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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Maurice Blackburn Pty Limited

ABN 21 105 657 949

Level 8, 179 North Quay
Brisbane QLD 4000

PO Box 13247, George Street
Brisbane QLD 4003

T (07) 3016 0300

F (07) 3236 1966

mauriceblackburn.com.au

By email: community.affairs.sen@aph.gov.au

To whom it may concern,

We welcome the opportunity to provide feedback in relation to the Committee's inquiry into issues related to menopause and perimenopause.

1. Maurice Blackburn Pty Ltd is a plaintiff law firm with 34 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, abuse law, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.
2. We extend our congratulations to those responsible for bringing this important topic to the community's attention through this inquiry. We see it as an important step toward ensuring more equitable treatment in the workplace and other places. It is indeed an issue of equity, rather than equality. It is important that differences between the male and female aging processes are acknowledged and responded to in an equitable way.
3. It is pleasing to see that a number of Australian employers are already taking steps to ensure equitable treatment of women experiencing menopause and perimenopause, in the absence of any regulatory requirement to do so. We believe that those employers who take seriously the challenges associated with ensuring equity will be better placed to retain high quality staff, and be seen as an employer of choice by would-be recruits.
4. Our submission centres around our own experience as a workplace, alongside our observations of policies and procedures in other workplaces, and the impacts decisions have on the working lives of women. To this end, we focus our responses to four of the Committee's Terms of Reference, namely (a), (g), (h) and (j).

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

5. Maurice Blackburn believes that issues related to workforce participation, in relation to menopause and perimenopause, centre around the extent to which an employer can destigmatise these issues in the workplace. In our experience, it is in workplaces



where a culture of shame exists, that women avoid discussing their needs with their employer, and in turn, this can create the issues of reduced workforce participation and productivity.

6. A failure to address these needs has the potential to lead to increased reliance on personal (sick) leave and absenteeism. Cumulative personal leave entitlements are important if a worker experiences a significant and unexpected injury or illness. If that allocation has been exhausted due to issues associated with menopause or perimenopause, it can leave that worker having to make choices that a male colleague would not have to face, such as taking unpaid leave. The issue of depleted personal leave is one that disproportionately impacts female workers, often due to carers duties and the needs of their reproductive body throughout their working lives.
7. It is important to note that a worker is not 'sick' when she experiences menopausal symptoms. It is a completely natural health reality. Workers who experience menopause should not be required to take personal leave in order to mask the true reason that she is unable to perform her work duties.
8. A policy which specifically allows for menopause (or "Reproductive") leave will have better outcomes.
9. By way of example, we offer below Maurice Blackburn's approach to these matters:
 - (a) our EBA contains neutral language when describing additional leave entitlements, for example, we offer four 'Health and Wellbeing' days per year, in addition to the statutory amounts (10 days per annum). These leave days can also be used in part or wholly, where an employee is experiencing uncomfortable symptoms of menopause, with no medical certificate required;
 - (b) an ongoing commitment to flexible working arrangements is built into our systems and culture. It is possible, through discussions between staff and management, for a worker experiencing menopausal discomfort to catch up on missed work at other times, without having to draw on leave entitlements; and
 - (c) access to a comprehensive Employee Assistance Program (EAP)
10. Menopause tends to occur at a time when women are most likely to be taking on leadership roles within the workplace. Without appropriate safeguards in place, this could lead to a loss of talent within the firm at a crucial time.
11. Further, data tells us that on average women retire from the workforce seven years earlier than their male counterparts. This in turn impacts that worker's superannuation contributions and retirement income.
12. A survey on menopause in the workplace by Circle In and the Victorian Women's Trust found that 83% of survey participants said that their work was negatively impacted by menopause. 45% said that they considered retirement when their symptoms were severe.¹
13. Further, it has been reported that women over the age of 55 are the fastest growing demographic for homelessness in Australia.² A concerning statistic, and when considered concurrently with the early retirement rate, reduced earnings and reduced

¹ [There are calls for menstrual and menopause leave to be included in the Fair Work Act, but what is it and how would it work? - ABC News.](#)

² <https://www.financialstandard.com.au/news/menopause-the-silent-economic-crisis-179798921>.

superannuation balance, menopause must be considered as a contributing factor to these issues.

