Categorising work relationships: a world of ambiguity, inconsistency and contradiction

A February 2021 decision of the United Kingdom Supreme Court concerning the legal status of Uber drivers in London attracted significant levels of media interest in many countries, including in Australia.[1]

The case turned upon the interpretation of the term 'worker' in British employment legislation, and as such, is not of direct relevance in the Australian context. Nevertheless, it can confidently be anticipated that the decision in the *Uber Case* will be brought to the attention of courts and tribunals, and will be the subject of further debate, in Australia and elsewhere – as evidenced by the recent decision of Commissioner Cambridge in *Diego Franco v Deliveroo Australia Pty Ltd*.[2]

The decision in the *Uber Case*, and the world-wide interest it generated, serves to highlight the problems legal systems everywhere are experiencing in categorising work relationships at a time of profound technological, social and economic change – changes which are currently compounded by the effects of the COVID-19 pandemic.

In this Insight we look at the principal reasons why it's necessary to characterise work relationships, and then at the ways in which courts and parliaments have tried to do this over the years.

This leads to a consideration of some of the things that can and should be done to bring greater clarity and certainty to the characterisation process – recognising that there is no magic, one-size-fits-all' solution to the categorisation conundrum.

Our analysis proceeds from the recognition that in a market economy all businesses need to access labour in order to carry on their commercial activities. Conventionally, they have done this by engaging employees under contracts of 'employment' or 'of service'.[3]

Such contracts can provide for a number of different kinds of engagement, including: full-time, part-time, and casual. Their content is governed by a combination of agreed terms (express and implied), modern awards, enterprise agreements and statute.

Frequently, however, businesses will wish to access labour on some other basis – for example, in order to meet a short or long-term need for specialised services, to facilitate a flexible response to fluctuations in demand for goods or services, or simply to control labour costs.

1 *Uber BV v Aslam* [2021] UKSC 5 (***Uber***). For comment from an Australia perspective, see e.g. 'Subordination: Uber drivers are not self-employed, rules UK Supreme Court', *Sydney Morning Herald*, 19 February 2021; 'Uber wage ruling puts gig workers in box seat', *The Australian*, 18 March 2021; and 'Uber's response to UK ruling leads to new controversy', *Australian Financial Review*, 17 March 2021.

2 [2021] FWC 2818, [135]-[136].

3 The concept of 'service' is derived from the old law of master and servant, and is little-used nowadays; although contracts of employment are conventionally characterised as 'contracts of service' in order to distinguish them from 'contracts for service*s*' which are used for the engagement of independent contractors.

Such needs can be satisfied in a number of ways, including through the engagement of labour hire providers, where the workers concerned are employed by the provider but are supplied to, and work under the direction and control of, the client on the basis of a commercial arrangement between the provider and the client.

They can also be satisfied through various forms of principal/contractor arrangements. These can range from arms-length contractual engagements involving substantial corporate entities to 'independent contractor' arrangements between corporations and individual workers which bear many of the hallmarks of an employer/employee relationship, even where the services are provided through a partnership or a 'one-person company'.

These various forms of engagement are perfectly legitimate, and, subject to observance of the relevant regulatory requirements, can be tailored to reflect the specific needs of the parties. It is also becoming common for people to undertake work across a number of businesses and many value these opportunities to control the relationships under which they perform their work.

There is, however, a two-fold problem: first, the current state of the law is such that too often it is not possible for the parties to a contractual relationship to be reasonably, let alone entirely, confident as to its precise legal character; and secondly, the existing rules are too inflexible to enable businesses effectively to respond to rapidly changing circumstances.

In the next part of this Insight we look at three recent decisions of the Full Court of the Federal Court of Australia (**Trilogy**) which starkly illustrate the ***ambiguity, inconsistency and contradiction*** that have too often characterised judicial decision-making and legislative policy formulation in this area.[4]

The decisions also illustrate the continuing failure of courts, legislators and regulators to ensure that the law relating to categorisation of work relationships keeps pace with the changing nature of work and of the economy. These failings have in turn served as a significant source of inconvenience, expense and uncertainty for Australian business – and for many individual workers.

The Trilogy comprises:

- *Jamsek v ZG Operations Australia Pty Ltd Jamsek v ZG Operations Australia Pty Ltd* (***Jamsek***);[5]
- *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (***Personnel Contracting***);[6] and
- *Dental Corporation Pty Ltd v Moffet* (***Moffet***).[7]

Importantly, on 12 February 2021, the High Court of Australia granted special leave to the losing parties in *Jamsek* and in *Personnel Contracting* to appeal against the decisions of the Full Court, whilst on the previous day it refused leave to Dental Corporation to challenge the decision against it in *Moffet*.

The appeals in *Jamsek and Personnel Contracting* are due to be heard in the second half of this year, which means that the decision is likely to be handed down in late 2021 or early 2022. It is to be hoped that the High Court will take the opportunity to adopt a more rational and consistent approach to the important task of categorising work relationships than has been the case in the past frequently.

This aspiration assumes particular significance in light of the announcement in February 2021 by the Federal Leader of the Opposition that a future Labor Government would legislate "to ensure more Australian workers have access to employee protections and entitlements currently denied to them by … [the] …narrow, outdated definition of an 'employee'". This, apparently, is to be achieved by "extending the powers of the Fair Work Commission (**FWC**) to include employee-like forms of work, allowing the Commission to make orders for minimum standards in new forms of work".[8]

The Leader of the Opposition's speech is disconcertingly short on detail in relation to key issues such as what constitute 'employee-like' relationships and as to what is to replace the 'outdated definition of employee'. This makes it all the more important that the High Court provide a clear and consistent framework of common law principles in relation to categorisation of work relationships within which legislative reform might be developed and implemented.

