

16 April 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
Canberra ACT 2600

By email: josh.frydenberg.mp@aph.gov.au

Dear Treasurer,

Re: JobKeeper eligibility and schedule of payments

As you would be aware, the live performance and entertainment industry has been significantly impacted by Government directives for bans on gatherings due to COVID-19, and as a result, all forms of live entertainment have ceased. This has presented many challenges for the industry, including a significant reduction in revenue and the ability to pay its workforce. In many cases, without the ability to present performances and live music, tour shows, and screen films many companies saw their income reduced to zero in a matter of days.

1. BUSINESSES UNABLE TO PAY WAGES IN ADVANCE OF JOBKEEPER PAYMENTS

Without any income, many companies which meet the criteria as 'eligible employers' for the purposes of claiming the JobKeeper Payment do not have the cash flow to pay 'eligible employees' in advance of receiving the JobKeeper payment, which is paid in arrears. These same companies, due to their structure and inability to take on liabilities, are also having difficulty accessing bank loans to assist with the payment of wages while they wait for reimbursement through the JobKeeper scheme.

This is compounded by the flat JobKeeper Payment of \$1,500, which for a number of our member companies, results in a higher fortnightly total payroll bill than if the same companies were paying their usual wages. In some cases, more than \$20,000-\$30,000 each fortnight for companies, which are struggling to sustain themselves through the next six months.

The cash flow PAYG reimbursement (up to \$100,000 over 2 periods) will also not provide sufficient assistance for many companies as the amount is too small. The key challenge is timing. The current timeline for crediting BAS is not fast enough to assist companies to manage cash flow.

The JobKeeper Payment will undoubtedly provide the necessary assistance to help many businesses keep people in their jobs and re-start once the COVID-19 crisis is over. However, we are concerned that many companies in the live performance and entertainment industry, that are not able or struggling to cover wages in advance, will now face further financial pressure and will not be able to retain their workforce. This will have a resounding impact well into the future of the industry, which is expected to face significant upfront costs and require industry-specific skilled workers in order to restart.

LPA seeks that the Commissioner of Taxation be provided discretion to:

1. Credit the BAS quicker, as soon as a company/entity lodges the BAS i.e. within 2 days or earlier;
2. Pay the JobKeeper Payment in advance for each eligible employee, on a monthly basis; or
3. Allow eligible employers to backpay wages to eligible employees after receipt of the JobKeeper Payment.

One, or all of the above options could be available to companies without the cash-flow to cover payment of wages in advance. This would greatly help businesses in the live performance and entertainment industry which are currently experiencing significant financial difficulty. Fundamentally, it may be the difference between many companies continuing to survive and retaining workers with the requisite skills when industry can restart. Therefore, these workers are an important part of our economic and cultural recovery when the COVID-19 crisis is over.

2. JOBKEEPER PAYMENTS FOR FUTURE-CONTRACTED ARTISTS

Most companies in the live performance industry issue contracts of employment to performers and production employees on a fixed-term (or maximum term) basis, for the duration of, or expected duration of a production (for example a musical or a theatre show). Many of these performers and production employees have signed contracts of employment on, or before 1 March 2020, but the period of work is scheduled to commence at a future date. Having not been technically “on the books” at 1 March 2020, these performers and production employees are not eligible for the JobKeeper Payment even though they had been engaged to work on productions in the future, which would have kept them in employment for at least the next six months.

In addition, some performers and production staff are engaged on touring productions, for which they may have signed multiple contracts of employment, which cover the next six months but have, for example a 3 week gap between cities, during which the employee is not subject to a contract of employment. Even if these employees are currently ‘eligible employees’ for the purpose of JobKeeper Payments, when the first contract of employment ceases the employee is no longer eligible, even though the employee restarts work on the same production just a few weeks later.

We also have productions that were due to commence work in the next couple of weeks and cannot start due to the COVID-19 restrictions. Employers are hopeful the production will be able to commence later this year and so will be standing down these employees from the first day of the contracted period. These employees are vital to the successful mounting of the show in the future, once the restrictions are lifted. However, they are not ‘eligible employees’ as they were not on the books as at 1 March 2020. Such employees are disadvantaged by not being able to access JobKeeper even though they will be engaged at a future date.

LPA seeks that these live performance employees be deemed ‘eligible employees’ for the purpose of JobKeeper Payments. The nature of the industry does not allow most of its performers and production staff to be engaged in continuous employment, even though in usual circumstances the same performers and production staff would be engaged in regular employment throughout the year. As a result, these employees under the JobKeeper enabling laws will be left out of the JobKeeper scheme.

SUMMARY

In summary LPA requests:

The Commissioner of Taxation be provided discretion to:

1. Credit the BAS quicker, as soon as a company/entity lodges the BAS i.e. within 2 days or earlier;
2. Pay the JobKeeper Payment in advance for each eligible employee, on a monthly basis;
3. Allow eligible employers to backpay wages to eligible employees after receipt of the JobKeeper Payment;
4. Extend the definition of ‘eligible employee’ for the purposes of the JobKeeper Payment to include live performance employees engaged on fixed-term (or maximum-term) contracts executed on, or before 1 March 2020, for future productions,

We seek your urgent consideration of the matters raised in this letter. Please contact me if you require any clarification or additional information.

Yours sincerely,



Evelyn Richardson

Chief Executive

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ABOUT LPA

Live Performance Australia (LPA) is the peak body for Australia's live performance industry. Established over 100 years ago in 1917 and registered as an employers' organisation under the *Fair Work (Registered Organisations) Act 2009*, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia.