



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH AND COMMUNITY WELLBEING
MR JOHNATHAN DAVIS MLA (Chair), MR JAMES MILLIGAN MLA (Deputy Chair)
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Submission Cover Sheet

Inquiry into Period Products and Facilities (Access) Bill 2022

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Dear Committee,

Thank you for the opportunity to give feedback to the Inquiry into the *Period Products and Facilities (Access) Bill 2022*. The ACT Government's work on this initiative will have real impact on the lives of people experiencing period poverty.

As the union representing workers in public education, our members work hard every day to reduce inequality and to ameliorate the impacts of poverty, and this program will help promote these aims. Our submission includes recommendations to strengthen the Bill and provide some assurance that the impact on teacher and principal workload will be as minimal as possible.

We look forward to working with the ACT Government on the implementation of this Bill and are available to provide more information and advice should it be required.

Regards,

Angela Burroughs



Introduction

The Australian Education Union ACT Branch welcomes the Committee's Inquiry into period product access in the ACT and the corresponding *Period Products and Facilities (Access) Bill 2022* ('the Bill'). We represent over 4,300 public servants, who are the educators on whom our public education system and CIT relies. Our members are the people in schools who support students experiencing period poverty and will be one of the largest groups of public servants to access the Bill's provision of sanitary facilities in workplaces. As such, we are keen to ensure that this program leads Australia – and indeed the world – in enabling access to free period products and hygienic facilities in the workplace.

This submission will echo many of the points raised in our submission to the exposure draft. The AEU is pleased to see that the Government has responded constructively to many of the points we and others raised, and the new Bill is better for that.

As foreshadowed in our discussions with Minister Orr, we understand that many of the details of this Bill as they relate to provision of products and information in education settings will be covered by Directorate policy and procedure rather than legislation. We include those details here, however, to indicate some of the implementation details that will ensure this Bill achieves its full intent of eliminating period poverty in the ACT.

We especially welcome the Bill's expansion to include Part 3, 'Workplace access to facilities'. The ACTPS should be an exemplar employer and this part of the Bill ensures that the ACT Government is leading the way on ensuring the health and dignity of the people it employs.

We note that 'period poverty' is only one manifestation of poverty which stems from broader inequalities in our community. Eliminating the additional challenges faced by people living in poverty who menstruate will alleviate some stressors, but they will not eliminate the root cause, which is socio-economic inequality. As educators, we know that some of our students come from families who endure constant financial stress, social marginalisation, and other forms of vulnerabilities and disadvantage. The ACT Government should be commended on this Bill, but we cannot remain complacent on the need for better basic service provision in the ACT. In addition to period poverty, we must also urgently address housing, mental health services, and the cost of living for low-income households. The Standing Committee on Health and Community Wellbeing should be well-versed in the social and economic determinants of health which are persistently relevant here.

Our final general comment is that our members will be perhaps the most crucial implementation agents of this program. We know that our members will rise to the challenge of educating students about menstruation, helping promote positive culture in schools around menstruation, and following up with the Directorate to improve and refine the program as it is implemented. We look forward to working closely with Ministers, the Education Directorate, and other partners to ensure an effective implementation that does not unreasonably burden our teaching workforce.

Our submission covers facilities in Territory-funded workplaces, access to period products, information about menstruation, and school-specific implementation.



1. Facilities in Territory-funded workplaces

The AEU is called on at times to assist members who do not have adequate staffroom facilities in their schools. We advocate for these members with reference to WorkSafe ACT's *Work Health and Safety (Managing the Work Environment and Facilities Code of Practice) Approval 2020*.¹ This Code of Practice helps workplaces implement minimum standards regarding facilities for toilets, hand washing, sanitary waste disposal, and so on. The provisions in the Bill will buttress this Code of Practice and further embed the expectation that all workers must be able to attend to basic health requirements with dignity in the workplace.