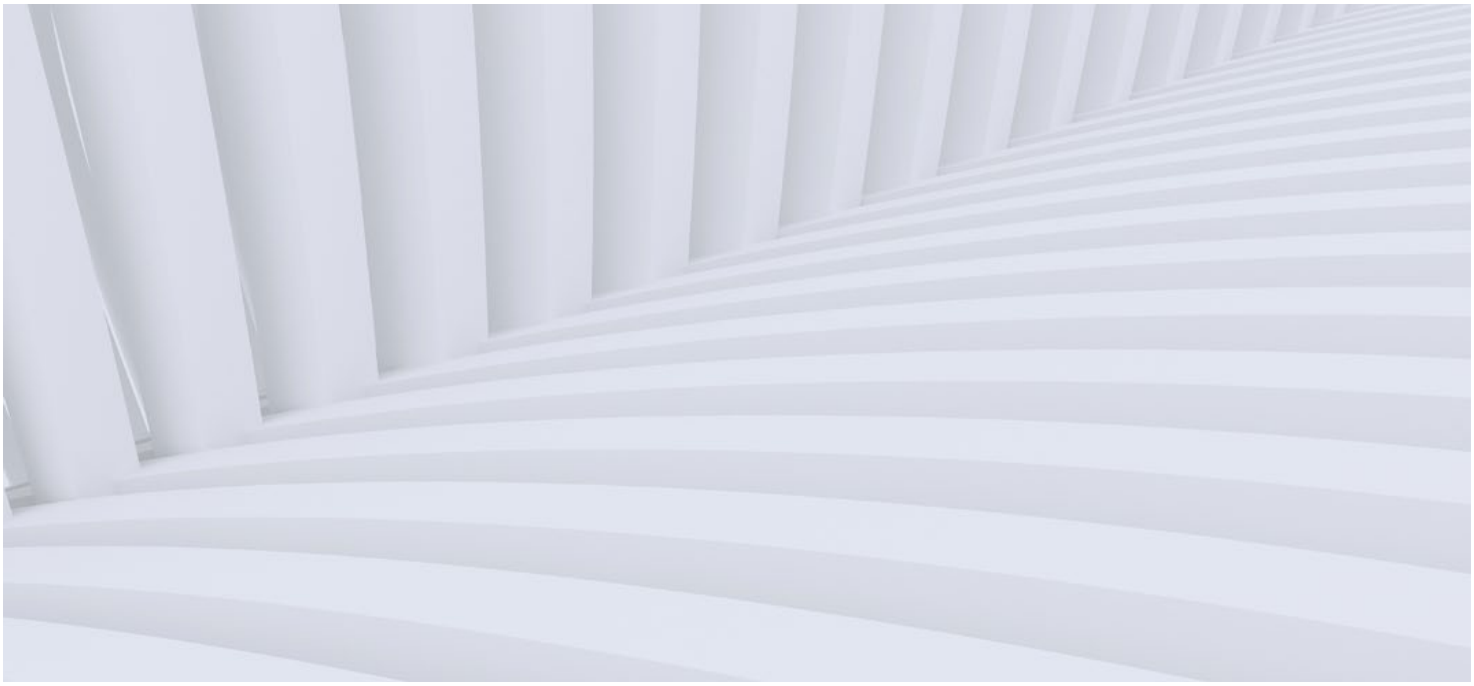
4 The highlighted expression is taken from the judgment of Justice Lee in *CFMMEU v Personnel Contracting Pty Ltd* [2020] FCAFC 122, [61].

5 [2020] FCAFC 119. The Court was comprised of Justices Perram, Wigney and Anderson. The principal judgment was delivered by Justice Anderson, whilst the other members of the court provided short concurring opinions.

6 [2020] FCAFC 122. The Court was comprised of Chief Justice Allsop and Justices Jagot and Lee. The principal judgment was delivered by Justice Lee. The Chief Justice delivered a brief concurring opinion, whilst Justice Jagot concurred with both of her colleagues.

7 [2020] FCAFC 118. The composition of the Court was the same as in *Jamsek*. Justices Perram and Anderson delivered the principal judgment, whilst Justice Wigney delivered a short concurring opinion.

8 *Secure Australian Jobs Plan*, address by Anthony Albanese MP, Leader of the Australian Labor Party, TAFE Queensland, Brisbane, 10 February 2021.



As indicated, there is no magic solution to the categorisation conundrum but there are a number of things that can and should be done to bring greater clarity and certainty to the process. We explore some of these options in the last part of this *Insight*.

Pending significant regulatory change, we suggest that there are a number of principles by which businesses should be guided in choosing the kinds of labour arrangements that they adopt:

- Ensure that there is a clear and compelling business case for whatever model of engagement may be adopted. It is important not to fall into the trap of entering into particular kinds of work arrangements simply because it is 'fashionable' to do so, or because a competitor has done so.
- Ensure that the relevant contractual arrangements are clearly and consistently drafted, and that they address any issues/regulatory requirements that have the potential to compromise the integrity of the relationship those arrangements are intended to create.
- Ensure that the relevant contractual provisions accurately reflect the model that has ostensibly been adopted, thereby enabling them to withstand challenges on the ground that they constitute 'sham' arrangements or are inconsistent with statutory protections of independent contractors.[9]
- In that context, it is also important to ensure that there is a credible factual basis for the arrangements into which the parties are entering: for example courts are unlikely to look favourably at principal/contractor arrangements where the supposed 'contractor' or 'entrepreneur' has no meaningful bargaining power and little if any understanding of the nature and consequences of the arrangements in question.[10]
- Frame principal/contractor arrangements in such a way that the principal has the capacity to exercise the least possible degree of control over the contractor, and that contractors genuinely have the capacity to accept or to refuse work and to delegate the performance of work without the agreement of the principal.
- Recognise that in many instances the most effective way to ensure the legal and operational integrity of independent contractor arrangements is to obtain the services of workers through an interposed corporate entity – bearing in mind that in certain circumstances courts will be prepared to 'lift the corporate veil' in order to ascertain what it considers to be the true character of a relationship.
- Ensure that the practical application of contractual arrangements reflects their form: the most sophisticated principal/contractor arrangements will be wholly ineffectual if the reality of the relationship between the parties is one of employer and employee despite its being labelled as something else.

9 Such protections can include the sham contracting provisions in sections 357-359 of the *Fair Work Act 2009* (Cth) (**FW Act**), the general protections provisions in Part 3-1 of the same Act, and the *Independent Contractors Act 2006* (Cth) (**IC Act**).

10 The situation of Mr McCourt in CFMMEU *v Personnel Contracting Pty Ltd* [2020] FCAFC 122 is a case in point.

The Trilogy

Jamsek

Messrs Jamsek and Whitby (**Drivers**) started work with Associated Lighting Industries Pty Limited (**ALI**) at its premises in western Sydney in 1977. During their early years with ALI they were engaged in a range of unskilled or semi-skilled jobs. By 1980 they had both become truck drivers. Thereafter they worked in that capacity for ALI and various successor companies (**Companies**) until 2017, at which point their engagements were terminated by the latest company in the line of succession, ZG Operations Australia Pty Ltd (**ZG Operations**).

From 1986 onwards the Drivers were engaged under a series of written and unwritten contracts (**Contracts**) by which various – of the Companies purported to engage them as independent contractors. At the time of entering into the 1986 contract, it was made clear to the Drivers that if they were not prepared to contract on that basis their employment would be terminated.

Under the Contracts the Drivers were responsible for providing and maintaining their trucks – indeed, in the first instance they actually purchased the trucks they had been driving as employees from their former employer at a price set by the employer.

Over time, the Companies provided the Drivers with branded clothing, although they were not obliged to wear it. On occasion their trucks were also painted in Company livery and/or had Company logos affixed to them (at the Companies' expense). The Drivers could work for other clients, but never in fact did so, and indeed could not realistically do so given the number of hours they worked for the Companies.

Although the Drivers enjoyed a certain amount of discretion in terms of the order and manner of delivery of goods, and as to finishing time, the volume and character of their work was almost exclusively determined by the Companies.

Initially both Drivers were engaged through partnerships, with their respective spouses as the other members of the partnership. Mr Whitby's partnership was dissolved in 2012, and thereafter he worked as an individual, but still (ostensibly) as an independent contractor. The Drivers invoiced the Companies on a weekly basis, and following the introduction of the Goods and Services Tax (**GST**) in 1999 they added GST to their invoices. When operating as partnerships, the Drivers' incomes were split with their partners, and they paid tax through the partnerships.

The engagements of the Drivers were terminated in 2017 in the context of a reorganisation of its business by ZG Operations. Following this, the Drivers commenced Federal Court proceedings seeking to enforce a range of statutory entitlements, and the imposition of penalties for a number of alleged breaches of the FW Act.[11]

The most important of the statutory entitlements for present purposes concerned annual leave under the FW Act, superannuation contributions under the *Superannuation Guarantee (Administration) Act 1992* (**SGA Act**), and long service leave under the New South Wales *Long Service Leave Act 1955* (**LSL Act**).

For these claims to succeed the Drivers had to be able to show that they were in fact 'employees' (for purposes of the FW Act and the SGA Act) and 'workers' (for purposes of the LSL Act), despite the fact that some or all of the Contracts had expressly stated that they were engaged as independent contractors.

The Drivers claims were rejected at first instance. However their appeal to the Full Court was successful, and the matter was remitted to the trial judge for determination on the merits. The amounts involved have not been quantified at this stage in the proceedings, but should the decision of the Full Court be upheld, it can safely be assumed that the amounts owing to the drivers would be quite substantial: they would, for example, include payment in respect of almost 40 years of long service leave and extensive periods of untaken annual leave. At the time of termination of their engagement, the Drivers were earning $1,995.95 per week.

11 For a full list of their claims, see [2020] FCAFC 119, [126].

Moffet

Dr Moffet (**Moffet**) was a dentist. In 1987 he purchased a practice in Parramatta, and carried on the business in his own right until 2000. From July 2000 onwards the business was conducted by Immediate Dental Care Pty Ltd (**Immediate**), which was the trustee of the Moffet Family Trust. Moffet worked as an employee of Immediate until 2007, at which point he and Immediate sold the practice to Dental Corporation Pty Ltd (**Dental**).

At that time, Moffet entered into a Service Agreement (**Agreement**) with Dental under which he was obliged to provide dental services at the practice. His remuneration consisted of two elements: an amount calculated by reference to revenue generated by Moffet's work as a dentist in the practice, and a bonus that was calculated by reference to the revenue of the practice as a whole.

An unusual feature of this relationship was that Moffet undertook to compensate Dental if the revenue of the practice fell below a certain level – and he in fact did so in FY 2012-13, when he paid Dental the sum of $291,125.

Moffet worked, and took leave, as and when he pleased. For example, in calendar year 2011 he took no fewer than 15 weeks' annual leave.

The Agreement provided that Moffet was responsible for paying all taxes in relation to any remuneration paid to him under it, and expressly stated that his relationship with Dental was not one of employer and employee.

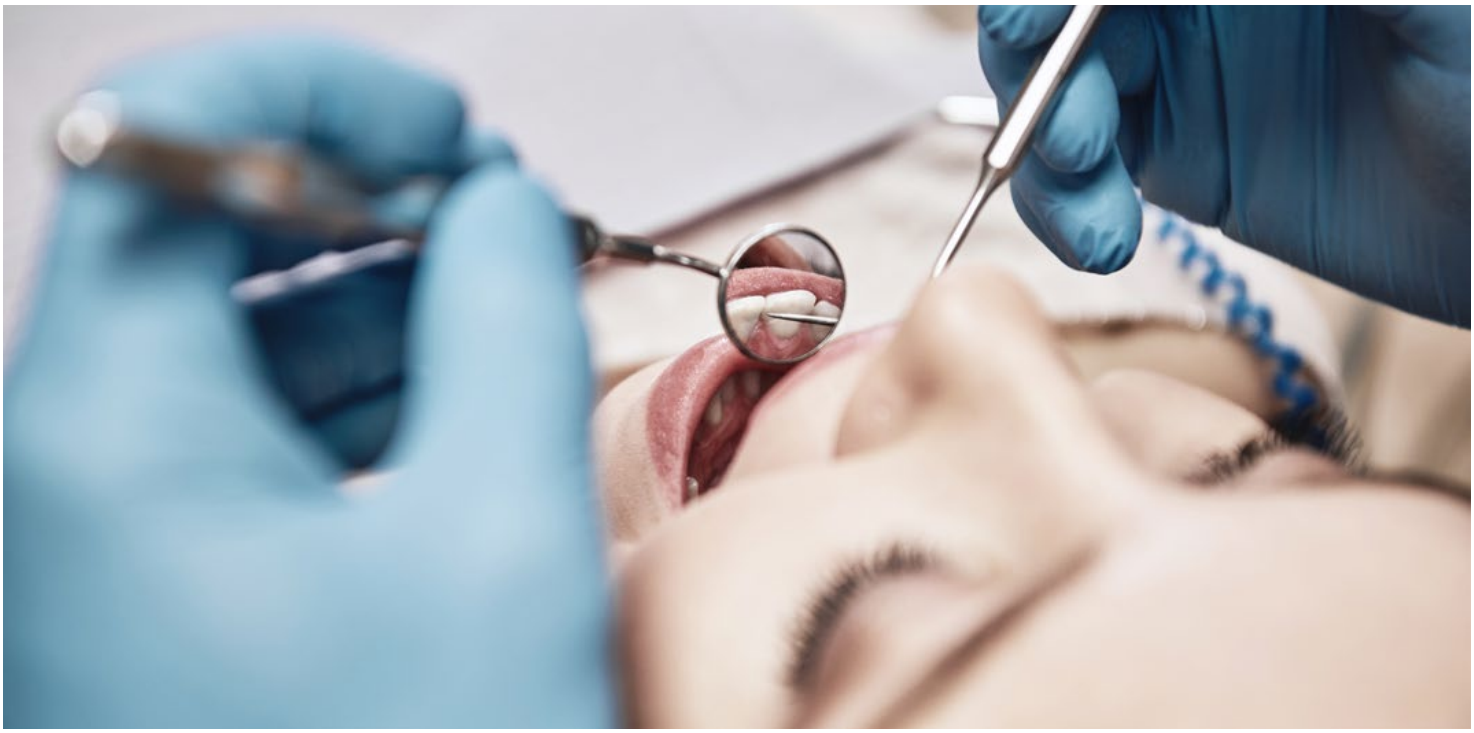
In November 2014 Moffet resigned from Dental, at which time he claimed to be suffering from psychological illness brought about by bullying by a number of his colleagues.

Subsequent to his resignation, Moffet initiated proceedings claiming that he was entitled to annual leave in accordance with the FW Act, long service leave under the LSL Act, and superannuation contributions in accordance with the SGA Act. In other words, he made essentially the same claims as the Drivers in *Jamsek*, and as in that case, his prospects of success depended on whether he could properly be categorised as an employee or 'worker' rather than as an independent contractor.

Moffet failed at first instance in relation to the annual leave and long service leave claims. However, unlike the Drivers, he succeeded in his SGA Act claim on the ground that he fell within the extended definition of 'employee' in section 12(3) of the SGA Act. Both Moffet and Dental appealed.

The appeals were heard by the same Full Bench as in *Jamsek*, and both Moffet's appeal and Dental's cross-appeal were unsuccessful. Dental subsequently applied for special leave to appeal to the High Court against the SGA Act finding. As indicated, that application was refused in February 2021. Moffet, meanwhile, does not appear to have sought special leave in relation to the annual leave and LSL decisions.

The decisions in *Jamsek* and *Moffet* were handed down on 16 July 2020. On the following day, a differently constituted Full Bench handed down its decision in the third case of the Trilogy.



Personnel Contracting

Mr Daniel McCourt (**McCourt**) was a 22-year-old British back-packer. In July 2016, whilst located in Perth, he entered into an agreement with a labour hire company called Personnel Contracting Pty Ltd (**Construct**) under which he made himself available to be offered work on construction sites for clients of Construct. In due course, he was offered, and accepted, work on a site operated by Hanssen Pty Ltd (**Hanssen**).

Construct had a contractual arrangement (**Labour Hire Agreement**) with Hanssen whereby Construct agreed to supply labour to Hanssen at its request. Hanssen communicated its needs for labour to Construct, which then offered work to the requisite number of individuals. If the individuals concerned accepted the offer of work, they then reported to, and worked under the direction and control of, Hanssen. They were subsequently paid by Construct on the basis of information provided by Hanssen.

McCourt's agreement with Construct expressly provided that he was 'self-employed' and that there was no relationship of employer and employee between them. It also stated that McCourt was not obliged to accept any work that was offered to him, and that he had no claims against Construct in relation to issues such as holiday pay, sick pay and superannuation. McCourt was required by the agreement to supply his own work-boots, hi-vis shirt and hard hat.

Such tripartite arrangements are quite common in the construction industry, and are often referred to as '*Odco* contracts'.[12]

Having been offered work with Hanssen, McCourt undertook unskilled labouring work under the direction and control of Hanssen over a period of months in 2016 and 2017. He was paid by Construct at a rate that was some 25% less than the applicable award rate, and, in accordance with his agreement with Construct, did not receive any statutory employment benefits.

McCourt was not offered any work through Construct after June 2017.

Subsequently, the CFMMEU on behalf of McCourt initiated proceedings seeking to recover entitlements and the imposition of penalties under the FW Act. The Union's claim was rejected both at first instance and on appeal.

It is not surprising perhaps that over the years unions in the construction industry should have strongly opposed the utilisation of *Odco* contracts both industrially and in the courts, given that such contracts leave the worker as an employee of neither the party that provides them to the user, nor of the user. The unions' legal response included an unsuccessful challenge in the Western Australian Industrial Appeal Court in 2004 to what was, in effect, the same agreement as that entered into by McCourt and Construct some 12 years later.[13]

In the 2020 proceedings, the Full Bench clearly considered that the 2004 Case was incorrectly decided but nonetheless felt constrained by the principle of comity to follow the earlier decision.[14] Should the High Court share their Honours' evident frustration with the 2004 decision, the unions' long campaign against *Odco* contracts may at last bear fruit.

12 So-called after their endorsement in *Odco Pty Ltd v Building Workers' Industrial Union of Australia* [1989] FCA 483 and (on appeal) *Building Workers' Industrial Union of Australia v Odco Pty Ltd* [1991] FCA 96.

13 See *Personnel Contracting Pty Ltd t/as Tricord Personnel v Construction, Forestry, Mining and Energy Union of Workers* [2004] WASCA 312.

14 Amongst other things, this principle contemplates that Federal courts should respect the decisions of State courts at the same level in the judicial hierarchy, and vice versa. It is not a rule of law as such, but the Full Bench in *Personnel Contracting* clearly felt impelled to adhere to it. See further [2020] FCAFC 122, [33]-[40] (Chief Justice Allsop) and [125]-[134] (Justice Lee).

Why does categorisation matter?

This question can be answered at both a legal and a policy level.

Legal considerations

The origins and the legitimacy of the distinction between employer/employee and principal/contractor relationships has been the subject of extensive academic debate over the last 30 years or so.

For present purposes it is sufficient to note that it originated in the 19th century in the context of attempts by the English courts to find a way to mitigate the effect of a number of decisions which had determined that an employer was not liable to a worker who had been injured as a result of the negligence of their fellow employee.[15]

This had serious adverse consequences for the injured worker since the 'common' employee would rarely have the resources to pay substantial damages or costs, whereas there could be some expectation that the employer would have the necessary resources and/or appropriate insurance cover to do so.

In order to address this dilemma, the English (and later Australian) courts adopted the doctrine of 'vicarious liability' whereby employers were regarded as being 'vicariously liable' for the negligent acts of their employees undertaken in the course of their employment. Businesses were not, however, liable for the negligent acts of non-employees (such as independent contractors) engaged by them.

This remains one of the principal reasons why it is necessary to distinguish between workers who are categorised as employees and those who are categorised as independent contractors. As Justice Lee put it in *Personnel Contracting*: "the concept of vicarious liability [is] now principally invoked to hold an employer liable for the wrongs of an employee, acting 'in the course of employment'".

Interestingly, in the same case Chief Justice Allsop was strongly of the view that "the notion that Mr McCourt was an independent contractor when working on the building site and that Hanssen was not liable for his negligence would defy any rational legal principle and common sense", and that Hanssen would "undoubtedly" be liable for Mr McCourt's negligence when working under the supervision and direction of Hanssen, even though he was not their employee. His Honour did not, however, explain on what doctrinal basis this outcome could be achieved.

It is commonly assumed that the other reason that the common law needs to differentiate between employees and independent contractors is that contracts of employment will normally contain a range of implied terms that would not normally be found in principal/contractor arrangements.

For employees, such implied terms would include a duty to obey the lawful reasonable directions of the employer, a duty to cooperate with the employer in achieving the objects of the business, a duty to protect the employer's confidential information, and a duty to demonstrate a reasonable level of skill and competence.

For employers, they would include a duty of to take reasonable care to prevent the occurrence of injury to the employee in circumstances that are reasonably foreseeable, a duty to indemnify employees in respect of expenses incurred in the course of performing their duties, and a duty to cooperate with the employee in enabling them to perform their obligations under the contract.

Many of these duties derive from the pre-industrial law of master and servant, and can be qualified or overridden by express or implied agreement to the contrary. The point is that, as indicated, such terms would not generally be regarded as part of a contract between a principal and an independent contractor.

Some commentators suggest, however, that the differences between employer/employee and principal/contractor arrangements in this context are more apparent than real.[16] For example, both categories of relationship would commonly be taken to include duties of care and of skill and competence.

Even the duty to obey lawful reasonable directions – often seen as the most distinctive characteristic of an employer/employee relationship[17] – would frequently be found to be expressly or impliedly incorporated in principal/contractor arrangements.

15 This was the so-called doctrine of 'common employment', which originated in the decision in *Priestley v Fowler* (1837) 3 M & W 1, 150 ER 1030.

16 See, for example Adrian Brooks, 'Myth and Muddle – An Examination of Contracts for the Performance of Work' (1988) 11 *University of New South Wales Law Journal* 48 54-84.

17 As appears below, the duty of obedience forms the basis of one of the standard tests for the categorisation of work relationships – the 'control' test – which looks to the 'employer's' capacity to control the what, the where, the when and the how of the putative employee's work.

Despite its historical origins, in modern conditions the principal purpose of the binary divide between employer/employee and principal/contractor relationships is to help determine whether a given individual is subject to certain statutory imposts (usually as an employer) or entitled to certain statutory entitlements (usually as an employee).

This is clearly reflected in the Trilogy. In both *Jamsek* and *Moffet* the workers concerned were trying to establish that they were entitled to three specific statutory benefits: annual leave, long service leave and superannuation contributions.

In *Personnel Contracting*, the Union was seeking to recover McCourt's entitlements under the modern award that would have covered his work if he had been categorised as an employee, plus various other entitlements under the FW Act that also required that he be characterised as an 'employee' for purposes of that Act.

Between them the matters that were at issue in the Trilogy exemplify a number of the principal reasons why it is necessary to categorise work relationships in Australia in 2021. There are others, however, including: access to the enterprise bargaining regime (and the concomitant capacity lawfully to take industrial action) under the FW Act; access to the unfair dismissal jurisdiction in Part 3-2 of the FW Act; access to the full range of National Employment Standards in Part 2-2 of the FW Act; coverage under State and Territory workers' compensation legislation; and 'employer' liability to make payroll tax contributions based on wages or salary paid to 'employees'.

The starting point for the categorisation process for all purposes is the traditional binary divide – despite the fact that, as appears below, it is no longer fit for purpose. Precisely because it is not fit for purpose, it has been subject to extensive legislative modification, to the point where it is not unusual for the same group of workers to be characterised as 'employees' for one purpose and as non-employees for another.

Indeed, *Moffet* furnishes an example of just that: Moffet was found to be a deemed employee of Dental Corporation for purposes of the SGA Act, but not to be a 'worker' for purposes of the LSL Act or an employee for purposes of the annual leave provisions of the FW Act. [18]

The fact remains, however, that for all the 'myth and muddle',[19] the binary divide remains the starting point for the categorisation of work relationships. Unfortunately, all too often it is not the end-point.

Policy considerations

Legal rules never operate in a policy vacuum. This suggests that the fact that the law draws a distinction between employer/employee and principal/contractor relationships must reflect an implicit or explicit policy determination that entering into different forms of work relationships can and should be attended by different consequences.

Perhaps the most important of the implicit policy assumptions is that those who, by force of circumstance or by choice, sell their labour in the marketplace as employees suffer from a power-imbalance relative to those who purchase that labour. Those who participate in the market as independent contractors are assumed to suffer from a lesser, if any, imbalance, with the consequence that they are considered to have less need for access to statutory protections.

This helps explain why the FW Act recognises the capacity of employees to combine together to form and join trade unions, engage in enterprise bargaining, and in certain circumstances to withdraw labour in order to exert economic pressure upon the purchasers of labour.

In contrast, the capacity of those who participate in the market as independent contractors to engage in certain forms of 'bargaining' (including withdrawal of labour) is constrained by the law of restraint of trade and competition law – as are certain forms of 'bargaining' by employers.[20]

The presumed power imbalance between sellers and purchasers of labour is also reflected in the fact that statute intervenes to protect individual workers against certain forms of unfair treatment, and to provide entitlements to minimum benefits which individuals could not necessarily secure for themselves either through individual negotiation or (perhaps) enterprise bargaining.

Thus it is that 'employees' enjoy protection against unfair dismissal under Part 3-2 of the FW Act, and are entitled to the benefit of modern awards and the National Employment Standards under Parts 2-3 and 2-2 of the same Act.

Independent contractors are again assumed to be able to fend for themselves in relation to such matters, and generally do not enjoy these kinds of statutory protections – although, as appears below, even this assumption must be heavily qualified in certain contexts.

18 For a further illustration, see *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 (**Vabu**) where a number of bicycle couriers were characterised as employees for purposes of fixing their employer with vicarious liability for their negligent acts, whilst in *Vabu Pty Ltd v Commissioner of Taxation* (1996) 81 IR 150 (***1996 Vabu Case***) couriers working under essentially the same arrangements were found to fall outside even the extended definition of 'employee' in the SGA Act.

19 See Brooks, above n 16.

20 It should be noted, however, that even though they cannot engage in enterprise bargaining or take protected industrial action, independent contractors can, in certain circumstances, become members of registered unions – see *Fair Work (Registered Organisations) Act 2009* (Cth), sections 6 (definition of 'federal system employee') and 18B(3)(c).

It is in order to give effect to these underpinning policy assumptions that the law seeks to distinguish between employers and employees on the one hand and principals and contractors on the other. As Justice Lee pointed out in *Personnel Contracting*, the common law's attempts to draw and to maintain this distinction have been the source of much 'ambiguity, inconsistency and contradiction'.[21]

The ways in which the law has tried to do this, and the limited success it has enjoyed in its endeavours, are examined in more detail in the next two parts of this Corrs Insight.

It is also apparent that the ambiguity, inconsistency and contradiction associated with the common law's attempts at categorisation are compounded by the fact that in various contexts legislators have recognised that independent contractors may in fact be in need of protection in a similar manner to employees.

In some instances this has caused them directly to accord statutory protection to independent contractors – for example in the context of the 'general protections' under Part 3-1 of the FW Act, and under equal opportunity and occupational health and safety legislation. In other instances it has caused legislators to adopt definitions of 'employees' or 'workers' which extend the reach of various statutory measures to include some or all individuals who for other purposes would be regarded as independent contractors.[22]

This legislative 'tinkering' with the concept of 'employee' or 'worker' can also be seen to reflect a perception that individuals or (especially) corporations who engage the services of independent contractors should, as a matter of policy, be treated as if they were the employer of those individuals.

For example, pay-roll tax legislation is commonly framed in a manner which encompasses services provided by a broad range of non-employees.[23] This presumably reflects a perception that 'employers' should not be able to avoid what the legislature sees as their fiscal responsibilities through what may be, or be perceived to be, artificial contractual arrangements.

Legislative modifications of the concept of 'employee' or 'worker' may also be driven wholly or partly by a desire to ensure that parties who are in reality 'employers', but who use artificial constructs to avoid being categorised as such, do not obtain an unfair competitive advantage relative to those who 'do the right thing' by adopting more conventional employer/employee relationships.[24]

Clearly, therefore, the binary divide between employer/employee and principal/contractor relationships reflects a number of different – and frequently competing – policy objectives. Confused policy objectives generally yield confused practical outcomes.

Categorisation at common law

Control

Traditionally, the common law took the view that an employer/employee relationship was characterised by the capacity of the employer to control the what, the how, the where and the when of what the servant/employee did, whilst an independent contractor was someone who contracted to produce a given result but who did not work under the direction and control of the person for whom the work was performed.

This model may have served its purpose at a time where most 'servants' were farm labourers, domestic servants or shop assistants but its application became increasingly divorced from reality as the nature of work changed and more and more highly skilled and/or professional workers were engaged in highly dependent economic relationships that could and (perhaps) should be categorised as 'employment'.

The courts responded to this by focussing on the question of whether the putative employer could be said to retain a residual right of control, even though they did not exercise day-to-day control over the employee's work. This is neatly illustrated by the decision in *Zuijs v Wirth Bros*, where the High Court determined that the proprietor (and ringmaster) of a travelling circus was the employer of an acrobat who had been injured in the course of a performance by virtue of the fact that, even though he "could not interfere in the actual technique of the acrobatics and in the character of the act", he still had the capacity to direct the worker "in all other respects".[25]

21 These sentiments are fulsomely endorsed by Commissioner Cambridge in the *Deliveroo Case*, [2021] FWC 2818, [97].
22 It was provision of this character that was at issue in the *Uber Case*, referred in at note 1.
23 See, eg, *Payroll Tax Act 2007* (Vic), Part 3, Div 7.
24 This would, for example, constitute part of the conceptual underpinning of the 'sham contracting' provisions in sections 357-359 of the FW Act.
25 (1955) 93 CLR 561, 571.

Multi-factoral test

More recently, the focus has shifted away from control as the determinative factor in the categorisation process in favour of a multi-factoral test whereby the courts and tribunals look to 'the totality of the relationship' between the parties, taking account of relevant aspects of that relationship.[26]

It is important to appreciate, however, that there is not, and indeed given the nature of the categorisation process could not be, any exhaustive list of factors that may be taken into account in this context. However, those that are most commonly called in aid include:

- whether, and to what extent, the service provider is required to observe the directions of the principal;
- whether payment is by invoice or by periodic payment of wages or salary;
- whether tax is deducted before payment to the service provider;
- whether the service provider supplies their own tools, equipment or raw materials;
- whether the service provider requires permission from the principal before taking leave;
- whether the service provider can delegate performance of work under the contract without the agreement of the principal;
- whether the service provider determines, or can determine, where and when work is performed;
- whether the service provider can be said to be 'integrated' into the business of the other party;
- whether services are provided through an entity such as a body corporate or a partnership;
- whether the service provider can credibly be said to be in business on their own account – as evidenced, for example, by whether they bear the financial risk of success or failure of the business;
- whether the service provider generates, and can dispose of, 'goodwill' in the business; and
- the label attached to their relationship by the parties.

The fact remains, however, that application of the multi-factoral approach:

> "… is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another."[27]

Economic Reality/Entrepreneur Test

In some instances courts in common law jurisdictions have focussed particular attention upon the question of whether the person providing services, under what purports to be an independent contractor arrangement, can properly be said to be in business on their own account. That is, they have gone beyond treating this as just one of a range of matters to be taken into account in the applying the multi-factoral approach and regarded it as determinative of the character of the work relationship concerned.[28] This approach has also attracted a measure of support from Australian courts,[29] and as appears below, it has recently been endorsed by the Victorian Inquiry into the On-Demand Workforce. As further appears below, whilst this approach is not without its attractions, it also has its limitations.

26 Particularly significant in this shift away from 'control' as a determining factor were the decisions of the High Court in *Stevens v Brodribb Sawmilling Company Proprietary Limited* (1986) 160 CLR 306 and in *Vabu*.

27 *Hall (Inspector of Taxes) v Lorimer* [1992] 1 WLR 939, 944 (per Justice Mummery).

28 See, e.g. *United States v Silk* 331 US 704 (1946); *Market Investigations Ltd v Minister of Social Security* [1969] 2 QB 173; and *Lee Ting Sang v Chung Chi-Keung* [1990] ICR 409 [JCPC].

29 See, e.g. *On Call interpreters & Translators Agency Pty Ltd v Commissioner of Taxation (No 3)* [2011] FCA 366, [208]; *Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd* [2015] FCAFC 37, [146]-[147]

Expressed intention of the parties

It might reasonably be anticipated that the expressed intention of the parties as to the nature of the relationship between them would be highly influential, if not determinative. A contract is, after all, an agreement between the parties which is intended to have legal effect, and the label they choose to attach to it ought logically to determine its character.

To an extent this is indeed the case. The courts will generally attach very considerable weight to the expressed intention of the parties as to the character of their relationship.

Such statements of intent are not, however, determinative in all instances. Particularly in recent years, courts in Australia and elsewhere have evinced an increasing preparedness to look behind the contractual form in order to ascertain the true character of work relationships.

Indeed, they are positively encouraged to do so by the enactment of provisions such as sections 357 and 359 of the FW Act. The first section makes it unlawful for an employer to represent what is in reality a contract of employment as a contract for services, whilst the second makes it unlawful for an employer knowingly to make a false statement to an employee to "persuade or influence" that employee "to enter into a contract for services under which the individual will perform, as an independent contractor, the same, or substantially the same work for the employer".

Put differently: if the reality of the relationship is one of employer and employee then the legislation requires the courts to disregard contractual stipulations to the effect that it is one of principal and contractor (or even something else entirely), and treat the contract as one that creates a relationship of employer and employee. In appropriate circumstances they may also impose penalties and grant other forms of relief in respect of contravention of sections 357 and 359.

The preparedness to look beyond the form of the relationship to find its true character is helpfully illustrated by the 2011 decision of the UK Supreme Court in *Autoclenz Ltd v Belcher*.[30] This case concerned a contractual arrangement which purported to create a relationship of principal and contractor between a number of car 'valeters' (cleaners) and a principal to whom they provided services.

The Supreme Court determined that in order properly to characterise the workers concerned it was necessary to distinguish between the 'factual matrix' in which a contract was made and its legal form. In doing so, Lord Clarke (with whom the other members of the Court agreed) observed that "the circumstances in which contracts relating to work or services are concluded are often very different from those in which commercial contracts between parties of equal bargaining power are agreed."[31] His Lordship continued:

> "… the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part."[32]

This approach has been endorsed by a number of Australian courts, including by Justice Anderson in *Jamsek*:

> "I acknowledge that parties to a working relationship should broadly be entitled to define the nature of their relationship as they desire. As a starting premise, freedom of contract demands as much.
>
> "The form of a written contract will be the starting point to characterise the relationship between the contracting parties. In the present case, it is apparent that the company intended in 1986 to transition their drivers away from an employment relationship.
>
> "The company required the drivers…to enter into a 'Contract Carriers" Arrangement which described the driver as 'Contractors'. **But the classical notions of freedom of contract may not be seamlessly applicable in employment contexts.** And, most fundamentally for present purposes, **the characterisation of a relationship as that of employment or otherwise is not performed exclusively by reference to the terms of a written contract** … In the present case, my view is that the applicants were, in reality, employees within the ordinary meaning of that term. [Emphasis added][33]

Appropriate as this focus on the reality of the relationship may be, the fact remains that the categorisation of work relationships is a far from precise science. As Justice Lee put it in *Personnel Contracting*, the application of the multi-factoral test is 'an impressionistic and amorphous exercise' that is 'susceptible to manipulation' and which is 'inevitably productive of inconsistency'.[34]

30 [2011] UKSC 41.

31 *Autoclenz Ltd v Belcher* [2011] UKSC 41, [34].

32 [2011] UKSC 41, [35]. This approach was also endorsed by the Supreme Court in *Uber* – see [2021] UKSC 5, [58]-[71].

33 [2020] FCAFC 119, [248]. This approach was also endorsed by Justice Lee in *Personnel Contractors* [2020] FCAFC 122 [102]-[106].

34 [2020] FCAFC 122, [76].

Justice Lee is not alone in this regard. Other courts, for instance, have described the categorisation process as an impressionistic exercise,[35] requiring the application of a 'smell test',[36] whilst a distinguished British academic commentator described the multi-factoral approach in terms of an 'elephant test' which views the employee as "an animal too difficult to define but easy to recognise when you see it".[37]

The end-result of all this is that businesses that are trying to exercise their legitimate right to enter into principal/contractor relationships frequently find themselves in a situation where they cannot determine with reasonable certainty whether they have successfully done so – unless or until the matter comes before a relevant court or tribunal. Even then the outcome may more closely resemble the result of a lottery than the product of rational forensic analysis. Furthermore, such businesses cannot look to the legislature for clear and coherent assistance in working their way through the categorisation process.

Categorisation under statute

One of the principal reasons that work relationships need to be categorised is to determine whether individual workers are entitled to certain statutory benefits, and/or whether those who purchase labour or services in the market are subject to certain statutory imposts. That being the case, it seems reasonable to assume that the relevant legislation should afford clear and concise guidance as to who is entitled to what benefit, and who is required to meet what cost. All too often, this is not the case.

Over the years, legislators at both State and Federal level have adopted a range of different approaches to the categorisation of work relationships, albeit with only limited success.

At the simplest level, some measures simply ignore the matter, and leave it to be determined by reference to the relevant common law principles, with the attendant 'ambiguity, inconsistency and contradiction'. Others adopt more or less elaborate 'definitions' and modifications – many of which render little, if any, assistance to the user.

The FW Act

Prominent amongst measures in the 'leave it to the common law' category is the FW Act, section 12 of which states that 'employee' and 'employer' are "defined in the first Division of each Part … in which the term appears".

Closer examination show that this means that the Act applies either to 'employers' and 'employees' in the 'ordinary meaning' of those terms, or to 'national system employees' (section 13) or 'national system employers' (section 14) – with the former being persons who are 'employed' by the latter.

This distinctly unhelpful approach means that the centrepiece of Australia's system of industrial regulation applies only to persons who stand in the relationship of employer and employee at common law – but that not all employees are equal.

In particular, those employees whose employer falls outside the definition of 'national system employer' do not have access to certain Parts of the Act – for example the provisions dealing with the National Employment Standards, modern awards and enterprise bargaining in Parts 2-2, 2-3 and 2-4 respectively.

On the other hand, all employees have access to the 'general protections' set out in Part 3-1, because that Part is expressed to apply to employers and employees in their 'ordinary meaning'. Confusingly, however, some aspects of Part 3-1 also apply to non-employees such as independent contractors.

35 *Re Porter; Re Transport Workers Union of Australia* (1989) 34 IR 179, 184.
36 *On Call Interpreters & Translators Agency Pty Ltd v Commissioner of Taxation (No 3)* [2011] FCA 366, [204] (**On Call**).
37 Lord Wedderburn, *The Worker and the Law*, (3rd ed), 1986, 116.

Applying these principles to the Trilogy: the Drivers were entitled to annual leave under the FW Act because they were employed by a national system employer. Moffet, on the other hand, was not entitled to such leave because he was not an employee of anyone – although he was entitled to access to superannuation benefits by reason of the fact that he fell within the extended definition of 'employee' in the SGA Act. Because McCourt was employed by neither Construct nor Hanssen, he was entitled to neither award rates of pay nor annual leave.

Deeming provisions

An alternative approach is to take the common law concept of employer and employee as a starting point and then to expand its reach by deeming it to include categories of workers who might or might not be employees at common law.

For example, the entitlements of the Drivers and Moffet to long service leave turned upon whether they could bring themselves within the definition of 'worker' in section 3(1) of the LSL Act:

> **'Worker'** means person employed, whether on salary or wages or piecework rates, or as a member of a buttygang,[38] and the fact that a person is working under a contract for labour only, or substantially for labour only, or as lessee of any tools or other implements of production, or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller, insurance agent, or in any other capacity in which the person is paid wholly or partly by commission shall not in itself prevent such person being held to be a worker but does not include a person who is a worker within the meaning of the *Long Service Leave (Metalliferous Mining Industry) Act 1963*.

The Drivers succeeded in establishing that they were workers in the relevant sense, whereas Moffet did not. He did, however, enjoy greater success in relation to statutory superannuation.

The relevant definition in this instance was to be found in section 12(1) and (3) of the SGA Act. The first of these provides that the terms employee and employer "have their ordinary meaning", but goes on to indicate that subsections (2) to (11) expand the meaning of those terms and "make particular provision to avoid doubt as to the status of certain persons" for purposes of the SGA Act.

According to subsection (3), those 'persons' include those who work under contracts that are "wholly or principally for the labour of the person" concerned. Unlike the couriers in the 1996 *Vabu* Case, Moffet was adjudged to be such a person.

The Drivers, meanwhile, were entitled to the benefit of the SGA Act by reason of the fact that they were employees in the ordinary meaning of that term, and thus fell within the scope of section 12(1).

In yet other instances, statutes simply define 'employee' so as to include independent contractors. For example, section 4 of the *Equal Opportunity Act 2010* (Vic) states that 'employee' includes (among others) "a person employed under a contract of service, whether or not under a federal agreement or award" (i.e. an 'employee') and "a person engaged under a contract for services" (i.e. an independent contractor).

38 This was a form of contracting arrangement whereby a gang-master ('butty') supplied labour for contract work in coal mines and in other contexts involving manual labour. Remuneration was shared between gang members, with the butty receiving an additional share. It is now obsolete.

What is to be done?

The state of confusion and uncertainty described above is manifestly not in the best interests of businesses workers, or the broader community.

There is a clear public interest in individuals and businesses (especially small businesses) being able to sell their services in the market as free agents. As against that, there is also a clear public interest in ensuring that vulnerable individuals are protected from arrangements that may expose them to exploitation by denying them access to their rightful entitlements and protections.

The 2020 *Report of the Inquiry into the Victorian On-Demand Workforce* (**Victorian Inquiry**) recommended a two-pronged approach to the categorisation issue:

> First, that, instead of relying on 'indistinct common law tests', the process of categorising work relationships should be 'codified' on the basis of the so-called 'entrepreneurial worker' approach whereby "those who work as part of another's enterprise or business are 'employees' and autonomous, 'self-employed' small business workers are covered by commercial laws".[39]
>
> Second, that governments at all levels should "review the approach to 'work status' across work laws…with the purpose of more closely aligning them".[40]

The 'entrepreneurial worker' concept has received a measure of support in various common law jurisdictions over the years, and as noted in an earlier ***Corrs Insight***,[41] it has some attractions.

In particular, it seems to accord more closely to the realities of the marketplace than the artificialities that inevitably follow from attempts to modify the traditional control test, or from the 'impressionistic and amorphous' process of applying the easily manipulated and inconsistent multi-factoral or 'elephant' test.[42]

That said, it must also be recognised that the entrepreneurial worker test does not provide a satisfactory basis for categorising work relationships in all contexts:

> There must inevitably be situations where it is not entirely clear whether a particular individual can properly be said to be carrying on business on their own account – for example where they provide services wholly or mainly to just one principal.

This possibility is helpfully illustrated by the fact-situation in *Jamsek*. The Drivers in that case worked under arrangements that could readily be said to be characteristic of those between an entrepreneur and a client or customer. But those same arrangements could also credibly be said to be characteristic of an employer/employee relationship, especially in light of the fact that the Drivers provided services exclusively to one principal – even though they could ostensibly provide services to other principals if they so wished.

Nevertheless, even recognising its limitations, the entrepreneurial worker test does seem to provide a more rational and consistent basis for characterisation of work relationships than the indeterminate and open-ended tests that have generally been applied in Australia up to now.[43]

The Victorian Inquiry's Recommendations were primarily directed to legislative reform in the specific context of on-demand working. However, it made a number of proposals for legislative reform which are of potential assistance in the broader context of reform of categorisation of work relationships.

Of particular interest in the present context are: first, adoption of the entrepreneurial worker test for purposes of determining who is covered by the FW Act, and secondly aligning the approach to categorisation across a range of different contexts such as the regulation of superannuation contributions, occupational health and safety, and workers' compensation.

Both proposals require further consideration – especially in a broader context than that of on-demand working. Nevertheless, there does appear to be a particular need to address what the Victorian Inquiry described as the alignment issue.[44]

Leaving the categorisation issue to the common law – as is largely the case under the FW Act – is unhelpful. The same is true for *ad hoc* modifications to the common law concept of employee in order to meet specific contingencies: not only does this generate lack of clarity, it can have risible results in some instances.[45] The practice of adopting definitions of 'employee' which include both employees and independent contractors also has little to commend it.

39 Report, Recommendation 6.

40 Report, Recommendation 7.

41 https://corrs.com.au/insights/on-demand-working-and-the-changing-workplace

42 The terminology is that of Justice Lee in *Personnel Contracting*, [2020] FCAFC 122, [76].

43 https://corrs.com.au/insights/on-demand-working-and-the-changing-workplace

44 The 2021-22 Victorian Budget contained an allocation of $5.1 million to allow work to start on implementing the recommendations of the Victorian Inquiry. This follows the failure of the Government to garner support from the Commonwealth to implement the Inquiry's recommendations at national level. See 'Victoria moves on gig standards', *Workplace Express*, 13 May 2021.

45 See, e.g. the definition of 'worker' in the LSL Act that was at issue in *Jamsek* and *Moffet*, and the extraordinary list of workers who are deemed to be 'employees' by section 5(3) and Schedule 1 of the *Industrial Relations Act 1996* (NSW).

The Federal Opposition has committed to significant legislative change in this area. At this stage it has provided little by way of detail as to just what it has in mind. It is clear, however, that simply enabling the FWC to make orders treating parties who are in an 'employee-like' relationship whilst engaged in 'in new forms of work' as being in an employer/employee relationship would achieve little in and of itself.

For such a power to be efficacious, it would need to be accompanied by a carefully structured set of principles to guide the Commission in the process of making orders to redress the ill-effects of the 'narrow, outdated' approach to definition that was adopted by the framers of the FW Act.

The vagueness and potential for counterproductive consequences that characterise the proposals outlined by the Leader of the Opposition in his speech of 10 February 2021 should not be allowed to obscure the need for change in the context of categorisation of work relationships.

The current state of ambiguity, inconsistency and contradiction serves the interests of no one. To be effective, change does, however, need to proceed from a clear understanding of what the purpose of categorisation is meant to be, and of the legal and practical consequences of a relationship being categorised in a particular way.

It has been a consistent theme of this Insight that legislators, courts, tribunals and regulators have signally failed to achieve these objectives in the past. The appeals in *Jamsek* and *Personnel Contracting* provide an opportunity for the High Court at least to make a start on the reform process by tidying up some common law principles that have outlived their use-by date and that are no longer fit for purpose. The nature of the appellate process being what it is, the Court could not provide other than a very partial solution to what was earlier described as the categorisation conundrum. A more far reaching solution would require recognition on the part of all relevant interest groups that categorisation cannot prudently be left to the ambiguities, inconsistencies and contradictions of the common law and the current legislative and administrative mishmash.

Although it is possible to make out a clear case for change in the basis upon which, and the manner in which, work relationships are categorised in Australia, it must be recognised that comprehensive reform is unlikely to be forthcoming in the short to medium term. In the meantime, business has to make the best use it can of a flawed regulatory model.

To do so, it's clearly necessary to observe the six basic principles that were outlined at the start of this Insight. They merit repetition:

1. Ensure that there is a clear and compelling business case for whatever model of engagement may be adopted. It is especially important not to fall into the trap of entering into particular kinds of work arrangements simply because it is 'fashionable' to do so, or because a competitor has done so.
2. Ensure that the relevant contractual arrangements are clearly and consistently drafted, and that they address any issues/regulatory requirements that have the potential to compromise the integrity of the relationship that those arrangements are intended to create.
3. Ensure that the relevant contractual provisions accurately reflect the model that has ostensibly been adopted, thereby enabling them to withstand challenges on the ground that they constitute 'sham' arrangements or are inconsistent with statutory protections of independent contractors.[46] In that context, it is also important to ensure that there is a credible factual basis for the arrangements into which the parties are entering: for example courts are unlikely to look favourably at principal/contractor arrangements where the supposed 'contractor' or 'entrepreneur' has no meaningful bargaining power and little if any understanding of the nature and consequences of the arrangements in question.[47]
4. Frame principal/contractor arrangements is such a way that the principal has the capacity to exercise the least possible degree of control over the contractor, and that contractors genuinely have the capacity to accept or to refuse work and to delegate the performance of work without the agreement of the principal.
5. Recognise that in many instances the most effective way to ensure the legal and operational integrity of independent contractor arrangements is to obtain the services of workers through an interposed corporate entity – recognising that in certain circumstances courts will be prepared to 'lift the corporate veil' in order to ascertain what it considers to be the true character of a relationship.
6. Ensure that the practical application of contractual arrangements reflects their form: the most sophisticated principal/contractor arrangements will be wholly ineffectual if the reality of the relationship between the parties is one of employer and employee despite its being labelled as something else.

46 Such protections can include the sham contracting provisions in sections 357-359 of the FW Act, the general protections provisions in Part 3-1 of the same Act, and the IC Act.

47 The situation of Mr McCourt in *Personnel Contracting* is a case in point, as was that of the car valeters in *Autoclenz*.

CORRS
CHAMBERS
WESTGARTH

Authors

Paul Burns
Partner

+61 3 9672 3323
+61 417 325 009
paul.burns@corrs.com.au

Breen Creighton
Consultant

+61 3 9672 3122
breen.creighton@corrs.com.au

Jack de Flamingh
Partner

+61 2 9210 6192
+61 403 222 954
jack.de.flamingh@corrs.com.au

John Tuck
Partner and Head of
Employment & Labour

+61 3 9672 3257
+61 434 181 323
john.tuck@corrs.com.au

Sydney
Melbourne
Brisbane
Perth
Port Moresby

corrs.com.au

WEB0008