

Industrial Relations and Other Legislation Amendment Bill 2022

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Committee Secretary
Education, Employment and Training Committee
PARLIAMENT HOUSE QLD 4000

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

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Committee's examination of the *Industrial Relations and Other Legislation Amendment Bill 2022*.

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 permanent offices and 7 visiting 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 Queenslanders on a range of issues including wage theft, silicosis and workplace safety.

Maurice Blackburn congratulates the Queensland Government on this important piece of legislation, and the extensive and inclusive consultation process that informed its development.

We note from the Committee's website that the Bill has six core intentions:

The amendments in the Bill related to the review are intended to:

- *strengthen protections against workplace sexual harassment*
- *support effective representation of employees and employers by registered industrial organisations and maintain the integrity of the registration framework for industrial organisations*
- *update the Queensland Employment Standards to ensure that Queensland workers have access to entitlements which are equal to or more favourable than the equivalent entitlement under the Fair Work Act 2009 (Cth)*
- *empower the Queensland Industrial Relations Commission to set minimum standards for independent courier drivers*



- *update the collective bargaining framework to ensure access to arbitration by a single Commissioner during enterprise bargaining negotiations, and include equal remuneration as an aspect of good faith bargaining,* and
- *remove a number of redundant or superfluous provisions, including the provisions enabling the recovery of historical employee overpayments by Queensland Health.*

While we are confident that the Committee will receive considered feedback on each of these, Maurice Blackburn focus its response on three of these important issues. For each of these issues, our responses are derived from the lived experience of our clients, and the Maurice Blackburn staff who support them.

1. Strengthen protections against workplace sexual harassment

The Explanatory Notes¹ tell us that:

The Bill's sexual harassment amendments are necessary to provide protections and deterrents against sexual harassment and sex or gender-based harassment connected with employment by adding key provisions to the main purpose of the IR Act; and replacing existing definitions of 'sexual harassment' and 'discrimination' in the IR Act with those contained in the Anti-Discrimination Act 1991 (AD Act).

The Bill's amendment to the definition of 'industrial matter' to include sexual harassment and sex - or gender-based harassment will facilitate access to orders and permit the Queensland Industrial Relations Commission (QIRC) to exercise its general conciliation and arbitration powers for sexual harassment and sex or gender-based harassment complaints.

These provisions will ensure that sexual harassment is misconduct for the purposes of summary dismissal and require that the QIRC consider whether a dismissed employee engaged in sexual harassment or sex or gender-based harassment in deciding whether a dismissal was harsh, unjust or unreasonable.

Maurice Blackburn is fully supportive of the initiatives within this section of the Bill. We believe that these changes represent an appropriate incremental response to the Respect@Work: Sexual Harassment National Inquiry Report², and other recent consultations on workplace reform.

We further note from the Explanatory Notes³ that:

Queensland's response to the Respect@Work Report will include other legislative reforms in addition to those introduced by the IR Bill, such as amendments arising from the Queensland Human Rights Commission (QHRC) review of the Anti-Discrimination Act 1991 (AD Act). The QHRC review includes in its terms of reference consideration on whether the AD Act should contain a positive duty on employee and employer organisations to eliminate discrimination and other objectionable conduct prohibited by the AD Act, similar to the duty contained in section 15 of the Equal Opportunity Act 2010 (Vic).

¹ <https://documents.parliament.qld.gov.au/tp/2022/5722T915-4640.pdf>: p.1

² https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wsh_report_2020.pdf

³ Ibid: p.6

Maurice Blackburn believes that the introduction of a positive duty on all employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation is essential, in order to satisfy recommendations 17 and 18 of the Respect@Work report.⁴

It will also be essential to empower the QHRC or the QIRC to assess compliance and enforce these requirements, and to ensure that they are appropriately resourced to fulfil those important functions.

2. Support effective representation of employees and employers by registered industrial organisations and maintain the integrity of the registration framework for industrial organisations

The Explanatory Notes⁵ tell us that:

The purpose of the amendments are to ensure that employees' and employers' industrial interests are effectively represented by entities subject to regulation under the IR Act, rather than unregulated entities who are not required to fulfil the high level of governance duties under the IR Act. The amendments are designed to protect members interests by prompting integrity, accountability and transparency of the employee and employer organisations.

Maurice Blackburn fully supports these worthy intentions.

We have long argued that there is no role for unregistered incorporated associations masquerading as representatives of employees or employers.

The framework for registering and regulating industrial organisations provides clear expectations to industrial participants of their rights and responsibilities in the important role of supporting employees or employers in the conduct of industrial relations.

Moreover, the introduction of provisions prohibiting misrepresentations by non-registered entities or persons about their rights to represent others, are an important consumer protection for workers and a safeguard for all industrial participants.

These changes are wholly consistent with ensuring freedom of association while delivering sensible regulation of Queensland's industrial relations system.

3. Empower the Queensland Industrial Relations Commission to set minimum standards for independent courier drivers

Maurice Blackburn fully supports this initiative.

While recognising that the Commonwealth plays the main role in determining the minimum standards for those in the broader gig economy, we believe this is an important step in ensuring Queensland continues to show leadership in achieving appropriate employment conditions for independent contractors – not just courier drivers.

One important minimum standard is access to workers' compensation. Nowhere is this more important than for those who drive for a living.

⁴ Ibid: p.44

⁵ <https://documents.parliament.qld.gov.au/tp/2022/5722T915-4640.pdf>: p.4

Queensland was at the forefront of discussions around gig worker access to statutory workers' compensation schemes through the landmark Peetz review of the operation of the Queensland workers' compensation scheme in 2018.⁶

We note that this matter also featured in the Interim Report of the Senate Select Committee on Job Security.⁷ Recommendation 6 from that inquiry reads:

The committee recommends that the Australian Government works with state and territory governments to lead the reform of state-based workers' compensation schemes so that they extend to platform workers, regardless of their visa or work status, and require platform companies to pay workers' compensation premiums for these workers.

While this specific element of minimum entitlements is not featured in the current Bill, we note for the Committee that the Queensland Government has committed to ensuring gig workers access to workers' compensation in the 2020 Queensland State election. The extension of protections for gig economy workers under this commitment will ensure the avoidance of unintended regulatory gaps, such as where a gig economy work might have their engagement regulated by the QIRC, but is not covered by Queensland's workers' compensation framework.

We look forward to Queensland continuing to show national leadership in this important area.

Conclusion

Maurice Blackburn is pleased to support this important Bill, and congratulates the Queensland Government on its ongoing commitment to improving the circumstances of Queensland workers – especially those who are most vulnerable. We see this Bill as an important step in implementing the important findings of a number of influential inquiries, both in Queensland and nationally.

We urge the Committee to recommend the adoption of the Bill's provisions in full.

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

We look forward to an opportunity to expand on these points at a public hearing.

Yours faithfully,



Giri Sivaraman
Principal Lawyer
MAURICE BLACKBURN

⁶ https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0021/24087/workers-compensation-scheme-5-year-review-report.pdf

⁷ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Interim_Report/saction?id=committees%2freportsen%2f024635%2f75899