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12 October 2018

Office for Women, Community Participation, Health and Wellbeing Division
Victorian Department of Health and Human Services

By email: gender.equality@dhhs.vic.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Exposure Draft of the Gender Equality Bill (2018).

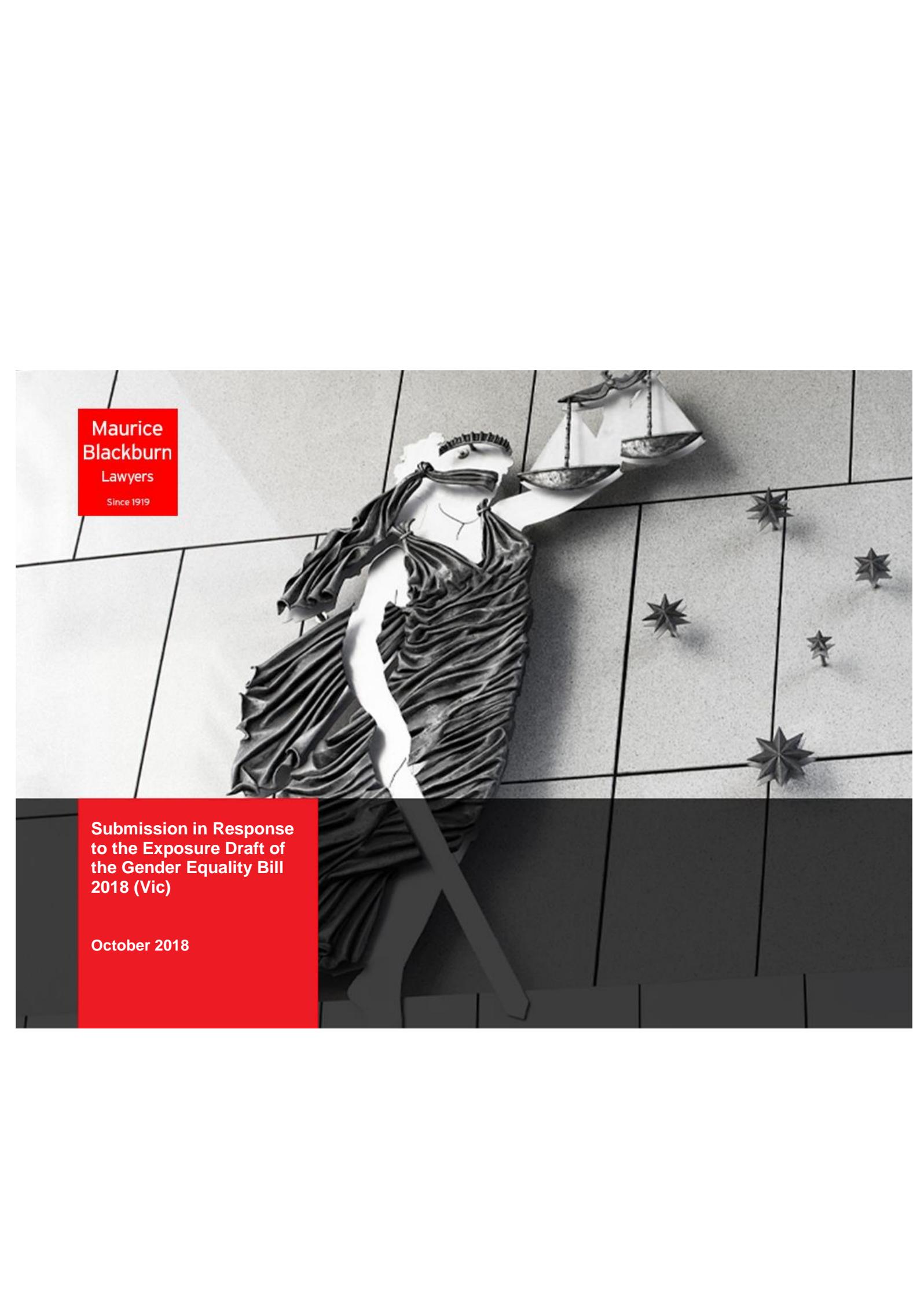
Please do not hesitate to contact me and my colleagues on (03) 9605 2700 or at KShaw@mauriceblackburn.com.au if we can further assist with the Office for Women's important work.

Yours faithfully,



Kim Shaw
Principal, Superannuation & Insurance
Women's Network Convener
MAURICE BLACKBURN





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**Submission in Response
to the Exposure Draft of
the Gender Equality Bill
2018 (Vic)**

October 2018

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Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries law, class actions, employment law, superannuation and insurance, and wills and estate. Our firm has a long history of litigating and campaigning for social justice and change, and we advocate strongly for fairness and equality.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. Maurice Blackburn is committed to providing access to justice for all; and creating a workplace which is reflective of the community and clients we serve. To achieve this, we have made significant progress in diversity and inclusion during 2017-18.

