

The Reproductive Body in Law, Policy and Bargaining

Welcome!

This report focuses on our Body@Work Project Research Network Workshop, which was held both online and in-person at the University of Sydney in November 2022.

The theme of the workshop was the **Reproductive Body in Law, Policy and Bargaining** and explored how governments, employers and unions are increasingly turning their attention to the body at work and its implications for gender equality and workforce sustainability. The presentations highlighted a range of reproductive health concerns and interventions that require attention in law and workplace policy reform including menstruation, endometriosis, fertility treatment, pregnancy loss and menopause.

Thank you to those who attended and presented, it was wonderful to learn more about the exciting work and research that is happening in this multi-disciplinary field and we look forward to hosting another research workshop in the future.

Sydney, Liz and Marian

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The Body@Work Project and Newsletter is convened by Sydney Colussi, A/Prof Elizabeth Hill and Professor Marian Baird, the University of Sydney

About the workshop

Co-convenor of the Body@Work Project, Associate Professor Elizabeth Hill, opened the workshop with an Acknowledgment of Country and recognised the tradition of custodianship and law of the Gadigal People, on whose land the University of Sydney campus stands.

Elizabeth provided important background information and context on the Body@Work Project and theme of the 2022 research network workshop: The Reproductive Body in Law, Policy and Bargaining. Elizabeth explained the theme of the workshop responds to the growing interest of governments, employers and unions in Australia and globally in workplace inequalities related to the reproductive body in a context of rising female workforce participation. This is reflected, Elizabeth argued, in the rapid rise of public and private sector policies that address a range of reproductive health concerns over the life course such as menstruation, fertility treatment, pregnancy, breastfeeding, pregnancy loss and menopause.

In Australia, Elizabeth noted these issues have received increased attention from state and federal governments over the past year. In New South Wales, the government introduced paid leave for miscarriage for public sector workers, while also announcing public investments in IVF and fertility treatment services and specialist menopause health services. The former federal Coalition government under Prime Minister Scott Morrison also amended national legislation to include miscarriage as a ground for paid compassionate leave. And in its first Women's Budget Statement, the newly elected federal Albanese Labor government included a statement on sexual and reproductive health that acknowledged the impact of menstruation and menopause on the health, education and workforce participation of women and girls.

As the reproductive body is increasingly the focus of legal, industrial and public policy, Elizabeth argued it was timely for scholars, unionists and employers to share their research and insights on this important topic. The workshop was an opportunity for academics and professionals from a diverse range of fields and disciplines to discuss legal and policy challenges in this area and pathways forward to help us better support the reproductive health needs of all people, regardless of age or gender.

“There is growing research evidence that shows that when our workplaces and our public policy settings fail to recognise workers’ physical, and particularly reproductive needs, there can be a negative impact on broader socio-economic and demographic trends and gender equality. And you’ll also know that an increasing body of research shows how our reproductive health can affect labour force participation at any stage of the life cycle from menstruation to endometriosis, to IVF and fertility treatments, pregnancy and pregnancy loss, breastfeeding, right through to menopause”

– Associate Professor Elizabeth Hill

Workshop presentations

Law

Sydney Colussi – University of Sydney

Menstruation, menopause and the human right to work

Sydney presented a draft paper that is exploring the human right to work for people who experience menstruation and menopause in the workplace. Sydney argued labour market inequalities related to these bodily functions are a global problem, but that this issue has not been adequately recognised in human rights law, with rights and protections for the reproductive body at work limited to pregnancy and parenthood. Drawing on feminist theory, Sydney showed how this paper is developing a critical reading of the right to work that starts to take menstruation and menopause into account. Sydney argued this approach could help to make menstruation and menopause more visible in human rights law and workplaces across the world, which too often overlook and fail to accommodate these inherent features of the body.

“The aim of this project was to try and understand to what extent the human right to work offers protection to people who experience menstruation and menopause in the workplace”

– Sydney Colussi

Dr. Gabrielle Golding – University of Adelaide

Paid period leave for Australian women: A prerogative not a pain

Gabrielle presented a paper published in the Sydney Law Review that addressed the following question: should Australian women be entitled to paid menstrual leave under the Fair Work Act 2009 (Cth)? This question responds to the current provision for personal/carer’s leave under the Act, which only entitles national system employees to paid leave in the case of a personal illness or injury. Gabrielle argued it is problematic for workers to have to use “sick” leave for menstruation, which is an innate feature of the human body. Gabrielle noted that while menstrual leave could arguably be a hindrance to gender equality, it

could also help to accommodate difference in national employment law and for this reason was worth considering.

