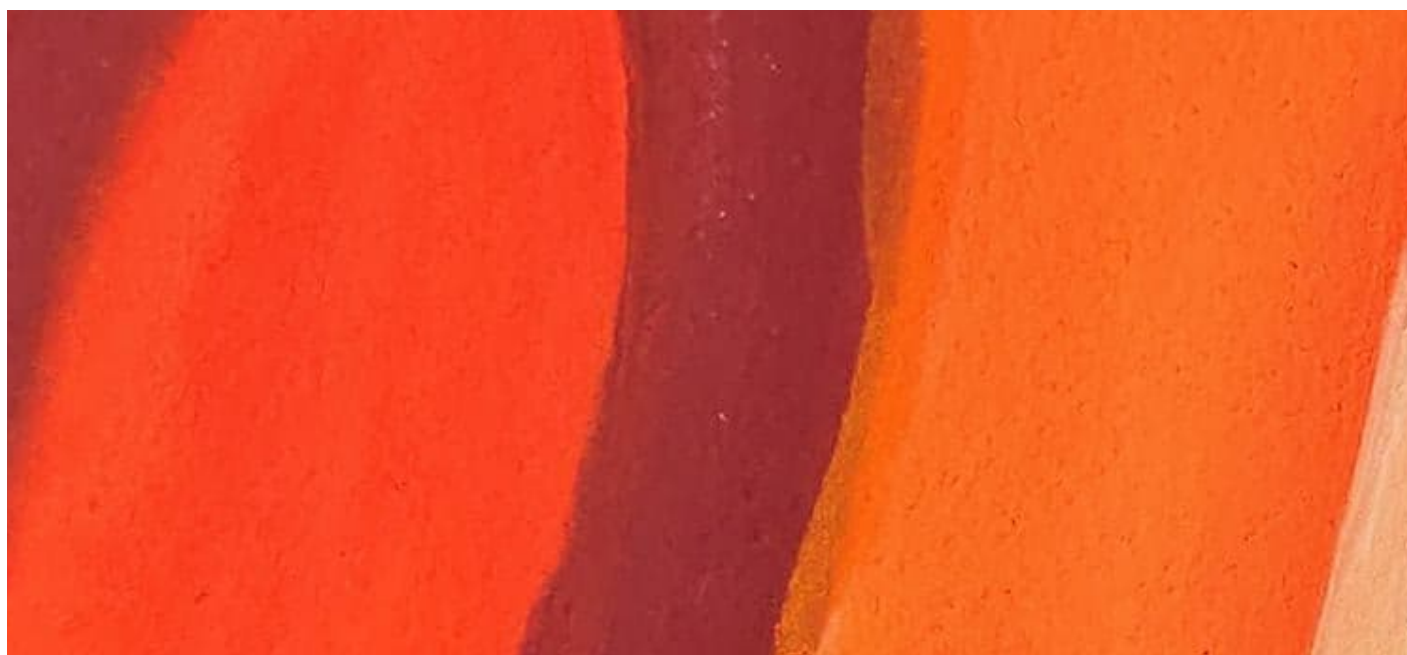
In response to questions six and seven, many respondents reported how their employers believed that menstrual pain was not a strong enough justification for employees accessing their paid sick leave. The majority of respondents who did access paid leave to cope with their menstrual symptoms reported having to lie about the reason they were taking leave. Some respondents who were honest about their symptoms reported being scrutinised for taking too much time off work, and others were forced into seeking alternative employment as a result.

One respondent, who reported taking one to two days off each year, stated:

Usually I work through, even though I am not very productive. I don’t want to take too much personal leave because I am worried that my workplace would think that I am faking or that they would make unfavourable conclusions about the ability of women and other people who menstruate to do our jobs.

Another respondent stated:

I had to have HR meetings to explain why I had so much time off and was given multiple warnings. It was also questioned as to whether my medical problem was even real, and it was strongly implied that I was just “slacking off”.



How workplaces could better accommodate menstruation

Lastly, questions eight and nine were used to ask respondents how their workplace deals with people experiencing period pain and what changes in the workplace would help them cope with menstruation better.

Question eight: How does your workplace deal with people experiencing period pain? What are your experiences of trying to manage period pain in your workplace?

- Answered: 424
- Skipped: 40

Question nine: Do you have any stories you would like to share with us involving employment and menstruation, and is there anything specifically that you want to see changed in your workplace?

- Answered: 255
- Skipped: 209

The most common response was the availability of work from home options. Respondents also asked for more paid leave without the requirement of a doctor’s certificate. Many discussed how they wished they could take a day off without “feeling guilty” about it.

Another important theme was cultural change. Respondents believed that their ability to cope with menstruation at work could be greatly improved if their symptoms were taken more seriously, and they could discuss these issues openly without shame or fear.

One respondent, who works full-time in education, stated:

More recognition of the impact periods and period pain has on people would be helpful. Office supplies to include tampons and sanitary pads would be a good sign that the workplace recognises it. Recognition that this issue impacts people with periods more than people without, and perhaps adjusting sick leave allowances to cover that.

Another respondent, who works part-time in retail, also stated:

I would love for there to be an option as one period leave day a month. Usually women don’t need to take a day off every month but in the off chance it’s a very painful period, it would be very supportive to know there would be that option. Also, more education surrounding periods for male colleagues, and recognising that periods are not a sickness, so therefore we should not have to use sick leave.



MENSTRUAL
EQUITY
FOR ALL!
SUPPORT
MENSTRUAL LEAVE/
FLEXIBLE WORK
ARRANGEMENTS

BLEED
with
DIGNITY

It's that
time of
the
month...
to REST

DON'T
DISCRIMINATE
AGAINST
THOSE WHO
MENSTRUATE

Everyone
deserves
a bloody
good
period

EQUALITY
UNDERSTANDING
DIFFERENCE

ABOUT
BLOODY
TIME!

WE ARE NOT
OVARY-ACTING

Sometimes we need
to be able to
go with the
flow...