In 2017-18, Maurice Blackburn:

- achieved 50% female representation on our Board;
- committed to a future 40/20/40 gender balance on our Board;
- obtained Workplace Gender Equality Agency (**WGEA**) Employer of Choice and Australian Workplace Equality Index (**AWEI**) Bronze Tier status;
- conducted the firm's first-ever All In Census, enabling better understanding of who we are and our workforce needs;
- increased our paid primary carers leave allowance to 18 weeks full pay;
- initiated superannuation payments for primary carers receiving the Federal Government parental leave;
- pledged to ensure equal representation on panels at our events and those we attend;
- promoted 97 women (76% of promotions), some while on parental leave;
- welcomed 94% employees back to work after primary parental leave;
- delivered extensive gender and cultural diversity awareness training;
- refined our secondary carers leave policy to enable more flexibility;
- encouraged flexible work arrangements – 71% of staff worked flexibly in the three months leading up to our 2018 employee engagement survey;
- fostered a part-time working environment, with 23-27% of employees working less than full-time hours since 2015; and
- piloted a comprehensive Flexwork program in Queensland.

Maurice Blackburn's Women's Network is one of the firm's key diversity drivers. In 2017-18, the Network:

- Delivered events including:
 - An external breakfast with Tracey Spicer on the topics of #MeToo and NOW Australia;
 - An external breakfast with Victorian Minister for Women & Minister for the Prevention of Family Violence Natalie Hutchins, MP; and
 - A Victorian Women Lawyers' panel discussion on 'Sexual Harassment and Secrecy in the Workplace'.
- Held International Women's Day high teas in all our offices at 3.43pm to mark the time of day at which women theoretically stop being paid for doing the same work as men in a 9am-5pm day.

These real gains and public advocacy demonstrate the firm's commitment to gender equality. But the work continues – both in and outside Maurice Blackburn – to remove the gender asterisk still hovering over the labour movement promise of “a fair day's pay for a fair day's work”.

The Gender Equality Bill

The Gender Equality Bill (**the Bill**) aims to promote and improve gender equality across the Government and public sector organisations. It does this by creating obligations upon Victorian Government departments, public sector entities with over 100 full time employees, local councils and certain universities (**defined entities**).¹

The Bill requires defined entities to:

1. Create a Gender Equality Action Plan (**GEAP**),² having regard to ‘Gender Equality Principles’³ (**the Principles**) and the ‘Guidelines’ issued by the Secretary;⁴
2. Consider certain actions in the creation of their GEAP;⁵
3. Comply with gender equality targets, if prescribed by the regulations;⁶ and
4. Report on their progress annually.⁷

The Bill also places obligations upon the Minister for Women (**the Minister**) to ensure there is a State GEAP, and that the plan is maintained and improved.⁸ Further, it provides that the Finance Minister may issue guidelines for procurement policies, and mandates that defined entities have regard to those guidelines in development and implementing their own procurement practices.⁹

Defined entities that do not create a GEAP, do not report on their GEAP, or do not have regard to the procurement guidelines in their own policies and practices, may be issued with a notice by the Secretary to the Department of Health and Human Services.¹⁰ If a reasonable explanation is not given for non-compliance, the name of the defined entity and the relevant details of non-compliance *may* be included in the annual report of the State GEAP.¹¹

Part 4 of the Bill creates a Ministerial Council on Women’s Equality to provide advice to the Minister. The Minister must ensure that the Council of between 8 and 14 members reflects the diversity of Victorian women, and must ensure that Aboriginal persons are represented.¹²

This submission identifies Maurice Blackburn’s recommendations to improve the Bill, with the hope of ensuring that it can assist in delivering substantive, effective and lasting returns on the project of achieving general equality in Victorian workplaces.

Our recommendations stress the importance of adequate resources, sustained political commitment and careful evaluation and adjustment of the Principles and compliance to the Bill.

Our submission also highlights the other key areas of law and policy which require reform, in tandem with the introduction of gender equality legislation, to give Victorian society the best chance of propelling toward the full realisation of gender equality.

¹ Gender Equality Bill Exposure Draft, s 6.

² Ibid, s 10-11, 7.

³ Ibid, see s 7.

⁴ Ibid, s 15.

⁵ Ibid, s 8.

⁶ Ibid, s 14.

⁷ Ibid, s 10(3).

⁸ Ibid, s 16.

⁹ Ibid, s 13.

¹⁰ Ibid, s 17-18.

¹¹ Ibid, s 18.

¹² Ibid, s 20.

Responses to Inquiry Questions

Q1: What do you think are the critical actions necessary for the success of gender equality legislation?

1.1 The Object

The Object of the Bill is to 'promote and encourage progress towards achieving gender equality and improving the status of women'. Maurice Blackburn suggests that section 3 be amended to provide a more robust objective. We suggest the wording: *'to promote, encourage and facilitate substantive progress towards achieving full gender equality and improving the status of women.'*

This proposed amendment is designed to capture both the Government's unique role as an enabler of change and its commitment to delivering real action on gender equality.

