

27 May 2020

COSBOA Communique

Early issues impacting SME Recovery

BACKGROUND

With strong indications that the COVID-19 health crisis is diminishing, the attention of the National Cabinet has turned to how best to get the national economy moving again, with the identification of a three-stage process for reopening of the economy.

The reopening task has been similarly exercising the minds of SMEs around the country, with many business owners focussing on how best to reduce reliance on current economic assistance programs that are scheduled to conclude in September 2020 (e.g. Job Keeper). The degree to which SMEs are successful with this task will be somewhat dependant on policy and regulatory settings that encourage investment which, in turn, supports expedient job creation as a means of accelerating national economic recovery.

Accordingly, COSBOA's COVID-19 Roundtable has been re-tasked to focus on the nature of the initiatives that could aid economic recovery and jobs creation from an SME perspective. The first of these re-tasked meetings was convened on Friday 22 May 2020 and included addresses from Mr Chris Jordan (Tax Commissioner, ATO) and Ms Sandra Parker (Fair Work Ombudsman).

Much of the conversation at this meeting focussed on JobKeeper and industrial relations uncertainty created by a recent federal court ruling relating to the employment of casuals.

KEY THEMES

Two key themes emerged during the latest meeting of the National COSBOA Roundtable, namely:

1. Pragmatic and fair administration of the JobKeeper Program by the ATO

- Notwithstanding some relatively minor issues relating to uncertainty, the performance of the Australian Taxation Office (ATO) in establishing JobKeeper and communicating with the SME community has been exemplary. COSBOA notes that the ATO is reportedly receiving around 90,000 calls per day and typically answering these inquiries within 10 minutes.
- Participants noted the change in the 'traditional' regulatory stance of the ATO to being one of feared regulator to being a national agency supporting the honest efforts of SMEs (and their tax agents, bookkeepers or accountants) to do the right thing in

respect of JobKeeper eligibility and participation – effectively, highlighting that the ATO is not looking for ‘gotcha moments’ against SMEs who are striving to do the right thing.

2. There is an urgent need to address significant uncertainty surround the implications of the recent decision of the Federal Court around the employment of casuals

- Several industry bodies, predominantly national employer bodies operating under the auspices of the Fair Work Act (2009), advised that the level of member inquiry about the impact of the recent federal court decision (i.e. Rossato V Workpac of May 2020) on their leave liabilities.
- There was lengthy discussion about the urgent need for the Federal Government (and the Fair Work Ombudsman) to issue a clarifying statement in respect of the employment of casuals, noting that the decision appeared to be specific to those employed under labour hire agreements (predominantly in mining and construction), as opposed to casuals working under long accepted arrangements in retail and other industries – and subject to the provisions of the model clause relating to casual to permanent conversion obligations in all modern awards.
- The Fair Work Ombudsman advised that they were aware of the recent federal court decision relating to casuals and were considering the implications and whether any additional guidance needs to be provided to stakeholders in lieu of this decision.

Post Script:

- *The COSBOA secretariat notes that the issue of casuals is to be addressed by the Commonwealth Government in partnership with all stakeholders, as announced by the Hon. Prime Minister Scott Morrison in his headland address on Tuesday 26 May 2020. This announcement is warmly welcomed by COSBOA and COSBOA looks forward to contributing constructively to this process.*
- *The COSBOA secretariat also notes comments made by ACTU Secretary, Ms Sally McManus, suggesting that national media discussion pertaining to the recent federal court decision appears to be promoting questionable conclusions about the extrapolation of the decision to the employment of genuine casuals working in SMEs in Australia – and creating unnecessary anxiety. COSBOA supports this assessment by the ACTU Secretary.*
- *The COSBOA secretariat further notes the cost of JobKeeper was overestimated by \$60 billion. This was revealed in the hours after the roundtable on 22 May. Given the speed of reaction by the government and public service, it is unsurprising that estimations were wrong, although the amount is staggering.*

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