

Dr Carina Garland MP, Chair  
House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training's Inquiry into the National Employment Standards (NES)  
PO Box 6021  
Parliament House  
CANBERRA  
Canberra ACT 2600

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Sent via email: [employment.reps@aph.gov.au](mailto:employment.reps@aph.gov.au)

Dear Chair,

**SUBMISSION TO AMEND THE FAIR WORK ACT 2009 AND THE NATIONAL EMPLOYMENT STANDARDS –  
COMPASSIONATE LEAVE FOR MEDICALLY DIAGNOSED INFERTILITY**

**1. Purpose**

Through the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training's Inquiry into the National Employment Standards (NES), I seek your support to amend the Fair Work Act 2009 and the NES to extend compassionate leave eligibility to include medically diagnosed infertility.

For my submission, medically diagnosed infertility would be a medical diagnosis following surgery or some other medical intervention, that determines that individual is unable to be a biological parent.

**2. Proposal**

To amend the Act and the NES as set out below (proposed changes in bold):

*Employees can take compassionate leave if:*

- a member of their [immediate family](#) or household dies, or contracts or develops a life-threatening illness or injury
- a baby in their immediate family or household is [stillborn](#)
- they have a [miscarriage](#), ~~or~~
- **they, their current spouse or member of their [immediate family](#) is medically diagnosed as infertile, or**
- **their current spouse or de facto partner has a miscarriage.**

As noted in the 'Purpose' section of this submission above, medically diagnosed infertility would be a medical diagnosis following surgery or some other medical intervention, that determines that individual is unable to be a biological parent. I appreciate that medically diagnosed infertility would likely need to be defined in the Act and the NES. The intent is to capture the end of an individual's fertility journey to be a biological parent, when all medically available options are exhausted (including definitive surgery). It is proposed to capture such issues impacting an employee, their current spouse or their immediate family. The reasons as to why this is both necessary and appropriate, are outlined within my submission – through my own lived experience as being diagnosed as medically infertile.

I have reviewed the Committee's Inquiry's Terms of Reference and provided an analysis of why this proposal aligns with them, contained as **Attachment 1**.

**3. Background**

The NES currently provides up to two days of compassionate leave for events such as the death of a loved one, stillbirth, miscarriage, or life-threatening illness. These provisions recognise moments of deep grief — yet they do not extend to

Australians who receive a medical diagnosis of infertility. For many, that diagnosis carries the same sense of loss, devastation, and emotional upheaval.

#### **4. My Experience**

In 2022, after years of trying to have a child, I was diagnosed with azoospermia — a condition that affects 1 in 100 men and results in a zero sperm count. The only way to determine if I could be a biological father was through invasive micro-TESE surgery, which offers only a 40% success rate.

In March 2023, I underwent the procedure. It confirmed that biological fatherhood was not possible for me. The news was devastating — a mix of grief, disbelief, and loss of identity. Compassionate leave would have given me the time to process and heal. Instead, I used personal leave, which felt inadequate for something so profoundly life-changing.

This experience was deeply confronting not just for me, but for my wife and our respective immediate families. Infertility is not simply a medical diagnosis; it's a moment that redefines how you see yourself, your future, and the way you imagined your family might grow.

#### **5. Why It Matters**

Medically diagnosed infertility affects countless Australians and their partners. Among the nation's 13.5 million men, around 135,000 live with azoospermia, and many women face equivalent diagnoses. Recognising infertility under compassionate leave would acknowledge the shared grief and mental health impact faced by couples and immediate families navigating this experience.

After returning to work, I proposed updates to our compassionate leave policy. My workplace went further — introducing a discretionary clause to cover circumstances like mine and extending eligibility to casual staff. It was a small but powerful gesture that said: we see you, and we care.

If compassionate leave already applies to miscarriage and stillbirth, it should also apply to medically diagnosed infertility — a loss of possibility that deserves the same compassion and dignity.

#### **6. Why shouldn't it be just personal/sick leave?**

What I went through, what my wife went through, what our immediate families went through, was traumatic. Having experienced the deaths of family members in life, I can honestly say following my surgery it was equally as traumatic, if not more so. It was the end of my journey to be a biological parent. It's something almost impossible to process if you are on a journey to start a family in this great nation.

What of those, who may not have any personal/sick leave or other form of paid leave available? Are they expected to return to work in a time of profound grief, or otherwise must seek approval for unpaid leave?

Compassionate leave is already deliberately separated from personal/sick leave to deal with circumstances that demand compassionate responses. This is because they are both delicate and extreme. Compassion is also necessary when you've just been told that you are unable to be a biological parent.

Enshrining in law, two days for Australians covered by the Act and NES, their partners and immediate families that have just been told that they can't be a biological parent is a security blanket that they can rely on as they process, deal with, and support one another. It will also serve as the benchmark for other employment law, both national and state level, to align their own legislation and regulations with these new requirements.

#### **7. Fairness and Inclusion**

A diagnosis of infertility happens once in a lifetime. Extending compassionate leave to include this circumstance would have minimal impact on employers, yet immense impact on the lives of those affected. It would also send a clear message that

all forms of reproductive loss are valid and deserving of care. Is it fair, just and equitable that those that can fall pregnant, but then face stillbirth or miscarriage are eligible for compassionate leave, if those that are biologically unable to fall pregnant can't, are not?

