



30 June 2020

Committee Secretary  
Economics and Governance Committee  
Parliament House  
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Dear Sir/Madam,

We welcome the opportunity to provide feedback to the Inquiry into the Queensland Government's economic response to COVID-19.

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 offices specialise in personal injuries, 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.

All Maurice Blackburn submissions to public policy inquiries are based on the lived experience of the clients we serve. To that end, we restrict our comments to three areas of legal practice in which our clients have been directly impacted by the Queensland Government's economic responses to the COVID-19 pandemic. They are:

1. Workplace issues during the crisis which have impacted Queensland
2. Preventing 'Presenteeism'
3. Short-term changes to the operations of the Court system in Queensland

We also see the work of this Committee as an ideal opportunity to give consideration to how Queensland society should change as a result of the crisis. To this end, we offer some observations about learnings for the future in each of these areas.

Australia's response to the crisis would have to be considered one of the best in the world, in terms of restricting loss of life and ensuring that the economy is well placed to recover from the lock-down period.

We see this inquiry as an opportunity to consider how we fortify our society from future events, by strengthening the areas that have proven most vulnerable. We are grateful for the opportunity to provide input to inform this process

## 1. Workplace issues during the crisis which have impacted Queensland

Maurice Blackburn calls on the Queensland Government to exercise its influence as a member of the National Cabinet to seek changes to the JobKeeper and JobSeeker arrangements.

Maurice Blackburn believes that the crisis work conducted by the Federal Attorney General, the ACTU Secretary and others in developing the blueprint for the JobKeeper program was a great example of what can happen when decision makers are focused on the workers and the economy, not on an ideological outcome. It was also a great example of cooperative work between a decision maker and representatives of the labour force.

We acknowledge that the speed with which JobKeeper was developed, and the magnitude of the Federal Government's financial commitment at the time, were both very impressive and appropriate.

Unfortunately, whenever a much needed, major reform is done in a hurry, gaps are likely to appear in the implementation.

Maurice Blackburn's Queensland staff have been inundated with calls from workers who have, in various ways, fallen between the cracks of JobKeeper coverage. We lend our voice to those that believe the National Cabinet could have been more insistent that the 'line in the sand' be drawn in such a way that more Australian tax payers – especially casuals, migrant workers, university staff, Australian staff of foreign owned entities and those in the Arts industry were able to access the benefits. As the early wind-back of Jobkeeper in the childcare sector reminds us, it is roles most often occupied by women and young people that are most impacted by these decisions.

Our concerns with JobKeeper are not restricted to eligibility. Another large number of calls to our offices from Queensland workers indicates that rorting of the system by employers has been widespread. The case study below illustrates how that rorting has been occurring.

### Case Study #1

*Lisa<sup>1</sup> was a permanent full time employee in a Queensland plastic and reconstructive surgery clinic. Her employer asked her to sign a new employment contract, citing the impacts of COVID-19. She declined, but offered to work reduced hours and take annual leave on the other days, or to be stood down on JobKeeper. She was made redundant instead. Our client filed an unfair dismissal application which was settled by Lisa being reinstated, before the case even got to conciliation.*

We would be pleased to share with the Committee more granular detail in relation to the enquiries about JobKeeper we have received from clients and the Queensland public.

Maurice Blackburn believes that many Australians will have gained an unpleasant insight into just how marginal or precarious their employment (and income) is. We perceive this inquiry as a great opportunity to seek to influence their federal counterparts to reconsider the policy settings that have led to this precariousness, and recommend appropriate adjustments.

Queensland needs policy setting which focus on stable, satisfying employment, with good conditions. We need policies which incentivise employers to prioritise permanent jobs, and de-incentivise the use of temporary and precarious working conditions.

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<sup>1</sup> For more detail on this case, see: <https://www.couriermail.com.au/truecrimeaustralia/police-courts/sacked-worker-claims-her-position-should-have-been-a-keeper/news-story/cfa84a097025d63735445dd3d354afad>

The crisis has shown that we need to return to a world of work where employment conditions are the result of genuine negotiation between employers, employees and their representatives.

Maurice Blackburn believes that membership of the National Cabinet also affords a unique opportunity to advocate for structural reform where the work of nurses, teachers, drivers, supermarket workers, first responders etc are recognised as the essential workers. These are the roles that the current system disempowers.

During the crisis, the Federal Government showed sympathy and respect for those that had to rely on the JobSeeker safety net. There seems to be genuine recognition during the COVID crisis that, in the vast majority of cases, it is circumstances beyond the control of the individual that have put them in that position.