“Periods in and of themselves shouldn’t be classed as an illness or an injury. We do of course acknowledge that there are conditions like endometriosis, PCOS and the like which certainly would be classed as an illness or injury for that purpose, but having a period in and of itself is not – it’s a natural part of being female”

– Dr. Gabrielle Golding

Policy

Professor Gavin Jack – Monash University

Women’s health in/and work: Menopause as an intersectional experience

Gavin presented a paper published in the International Journal of Environmental Research and Public Health that applies an intersectional lens to the experience of menopause in the health care and higher education sectors. Gavin argued an intersectional approach is important because the literature on this topic often focuses on individual symptom management rather than the role of social and organisational structures in contributing to menopause-based inequality at the intersections of age, class, ability, race, ethnicity, health and socio-economic status. The findings of this paper have important implications for law and policy reform, particularly the fact that menopause is a diverse experience that requires careful consideration in order to address the concerns of different groups of people in different types of work.

“Forms of inequality that are ... often experienced by women transitioning through menopause are intersectional in nature and differ depending on whether one is looking at a gender, age lens or a gender, race and ethnicity lens or a gender and socio-economic class lens or a gender and health status lens”

– Professor Gavin Jack

Associate Lecturer Sarah Carter (Charles Darwin University) and Professor Kirsten Black (University of Sydney)

Menopause workplace policy: The way forward or backward?

Sarah presented a paper published in the Australian and New Zealand Journal of Obstetrics and Gynaecology that considers the risks and benefits of workplace menopause policies and the essential role of the healthcare system in providing support to people experiencing menopause. Sarah argued menopause policies may improve conditions for some people who are experiencing difficulties but that these policies created a broader risk of contributing to age and gender discrimination in the workplace and preferential treatment of male employees. Given that menopause is a highly diverse experience that may require medical treatment tailored to individual needs, Sarah argued it is critical to consider the responsibility of health care providers, as well as employers, in ameliorating workplace inequalities related to this life transition.

“[E]very woman goes through a different experience of menopause. Some women are going to have absolutely no symptoms and they’re just going to fly through it ... And then the women who are on the other end of the spectrum ... are having such severe symptoms that they just can’t even do their day-to-day tasks and then there’s a whole lot of grey in the middle”

– Associate Lecturer Sarah Carter

Dr. Mike Armour, Dr. Sarah Duffy, Associate Professor Emilee Gilbert and Dr. Michelle O’Shea – Western Sydney University

What’s the bloody big deal? How Australian workplaces and educational institutions can help break the menstrual taboo

Mike, Sarah, Emilee and Michelle presented a white paper on menstrual equity that was written with the aim of creating an accessible resource that people could share with their colleagues or employers to start a conversation on this important topic. The research team presented a range of challenges that need to be addressed in educational institutions and workplaces, including menstrual stigma, the prevalence and significant impact of “dysmenorrhea” (period pain), and inadequate organisational policies and infrastructure. The team argued it was time to make these issues more visible and to explore new opportunities

for policy development and change, such as flexible menstrual policies and free period products, while also challenging negative institutional and cultural attitudes toward menstruation.

“[T]hrough shame and stigma, women have been made responsible for keeping ourselves and our leaky bodies under control. We really can’t underplay the significant amount of labour and cost involved for women when adhering to social acceptability around the menstruating body”

– Associate Professor Emilee Gilbert

Mary Crooks AO – Victorian Women’s Trust

Menstruation and menopause policy

Mary is the Executive Director of the Victorian Women’s Trust, one of the first Australian employers to implement a menstruation and menopause policy that provides paid leave and flexible working arrangements for these issues. Mary presented findings from a survey of 3,500 people that informed the policy, for example that 40% of respondents felt negatively about their period. However, respondents noted the following would make menstruation and menopause a more positive experience in the workplace: time to rest, more affordable menstrual products, having reliable information, talking openly and being able to request time off or workplace adjustments. In light of these findings, Mary argued a menstrual policy was a “no-brainer” and an important opportunity to challenge the menstrual taboo, which Mary observed has been a pervasive issue across centuries and civilizations.