**8. 'Priya's Law'**

In many respects, my proposal aligns with recent changes to the Act - dubbed 'Priya's Law'. That change in law was widely popular because it was logical and made sense. Should the Government be of the mind to consider my proposal, they should take comfort and confidence from the strong base level support from Priya's law. It is, in many respects, a natural extension.

**9. A Call for Compassionate Leadership**

As former Prime Minister Ben Chifley said:

*"We have a great objective – the light on the hill – for the betterment of mankind."*

This proposal is one small light for the many Australians navigating infertility and the end of their own journey to be a biological parent with quiet courage.

**10. What we can't afford to do...**

We can't rely on individual businesses, companies and organisations to provide compassionate leave support above the minimum standards in the NES. The variability is too large, and those businesses, companies and organisations that extend compassionate leave to circumstances such as medically diagnosed infertility are in the minority. Australians deserve a base level of consistency – something such changes to the NES would achieve, and would be consistent with the object purpose of the NES which is to act as a safety net for employees.

**11. A Personal Note**

My wife and I were blessed to welcome our daughter in March this year through donor conception. We are profoundly grateful — and that gratitude fuels my determination to ensure others facing infertility are met with empathy and support, not silence or stigma.

*"I alone cannot change the world, but I can cast a stone across the waters to create many ripples."* –  
Mother Teresa

Together, we can be that stone, providing a modest, yet meaningful change for hundreds of thousands of Australians.

In December 2025, I approached the Hon Patrick Gorman MP, Assistant Minister for Employment and Workplace Relations and my local Member of Parliament in my electorate of Bullwinkel, Ms Trish Cook MP seeking the same change. They have both directed me to make representations to this Committee Inquiry.

**Important:** Please note, that I am extremely passionate about this issue and the proposed change, having lived experience and effected positive changes within my own workplace and I would be interested and available to attend a public hearing or briefing as a witness to give oral evidence.

Thank you for your time and consideration.

Regards,

**ANTHONY DENHOLM**

**Attachments**

1. Alignment of the Proposed Change to the Committee Inquiry Terms of Reference

### Attachment 1 – Alignment of the Proposed Change to the Committee Inquiry Terms of Reference

Term of Reference	Alignment of Proposal
<ul style="list-style-type: none"> <li>the objective and purpose of the NES as part of the safety net framework, as well as individual NES entitlements.</li> </ul>	<p>The objective and purpose of the NES is to provide a safety net for employees covered by it. That is, a default setting that serves as a minimum floor of expectation – creating consistency and comfort. The proposed changes set out in this submission relating to expanding compassionate leave to include those who are medically diagnosed as infertile aligns with the objective and purpose of the NES.</p>
<ul style="list-style-type: none"> <li>the extent to which the NES is fit for purpose, having regard to the changing nature of work.</li> </ul>	<p>The compassionate leave provisions within the NES have not been reviewed, but certainly not amended since they came into effect on 1 July 2009. I contend that given my experience, an experience shared by hundreds of thousands of other Australians, the NES provisions relating to compassionate leave do not go far enough, when certain circumstances demand the same level of compassionate as those already prescribed.</p>
<ul style="list-style-type: none"> <li>the role of the NES in promoting the object of the <i>Fair Work Act</i> set out in Section 3.</li> </ul>	<p>The NES could be improved with the proposed changes set out in this submission in that it would promote the object of the Fair Work Act within Section 3 by meeting sub clauses (a), (b), (d) and (e).</p>
<ul style="list-style-type: none"> <li>the adequacy, relevance and coherence of existing NES entitlements.</li> </ul>	<p>Compassionate leave and its current construct, clearly serves a meaningful and relevant purpose. However, if compassionate leave already applies to miscarriage and stillbirth, it should also apply to medically diagnosed infertility — a loss of possibility that deserves the same compassion and dignity. For the reasons outlined in this submission, it is not considered that the NES provisions relating to compassionate leave are adequate or relevant in all circumstances that require and demand its necessity.</p>
<ul style="list-style-type: none"> <li>the effectiveness and application of the NES, including opportunities for technical improvements.</li> </ul>	<p>The proposed changes set out in this submission will improve the effectiveness and application of the NES and could be considered a technical improvement.</p>
<ul style="list-style-type: none"> <li>the interaction between the NES and other workplace instruments, including modern awards, enterprise agreements, and individual flexibility arrangements.</li> </ul>	<p>If effected, the proposed changes will serve as a catalyst for other workplace instruments at the national and state levels to improve their own provisions and entitlements for employees.</p>
<ul style="list-style-type: none"> <li>the types of workers covered by the NES and consideration of differences in experience of the NES, including experiences of women, workers over 55, young workers, First Nations workers and workers with disability.</li> </ul>	<p>The current compassionate leave provisions within the NES appear quite broad and wide ranging, but in reality they are inherently limited. It is extremely narrow in the circumstances in which access to it is possible, when there are circumstances that are equal to, or greater than, some or all of the currently prescribed circumstances.</p>
<ul style="list-style-type: none"> <li>whether there are any gaps in data information about any of these matters and what action is required to address these,</li> </ul>	<p>Without knowing the data used in the development of the current compassionate leave provisions within the NES, it is difficult to ascertain if medically diagnosed infertility was a consideration. Medically diagnosed infertility affects countless Australians and their partners. Among the nation's 13.5 million men, around 135,000 live with azoospermia and require surgery with a success rate of 40% which determines if they can be a biological parent, and many women face equivalent diagnoses.</p>
<ul style="list-style-type: none"> <li>any related matters.</li> </ul>	<p>N/A</p>