We are concerned, however, that the Bill is silent on what is to happen if a public servant or their representative reports a lack of access to facilities and the relevant Director-General does not attend to the problem in a sufficient or timely fashion. This means there is also no way to monitor whether there are Territory-funded workplaces that have multiple reports made over time.

We therefore recommend the addition of a section to Part 3 which outlines a process that will be followed when access is reported to be lacking, including appropriate consequences for repeat denial of access. While we have wholehearted faith in the Government's commitment to the Bill's implementation, legislation must safeguard access into the future with appropriate consequences if facilities are not provided. In practice, such matters may be pursued by the WHS regulator, the Human Rights Commission, or the more expensive route of judicial review, but the Bill should give some indication of process before WHS or discrimination complaints are lodged.

The AEU knows well the processes that will be followed should any individual educator not perform their duty to support dignified access to period products as described by the Bill. They may be subject to misconduct processes that come with a list of possible disciplinary actions and sanctions that can be taken against the employee. With the Bill as it currently stands, there is individual accountability borne by our members but no avenue for system accountability for decision-makers in the Government and Directorate.

2. Access to period products

a. Examples of dignity

We welcome the addition of examples listed to further define 'dignity' in the Bill. As explained in our earlier submission, as 'dignity' is the only criterion listed by the Bill to direct how access is provided, it needs to be as robust as possible. Dignity is a term as yet fairly undefined by Australian law and so is perhaps understood colloquially and intrinsically, yet in legislation we must be as specific as possible to promote intended outcomes and avoid unintended ones.

We agree that privacy is one of the key elements of dignity, as the Bill's examples suggest. We recommend that the Bill go further and add other elements of dignity to the list. A revised list of examples might read:

¹ Work Health and Safety (Managing the Work Environment and Facilities Code of Practice) Approval 2020, ACT Government, notifiable instrument number NI2020-551.



“Examples—respects the dignity of the person:

- 1 providing a reasonable amount of privacy for a person [/student] seeking access and protecting their personal information
- 2 respecting the cultural and religious background of the person [/student] seeking access
- 3 ensuring, as far as is reasonably practicable, equal access for all people regardless of their gender or disability
- 4 providing access in a way that avoids humiliation and enables age-appropriate agency and participation in decision-making”

The ACT leads Australia in embedding human rights in legislation and public policy. A rights-based approach to access to period products is one that would ensure, as much as possible, the key tenets of participation, accountability, non-discrimination and equality, empowerment, and legality as outlined by the Australian Human Rights Commission.² Further, the *Dignity Under Law* handbook from Dignity Rights International offers some helpful guidance on human dignity, giving a definition that highlights equality of every human and the animation of human capacity for decision-making.³ The examples we suggest above would go some way to achieving all of these elements.

b. Sanitary waste facilities in student bathrooms

While Part 3 provides for toilets, handwashing facilities and sanitary waste facilities for public servants, the Bill does not do the same for students in public schools. Of particular concern is the third element here of sanitary waste facilities. Being able to access waste facilities in a way that ensures dignity means that such waste facilities must be clean and regularly emptied, and must be widely enough available that no person must have their menstruation needs known by others because they are accessing a particular toilet block or cubicle. Anyone who has menstruated understands the potential humiliation of needing to access a particular toilet because only one in a cubicle block has a waste disposal unit. When they are available, if these units are not regularly emptied, they can become odorous and overfilled, which does not lend itself to an experience of dignity. These concerns are compounded when we consider the experience of a primary-school student accessing facilities for the first time in a school environment.

As such, we recommend that the Bill include a mandate for a minimum ratio or threshold subset (like at least two) waste disposal units in each toilet block in schools, and that these are emptied regularly.

c. Bulk availability

Our earlier submission discussed a pilot program in Aotearoa New Zealand which found that students who experience period poverty may need to access products in a way that is different from the one-off ‘emergency’ provision that those of us who do not experience period poverty might

² “Human rights based approaches,” Australian Human Rights Commission. Available at <https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches>.

