



31 July 2020

Committee Secretary
Public Accounts and Estimates Committee
Parliament House
Spring Street
East Melbourne Vic 3002

Maurice Blackburn Pty Limited
ABN 21 105 657 949
Level 21
380 Latrobe Street
Melbourne VIC 3000

DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

By email: covid.committee@parliament.vic.gov.au

Dear Sir/Madam,

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

Maurice Blackburn Pty Ltd is a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. Our Victorian 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 the short-term changes to the operations of the Court system in Victoria, and the impact that those adjustments are having on injured Victorians.

Maurice Blackburn has been very pleased with the leadership shown by the Government, and in particular the Attorney General's Office, in providing the legislative and policy platforms which have enabled Victoria's Courts systems to adapt quickly to remote working conditions.

The urgency with which most courts were able to respond has meant that, across the board, 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. Remote Signing and Witnessing of Documents

During the lockdown period, where there are (appropriately) strict limitations on the reasons for people to leave their homes, it is very difficult to find ways through which legal documentation can 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 Victorian Courts for rapidly identifying appropriate means for ensuring such documentation may be processed during the lock-down periods.

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.

ii. The move to remote hearings

Most Victorian courts have been 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.

The continuation of administration of justice during the pandemic has been important. Within the plaintiff law area, the focus must remain on ensuring that Victorians injured in a workplace environment, or on our roads, or through exposure dust diseases, or due to medical negligence can continue to achieve a speedy resolution to their claim, to ensure that they are not further financially disadvantaged by the pandemic. During these times of heightened financial insecurity, the stresses on injured people are exacerbated – so it has been important that the timeliness and efficiency of accessing justice has not added to this stress.

It has also been important to ensure that a backlog of cases does not arise in Civil Lists that will need to be addressed at a later point.

The Magistrates Court

The Magistrates Court has found it more difficult than the other Courts to offer electronic hearings and other e-capability. We have continued to engage with them to offer assistance regarding how justice could be better and safely accessed and delivered through this period. Issues which have arisen in the WorkCover List (where most of our client's cases are listed) have been:

1. A preference for in-person attendance at the Court for hearings and Early Neutral Evaluation Conferences (ENEC's);
2. Remote hearings only being offered from 13/7/20, and only where both parties consent;
3. Hearings in circuit courts (courts in regional areas) not being heard in their regular buildings¹ or online unless the case is transferred to the Melbourne registry (which requires an application by one of the parties to transfer the case, adding to time and cost).

The Medical Panel

The Medical Panel has also experienced some challenges in continuing to operate.

While many of these were overcome after the issues were worked through with Stakeholders, we have observed some slowing of examinations taking place where people have been referred for Wrongs Act assessments. This has the potential to create a backlog that will need to be cleared both at the Medical Panel and the Courts (as matters may be adjourned or Court hearing dates not ordered if the Medical Panel Opinion has not been issued).

¹ With the exception of the July hearing of the LaTrobe Valley circuit

VCAT:

VCAT has made some significant steps toward adopting remote hearing capacities, we thought it worth flagging that this is likely to need to be sufficiently robust to cope with an increase in caseload.

It is likely that we will need to issue more matters at VCAT in response to TAC increasingly terminating entitlements to medical expenses. Should we do so, VCAT will need to ensure that they have a Covid-safe way of progressing those matters through to conclusion.

iii. WorkCover and TAC

WorkCover and TAC have responded positively and collaboratively to the challenges presented by Covid.

As issues arise, we are able to raise these with the leadership of both WorkCover and TAC through the Legal Liason Committees and/or other working groups that each have set up. These have proved very beneficial during this period.

Issues will continue to arise that will require consideration by all of us on the impact they may have on people receiving their compensation entitlements. For example, our staff report that WorkCover Authorised Insurers have started cancelling Independent Medical Examinations (IMEs) for our clients, due at least in part to a reluctance to have medical examinations conducted remotely. If this becomes a trend, this is likely to delay our clients' access to benefits and create a backlog that will need to be cleared at a later point.

We will continue to engage with WorkCover and TAC on these issues as they emerge.

Conclusion

We have long recognised that increased use of electronic exchange, retention and use of information, together with use of video technology, would make a significant, positive difference to the cost of and access to justice. We hope the learnings from the changed behaviours during the pandemic, and the subsequent work of this Committee, can be instrumental in driving these changes forward.

We note that the Department of Justice has commenced a consultation process on elements of the Omnibus Bill which should be retained once those Bills expire, and those which should revert to pre-COVID settings. Maurice Blackburn offers our input to that conversation, for the benefit of this Committee, as Appendix A.

We would be happy to provide additional, and more specific information to the Committee on any of the issues raised in this submission.

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

Yours faithfully,

[REDACTED]

Liberty Sanger
Principal Lawyer
MAURICE BLACKBURN

Appendix 1:

Initiatives Implemented in the Court System during the COVID-19 pandemic that we would like to see retained, or returned to pre-COVID settings

1. Court practices/procedures in response to pandemic we would like to see retained

Post COVID, we would like to retain the ability to attend Directions Hearings by audio-visual means, with prior approval of the Court (this is of great assistance for suburban and regional lawyers – and will save time and expense).

