

7 April 2020

COSBOA Communique

Keeping employers and employees connected

BACKGROUND

The recent announcement of the Australian Government's \$130B JobKeeper package is warmly welcomed by COSBOA, noting that the objective of this package is principally to keep employees connected to their employer during the course of the COVID-19 Crisis. COSBOA notes that the announcement made by the Prime Minister and the Treasurer is effectively a statement of intent, with the detail to be worked out prior to the legislation being presented to the Australian Parliament on Wednesday 8 April 2020.

The issues on the operation of this measure are significant and were the focus of a national round table of COSBOA members (and other stakeholders) held on Friday, 3 April 2020. The round table was addressed by the Federal Minister for Employment, Skills, Small and Family Business, the Hon. Senator Michaelia Cash, who provided information on the government's approach to workforce training during the crisis and responded to questions about the JobKeeper announcement.

Four key themes were discussed by round table participants as outlined below.

Key Themes

1. Managing the cash gap. Participants noted that the JobKeeper package requires businesses to pay employees in advance. Given there is a natural uncertainty about making payments before JobKeeper becomes law, stakeholders highlighted challenges for small and medium businesses on managing the cash gap between payment of April wages and receipt of the JobKeeper subsidy in the first week of May 2020.

Another key issue included the increase in the total wages bill for employers. Even though the JobKeeper payments will be reimbursed by the ATO it will have unintended cost impacts. Many businesses with casuals will see their payroll bill increase as the casual employee will often receive a much higher wage under JobKeeper than they would normally be paid. This may, and will, increase the liability for payroll tax and workers compensation premiums. The Australian Retail Association, for example, reported that the large number of casuals employed in retail is estimated to increase fortnightly payrolls by 40% during April compared with pre-March 2020 fortnightly payrolls, and similar figures were reported for fuel retail.

2. Redressing IR Uncertainty. Participants noted with concern that the current operation of the Fair Work Act (2009) imposed significant limitations on the ability of businesses participating in the JobKeeper Program to amend the working hours and work tasks of their employees to meet business and consumer needs, as well as the essential need of maintaining a healthy work environment. Numerous association representatives reported that their member businesses had received feedback that some employees were unlikely to agree to reasonable changes in these areas. Concern was also expressed about the business risk associated with the use of the current stand down provisions in the Fair Work Act (2009). The meeting noted that:

- Recent experiences with changing awards via the Fair Work Commission (3 awards in 3 weeks) suggests that the process of making necessary changes to all 122 modern awards would likely take a further 2.3 years – to say nothing of the time required to also change more than 11,000 EBAs.
- Consequently, there is a need for temporary changes to the Fair Work Act to allow employers – whether operating a business that has temporarily closed or is operating at reduced capacity – to reasonably direct staff to reduce working hours and undertake new duties needed to support near term business survival and longer term business vitality (e.g. web marketing, workforce training, stock control).
- There is a need for absolute clarity in respect of the use of the stand down provisions (Section 524) of the Fair Work Act (2009) and this need is demonstrated by the action taken by the Qantas Alliance of Engineering Unions against Qantas for non-payment of sick leave following use of stand down provisions last month.
- Failure to address both aspects as part of the JobKeeper package – that is, work flexibility and certainty of stand down provisions – would create a level of business risk that will likely lead to sub-optimal use of the JobKeeper subsidy.
- The round table participants highlighted that such provisions should provide safeguards against exploitation of employees by unscrupulous employers and exploitation of workplace relations and unfair dismissal processes against employers by vexatious employees.
- Any changes should have end dates linked to the JobKeeper payment.

3. Workforce development opportunity. There is a significant opportunity to utilise the national vocational education system to provide employees, operating on reduced hours or on no hours, with new or upgraded skills that will assist both the business and the employees. The round table noted advice from the Minister that a COAG Skills Council meeting was focused on this as a matter of urgency. Outcomes could be achieved through the development of ‘micro credentials’ as well as utilisation of the Australian Industry Skills Committee (AISC) Framework. The round table applauded this work and resolved that:

- This work should seek to utilise the existing Vocational Skills Framework by re-tasking SSOs under the direction of the AISC and leverage the Industry Reference Committee structures that exist for industry communication.
- This work should seek to engage and support private training enterprises, public training bodies (e.g. TAFEs), and enterprise training organisations.
- That consideration be given to a training 'voucher system' to employers to encourage their employees into training programs relevant to their occupation.

4. Supporting employers supporting employees. During the period of the crisis, many small businesses will become training environments in their efforts to keep their employees meaningfully engaged. It is therefore essential that business owners are supported in these efforts (in a train the trainer manner) and are assisted in managing the emotional well-being of their people. This is best achieved through industry associations, the ASBFEO and other agencies.

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