The importance of this approach to law-making has been stated by current federal Sex Discrimination Commissioner Kate Jenkins, who spoke at a conference held by the Victorian Women's Trust in 2016. She stated: 'I do fundamentally believe that having good laws are absolutely foundational to getting equality and to reflecting what our society expects.' However, she reminded us that legislation 'has created a false sense of security and a social kind of tolerance of behaviours that we should not want.'¹³

Recommendation 1:

That section 3 be amended to state: *'The Object of this Act is to promote, encourage and facilitate substantive progress towards achieving full gender equality and improving the status of women.'*

1.2 Resourcing

It is crucial that this legislation is supported with sufficient and sustained resources by the Government. Failure to do so will mean failure to deliver on the objects and desire of the Government.

The issue of structure and independence goes hand in glove with resourcing. We recommend that an independent authority be established to oversee the requirements of the legislation.

There are plenty of good examples of independent, resourced statutory authorities charged with delivering public policy outcomes: the WGEA, WorkSafe and TAC are three that we interact with on a regular basis. Each of them provides the type of guidance and resourcing commitment required to achieve cultural and behavioural change regarding their subject matter. These authorities also show the financial benefit of investment in succeeding with behaviour change. Although it is beyond the remit of this submission, the financial and well-being benefits of achieving gender equal workplaces is well known and documented.¹⁴

Recommendation 2:

That the Government commit to establishing an independent authority charged with sufficient resources to achieve the objects of the Bill.

¹³ Victorian Women's Trust 2016 Conference, *Breakthrough: 'Reforming Law'*, 2.

¹⁴ See, eg, Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle and Lareina Yee, 'Delivering through Diversity', McKinsey & Company (January 2018).

1.3 Trade Union Involvement

Engagement with all stakeholders with expert knowledge of workplace matters during both the design and implementation phases of the roll out of the Bill will be critical to its success.

One of those key stakeholders is the Trade Union movement. Trade unions are uniquely placed to both lead and provide expert feedback on how to achieve cultural and behavioural changes in workplaces.

The women members unions represent are some of the most vulnerable with respect to gender unequal outcomes (such as gender pay gaps, occupational segregation, unique issues for female dominated industries, sexual harassment, gendered violence and biases regarding parental responsibilities) and therefore they should be involved as a key part of the process in negotiating the Bill's Principles, Guidelines, procurement guidelines and gender equality targets.

We also submit that trade unions should be involved in the development of defined entities' GEAPs. If they are properly enforced, GEAPs are likely to have an impact on employees and we submit that it is therefore crucial that workers' voices are heard in the process. This will also ensure that any commitments in the GEAP do not undercut or contradict commitments made by the employer in other documents such as Enterprise Bargaining Agreements.

We believe a tri-partite process is the one that is most likely to achieve long term success with respect to delivering gender equal workplaces.

Recommendation 3:

That in further negotiating, drafting and finalising the Bill's Principles (s 7), procurement guidelines (s 13), Guidelines (s 15), and gender equality targets (s 14), the Government commit to engaging with the relevant trade unions; and the safety committees or training organisations which trade unions consult.

Recommendation 4:

That the legislation provide trade unions with an opportunity to engage and negotiate with employers about the contents of their GEAP.

1.4 Review

Maurice Blackburn endorses the recommendation from the Citizen's Jury that an evaluation schedule be established to ensure ongoing effectiveness of the legislation.¹⁵

Recommendation 5:

That the evaluation be received and tabled to Parliament after three years to assess its effectiveness, progress and consequences. The Guidelines outlined in s 15 of the Bill should be reviewed annually to ensure they remain relevant and reflective of broader attitudes and trends in compliance reporting.

Q2: What other activities should the government undertake to support this legislation?

Gender equality reform must include measures that acknowledge and combat the barriers that women and girls face in the workforce. These include:

¹⁵ Victorian Government 2018, 'Gender Equality Bill Citizens' Jury: Aspirational and Practical Recommendations' (2018) 13.

1. The Gender Pay Gap;
2. Sexual Harassment;
3. Limited Whistleblower Protections; and
4. Discrimination against Victims of Family Violence.

Maurice Blackburn submit that consideration of these issues should inform the Government's development of the Guidelines. We also submit that there are other laws which require reform in order to support this legislation.

2.1 Gender Pay Gap

Women are on average paid less than men. This is not only because they work part time or in generally low pay industries – although that is a part of the wider problem - women are paid less than men in every industry for doing the same job. Estimates suggest it will be another 50 years before men and women are truly paid equally.

The gender pay gap manifests in multiple ways; for example, individual women receive lower salaries for doing the same work as men, and lower salaries are normalised in industries which are dominated by women. The gender pay gap also exists in the form of the economic loss women suffer when they take on caring responsibilities – particularly when men are not supported or encouraged to share that load.

All the above results in women not being able to contribute as much to their superannuation and retiring with less, which gives rise to the new phenomenon of families, particularly women, facing homelessness at the end of their working lives.