“[W]e can’t have a gender equal world when women are still feeling a source of shame about their bodies ... We need to strip the taboo of the power that it still holds. We need to dismantle it for good. We have to actually smash it out of the park, because you know what, only benefits will fly”

– Mary Crooks AO

Dr. Jane Carland – University of New South Wales

Experiences of Australian women on returning to work after miscarriage

Jane presented a paper published in Community, Work & Family that explores the return to work experiences of women who have had a miscarriage through a survey of over 600 Australian women. The study found that 85% of respondents took leave following their miscarriage for a median of 7 days, while 1.5% resigned due to their loss. The study also found that while most respondents received informal support from colleagues following their loss, there was either minimal formal support or negative reactions from employers. This study was conducted in 2020 and provided evidence to support the Pink Elephants Support Network “Leave for Loss” campaign for bereavement leave following early pregnancy loss. This campaign culminated in important policy reform in 2021, with NSW making paid bereavement leave available to public sector workers for pregnancy loss and the federal government amending legislation to include miscarriage as a ground for compassionate leave.

“What do we need? What we see in our studies is that we need to start the conversation. We need to acknowledge loss [and] that women also need access to leave. They need workplace flexibility and support. They’re not just suffering a physical toll following their loss, there is also an emotional toll, and if we want our workforce and women in our workforce running strong, we need to support them through this”

– Dr. Jane Carland

Bargaining

Kate Marshall – Health and Community Services Union (HACSU)

Reproductive health and wellbeing leave

Kate is the Assistant State Secretary of the Health and Community Services Union (HACSU), which has been bargaining and campaigning for Reproductive Health and Wellbeing Leave in Victoria. This policy would provide workers with paid leave and workplace flexibilities for a range of health and wellbeing issues such

as fertility treatment, pregnancy loss, endometriosis and menopause. Kate discussed the origins of the clause at HACSU, which is a female-dominated union in the mental health and disability care workforce. Conversations with union members revealed a pattern of reproductive health-related challenges. Members were hesitant to seek support from employers and unable to address these health concerns with sick or carers’ leave, which was either quickly depleted or reserved for caring obligations in the context of the COVID-19 pandemic. The reproductive leave clause was designed to address these issues and to “start the conversation” around these stigmatised topics in the workplace.

“In surveying our members, we know that 45% of our members, who are going through menopause, [some] were actually considering taking early retirement due to their menopausal symptoms, which is terrifying because that’s where the corporate knowledge really is – you can train anyone, have all these grad nurses coming in, it’s fantastic, but that on-the-floor experience will leave due to their menopausal symptoms”

– Kate Marshall

Dr. Darius Pfitzner – National Tertiary Education Union (NTEU)

Bargaining for menstruation and menopause leave

Darius is the president of the Northern Territory division of the NTEU, which proposed a menstruation and menopause self-care clause in its most recent enterprise agreement with a higher education institution. Darius explained the purpose of the clause was to improve support, understanding and acceptance of these issues in the workplace and to make paid leave and workplace flexibilities available to those who needed it. Another important aim was to challenge the stigma and taboo surrounding these topics. Darius discussed the challenges of bargaining for this type of clause, which elicited a strong pushback from negotiators for the employer, who argued it was unnecessary because women can take sick leave for these issues. Darius argued it was time for employers, and society more broadly, to acknowledge that menstruation and menopause are a reality of life, not illnesses.

“Our target for this ... clause was to improve understanding, acceptance and support of these issues in the workplace and primarily to remove what we think is the biggest problem, that’s the stigma and taboo surrounding menstruation and menopause in the workplace and the broader community”

– Dr. Darius Pfitzner

Natalie Montague-Clarke – Queensland Teachers' Union (QTU)

QTU menopause project

Natalie is the acting Women and Social Welfare Issues Officer at the Queensland Teachers' Union (QTU), which launched a pilot project in collaboration with workplace wellbeing advisor, Thea O'Connor, to become a menopause friendly organisation in 2020. Natalie explained the QTU is a feminised union and employer and that the purpose of the project was to address this taboo topic in a meaningful way and offer support for staff experiencing menopause. The project included a survey of staff knowledge and attitudes toward menopause, a review of existing policies to embed menopause support, education sessions for staff and opt in training for managers, self-care workshops for women experiencing menopause and the launch of a menopause policy. Natalie discussed the positive impact of the project, which has helped to change conversations around menopause and enabled employees to feel more comfortable asking for workplace adjustments.

