



## *The Deal Room Podcast*

### Episode 235 – Ask Me Anything: How do you adjust for staff entitlements (fairly)? And broker best practices.

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## Transcript

**Joanna:**

Hi, it's Joanna Oakey here and welcome back to The Deal Room Podcast and podcast proudly brought to you by our commercial legal practice aspect legal. Now today we have a bit of a different show we have our Ask Me Anything episode today. So, these are questions that I have been provided by you as listeners or along the way along the journey in our day-to-day practice that I want to provide answers to for in a quick podcast session. So today I'll run through a few and we will be integrating these into our podcast from time to time now if you have a question that you'd like me to answer them, please send it to us at [podcasts@aspectlegal.com.au](mailto:podcasts@aspectlegal.com.au) And we'll put that link in the show notes now. Here we go with a very quick session.

**Joanna:**

So, this our Ask me anything segment so Cameron Ryan take it away, Ask me anything.

**Cameron:**

The first one is in relation to staff entitlements. So approved personal leave annually long service leave, it often seems to be a contentious point for both buyer and seller. When adjusting for this settlement. What do you feel is fair and reasonable and the best way to handle adjustable?

**Joanna:**

Yeah. I mean, what a contentious area. This is. And it's a tricky one because I think most sellers go to market, understanding that they'll have entitlements that they'll need to pay out. But do you know what I get sellers, I've actually had quite a few in the last few weeks who've come in thinking that a buyer will happily take on the liability of all of the entitlements without there being an adjustment. So we all know the real world is buyers don't want to take on the liability of entitlements without there being an adjustment. And of course, the buyers can't have if they're in a business sale environment have the opportunity to make a decision as to whether or not they recognize service are not recognized service and that and that has different consequences in relation to what the seller must do in terms of the entitlements that they need to pay out at completion. But effectively, you've got two options. Can pay out the staff the entitlements, at completion, or they can adjust for it to the buyer. And in, our annual leave is straightforward.

**Joanna:**

That's something that is calculated as it is except with a tax deduction. And this is where there's often a little bit of misunderstanding that the standard contracts for each state have a provision for eight 70% capitalization depending on which state you are some sometimes it's 72.5% nuts to take into account the differing tax rates applicable to businesses, but generally speaking, it will be 72.5% to recognize the standard tax rate of businesses and that's why we have that sort of reduction applied, it's just connected to tax but generally speaking, our approach to annual leave is fairly non contentious, long service leave that has triggered where the liability has triggered is generally non contentious, because that's a liability that employers understand they have to pay out the bit that can be a little bit tricky. Is the long service leave entitlement total, for that for staff who have not hit the long service leave point or end personal life. So, there are these two areas that are a little bit tricky, because there's no absolute approach. And you know, it really is a potential source of negotiation.

**Joanna:**

Many vendors are or seller's depending on the terminology that you're using your state, which is another funny thing. Isn't it funny that there's different tournament terminology in different state by sellers, vendors purchase anyway, let's leave that alone. Many vendors many sellers want to ensure that they see a buyer taking on personal leave entitlements. So, they'll want that want the buyers to recognize leave that want the buyers to take on the personal leave entitlements. But then there is still this question about whether that should be calculated at the full amount of personal leave that's sitting there, or if it could, should be reduced and the argument behind why it should be reduced is that it's a contingent liability in that we don't know for sure that staff will take out will take all their personal leave. And some organizations where staff have accrued a massive bank of personal leave are obviously indicating that there are organizations in which staff are not generally always taking all their personal leave. And of course, we know that when staff leave, they don't have that personal leave paid out.

**Joanna:**

So, from a seller's perspective, if they are wanting a buyer to take on the personal leave, but they feel that this personal leave title is contingent, then usually what was easy negotiation in relation to the amount that they will pay. So, for example, they might negotiate that they pay 35% of the value of the personal leave entitlements or 25% of the personal leave entitlements. And that generally, is a point of negotiation. between the parties. But it's interesting between states because we deal very regularly in New South Wales, Victoria and Queensland and other states as well, but most particularly those three states and the funny thing is the state the standard contracts in each state are actually different in terms of how they deal with that, which I think is hilarious, because we talking about, you know, documents that you would think would be consistent between states, but actually they're not.

So, in some states, there's a that the standard form terms will actually always include a reduction of 35% for example, in other states, there's nothing so you know, it's some it's an interesting field, Cameron, very, very interesting question. There's no absolute answer that. The answer is that there's no absolute answer, but you need people on your side who understand what they're negotiating, because it's a tricky area.

**Cameron:**

Yeah, absolutely. I guess I'll refer to a recent settlement and kind of negotiation but the purchaser I think rightfully wanted personal leave adjusted in full with that allowance for the tax benefit that might be achieved. So instead of a 35% adjustment for personal leave, she wanted the full 70% mainly because of the threat of COVID and flu going around. She thought the other day after taking ownership of this business staff member may well call in the two weeks of personal leave that they have accrued. And you know, she might be able to pocket if there's only an adjustment for half of that. So, they came down from negotiation.

**Joanna:**

It's so true, but then sitting on the on the seller side of the fence, you know the reality is if they if there's banked personal leave the likelihood that all the staff are going to take 100% of their personal leave is quite low. So, it's this negotiation then that has to go on, you know,

**Cameron:**

I personally say meet in the middle a 50-50 split is a reasonable outcome for both buyer and so on.

**Joanna:**

Yeah, yeah, in good news. It doesn't seem to be a huge sticking point generally, and it doesn't come up as often as I would think it would. So, it's interesting. Fabulous. Okay, well, how about you head on to your second question?

**Cameron:**

So the second question is not so much legally related, but I imagine you and your team have dealt with several business brokers on a variety of transactions as the lawyer acting for either the buyer or the seller in the transaction. what can business brokers do and your provide to make the transaction more seamless and therefore more likely to reach settlement?

**Joanna:**

Really good question. It's such a good question. And I think a lot I think long and hard about processes in in these areas, because you know, my big thing is, I really love to build a great solid process in this area and keep refining it over time to make it quicker, easier, less likely to be hurdles along the way. And, and I think there's a few key things. So we have a really tight turnaround from a client coming on board and providing us all of the information that we need to prepare a contract and getting the contract out. So in micro deals, what I call micro deals, so under the \$1 million space, we generally have a 24 hour turnaround between getting instruction and getting our get getting our draft contract out. But the problem is, what that requires is for the seller or the broker on behalf of the seller, to provide us all the information that we require for the compilation of the contract.

**Joanna:**

Now we have a clear, list information sheet that contains all of the information that we need to compile a contract and if anyone is interested in it, we'll put a link in our show notes to a way that you can get a copy of that list if you're interested. But what we find is that some sellers and you must have this experience as well dealing with sellers, some sellers take an inordinately long amount of time to actually provide that information. And that slows down the whole process. You know, it slows us down and I hate that because I like to deliver fast. You know, I love it when we can go from it, you know, a really organized seller who can provide all of the information immediately we can whiz through contract preparation, get them into to review it, get it out to the other side. And you know there's times that we'll have sellers who will be able

entitlements (fairly)? And broker best practices. to provide that information quickly. But I must say, in many instances, there's this real delay in the provision of information. And you know, I know when we're acting by side and conducting due diligence that quite often vendors are dealing with their buyers in the same way you know, that they're dragging out, you know, the provision of information. So what can brokers do? Number one, absolutely know what it is the lawyers are going to need to put in the contract. And make sure the sellers are bound in advance without so they know what's going to be asked of them. They'll know what information is going to be needed for the contract so that when you get an when you get a deal agreed between buyer and seller, you can come to us and/or your lawyer whatever but you have all of the information that's needed for your solicitors to jump on board, get that contract together and get it out as I say we can you know for micro deals we can do that in 24 hours, but we need the contract we need the information there in the first place. So that's the first thing. The second thing that I would mention here is sort of priming the buyer and seller as to how to appoint lawyers who understand business sales acquisition transactions, because one of our key frustrations is when we're dealing with a party on the other side, so a lawyer on legal team on the other side that hasn't dealt with this area very much before and you know, hasn't dealt with the smart area much before or is really slow. That's another problem. And I really think that, you know, if buyers and sellers understand that it's going to cost them more and it's going to be a lot slower deal and more painful deal for them.

**Joanna:**

If they're not super careful about the appointment of their transaction advisors their lawyers, but also their accountants if accountants are going to be a key part of the process. I think I think that is critical. So brokers having that early discussion with their buyers and sellers, making them absolutely clear that you know, not all commercial lawyers do this do business sale acquisition transactions all day every day. In fact very few of them. Do you know that's the reality. That so the buyers and sellers need to know what they're looking for when they're appointing a lawyer. They need to be appointing legal teams who've done it many times before and have systems and processes behind them in order to move quickly. I reckon that's my top two areas Cameron does that help?

**Cameron:**

Yeah, I guess it just reinforces, I guess my opinion on it or my thoughts as to how you might answer the question. Completely agree that you've got to have all the information readily available. And I would also like to think by the time it actually gets to you guys as the lawyers should be a good head of agreement in place with all the supporting documents so that you guys can just get on frame contract of sale and everything's been provided.

**Joanna:**

That's right. And I know I tell you what matters like that are a dream because we can just we can get in we run our searches we draft the contract we get the client in we go through it, we get it out to the other side and boom, we can ride that wave of enthusiasm of the buyer without us, you know, entering into this sort of deal fatigue area that, you know, getting to contract stage can sometimes create.

**Cameron:**

Hugely important to keep them up that that wave of enthusiasm going when starts to wane. And when you start to stretch transaction out and maybe one lawyer is not pulling their weight or doing their part, a transaction can fall apart very quickly.

**Joanna:**

Absolutely. Ride the deal momentum. That's what we say. Cameron a huge thank you for coming out today.

**Cameron:**

Thank you.

**Joanna:**

Well, that's it for our Ask me anything episode today. I hope you found that useful. Now we've got a few more of these kinds of podcasts coming up soon. I find that invaluable to be able to answer these top-of-mind questions whether they're from our guests, our audience or our clients. Now if you have a specific topic or question that you'd like us to discuss then submit your Ask Me Anything questions to [podcast@aspectlegal.com.au](mailto:podcast@aspectlegal.com.au) or check out the show notes to this episode where we will link right through to an email for you to submit to submit your Ask Me Anything questions and an important reminder that if you would like any legal assistance with matters that you're working on at the moment, then don't forget you can book in for an initial free call directly with our Legal Eagles at Aspect Legal by heading to our homepage at [aspectlegal.com.au](http://aspectlegal.com.au) Well, that's it for me today. My name is Joanna Oakey and you've been listening to another wonderful episode of our podcast proudly brought to you by our commercial legal practice Aspect Legal. See you next time.