

From: Elisha Radwanowski <elishar@acapma.com.au>

Sent: Friday, 8 May 2020 11:50 AM

To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>; Sophie Ismail <sismail@actu.org.au>; Tamsin Lawrence <Tamsin.Lawrence@australianchamber.com.au>; Sue-Anne Burnley <sue-anne@sda.org.au>; David.Smith@amwu.org.au; Stephen Crawford <stephen.crawford@nat.awu.net.au>; Hamish Harrington <Hamish.Harrington@aigroup.com.au>; Chesterman, Bill <bchesterman@vacc.com.au>; Luis Izzo <Luis.Izzo@ablawyers.com.au>; Gavin van Rensburg <gavin@sda.org.au>

Subject: RE: AM2020/22 - Vehicle Award

Further to the drafting issue raised below, it is noted that participation in the JobKeeper Program is not mandated, regardless of the businesses eligibility, as such a business may be eligible and not participating. Use of 'qualification' or 'eligibility' of the business to participate in the JobKeeper Program, rather than actual participation, could give rise to unintended coverage issues. As such it is suggested that rather than reflecting the businesses eligibility the drafting be adjusted to reflect the businesses enrolment in the JobKeeper Program

To reflect this distinction and assuming that clause J.1(d) intends to capture eligible employees of participating businesses, it is proposed that the clause be amended as follows:

' Schedule J does not apply to any employee employed by an employer ~~who qualifies for~~ is enrolled in the JobKeeper Scheme if the employee is ~~eligible to receive 'JobKeeper' payments pursuant to the Coronavirus Economic Response Package (Payments and Benefits) Act 2020~~ an eligible employee as defined in s.9 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.'

Should you require any further information or assistance please do not hesitate to contact me.

Kindest Regards

Elisha Radwanowski

Executive Manager: Employment and Training
Australasian Convenience and Petroleum Marketers Association

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From: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Sent: Friday, 8 May 2020 11:39 AM

To: Sophie Ismail <sismail@actu.org.au>; Tamsin Lawrence <Tamsin.Lawrence@australianchamber.com.au>; Sue-Anne Burnley <sue-anne@sda.org.au>; David.Smith@amwu.org.au; Stephen Crawford <stephen.crawford@nat.awu.net.au>; Hamish

Harrington <Hamish.Harrington@aigroup.com.au>; Chesterman, Bill <bchesterman@vacc.com.au>; Elisha Radwanowski <elishar@acapma.com.au>; Luis Izzo <Luis.Izzo@ablawyers.com.au>; Gavin van Rensburg <gavin@sda.org.au>

Cc: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Subject: AM2020/22 - Vehicle Award

Importance: High

Dear Parties,

Further to the hearing this morning, the Full Bench wish to raise a minor drafting issue with all parties.

Clause J.1(d) currently provides:

‘Schedule J does not apply to any employee employed by an employer who qualifies for the JobKeeper Scheme if the employee is eligible to receive ‘JobKeeper’ payments pursuant to the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*.’

Employees do not receive JobKeeper payments. They receive the benefit of Jobkeeper payments, but Jobkeeper payments are made to the employer.

Employees can be ‘eligible employees’ as defined under s.9 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*, in which case their employer can claim the jobkeeper payment for the employee. To receive the benefit of a jobkeeper payment, the employee would need to be an ‘eligible employee’, and employed by an employer that decides to participate in the jobkeeper scheme. An employee could be an ‘eligible employee’, but be employed by an employer that decides not to participate in the jobkeeper scheme.

Assuming that clause J.1(d) intends to capture eligible employees, it is proposed that the clause be amended as follows:

‘ Schedule J does not apply to any employee employed by an employer ~~who~~ that qualifies for the JobKeeper Scheme if the employee is ~~eligible to receive ‘JobKeeper’ payments pursuant to the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*~~ an eligible employee as defined in s.9 of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.’

In order to finalise this matter quickly, you are requested to provide any comment on the proposed clause by **3pm today**. All comments to chambers.ross.j@fwc.gov.au.

Kind regards,

Mirella Franceschini
Associate to The Hon. Justice IJK Ross
President

Fair Work Commission
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The **Fair Work Commission** acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander peoples. We acknowledge their continuing connection to country and pay our respects to their Elders past present and emerging.