³ Daly, E. and J. R. May, *Dignity Under Law: A Global Handbook Judicial Edition*, Dignity Rights International, 2021, pp. 16-17. Available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/dignity-rights/dignity-handbook-for-judges.pdf.



envision.⁴ If a student's circumstances mean they cannot afford period products, they will possibly need to access many products per month depending on their own body's needs and their preferences, and might be better served by being able to 'stock up' more intermittently. While we understand that the details of this will be handled by Education Directorate policy and procedure as well as school-level operations, this further demonstrates the need for a robust and broad interpretation of dignity to inform that policy, such as student and educator participation in decision-making.

3. Information about menstruation

The Bill remains vague about what information about menstruation will be made available other than that it will include information about menstrual hygiene. While we welcome the addition of a range of age-appropriate materials, we recommend that the Bill add brief mention of what else should be featured in these information materials. At a minimum we recommend this includes:

- Information about basic industrial rights related to sick leave as per the National Employment Standards
- Information about where in the ACT people can access healthcare or advice if their periods are abnormally heavy, irregular or painful

These can be very simple and easy-to-read statements that link to websites of the Fair Work Ombudsman and ACT Health.

4. School-specific implementation

As discussed earlier, we welcome this Bill and look forward to the program's roll-out in schools. We remain concerned, however, about the workload implications for our members. As demonstrated time and time again,^{5,6,7} teachers are continually expected to do more with less. Teacher workload is now the topic of national conversation as a chronic and acute teacher shortage affects every jurisdiction in the country.⁸ At the heart of this problem is years of new programs being

⁴ 'Access to free period products', New Zealand Government Ministry of Education, 2021. Available at: <https://www.education.govt.nz/our-work/overall-strategies-and-policies/wellbeing-in-education/access-to-free-period-products>.

⁵ Heffernan, A., D. Bright, M. Kim, F. Longmuir, B. Magyar, 'I cannot sustain the workload and the emotional toll': Reasons behind Australian teachers' intentions to leave the profession', *Australian Journal of Education*, vol. 66(2), August 2022, pp. 196-209.

⁶ Fitzgerald, S., S. McGrath-Champ, M. Stacey, R. Wilson, M. Gavin, 'Intensification of teachers' work under devolution: A 'tsunami' of paperwork', *Journal of Industrial Relations*, vol. 61(5), 2019, pp. 613-636.

⁷ Zipin, L and V. White, 'Too much with too little: Shift and intensification in the work of ACT teachers', report commissioned by the Australian Education Union – ACT Branch, 2001. Available at <http://nla.gov.au/nla.arc-31731>.

⁸ 'Issues Paper: Teacher workforce shortages', Australian Government Department of Education, 2022. Available at: <https://ministers.education.gov.au/clare/teacher-workforce-shortages-issues-paper>.



implemented with no action taken to mitigate workload requirements on principals, school leaders and teachers.

Without strong guidance, this Bill will increase the workload of teachers, and has the potential to disproportionately impact women educators. As facilities for access are made available in schools and the accompanying information is disseminated, students will need additional education about menstruation, which will necessarily encompass education about puberty and anatomy, especially in primary and lower secondary levels. High schools may also need to support positive cultures around the products being freely available. In addition to educational and cultural demands, there will be the logistical requirements of monitoring and replenishing stocks and attending to supply issues in consultation with the Education Directorate. Principals will need to communicate with their school community and address parent concerns about the program. There will likely also be need for infrastructure works to modify facilities to ensure privacy for dignified access.

As much as possible, the Government needs to develop resources centrally and offer direct support to schools to alleviate potential workload impact. School principals also need to be assured that these products will be funded centrally, not from within their school budgets, as the latter will penalise schools with students who have greater need to access free products.

While we understand that these are issues of implementation for the Education Directorate, we urge the Committee to consider them in its inquiry so as to give as much guidance as possible when the program is implemented.