We would like to retain E-signing requirements/acceptances - accepting e-mailed documents for filing where it's not an approved form to be filed

We would also like to retain the provision of material electronically (both receiving and sending) – including writs, OMs, affidavits, medical documents etc

E-brief management should continue post COVID

Video conference trials should be retained for appropriate cases – where witnesses can attend the court remotely

We would also like to retain the capacity for doctors/witnesses (ie the treating GP) to give evidence in non-controversial matters by audio-visual means. This may also force consideration as to whether that witness is really “needed” and so save time and costs. (note: In the County Court, Judge Tsalamandris has already referred to this potential at Medical Negligence Users Group meeting on 4 May).

In relation to Medical Panels:

- Post COVID, we would like to retain the option of Medical assessments/examinations via video conference as an option - psych assessments in particular

- We would also like to retain E-signing requirements/acceptances - Doctors accepting non-original authorities

- We would like to retain the provision of material electronically (both receiving and sending) - including writs, OMs, affidavits, medical documents etc.

In relation to Medical Experts:

- We would like to retain the capacity to receive briefing material by email/e-brief, and to provide e-briefs to doctors if they will accept them. This increases velocity and reduces the time and cost of bulky folders being sent to experts

- We would like to retain the ability to provide material electronically (both receiving and sending) - including writs, OMs, affidavits, medical documents etc.

- We would like to see a continuation of the willingness of hospital and doctors to accept e-signatures for clients for medical authorities. It saves time, increases velocity because not waiting for original signed authorities to be sent and then returned by clients.

- We believe that having medicos arranged to give evidence by video/web based video from their surgeries on an ongoing basis would be beneficial. Giving them that flexibility would reduce costs to them and also generally encourage more flexibility as to when they might give evidence. Of course giving evidence in person is preferred but there will be circumstances where this option is best.

- We would also like to retain the capacity for clients to attend assessments (where appropriate) by audio visual link, particularly for clients who live remotely or have health/mobility issues. Audio visual assessments should also be available as an option when it comes to assessing clients for psychiatric illness.

Post COVID, we would like to retain the capability to pay for FoI requests (including application and copying fees) to Government Institutions (hospitals, Ambulance Victoria, Victoria Police etc) by EFT.

2. Legislative amendments in the Emergency Measures Bill that we would like to see remain

We would like the Attorney General to consider retaining the arrangements for documents including affidavits to be signed and witnessed electronically via audio visual means in cases where physical presence is a hurdle, after the Omnibus Legislation/Regulations have expired.

3. Processes / legislative amendments which will need further consideration or should not remain

Post COVID, we would like to return to face to face pre-trial conferences and mediations with the parties, so that discussions and negotiations can take place with both counsel in the same room.

We would also like to return to final direction hearings in person. It is important to know and see your opponent practitioners and 'eye' the registrars too. For junior operators, attending Directions Hearings in person is a great opportunity to learn / improve on advocacy skills, communicating with defendant lawyers and develop an understanding of certain positions judges will take in different matters.

In relation to Medical Panels, post COVID, as a default, we believe we should return to physical examinations with safety measures in place

In relation to Medical Experts, Post COVID, there are some things we should return to:

- Physical assessments of a person to determine functional impairment/AMA assessment eg Rehabilitation Physician or OT assessments are more difficult over the video. We should return to a default position that clients are assessed, wherever possible, face to face.

- We believe that in-person evidence is generally better as a default setting

4. Opportunities for government consideration post Covid-19

As a suggestion for the future, we would like to see the ability to receive subpoenaed documents electronically from the Court.

Also as a suggestion for the future - The option of uploading an E-Court Book (which comprises the parties list of key documents) should be preferred moving forward, as opposed to a physical copy. This minimises the need to copy and can ensure that Courts can promptly peruse and locate the material. This will also assist experts, as well as the clients, review the material. Hard copies, which are voluminous, can result in assistants spending hours copying, only before last minute changes, which can obviously be stressful. It is a lot easier to make a change electronically. We would suggest that, in the future, the court move to requiring all court books to be filed electronically.

Other matters of interest:

An issue that often arises in asbestos disease claims is locating a former workers compensation insurer of a deregistered company. Identifying these insurers is essential for practitioners to direct claims to the correct entity. The County Court has a database set up in their registry which practitioners can search through at dedicated computers to find this information.

The difficulty during the COVID-19 isolation measures has been physically attending the County Court to undertake these searches. For a short time during this period, a representative of the County Court Service Delivery Team was conducting these searches on behalf of practitioners, however this practice was halted as the Court advised they did not have the resources to manage the requests.

Going forward it would be desirable to have some form of online portal that practitioners could access remotely and search through. This will ensure that physical attendance at the County Court is avoided whilst alleviating the resources of the registry team and also streamlining this search process.