14. It is not difficult to imagine that, for a number of women, the inability to balance issues associated with menopause within an inflexible workplace would factor into a decision to cease workforce participation early.
15. In summary, Maurice Blackburn believes that the main factors leading to reduced workforce and participation and productivity are:
 - (a) Stigma and shame. The failure of an employer to address these issues, and establish a culture where stigma and shame are unacceptable, will lead to reductions in participation and productivity. Often, in our experience, gender bias enabled by having a mainly male management cohort means that the issues associated with menopause or perimenopause are misunderstood, minimised or denied. The removal of stigma and shame requires careful planning and consultation, and the constant reinforcement of expectations through education and training;
 - (b) Policies that encourage and enable participation. The adoption of a menstrual and menopausal policy with two key pillars: provision to work flexibly to manage symptoms, such as working from home or taking longer breaks, and access to six days of paid leave per year has been proven to greatly improve women's engagement in the workplace;³
 - (i) Maurice Blackburn would be pleased to provide samples of successful Menstrual and Menopause Wellbeing Policies, if that would be of benefit to the Committee.
 - (c) Employee Assistance Programs. It is essential that women in the workplace know they have somewhere to turn when facing issues associated with menopause and perimenopause.

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

16. As noted earlier, in establishing awareness amongst employers and workers, it is important to frame this as an issue of *equity*, not *equality*.
17. There is no male equivalent to menopause or perimenopause which has the same capacity to impact capacity to work. Therefore, seeking equality of supports is pointless.
18. A workplace focused on equity – with policies and awareness-raising initiatives centred around equitable opportunities for ongoing workplace participation – will have a far better chance of retaining valued staffing resources and leadership than those that don't.

h. Existing commonwealth, state and territory government policies, programs, and healthcare initiatives addressing menopause and perimenopause.

19. Maurice Blackburn is delighted that some states and territories are taking leadership roles in encouraging public policy discussions on health issues pertinent only to

³ See for example: <https://www.lsj.com.au/articles/should-law-firms-introduce-menstrual-leave>.

women. For example, the Victorian Department of Health's Inquiry into Women's Pain⁴ is a groundbreaking initiative which stands to change the narrative about how pain impacts participation.

20. At the Commonwealth level, we note the establishment of the National Women's Health Advisory Council.⁵ While the Council's terms of reference only touch on the issue of menopause within a health perspective, we believe that a similarly styled advisory council focused on women's issues in the workplace could be beneficial.
21. One pathway available to the Commonwealth would be to commence the process for ensuring that Federal Awards are appropriately worded to ensure that entitlements allow for leave to be taken in response to issues related to menopause. As a starting point, the Federal Awards which set terms for female-dominant workplaces such as teaching, nursing and aged care could be reviewed, with the view to making appropriate adjustments when due.
22. We encourage the Committee to consider including this in the recommendations from this inquiry.
23. We note also that research indicates that there should be a legislative entitlement to paid menstrual leave under the *Fair Work Act 2009* (FWA).⁶ Such leave could (and, in our opinion, should) be extended to menopause leave, for the same reasons outlined in the research. Varying the federal Awards, as discussed above, would provide the government with the data they would need in order to consider appropriate adjustments to the FWA.

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

24. We draw the Committee's attention to two international jurisdictions, whose experiences may be instructive:
 - (a) Spain
 - (i) We note that Spain has become the first European country to introduce laws permitting menstrual leave.⁷ The law gives women the right to a three-day menstrual leave of absence - with the possibility of extending it to five days - for those with disabling periods. The costs to employers are met via Spain's social security system.
 - (ii) Thematically similar to menopause leave, the new laws seek to ensure that employees do not have to rely on sick leave entitlements when unable to work.
 - (b) United Kingdom
 - (i) The UK Parliament's Women and Equalities Committee released a report last year⁸ recommending that the government investigate how

⁴ Ref: <https://www.health.vic.gov.au/inquiry-into-womens-pain>

⁵ Ref: <https://www.health.gov.au/committees-and-groups/national-womens-health-advisory-council>

⁶ See for example: [Golding, Gabrielle; Hvala, Tom --- "Paid Period Leave for Australian Women: A Prerogative Not a Pain" \[2021\] SydLawRw 14; \(2021\) 43\(3\) Sydney Law Review 349 \(austlii.edu.au\)](#)

⁷ See for example: <https://www.politico.eu/article/bill-europe-spain-parliament-creates-first-menstrual-leave-in-Europe>

⁸ <https://publications.parliament.uk/pa/cm5803/cmselect/cmwomeq/91/summary.html>: p.48

menopause could be listed as a protected attribute in the Equality Act – a recommendation which was rejected by the government.

- (ii) Maurice Blackburn does not believe that such a recommendation would be appropriate in the Australian context. The recommendation came as a response to high levels of unfair dismissal cases where women of menopause age were dismissed from their employment, and where they had cited symptoms as affecting their employment. We are unaware of a similar concentration of cases in Australia.

Please do not hesitate to contact us on _____ or at _____
if we can further assist with the Committee's important work.

Yours faithfully,

Giri Sivaraman
Principal
Employment & Industrial Law Section
MAURICE BLACKBURN LAWYERS

Jessica Heron
Lawyer
Employment & Industrial Law Section
MAURICE BLACKBURN LAWYERS