Generous and encouraged paid parental leave schemes for partners to biological mothers are crucial to the advancement of gender equality. Only one in 50 Australian men take parental leave when their child is born, one of the lowest rates in the Western world, according to a 2016 report by the Organisation for Economic Co-operation and Development.¹⁶

In Australia, it is still considered more socially acceptable for mothers than fathers to strike a balance between their family and work commitments, which means more of the parenting burden falls on mothers.

A different approach is that taken in countries such as Norway, Sweden and Iceland, which provide paid, non-transferable leave for fathers and partners, in addition to generous leave entitlements for biological mothers.¹⁷

As a result, a large proportion of men take extended leave from their jobs to be the primary carer of their young children for extended periods of time.¹⁸ This approach influences individual behaviour as well as community attitudes about gender roles and the value of caring work.¹⁹ In turn, it helps to reduce the gender pay gap.

¹⁶ www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf

¹⁷ See, for example, UN Women, *Progress of the World's Women: Transforming Economies, Realizing Rights* (2015), available at: <http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/poww-2015-factsheet-developedregions-en.pdf?v=1&d=20151023T211255>, page 2; and International Network on Leave Policies & Research, *Country Reports*, April 2015, available at: http://www.leavenetwork.org/lp_and_r_reports/country_reports/

¹⁸ UN Women, *Progress of the World's Women: Transforming Economies, Realizing Rights* (2015), available at: <http://www2.unwomen.org/~media/headquarters/attachments/sections/library/publications/2015/poww-2015-factsheet-developedregions-en.pdf?v=1&d=20151023T211255>, 2.

¹⁹ The Tavistock Institute, *Shared parental leave to have minimal impact on gender equality*, May 2014, available at: <http://www.tavistock.org/news/shared-parental-leave-minimal-impact-gender-equality/>.

Iceland is also leading the way by creating legislation which applies to employers with 25 or more staff, and requires businesses to obtain equal pay certification from accredited auditors. All affected workplaces have to obtain certification by the end of 2021, and it will then have to be renewed every three years. Businesses that do not meet the requirements may be fined,²⁰ providing a legally binding toolkit to enforce the previously aspirational guidelines.

The Victorian Government should follow this lead by including Guidelines in s 15 which mirror these policies, and by mandating corresponding targets in the regulations under s 14.

Recommendation 6:

That the Guidelines issued by the Secretary should include the following:

- a) Abolition of pay secrecy (contractual obligations which exist to prevent staff from sharing their pay with colleagues);
- b) Provision of flexible-work options;
- c) Mandatory superannuation contributions for employees on paid parental leave;
- d) Payment of non-transferable extended paid parental leave for partners, as well as biological mothers, which can be used to provide primary care to that person's child at any time within the child's first two years.²¹
 - a. The Government should specifically fund agencies to provide this entitlement.
- e) Provision of post-maternity re-entry path-ways.

2.2 Sexual Harassment

Many of Maurice Blackburn's clients experience sexual harassment or sex-based discrimination.²² We witness the serious and damaging effect it can have on a person and a workplace. The Australian Human Rights Commission recently published figures²³ which show that:

- In the last 12 months, 23% of women and 16% of men have experienced sexual harassment at work;
- Women of colour, young adults (18-24), those with a disability, and LGBTI people are particular targets of sexual harassment;²⁴
- In the last 5 years, 81% of employees in the information, media and telecommunications industry having been sexually harassed;
- 40% of workplace sexual harassment incidents were witnessed by at least one other person, and in the majority of cases (69%) the witness did not intervene;
- Fewer than one in five people made a formal report or complaint about sexual harassment in the workplace; and
- Almost one in five people who did report sexual harassment were either labelled a trouble-maker; ostracised, victimised or ignored by colleagues; or resigned.

It is worth noting that the *Occupational Health and Safety Act 2004* (**the OHS Act**) and the *Workplace Injury Rehabilitation and Compensation Act 2013* (**the WIRC Act**) provide a mechanism for reporting occurrences of sexual harassment, among others, and making a claim where an injury is sustained.

²⁰ <http://www.abc.net.au/news/2018-01-04/iceland-law-will-ensure-men-women-paid-equally/9304412>

²¹ Maurice Blackburn endorses the recommendation made by the Citizen's Jury that parental leave be available for all public sector employees, and that there be no penalties for taking parental leave: Victorian Government 2018, 'Gender Equality Bill Citizens' Jury: Aspirational and Practical Recommendations', 7.

²² In 2016-17 the VEOHRC received 371 complaints about sexual harassment: Victorian Equal Opportunity and Human Rights Commission, *Annual Report 2016/2017*, page 68.

²³ Australian Human Rights Commission, 'Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces' (2018).

²⁴ Australian Human Rights Commission, *Change The Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities* (2017).

Section 21 of the OHS Act requires that employers provide and maintain a safe and working environment, one without risks.²⁵ Sexual harassment and how it is dealt with falls within this duty. The WIRC Act requires the Victorian WorkCover Authority (**the VWA**) to monitor compliance with this duty.

When there has been a breach of the OHS Act or corresponding regulations, it is the intention of the WIRC Act to provide appropriate redress in these circumstances. This protective mechanism is not well utilised and ought to be.

The VWA could better police instances of reported sexual harassment by holding employers to account if they fail to take reasonable steps to protect workers from sexual harassment. This will require workplace education and training to be provided to OHS Officials both at WorkSafe Victoria and within organisations.

The *Equal Opportunity Act 2010 (Vic)* (**the EO Act**) also provides an avenue for victims of sexual harassment to bring a claim against the perpetrator and/or their employer in the Victorian Equal Opportunity and Human Rights Commission. However, like the schemes mentioned above, the model puts an unreasonable burden on the individual.

Further, there is currently no requirement for companies to formally and regularly report sexual harassment statistics and claims internally or externally. We would expect to see behavioural change from companies if they were required to collect and report this data to an external agency. We would also then have a growing pool of data to draw from in identifying industries most affected by sexual harassment.

Many of the problems found in the current Victorian sexual harassment complaints system have been reiterated in a recent report by the House of Commons Women and Equalities Committee on Sexual Harassment in the Workplace (**the UK Report**).²⁶ For example:

- There is currently little incentive for employers and regulators to take robust action to tackle and prevent sexual harassment in the workplace.
- There is a lack of appropriate support for people who make complaints within the workplace.
- This lack of action by employers and regulators means the burden of holding harassers and employers to account rests heavily on the individual.
- Many do not make a complaint for fear of victimisation, lack of trust in the process, or because the complaints system is inaccessible.
- There is a lack of data on sexual harassment claims which makes it hard to measure the extent of harassment and the effectiveness of remedies.

The above factors mean in practice the current system is inaccessible for many people. Many of the learnings and recommendations from the UK Report in this area could be adopted in the Victorian context.²⁷ We submit that far more emphasis needs to be put on prevention by the employer.

Recommendation 7:

That section 105 of the EO Act be amended to extend the 'authorising and assisting' provision to prohibit 'permitting' a contravention, bringing to provision in line with the *Sex Discrimination Act 1984 (Cth)* and other anti-discrimination acts.

²⁵ *Occupational Health and Safety Act 2004* Section 21.

²⁶ UK House of Commons, Women and Equalities Committee, *Sexual harassment in the Workplace*, Fifth Report of Session 2017-19 (July 2018).

²⁷ UK House of Commons, Women and Equalities Committee, *Sexual harassment in the Workplace*, Fifth Report of Session 2017-19 (July 2018) para 60-62.

Recommendation 8:

That the Guidelines issued by the Secretary should include the following:

1. A process for formally reporting harassment claims and statistics to the board of the defined entity and to an external organisation, and
2. That policies on sexual harassment should include a requirement that bystanders to sexual harassment who occupy positions of power must take positive action to intervene.

Recommendation 9:

That WorkSafe Victoria and relevant workplace stakeholders (Victorian Trades Hall Council) be resourced to deliver training and encourage sexual harassment to be reported and considered via the OHS Act.

Recommendation 10:

That WorkSafe Victoria should better reprimand and enforce sanctions on employers who have breached their duty to provide safe and without risk workplaces, particularly in the context of sexual harassment.

2.3 Discrimination against Victims of Family Violence

There is a strong link between gender inequality and family violence. The causes of family violence are deeply embedded in community attitudes about power and the role of women in our society. To stop family violence, we need to address the gendered attitudes that lead to sex discrimination at work.

The Australian Council of Trade Unions called for the introduction of paid family and domestic violence leave for survivors to attend to matters arising from their situation.

A recent decision²⁸ in the Fair Work Commission now means that some employees can take *unpaid* leave to deal with family and domestic violence, but the entitlement is not for *paid* leave and only applies to employees covered by an industry or occupation award.

While much of the private and public sector are implementing their own initiatives and policies, it is not legislated and is far from widespread.

Paid domestic and family violence leave would ensure that survivors of domestic violence have time to seek legal advice, attend court proceedings and medical appointments, liaise with their children's school and carers, and seek alternative accommodation.

This leave should be kept separate from annual leave and sick leave and access to the leave should be simple, straightforward and confidential. For example, allowing an employee to apply directly through human resources means that they're not forced to discuss their personal circumstances with their manager.

Recommendation 11:

That the Guidelines issued by the Secretary should include the following:

1. A requirement that paid family and domestic violence leave be included as a claim during enterprise agreement negotiations;
2. Provision of a nominated support person in organisations with whom people can discuss family or domestic violence concerns;
3. Provision of free and confidential Employee Assistance Programs;
4. Provision of secure and flexible working arrangements for people experiencing family violence.

²⁸ <https://www.fwc.gov.au/documents/decisionssigned/html/2018fwcfb3936.htm>

Recommendation 12:

That 'being a victim of family violence or stalking' be included as a protected attribute in section 6 of the EO Act and impose an explicit obligation on employers to make reasonable adjustments at work that an employee may require because they are a victim of family violence or stalking.

2.4 Education and Training

We start learning about the world and our place in it in early childhood. Maurice Blackburn submit that it is essential that gender equality legislation is supported by Government action in the education and training sectors.

