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Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email: eesbc@parliament.qld.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Education, Employment and Small Business Committee (the Committee)'s inquiry into the *Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020* (the Bill).

Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories.

Our Queensland practice has 13 offices spread across both regional and metropolitan parts of the State, with these offices offering legal services across the firm's primary practice areas of personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation, negligent financial and other advice, and consumer and commercial class actions. The Queensland arm of Maurice Blackburn has also contributed to recent parliamentary inquiries into labour hire, the gig economy and workers' compensation, and has appeared at numerous parliamentary hearings to advocate for vulnerable workers on a range of issues including wage theft and conditions.

We congratulate the Government on the development of the Bill, and their ongoing commitment to the physical, psychological and financial wellbeing of Queensland workers. This Bill, once accepted, will bring Queensland in line with other jurisdictions¹ which are in the process of criminalising wage theft.

The Explanatory Notes² tell us that:

The objective of the Bill is to implement the underlying policy intent of Recommendation 8 (Simple, quick and low-cost wage recovery process for workers) and Recommendation 15 (Criminalisation of wage theft) of the Report.

¹ <https://www.parliament.qld.gov.au/docs/find.aspx?id=5618T1921>; s.1.8, p.7

² <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2020/5620T1168.pdf>; p.1

Recommendation 8

The committee recommends the Queensland Government review and take actions available to it, to ensure that wage recovery processes for Queensland workers are simple, quick and low-cost. This should include further investigation of the following options:

- a) establishing a dedicated industrial division within the Queensland Magistrates Court, in line with the example in Victoria;*
- b) investigating the inclusion of the Queensland Industrial Relations Commission or Industrial Court as an eligible state court under the Fair Work Act 2009 (Cwth);*
- c) reviewing relevant forms and processes to ensure the legal process is simple and user friendly for workers and their representatives; and*
- d) waiving or reducing current court filing fees for wage theft matters.*

Recommendation 15

The committee recommends the Queensland Government legislate to make wage theft a criminal offence, where the conduct is proven to be deliberate or reckless.

Maurice Blackburn believes that the Bill, as presented, will go some way to satisfying this objective. We agree that the criminalisation of deliberate or reckless wage theft, and the implementation of a simple, low-cost wage recovery process are worthy starting points for new legislation.

There are, however, a number of issues where we believe that the draft Bill represents a missed opportunity to embed some additional, beneficial elements of reform for Queenslanders.

Firstly, as noted in the Committee's report³, Maurice Blackburn and our union colleagues:

....called for industrial organisations (and legal firms, for IR Claims) to be 'given standing to prosecute wage theft', and to be able to seek costs from an employer on a successful prosecution.

There is much discussion in the Report that this was indeed the case prior to the introduction of the *Workplace Relations Act 1996 (Cth)*.

We remain of the opinion that this is still a worthy course of action.

Maurice Blackburn remains of the view that there is no coincidence that the spiralling of incidents of wage theft has occurred since the removal of standing for industrial organisations to investigate and prosecute wage theft.

The Report goes on to say⁴:

The committee recognises the critical role unions play in educating, advising and advocating for their members with respect to their workplace rights; and the role they have and continue to play in maintaining industry standards. The benefits of these activities extend beyond just their members to also deliver beneficial outcomes for workers more broadly engaged in those workplaces and industries.

Evidence provided by workers highlighted the importance of union support to enable them to successfully recover wages and entitlements. They were able to engage

³ Ibid; p.118

⁴ Ibid; p.119

directly with their employer, and where relevant, be represented in negotiations and obtain entitlements without fear of reprisal.

The committee acknowledges the concerns raised by unions in regard to worker access to representation in the workplace.

Maurice Blackburn believes that the Committee's choice to then perceive this issue as a federal issue (as reflected in Recommendation 6) is disappointing.

We urge the Committee to reconsider the immediate benefits of embedding industrial organisations' standing to prosecute within this Queensland legislation.

Similarly, the Committee report acknowledges that inspection and investigation functions sit at the federal level. Recommendations 11 & 12 read as follows:

Recommendation 11

The committee recommends the Federal Government take immediate steps to appoint additional Fair Work inspectors in Queensland under the Fair Work Act 2009 (Cth).

Recommendation 12

The committee recommends the Federal Government establish a full, independent review into the performance, resourcing and culture of the Fair Work Ombudsman to ensure that it can respond to wage theft and support affected workers in an effective and timely fashion.

Among other things, the review should consider the findings and recommendations of the Best Practice Review into Workplace Health and Safety Queensland which have driven a cultural shift from education to compliance.

Once again, Maurice Blackburn urges the Committee to reconsider the immediate benefits of embedding investigation and prosecution functions within this Queensland legislation. An appropriately resourced Queensland inspectorate – and a State Fair Work Ombudsman – would mean that Queensland workers are not subject to the vagaries of Commonwealth resourcing.

Maurice Blackburn further notes that it is assumed all alleged wage theft crimes must be reported to the police at first instance. Wage theft disproportionately affects migrant workers and young workers. WE are concerned that these are both cohorts that may be reluctant or afraid to approach the police. Establishing a Queensland inspectorate would allow those and other workers more confidence to report crimes and seek recourse.

Maurice Blackburn is also aware of some concern that the proposed adjustments to the Criminal Code may not have the desired effect of satisfying Recommendation 15 of the Committee's report – to make wage theft a criminal offence.

We understand that if the offender is a corporation, section 181A of the *Penalties and Sentences Act 1992* converts any possible sentence into a fine, thus office holders face no threat of imprisonment.

This would also create the unwanted scenario where sole traders and those who conduct unincorporated entities are subject to criminal sanctions, while those who run incorporated entities are not.

Maurice Blackburn urges the Committee to satisfy itself that the legislative mechanism adopted to implement Recommendation 15 will do just that.

Maurice Blackburn notes that the mandatory conciliation mechanism at the QIRC currently available under the Magistrate Court's Employment Claims is being replaced in the Bill with an opt-out voluntary conciliation scheme.

In our view conciliation must be compulsory to be effective. This will be the most effective means of streamlining and resolving claims quickly.

We note calls from the Young Workers Hub and the Queensland Council of Unions who are also advocating for compulsory conciliation, and echo their concern that without the mandatory requirement, employers are highly likely take up the opportunity to not engage in conciliation. The YWH note the devastating impact that protracted recovery processes would have on young workers. We commend their submissions to you.

We believe that this inquiry offers the Committee an ideal opportunity to revisit this issue.

Finally, Maurice Blackburn urges the Committee not to lose sight of two other important factors detailed in the report:

- The importance of public education⁵, and
- The importance of the Queensland Government reviewing its procurement policies to ensure that firms that have underpaid workers do not win government tenders⁶.

We encourage the Committee to reinforce these issues in its report to Parliament on the draft Bill.

Once again, we congratulate the Government on taking this important step of criminalising wage theft in Queensland. Evidently, current deterrent measures are insufficient to encourage some employers to do the right thing by their employees.

Please do not hesitate to contact me and my colleagues on [REDACTED] or via [REDACTED] at [REDACTED] if we can further assist with the Committee's important work.

Yours faithfully,



Giri Sivaraman
Principal Lawyer
MAURICE BLACKBURN

⁵ Ibid; Recommendations 1, 2 & 3

⁶ Ibid; Recommendation 5