

## Personal details

**First name**

Cheryl-Anne

**Last name**

Laird

**Organisation**

Mazars HR Pty LIMITED

## Options that could be implemented internally

**The Commission could provide parties with a fact sheet about representation in the Commission Support**

**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 Oppose**

**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**

**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 Oppose**

**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 Oppose**

**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**

**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 Oppose**

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

Support

**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

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

Support

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

Oppose

**Use the field below to make written submissions about internal options**

There are a number of the options which we oppose. These are options which, if implemented, will create, at the very least, a perception that paid agents are inferior to or less trustworthy than other representatives. This is an unfair characterisation of the many competent and professional paid agents.

We have no doubt that there are examples of paid agents (as there would be of other representatives) who do not provide a competent service, do not act in the best interest of their client or who do not deliver value for money for their clients. As noted by the FWC in its options paper, "many paid agents are competent professionals" (see paragraph [3]), and therefore it is our view that any action taken which diminishes the reputation of paid agents generally is neither appropriate nor fair.

We would support the introduction of a Code of Conduct which is applicable to all representatives appearing before the Fair Work Commission. We would support a power for the Fair Work Commission to investigate breaches of the Code of Conduct and to impose penalties, including a ban on appearing before the Fair Work Commission for a period of time and/or indefinitely (subject to the nature of the breach). However, this Code of Conduct should apply equally to all representatives, not just paid agents. All representatives should be held to the same standard. With the exception of Lawyers, there are many other persons who appear before the Fair Work Commission for whom there is no independent complaints process, nor any documented professional standard, for example employees of employer associations, trade unions, internal HR or IR officers, etc. It is our view that all representatives should be held to a minimum professional standard when appearing in the Fair Work Commission and support that the Fair Work Commission should have the powers necessary to enforce the Code of Conduct.

## Options involving other agencies or organisations

**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

**Refresh arrangements to refer complaints to the ACCC**  
Support

**Use the field below to make written submissions about options involving other agencies or organisations**

If the payment of settlement sums was mandated to be paid into an account which is in the control of the Applicant this should negate the need for a referral to recover settlement monies from a paid agent.

We are supportive of a capacity for referrals to the ACCC for breaches of relevant legislation including as set out in paragraph [30] of the options paper. However, the imposition of a Code of Conduct on all representatives may go a long way to eliminating the risks of such breaches in the future.

## Options involving proposals for legislative change

**Amend the Act to provide a system for the Commission to register paid agents**  
Support

**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**  
Support

**Use the field below to make written submissions about options involving legislative change**

We are supportive of statutory changes proposed in the options paper to register paid agents and also for the FWC to take into consideration the capacity of the lawyer or paid agent. Our support for the latter is contingent on the requirements being imposed equally on lawyers and paid agents as the mere fact that a person is a lawyer does not equate to them being competent to represent a party in a matter before the Fair Work Commission.

## Final thoughts

**Do you have any further suggestions you would like to put forward in response to the issues posed in the options paper?**

We are supportive of ensuring that all parties to a matter in the Fair Work Commission are able to be represented by a person or organisation of their choice, subject to permission being granted on a case by case basis by the Fair Work Commission. Further, we are supportive of there being minimum competency and professional standards which should apply to all representatives appearing in the Fair Work Commission. Although paid agents are the focus of the current options paper, arising from particular concerning conduct by a very small number of paid agents, it is my experience over a very long career appearing in the Fair Work

Commission on behalf of clients (as a paid agent) that "concerning conduct" in the Fair Work Commission is not restricted to paid agents.

There are many professional and competent paid agents currently appearing in the Fair Work Commission on behalf of their clients and this same group is often responsible for training the next generation of representatives to be competent and professional advocates. Concerning conduct by a small group of paid agents should not be allowed to taint the professionalism of the many paid agents who have never and would never engage in the conduct which is identified in the options paper.

**What has been your experience with paid agents and the Commission?**

Mazars HR Pty LIMITED, almost exclusively act as paid agents for employers. In this capacity we have, from time to time had the misfortune of having paid agents act for applicants in matters where such paid agents would clearly fit into the small group who demonstrate "concerning conduct", including those who seek to direct settlement sums to their own bank account as opposed to one controlled by the applicant. Other conduct we have witnessed includes outright lies about the application of the Fair Work Act, 2009 and/or case law and threats to pursue actions which have no factual basis (or prospect of success) as a tactic to drive up the quantum of a settlement.

As experienced advocates we find we are able to manage the "concerning conduct" when it occurs and protect our clients from such inappropriate tactics. We also note that paid agents are not the only representatives who engage in such concerning conduct from time to time. In our experience the impact of the concerning conduct can be minimised by a member of the Commission or an experienced conciliator. We are therefore supportive of matters involving a representative who has a reputation for concerning conduct (not limited to paid agents) to be allocated to experienced conciliators where possible.

We encourage the Fair Work Commission in determining the appropriate interventions to address the identified concerns with a small number of paid agents, to ensure that the reputations and businesses of the many professional and competent paid agents currently appearing before the Fair Work Commission are not negatively impacted.

**Are there any other issues or considerations related to paid agents and the Commission you would like to raise?**

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