The UK House of Commons Select Committee on Business, Energy and Industrial Strategy released a report this year called, '*Gender Pay Gap Reporting*'. The Committee emphasised the importance of educative approaches being coupled with business approaches in tackling gender inequality:

*'Some of the causes [of the gender pay gap] are rooted in the education system and out of date attitudes on the role of women in society. These must be addressed on a coherent cross-departmental basis that fosters cultural change and the elimination of all forms of conscious and unconscious bias. But businesses must also take responsibility for the impact of their own policies, practices and culture.'*²⁹

Recommendation 13:

That the Government implement effective and well-resourced education and training policies across early childhood, primary, secondary and tertiary education institutions. This may include sexuality education programs, respectful relationships education programs, and encouraging girls to engage in science, technology, engineering, and mathematics activities.

Q3: What do you think is best practice in measures to support implementation of legislation that drives lasting social change?

Maurice Blackburn supports the recommendation by the Citizen's Jury to adopt a tailored transition to support implementation of targets or quotas with incentives.³⁰

Iris Bohnet, in her book 'What Works: Gender Equality by Design', advocates for use of targets or quotas in achieving workplace change.³¹ We also submit that the Government should resource training opportunity for defined entities who are particularly effected by the legislation to ensure that organisations can provide their staff with leadership on the scheme.

Implementation will also be most effective and will result in the most sustainable social change if it is coupled with political leadership, adequate resourcing, and support of specialist non-government groups.

In particular, we believe that the Government should encourage a bi- or tri-partisan approach to this legislation to ensure maximum prospect of long term success. Gender equality is not an issue which should be left to be remedied by isolated special interest groups – this is a job for everyone. Maurice Blackburn urge the Government to commit to approaching the Bill with these activities in mind.

²⁹ Commons Select Committee on Business, Energy and Industrial Strategy 2018, 'Gender pay gap reporting: Lessons learnt from the introduction of new reporting requirements', *UK Parliament* (2018) 3.

³⁰ Victorian Government, 'Gender Equality Bill Citizens' Jury' (2018) 8.

³¹ Iris Bohnet, *What Works: Gender Equality By Design*, Belknap Press (2016).

Recommendation 14:

That the transition of the Bill's implementation be tailored by introducing strategies such as varied timelines, milestone progress reporting, incentives for meeting deadlines and additional resourcing where necessary.

Q4: Do you agree that these are the critical principles and actions that should underpin the legislation? What should be added, or needs to be changed?

Maurice Blackburn endorses the critical principles and actions listed in the Bill. In particular, we support the proposed action that defined entities must 'have regard to the fact that an individual's experience of gender inequality may be compounded by other forms of discrimination and disadvantage.' We suggest that this clause may be strengthened by a specific acknowledgement of intersectionality. For example, it could expressly state the qualities which can lead a woman to experience greater and sharper inequality.

To complement the principle that 'gender equality benefits all Victorians, regardless of gender,' we submit that a further 'action' be included which specifically addresses the important role of all genders in the project to achieve gender equality.

Recommendation 15:

That action item 4 be amended to state: 'have regard to the fact that an individual's experience of gender inequality may be compounded by other forms of discrimination associated with intersectionality such as race, disability, culture, class or language.'

Q5: What else should be included in Gender Equality Action Plans to support demonstrating compliance to the principles?

Maurice Blackburn submit that in order for the Principles to be demonstrated, GEAPs should demand a higher threshold for compliance than the Bill currently requires. In particular, we believe that sections 11 and 14 set the bar too low and do not correlate with the objectives of the legislation which are enshrined in the Principles and Object.

Under the Bill, defined entities are required to specify 'particular strategies and initiatives' to be implemented in the GEAP, with consideration given to gender equality indicators.³² They are also required to state whether they have implemented 'gender impact analysis', and if they have not, they are required to do so within 4 years.³³

Defined entities are only required to take 'reasonable steps and demonstrate progress towards meeting gender equality targets'³⁴ if targets are expressly set out in the regulations of the Bill.³⁵ In these cases, defined entities are required to set out the strategies and initiatives that they intend to apply to achieve the targets.³⁶

Further, we endorse the recommendation by the Citizen's Jury that incentives are built into the scheme as a further approach to demonstrating compliance.³⁷ Incentives are more likely to create a positive association with quotas and targets, and could include a rating on a website, provision of awards and 'success story' campaigns.

³² Gender Equality Bill, s 11(b).

³³ Ibid, s 11(c).

³⁴ Ibid.

³⁵ Ibid, s 14.

³⁶ Ibid, s 11(1)(d).

³⁷ Victorian Government, 'Gender Equality Bill Citizens' Jury' (2018) 10.

Recommendation 16:

That section 11 of the Bill be amended as follows:

1. Amend s 11(1)(c)(ii) so that the time frame mandated for implementing gender impact analysis is 2 years, not 4 years;
2. Amend s 11(1)(d) and s 14(2) so that it is a requirement that a defined entity take 'reasonable steps and demonstrate reasonable *and substantive* progress towards meeting gender equality targets....';

Recommendation 17:

That incentive schemes be built into the reporting process, whereby defined entities are rewarded when they reach or exceed particular targets or aims in their GEAP.

