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27 March 2020

The Hon Christian Porter MP  
Attorney-General of Australia  
Minister for Industrial Relations  
Leader of the House  
PO Box 6022  
Parliament House  
CANBERRA ACT 2600

*By email*

Dear Attorney

***Assistance to Barristers***

Despite the extraordinary circumstances of the current pandemic, the various Courts and Tribunals of the Commonwealth have been kept in operation to ensure that the administration of justice is maintained where it is possible and feasible to do so.

Barristers play a unique role in the administration of justice and I can report to you that our members have risen to the challenge in these unprecedented times. Our members have appeared in hearings, embraced new technologies, and made themselves available to ensure that the interests of the members of our community are served. We are receiving daily reports of our members working co-operatively with the various Federal Courts and Tribunals in this regard, and the work of all the officers and staff of the Courts and Tribunals is to be commended.

At all times, our members have been advised and encouraged to work on the basis that their health and safety, and that of their families, the Court and Tribunal members and staff, is of paramount concern. In large measure, the technological and other protocols instituted by the Federal Courts and Tribunals are working, but there are some discrete issues and teething problems in some Courts and Tribunals as would be expected. We are seeking to maintain a dialogue with the Commonwealth Courts and Tribunals to ensure that our member's concerns are addressed.

However, while our members will do what they can, many of our members are confronting present or imminent financial difficulties. That is not least because despite the best efforts of the Courts and Tribunals, and our members, some trials and hearing have not been able to proceed as anticipated, or at all. In Commonwealth criminal trials, juries are a necessity but no new juries are being empanelled until much later this year. Sentencing proceedings and bail applications are being prioritised but there are many practical issues with them proceeding. In civil cases, understandably priority is being given to the matters that necessitate it. There are particular difficulties in legally aided family and migration law matters.

This has impacted on the income of our members including income from Commonwealth agencies, all the while our members are continuing to confront expenses on business loans, rents, utilities and the expenses associated with their livelihood and that of their families. Many members have reported that their income has dropped to zero or they anticipate that it will in the near future. Nevertheless, the profession must be ready to practice immediately upon a case being ready, offered and the Court being available which requires the maintenance of practising certificates, insurance, chambers fees and overheads throughout this period.

While Barristers play an integral role in the administration of justice, they are also business operators. They are not permitted by professional rules to be incorporated. They are sole traders who have all the attendant challenges and expenses of running a small business as a sole trader.

With all of the above in mind, the Bar Association of New South Wales seeks the following:

1. Prompt payment of fees owing by Commonwealth agencies to barristers.
2. Extension of business stimulus packages and concessions for sole traders with particular attention to the impact of coronavirus on the profession. In this regard:
  - a. Under the current stimulus package, barristers who are not employers do not have access to the “cash flow boost” administered by the ATO. Many barristers, particularly junior barristers, do not have employees and therefore receive no support under these rules. We request that these rules be amended and that a “cash flow boost” be made available in some form to the self-employed who are not themselves employers. The Association understands that the UK Government has announced that self-employed workers there can apply for a grant worth 80% of their average monthly profits, up to a maximum of £2,500 a month, to help them cope with the financial impact of COVID-19. The Association requests that the Australian Government considers similar measures.
  - b. The COVID-19 supplement is only available to those barristers who are either currently receiving or eligible for Jobseeker payments. This is means tested and takes into account a partner’s income. The “assets test” is waived for these purposes, but the “income test” is not. While we understand that some single barristers have sought assistance by way of the Jobseeker payment, that does not appear to be a feasible option for many barristers who are partnered. This is because these payments do not take into account the fact that the barrister is contributing a loss to the household. The Jobseeker allowance (and consequently the COVID-19 supplement) has been designed for salary and wages workers. Since the stimulus package has extended the test in an effort to include sole traders, the test should also be amended such that the focus is on “household income” as opposed to “partner income”. It would assist many barristers if that change were to be made.
3. Deferral of GST, income tax instalments and other payments to the ATO for sole traders.
4. Extensions of time for businesses to lodge BAS and other tax returns with the ATO, including tax returns for individuals and trusts that are currently due on 31 March 2020 and activity statements which are due to be lodged in April 2020.

5. Relief from the payment of rent or fees payable by sole traders for the occupation of premises and protection from eviction, irrespective of whether there is a relationship of lessor or lessee (as many of our members pay license and other fees for the occupation of their place of business, being chambers).
6. Encouragement to Commonwealth and Territory agencies to continue to brief barristers in respect of both civil and criminal matters, with development of appropriate work flows for work that can be performed during the period of the pandemic.
7. Measures to address the circumstances of Federal Crown counsel and Federal defence counsel. There are no Federal Public Defenders who are salaried and only a minimal number of Federal Crown counsel, such as the Director herself, who are salaried. The private bar performs the role of Crown counsel in almost all Federal jury trials, whereas in States such as NSW, there are salaried prosecutors. There is a significant pool of counsel who regularly act for the Crown and counsel briefed by Legal Aid for the defence in trials who now do not have any work.
8. Encouragement to banks and commercial lenders to waive or defer payments due under loans and other transactions with sole traders for the period of the pandemic;
9. Interest free loans to assist barristers pay necessary operating expenses including insurance premiums, rent, mortgage or similar payments (to the extent that barristers are not otherwise relieved from paying those expenses).

I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink that reads "T. A. Game". The signature is written in a cursive style.

Tim Game SC  
President