

**RIGBY COOKE** LAWYERS

**The ongoing influence of COVID**

**Wages movement**

**Domestic Violence Leave**

**Ongoing issue - contractors and employees**

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## The Covid Two step

- After two years of rapid and often bewildering change, COVID specific regulations continue to change rapidly
- Inconsistency remains across:
  - International Borders
  - State lines
  - Industries;
  - Modern Awards
- Albanese government has recently announced a change to isolation periods, set to commence from Friday 9 September
- Regardless of COVID regulations, employer obligations remain the same:
  - Provide a workplace that is safe and without risk to health
  - Monitor the health and safety of your workplace



## Wages Movement

- Quarterly FWC reports indicate 1000 Enterprise Agreements certified in first quarter 2022
- Average Annual Wage Increase (AAWI) in employment generally is 2.6% (same as December quarter)
- AAWI in transport and warehousing is slightly higher at 2.7% (also the same as December quarter)
- 2.7% sits well above the Wages Price Index of 2%, which is the average increase for all wages (WPI)
- The market is hot
  - Increased pressure for higher salaries on commencement
  - Internal relativities under pressure as new hires skew the balance



## **Domestic Violence Leave**

- All employees covered by the Fair Work Act (which is not all employees) are entitled to 5 days unpaid Family and Domestic Violence Leave
- The Albanese Government has introduced a bill in late July 2022 proposing to introduce 10 days paid family and domestic violence leave in each 12 month period
- FDVL will be:
  - available to full-time, part-time and casuals
  - available upfront at commencement of each year (no need to accrue);
  - payable at the rate would have earned if had worked (incl casuals)
- The Bill also proposes to use the external affairs power to extend FDVL to employees not usually covered by the National Employment Standards
- FDVL may change significantly by the time is passed into legislation

# Contractors and Employees

## The never ending story

- Remember, contractors can be deemed to be employees under such schemes as superannuation, tax and WorkCover, even when workers are genuinely contractors – you cannot escape those obligations, make sure your accountant / lawyer understands the deeming provisions and is onto it.
- When determining whether a worker is a contractor or an employee, it is irrelevant:
  - what the parties call themselves;
  - what the parties understand (because their opinion of the law is irrelevant)
- What is persuasive is factors such as;
  - rights and duties of the parties;
  - the right of control;
  - payment amount, method and terms;
  - termination rights
- Getting it wrong has significant implications:
  - sham contracting – penalty provisions
  - underpayment claims and penalties – potential solvency implications





## Questions and comments

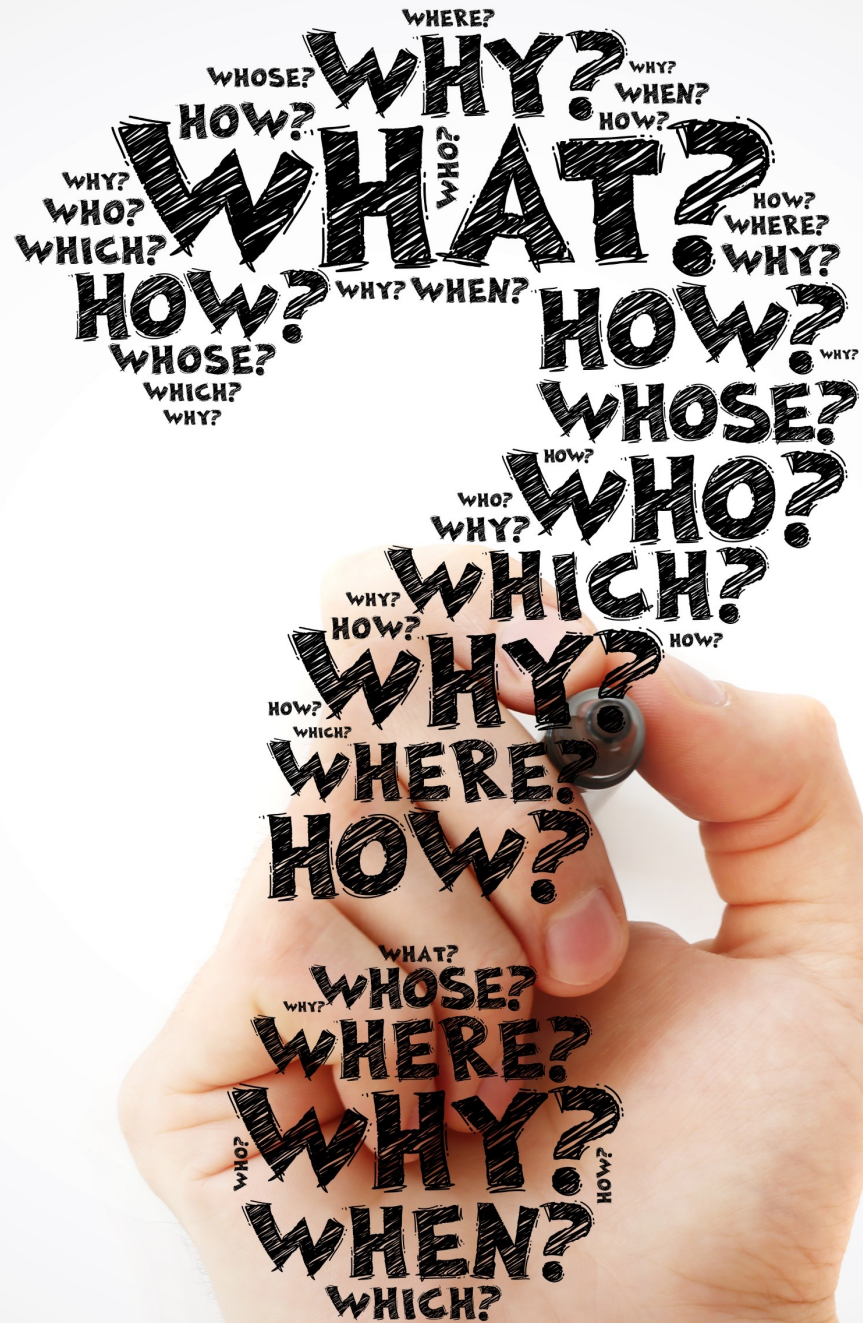
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