Q6: What preparation, guidance materials or training is needed to support organisations to develop Gender Equality Action Plans?

Recommendation 18:

That the independent authority should prepare a 'best practice' guideline with examples of robust and effective GEAPs.

There should be a variety of examples to address different workplace contexts and sizes, and they should be updated regularly.

Recommendation 19:

That there should be an individual from the independent authority allocated to each defined entity. The individual may visit the workplace and assist in the creation of GEAPs, in collaboration with staff, employers and any other relevant groups.

Training will be essential to the effective roll-out and implementation of GEAPs.

Recommendation 20:

That the Government facilitate/resource training for senior members of defined entities to ensure strong leadership, as well as to a widespread of other members of staff to ensure that the aims in the GEAPs are perceived as everyone's responsibility.

Q7: What kinds of public sector targets should be included in the regulations of the Gender Equality Bill?

Maurice Blackburn endorses the introduction of mandatory targets in the regulations of the Bill. The WGEA has stated that organisations that set targets are more likely to succeed at increasing their gender diversity. Setting targets and establishing a plan to meet them is an effective way for defined entities to focus on continuous improvement, and will increase and embed accountability processes and will provide measurable performance.

We also endorse the Citizens' Jury recommendation for gender equality targets to be sector specific, and to be sensitive and tailored to certain workforces. In their report, they stated:

'In some sectors, the extreme specialty of an organisation, board or working group may make the establishment of quotas unworkable. On some government boards, executive organisations and bodies, specific circumstances such as indigenous, LGBT, religious, sectoral representative boards, executive or groups may not be best represented by gender-based representation....In some circumstances, geographic considerations may make gender balanced areas of the public sector burdensome for operation. In some circumstances, the small size of the group may make gender quotas [or targets] ineffective'.³⁸

³⁸ Ibid, 24.

Recommendation 21:

That public sector targets should be determined through negotiation with relevant stakeholders, in line with the process outlined in the [guide](#) produced by the WGEA.

As a general rule, Maurice Blackburn endorses the Citizens' Jury recommendation of a 40:40:20 quota.³⁹

Q8: What is needed to ensure representation of women from diverse backgrounds?

An intersectional approach to gender equality is critical for its success. Research shows that those organisations that pay their workers fairly, ensure their employees can achieve their pay potential and have a diverse and inclusive workplace culture are more successful, have higher rates of staff engagement and are more profitable.

It is crucial that the Ministerial Council represents the diversity of our community. Maurice Blackburn endorses s 20(2)(b) of the Bill which mandates that the Ministerial Council has one or more representatives who are Aboriginal persons.

Recommendation 22:

That, in discharging their duty pursuant to s 20(2)(a), the Minister should ensure, as far as it reasonably practicable, that the membership of the Council is representative of women of colour, non-binary individuals, LGBTIQ women, women with disability, and women from regional and rural areas.

Recommendation 23:

That in order to ensure the Ministerial Council's advice properly represents the intersectional nature of gender equality, the policy areas which it considers should prioritise those which particularly impact people who experience disadvantage and discrimination in multiple ways.

Recommendation 24:

That the Office for Women engage with and consult appropriate stakeholder groups to develop Guidelines in respect of this issue.

The Guidelines should provide tangible steps and programs that defined entities can implement to ensure that their workplaces, workforce and recruitment processes are inclusive to women from diverse backgrounds. The independent authority will be responsible for ensuring the Guidelines are followed in workplaces.

Q9: What frequency or volume of reporting would strike a balance between transparency and accountability, whilst minimising regulatory burden?

It is crucial that the process of reporting provides defined entities with the motivation to maintain progress and momentum towards their stated objectives.

Maurice Blackburn endorses annual reporting, pursuant to s 10(3) of the Bill.

Recommendation 25:

That all reports should be directed to the independent authority to ensure that reporting is regulated, meaningful and drives change.

³⁹ Ibid, 12.

Q10: How can the Victorian Government leverage procurement and funding practices to promote gender equality in the wider community?

Public procurement is a mechanism by which the Government can extend the usually higher standards of equality expected of public employers to the private sector.

Section 13 of the Bill allows the Finance Minister to create procurement guidelines for the defined entities. Maurice Blackburn supports this section and its potential to indirectly place similar obligations on businesses and organisations that bid for funding or contracts with the Victorian Government, as those which would be applicable to public sector entities.

The procurement guidelines would build on the existing Social Procurement Framework, which came into force on 1 September 2018.

For a public procurement process to be an effective tool, a number of elements must be present, including an appropriate legal framework and the participation of civil society groups, such as trade unions 'either as part of representative structures within organisations or as well-informed external monitors.'⁴⁰

We submit that trade unions have an important role to play in ensuring fair treatment in the workplace and in monitoring agreed targets, and therefore they should be part of the process of negotiating the procurement guidelines.

Recommendation 26:

That the Victorian government consider including the following into the procurement guidelines:

1. Mandate pre-qualification measures, including recruitment processes which eliminate gender bias (for example, a 40:40:20 ratio of interviewees by gender);
2. Define what it means to be an 'accredited supplier'; and
3. Set a target for an amount of procurement spending that should go to accredited suppliers.

Recommendation 27:

That enforcement of the procurement guidelines should incorporate a variety of compliance mechanisms:

1. The preparation of a database of accredited suppliers on gender equality criteria;
2. Publish case studies of procurement stories to communicate success; and
3. Penalties for repeated non-compliance with the guidelines, without a reasonable justification.

Recommendation 28:

That barriers to women's participation in the economy be identified and support mechanisms provided for accredited suppliers. This might involve:

1. Creating specialised programs so that accredited suppliers can access finance;
2. Evaluating the impact of the size of the tender on gender equality;
3. Ensuring effective information is available to accredited suppliers about education and certification processes;
4. Training procurement officers to build awareness of the value of using accredited suppliers.

⁴⁰ Tessa Wright and Hazel Conley, 'Advancing Gender Equality in the Construction Sector through Public Procurement: Making Effective Use of Responsive Regulation' *Economic and Industrial Democracy* (2018) 7.

Q11: Do you think that the proposal for monitoring and compliance of the Bill is fair and balanced?

The Bill's current approach to monitoring and compliance is limited to softer strategies such as plan-making, reporting and 'naming and shaming'. The Bill lacks any legally binding or directly enforceable standards.

Under the current Bill employers have no higher obligation than to maintain the status quo, while receiving the benefit of accreditation via their GEAP.

To remain compliant under the current Bill an employer may prepare a GEAP (with no particular requirements in respect of its contents), have 'taken reasonable steps and demonstrated reasonable progress' towards meeting its targets (if any apply) and have 'regard' to the procurement guidelines'.

While we acknowledge the importance of a tailored approach to the GEAPS, we believe that the threshold for compliance, pursuant to s 17, is too low; and the consequence of non-compliance, pursuant to section 18, too lenient.

In December 2017, Chatham House⁴¹ published a document titled *Gender-smart Procurement: Policies for Driving Change*. They analysed the scheme in place under the *Workplace Gender Equality Agency Act 2012* (Cth) (**WGEA Act**).

Under that model, similarly to the Bill, employers that do not submit a report are named as non-compliant in the agency's annual report to Parliament. Compliance notices are given to employers who lodge a report, and this must be supplied if bidding for any Federal Government procurement activity valued over a threshold amount.

Importantly, Chatham House noted that 'the current reporting regime in the WGEA Act reliance on a 'naming and shaming' approach is delivering change at a 'glacial pace'.⁴² Instead, they urged 'a bolder, more strategic approach to procurement in the next phase of policy development, which should include the introduction of targets and pre-qualification schemes.'⁴³

In light of this, Maurice Blackburn submit that the Government should consider complementing 'soft' strategies such as naming and shaming of poor practice with 'hard' enforcement mechanisms (such as sanctions and penalties for non-compliance),⁴⁴ where appropriate.

We also support the recommendation by the Citizen's Jury to establish an independent authority to oversee implementation of the Bill,⁴⁵ as outlined in the recommendation below.

Recommendation 29:

That under s 17 an independent authority, with expertise in gender equality, should be given the power to:

1. Define data requirements;
2. Gather data;
3. Set reporting requirements;

⁴¹ Chatham House, the Royal Institute of International Affairs is an independent policy institute based in London.

⁴² Susan Harris Rimmer, 'Gender-smart Procurement: Policies for Driving Change' *Chatham House, Global Economy and Finance Department* (December 2017), 18.

⁴³ Susan Harris Rimmer, 'Gender-smart Procurement: Policies for Driving Change' *Chatham House, Global Economy and Finance Department* (December 2017), 11.

⁴⁴ Tessa Wright and Hazel Conley, 'Advancing Gender Equality in the Construction Sector through Public Procurement: Making Effective Use of Responsive Regulation' *Economic and Industrial Democracy* (2018) 7.

⁴⁵ Victorian Government, 'Gender Equality Bill Citizens' Jury: Aspirational and Practical Recommendations' (2018) 5 <<https://engage.vic.gov.au/gender-equality>>.

4. Review all GEAPs and annual reports;
5. Determine whether GEAPs and progress is satisfactory when compared against the Guidelines and Principles of the Bill;
6. Issue the notices with feedback and mandated actions;
7. Publish a report (at least annually) which is publicly available; and
8. Provide list with the names of non-compliant defined entities to the Secretary to be named in the State GEAP.

Recommendation 30:

That in order to establish a clearer and higher threshold for compliance, the Bill should require GEAPs to contain a minimum number of the Guidelines published by the Secretary pursuant to s 15.

Recommendation 31:

That the legislation should mandate that defined entities adopt a bargaining position that any relevant gender equality targets and quotas be included in enterprise agreements.

Recommendation 32:

That the GEAPs should be made publicly available, in a timely fashion, so that the defined entities are properly accountable to the public.