

Submissions in response to the Paid agents and the Fair Work Commission consultation paper.

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Options that could be implemented internally

Options posed in the discussion paper in Table 5 of the paper (pages 12 - 13)..

1. The Commission could provide parties with a fact sheet about representation in the Commission

See Option 1, Table 5 in paper for further detail

Support

Neutral

Oppose

Comments:

The wording of this proposal suggests that it is specifically designed to discourage representation.

Our internal figures show that the financial settlement we achieve for our clients are significantly better than the median or average figures published in the FWC annual reports. That can be readily attributed to our experience and expertise in this area.

If this proposal is an attempt to address an issue with specific agent(s) then it is not addressing the root problem.

On the basis that this proposal would or could detract from the financial settlements that applicants receive by discouraging the use of experienced representatives then we oppose this measure.

Figures provided in this consultation process imply that there is a considerable financial incentive for unethical actors to abuse the system. A fact sheet is unlikely to satisfactorily resolve that issue.

2. Members and conciliators (where applicable under the GP delegation) could determine applications under s. 596 prior to any conciliation, conference or hearing involving a paid agent

Support

Neutral

Oppose

Comments:

Support – on the proviso that s596 determination is done prior to hearing (not on day of, or at commencement, of hearing) to enable an applicant to seek alternate representation.

As the behaviour of at least one agent has been determined to be acting in an unethical manner, it should not be controversial to preclude them from appearing in matters before the FWC.

- 3. Members and conciliators collaborate and share information about their experiences in proceedings with paid agents to promote a consistent and predictable response to issues such as permission to appear**

Support
 Neutral
 Oppose

Comments:

Fully expect that is currently happening, at least on an informal basis.

- 4. At the beginning of any conciliation, conference or hearing involving a paid agent, the Member or conciliator would provide information about representation and settlements at the Commission**

See Option 4, Table 5 in the paper for further detail

Support
 Neutral
 Oppose

Comments:

See [1] above.

Additionally the suggestion that there be the provision of 'median' figures that were achieved in unrelated matters and in different circumstances would by default become the target figure to be achieved in a negotiation, particularly with unsophisticated applicants and/or inexperienced representatives.

- 4. (b) At the beginning of any conciliation, conference or hearing involving a paid agent, the Member or conciliator would: ask the paid agent to confirm, to the client and the Commission only, for their client's benefit what their payment arrangement with the client is, including fees incurred to date and the anticipated costs of the next stage of the proceedings (if a paid agent would continue to act), and to confirm if the fee structures will change should permission to appear not be granted**

See Option 4, Table 5 in the paper for further detail

Support
 Neutral
 Oppose

Comments:

A scan of the most advertised agents shows that the vast majority (with the exception of Just Relations) do not take matters past conciliation. The only appearances by other agents in recent years appears to be late applications / representative error etc.

This proposal would be pointless – apart from undermining the applicant’s faith in their chosen representative, and potentially derailing the conciliation process.

As an agent that is upfront with our clients about representation fees this would have no effect on our situation either.

5. A dedicated group of experienced conciliators could take on all conciliations involving paid agents that have repeatedly been the subject of complaints about challenging behaviour to ensure consistency in approach

- Support
- Neutral
- Oppose

Comments:

We would expect that matters are allocated to conciliators on basis of a variety of factors and that reviews of representatives, both applicant and respondent, whether agent, lawyer or union, are made on a regular basis.

6. Update current pages on the Commission’s website about representation by paid agents to add: what happens if a matter does not resolve and proceeds to court (i.e. no representation by paid agents in the FCA or FCFA as of right), and further examples of paid agent conduct the Commission receives complaints about

- Support
- Neutral
- Oppose

Comments:

Would suggest that examples of poor conduct by lawyers, barristers and HR representatives should also be included as balance.

7. Invite paid agents to voluntarily agree to a code of conduct, and publish the details of agents who have done so on the website.

See Option 7, table 5 for further detail

Support

Neutral

Oppose

Comments:

Generally support a code of conduct, particularly if it is applicable to all representatives appearing in the FWC. (ie inclusive of lawyers barristers and HR representatives.)

It should not be controversial for lawyers, barristers and HR representatives to abide by a code even if there are different remedies for contraventions of a code.

The WA Code looks reasonable.

Would expect this may be an interim measure prior to legislative changes as and if necessary (as per table 7.10 below).

8. Identify an appropriate test case to consider costs orders under s.376 where the paid agent has submitted a GP or UD application where it should have been reasonably apparent that the applicant had no reasonable prospect of success in the dispute (noting that this would require an application to be made by the other party – the Commission could not make such orders on its own motion)

Support

Neutral

Oppose

Comments:

Not supportive of costs orders as they tend to be weaponised.

Additionally, if as suggested on the FWC pages that some agents don't even reside in Australia, there is a real possibility that some agents who appear do not disclose their real identity so this may well be ineffectual.

9. Align the Commission's usual terms of settlement to provide only for payment of settlement funds into a bank account belonging to the Applicant

See [27]- [29] in the paper for further detail

Support

Neutral

Oppose

Comments:

My understanding is that is existing practice.

An alternate could be to modify the TOS so that splits are catered and the amount due to a representative under their agreement with a client-applicant is transparent and facility made for split payment.

10. Amend the Fair Work Commission Rules to stipulate that Notices of Discontinuance may only be filed by Applicants or their legal representatives

Support

Neutral

Oppose

Comments:

I would expect there will be fewer F50's lodged if it is left to applicants to complete them.

My understanding of recent practice is the conciliator will forward a copy of an F50 that has been lodged by an applicant representative (paid agent) to the employer and applicant for verification. That appears a reasonable process.

If an F50 is lodged without authority and fraudulently then it should not be controversial to cancel that document.

TABLE 6 - Options involving other agencies or organisations

The following section of the form discusses options posed in the discussion paper in Table 6 of the paper (page 13).

10. Establish a referral arrangement with Community Legal Centres or other pro bono legal services to provide advice to applicants that claim they have not received settlement monies

- Support
- Neutral
- Oppose

Comments:

Would note that entities such as ACC, FWO, Consumer Affairs Vic (CAV), VCAT, Magistrates Court Small Claims etc are under-resourced, over-stretched and can be onerous systems to navigate.

As prevention is a better solution, either address the matter at the source and ensure that the full payment goes to the applicant's bank account (or as I suggested at table 5.9 above the split to applicant / representative is transparent).

11. Refresh arrangements to refer complaints to the ACCC

See [30]-[32] of the paper for further detail

- Support
- Neutral
- Oppose

Comments:

See above. Particularly if the agent is overseas based or have given a false identity this would have little effect.

Table 7: Noting any change is a matter for Parliament.

The following section of the form discusses options posed in the discussion paper in Table 7 of the paper (page 14).

10. Amend the Act to provide a system for the Commission to register paid agents

See [33]-[35] of the paper for further detail

Support

Neutral

Oppose

Comments:

The WA system of registration has 36 registered agents inclusive of employer organisations.

This does create a barrier-to-entry (ie a fee to join and requirement for PI insurance) but does create the issue of potential abuse of a complaints process so that would need to be administered and cater for procedural fairness.

This would address issues such as *Employee Dismissal Claim Pty Ltd* –if there is a preclusion for entities which have been known and can be shown to act unethically.

11. Amend s.596 of the Act to make clear that the Commission can take into consideration the capacity of the particular lawyer or paid agent to represent the person concerned

See [36 onwards] of the paper for further detail

Support

Neutral

Oppose

Comments:

Good idea. Either in conjunction to or as an alternate to a full registry. Along with Code of Conduct. This may require further discussion and consideration to ensure there are no unintended consequences.

Final thoughts

- Do you have any further suggestions you would like to put forward in response to the issues posed in the options paper?
- What has been your experience with paid agents and the Commission?
- Are there any other issues or considerations related to paid agents and the Commission you would like to raise?

We are fully supportive of attempts to raise standards in representation at the FWC.

Public examples of bad behaviour

- It is public knowledge that **Employsure** was fined \$3m for misleading conduct making false and misleading representations in its online advertisements that it was, or was affiliated with, a government agency.
- **Dismissals Direct Pty Ltd** with director John Bingham was subject to a Public Warning Notice and are no longer apparently operating.
- **Employee Claims Pty Ltd** practitioners do not appear to be resident in Australia or alternately may be using false names given the complete absence of any obvious history of working in this field (or relevant social media presence). The registered director of that business also does not have any history of working in this area.

The decision of the Full Bench in the matter *Oram v Derby Gem Pty Ltd* [PR946375](#) dealing with the conduct of Advocate Gary Bailey may be instructive.

From our observation - other current agents/practitioners appear to use relatively low skilled employees as representatives with little or no experience or expertise. It would be beneficial to hear from conciliators their views on this issue.

We also note that Employee Claims Pty Ltd dox clients that make negative google reviews on their website and specifically details the allegations made in the clients termination

le :-

Aaron Campbell

3 reviews

4 months ago

They're the worst company to use when it comes to these matters. They're unprofessional, they're not lawyers that know the law and will do anything to settle outside of a hearing just to take your money. Their compassion means nothing when ...More

7

Response from the owner 3 months ago

Hello **Aaron Campbell**, thank you for your review. You were dismissed one month into your role as an **Engineer Site Supervisor with Re-Pump Australia Pty Ltd due to alleged dishonesty because of allegedly having overclaimed for time worked.** ...[More](#)



J C20

5 reviews

3 months ago

This company is a scam, this company is listed at the ACCC Public Warning Notices for suspect engaged in misleading and deceptive conduct, made false or misleading representations by telling consumers that it would receive settlement monies ...[More](#)

4

Response from the owner 3 months ago

Thank you **Julian Cruz for** taking the time to leave a review of our representation service. It is disappointing, however, that you appear to be unhappy to pay for the work we performed on the case we took at your request and at our own risk, despite you having been **dismissed from your job as a truck driver for misconduct due to allegedly having used your phone whilst driving, and your unsatisfactory performance after three months in the job.**

This can only be described as an unethical method to discourage the posting of negative reviews.

Marketing

The current market share of cases where agents appear for applicants appears to favour agents who engage sophisticated Search Engine Optimisation/ Search Engine Marketing.

The system is evidently open to abuse and exploitation and favours operations which are able to scale by offering minimal service and either fixed fee or questionable no-win-no-fee arrangements.

With no barrier to entry, an unsophisticated client base and a time imperative to choose a representative quickly (due to the 21 day time limit) the system favours agents who do not allocate time to a particular client and instead concentrate on their marketing systems.

Financial incentive

The preface to the discussion paper states that (mostly 8) agents have represented applicants approx. 2500 times in a year. That averages to over 300 clients each per annum. Fixed fee arrangements to appear at conciliation only are apparently in the order of \$2k – ie an average of approx. \$600k in income for an agent per annum. Employee Claims Pty Ltd fee arrangements are known to be approx. \$5k each on a nowin nofee arrangement which would make their revenues in excess of \$1m pa.

Our own method is to base fees proportionate to outcome. We are comfortable with this approach as

- (a) We do not take on cases which have no reasonable prospect of success. We are not on the business of wasting our own time, or the Commission's time or leading a client on when there is no reasonable potential outcome.
- (b) Of cold-call queries that we receive, only approx. 20% convert into becoming a live client with a valid claim in the FWC. This is because we are able to give proper guidance as to whether there are jurisdictional issues which would preclude a claim, or whether there are other avenues that a claimant should explore instead of the FWC.
- (c) Our interest aligns with the clients' interests in attempting to get the best possible outcome.
- (d) A nominal administration fee is charged to complete paperwork. This is to ensure that the client has some 'skin in the game'
- (e) Our initial consultation is generally free and informal
- (f) Our understanding that we achieve better than par results for our clients of what they would or could have achieved by self representation.
- (g) NB We do offer pay-by-the-hour or fixed-fee payment options but our no-win no-fee option is by far the most popular.

Our understanding of our competitor's fee structures include:-

1. Unions that may assist / represent at conciliation but then refer on to their partner solicitors for formal representation at arbitration.
2. Solicitors that charge
 - i. up to \$800 for a 45 minute consultation,
 - ii. in excess of \$1,000 to prepare the F2
 - iii. several thousand dollars to represent at conciliation.
 - iv. Arbitration representation at approx. \$5000 per day.
3. Agents who charge a fixed fee regardless of merits or likelihood of success
4. Agents who entice with a no-win no-fee structure but whose fees are the significant proportion, if not entirety, of any settlement. It is noted in these situations that agents have absolutely no incentive to attempt to negotiate a settlement in excess of their own fee.
5. Agents who use a scattergun approach, lodging claims irrespective of any likelihood of success – with an attempt to entice 'go-away' money.

Australian Based

As a suggestion for the Code of Conduct -- an undertaking that agents are Australian based and are subject to Australian law - perhaps provide a copy of Passport/ Drivers License or work visa to establish their actual identity and that they are authorised to work in Australia.

It is evidently an issue and addressed specifically at <https://www.fwc.gov.au/apply-or-lodge/legal-help-and-representation/where-find-legal-help/tips-choose-lawyer-or-paid-agent>

There would be little point of redress via ACCC (or alternates) if the agent is overseas based and/or providing a false name. It is noted the physical addresses for many agents on their websites are false or simply not given. For example Employee Claims Pty Ltd list their Melbourne address as being Level 8 – 220 Collins St Melbourne. This is a virtual office share space and they no longer have a contract there.

Summary:-

We are supportive of a graduated solution that includes:-

- Acceptance by agents of a Code of Conduct
- Publication of agents that abide by a Code of Conduct
- S596 amendment to preclude agents who are bad character / no capacity
- If above does not improve then registration of agents

Postscript – it is noted the recent significant decision *s.365 - Application to deal with contraventions involving dismissal - Massey & Ors v Brighter Access Ltd & Ors* - [\[2024\] FWCFB 154](#) - 15 March 2024 - *Wright DP, Slevin DP and Crawford C* which may make much of this discussion moot.