The Queensland Government is well positioned to help its federal counterparts to recognise that, outside of crisis conditions, the vast majority of people relying on safety nets are doing so due to circumstances beyond their control. It would be beneficial to the wellbeing of those individuals, and to our society, if the respect and empathy for people experiencing a period of joblessness extended beyond times of crisis.

## 2. Preventing 'Presenteeism'

The Federal Department of Health tells us that one of the critical elements of 'flattening the curve' is that we stay home if unwell<sup>2</sup>. This has been repeated to us by academics and experts in infectious disease management<sup>3</sup>.

For most people, this is a 'no brainer'. If you are displaying even mild symptoms of COVID-19, why would you risk spreading that to workmates, fellow commuters etc? For those that have been diagnosed positive, there are clear directions in place from the Department of Health requiring self isolation<sup>4</sup>.

The assumption underpinning this advice is that workers have a means of supporting themselves whilst not working. It is becoming increasingly evident that this is only true of those whose workplace arrangements allow for sick leave.

Research conducted by the McKell Institute<sup>5</sup> shows that there are 2.6 million Australian employees without paid leave entitlements. That figure does not include gig economy workers or contractors.

This needs to change if there is to be an expectation that sick people do not show up to work.

We applaud the initiative of the Queensland government whereby casual workers who do not have access to sick leave will be given a \$1,500 lump sum payment if they test positive for

<sup>2</sup> <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-restrictions/easing-of-coronavirus-covid-19-restrictions>

<sup>3</sup> See for example: <https://www.smh.com.au/business/workplace/if-we-are-sick-we-need-to-stay-at-home-20200513-p54smy.html>

<sup>4</sup> <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/self-isolation-for-diagnosed-cases-of-covid-19-direction>

<sup>5</sup> <https://mckellinstitute.org.au/app/uploads/McKell-COVID-19-Initial-Impact-Assessment-on-Workers-.pdf>; p.8

coronavirus<sup>6</sup>. We note that the Victorian Government<sup>7</sup> is following the Queensland Government's leadership on this issue, and we encourage other jurisdictions to do likewise.

While it was important that State Governments have responded to this issue in the short term, we believe there is a strong need for a longer term, federally driven measure to ensure sick workers do not have to feel that they have to go to work to be able to support their families.

We would also like to see the scheme expanded down the track, beyond those who test positive to COVID-19. Those without sick leave (casuals, gig economy workers etc) who are symptomatic should not need to choose between staying home to help prevent the spread, and having an income.

We encourage the Queensland Government to advocate strongly through the National Cabinet that the Federal Government assume responsibility for this Queensland initiative in the long term.

### **3. Short-term changes to the operations of the Court system in Queensland**

Maurice Blackburn has been very pleased with the relatively fast transition of Queensland's Courts systems to respond to remote working conditions. The urgency with which most courts were able to respond has meant that the criminal and civil justice systems have been able to continue to operate, albeit at a reduced capacity.

We bring the following matters to the attention of the Committee.

#### **i. The move to remote hearings**

Queensland courts were able to adapt to conducting remote hearings relatively quickly. Maurice Blackburn staff have reported that even complex matters have been heard with relative success, even though parties were not physically located within courtrooms.

#### **ii. Remote Signing and Witnessing of Documents**

During the lockdown period, where there were (appropriately) strict limitations on the reasons for people to leave their homes, it was very difficult to find ways through which legal documentation could be signed and witnessed. This was especially problematic in the area of Wills and Estates – at a time when many people's minds were turned to those issues. We are grateful to the Attorney General and the Queensland Courts for rapidly identifying appropriate means for ensuring such documentation could be processed during the crisis period.

We congratulate the Attorney General on moving swiftly to process these adjustments through the short-term adjustments to laws or regulations for the period of the crisis, processed via the various Omnibus Bills that made their way through the Queensland parliament.

In order for the Courts system to operate efficiently, it would be beneficial for the Committee to consider whether the adjusted methods for signing and witnessing court documentation may be worth retaining post COVID, as more court processes move on-line.

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<sup>6</sup> <https://www.qld.gov.au/jobs/entitlements/hardship-payment-covid19>

<sup>7</sup> <https://www.premier.vic.gov.au/statement-from-the-premier-45/>

In summary, when looking forward, Maurice Blackburn encourages the Committee to not focus on “how we get Queensland back to normal”, but rather focus on how we address the structural workplace inequities laid bare by COVID-19 in the plans for recovery.

In relation to legal systems, we encourage the Committee to focus on how we ensure that access to justice for all Queenslanders continues to be a priority during the recovery.

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

Yours faithfully,



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