"The pilot was well received by both male and female employees, and what it really did was it changed the conversations about menopause and it became more normalised and addressed the hidden taboo of menopause"

– Natalie Montague-Clarke

Professor Marian Baird AO – University of Sydney

What can unions do for the reproductive body at work?

Marian presented a draft paper that is exploring union bargaining for paid leave for a range of reproductive health concerns such as menstruation, fertility treatment, pregnancy loss and menopause. Marian discussed the growing awareness and popularity of these policies in Australia and globally in the context of increasingly feminised workforces as the participation of both younger and older women in paid employment rises. Marian argued the union movement has not traditionally pursued reproductive health benefits, with the exception of parental leave, because bargaining is often male-oriented and overlooks the female body at work. For this reason, Marian argued bargaining for reproductive leave creates unique challenges and important organisational and contextual factors, such as the external political environment and gender of

negotiators, will play a critical role in determining the success or failure of these claims going forward.

"We have paid a lot of attention to women when they have children at work, but we've been very reluctant to look at what causes having children – the conception process and reproduction"

– Professor Marian Baird

Speakers

- Dr. Mike Armour, Western Sydney University
- Professor Marian Baird AO, University of Sydney
- Professor Kirsten Black, University of Sydney
- Dr. Jane Carland, UNSW
- Associate Lecturer Sarah Carter, Charles Darwin University
- Sydney Colussi, University of Sydney
- Mary Crooks AO, Executive Director of the Victorian Women's Trust
- Dr. Sarah Duffy, Western Sydney University
- Associate Professor Emilee Gilbert, Western Sydney University
- Dr. Gabrielle Golding, University of Adelaide
- Associate Professor Elizabeth Hill, University of Sydney
- Professor Gavin Jack, Monash University
- Kate Marshall, Assistant State Secretary, Health and Community Services Union
- Natalie Montague-Clarke, Acting Assistant Secretary, Women and Social Welfare Issues, Queensland Teachers' Union
- Dr. Michelle O'Shea, Western Sydney University
- Dr. Darius Pfitzner, President NT Division, National Tertiary Education Union

Participants

- Jane Bennett, founder of the Chalice Foundation
- Professor Rae Cooper AO, University of Sydney
- Professor Beth Goldblatt, University of Technology Sydney
- Associate Professor Myra Hamilton, University of Sydney
- Paul Healey, State Secretary, Health and Community Services Union
- Dr. Melanie Keep, University of Sydney
- Casimira Melican, Office for Women Victoria
- Thea O'Connor, Wellbeing & Productivity Advisor
- Professor Elspeth Probyn, University of Sydney
- Dr. Suneha Seetahul, University of Sydney
- Georgia Shephard, Chalice Foundation
- Alison Williams, University of Sydney
- Amy Wong, University of Adelaide

Publications from our speakers

- Mike Armour, Sarah Duffy, Emilee Gilbert & Michelle O'Shea (Western Sydney University)
 - Armour, M., Duffy, S., Gilbert, E., Hammond, H., Hawkey, A., O'Shea, M., Smith, M., Taylor, C., Ussher, J. (2022) [What's the bloody big deal? How Australian workplaces and educational institutions can help break the menstrual taboo.](#) Western Sydney University.
- Jane Carland (St. Vincent's Hospital & UNSW)
 - Keep, M., Payne, S., & Carland, J.E. (2021). [Experiences of Australian women on returning to work after miscarriage.](#) Community, Work & Family, 1-10.
- Sarah Carter (Charles Darwin University) & Kirsten Black (University of Sydney)
 - Carter, S., Davis, S., & Black, K. (2021). [Menopause workplace policy: The way forward or backward?](#) Australian and New Zealand Journal of Obstetrics and Gynaecology, 61(6), 986-989.
- Gabrielle Golding (University of Adelaide)
 - Golding, G., & Hvala, T. (2021). [Paid period leave for Australian women: A prerogative not a pain.](#) Sydney Law Review, 43(3), 349-377.
- Gavin Jack (Monash University)
 - Riach, K. & Jack, G. (2021). [Women's health in/and work: Menopause as an intersectional experience.](#) International Journal of Environmental Research and Public Health, 18, 1-17.