

28 March 2024

Our ref: KB:ILC

Justice Adam Hatcher
President
Fair Work CommissionBy email: consultation@fwc.gov.au

Dear President

Paid agents consultation

Thank you for the opportunity to provide feedback on the Fair Work Commission's 'Paid agents' consultation.

The Queensland Law Society (**QLS**) has long advocated for a review of the issues concerning paid agents in industrial jurisdictions and we commend the Fair Work Commission (**FWC** or **Commission**) for its work in this regard.

We have perused the Options Paper and consider the issues raised are broadly consistent with the feedback we have received over the years. We are also seeking further feedback from our members about recent experiences.

We provide the following preliminary comments on the options presented in the paper. QLS would be pleased to be consulted further work is undertaken to address these issues.

Option	QLS Comment
Table 5: Options that could be implemented internally	
1	We are concerned that a factsheet might have limited utility as it is unlikely to be read before a person engages a paid agent or if it is read prior, a person might not apply what they have read when choosing a paid agent. The FWC has had information about paid agents on its website for some time and the issues identified in the options paper remain.
2	There appear to be some procedural issues with this option, including the proposal to treat paid agents differently to other representatives. Dealing with these issues prior to conference will be costly and potentially delay conferences.

3	We agree that the FWC members and staff should internally collaborate and share information about their experiences. However, consideration should be given to the possibility of allegations of potential bias etc arising from this.
4	We do not consider this would have a significant benefit. Further, the terms of engagement between the agent and the applicant are not matters for the FWC's control.
5	This option may have some merit, particularly if conciliators are able to actively engage in s.596 applications for paid agents. Conciliators should be empowered to take appropriate action in order for there to be a benefit.
6	This option, for the same reasons outlined in response to option 1, is unlikely to be effective.
7	This option has some merit, but will depend almost entirely on whether the applicant checks the website to see whether a paid agent agreed to the code of conduct <i>before</i> they are engaged. We also query whether agreeing to a voluntary code, where compliance is not monitored, will be an incentive to act appropriately.
8	There have been cases involving paid agents in the past. However, in some of matters, the paid agents are not located in Australia which will give rise to enforcement issues. We query whether this is it potentially something the FWC could partner with FWO on? It might be that the FWO has powers to enforce FWC orders, but does not often do this.
9	The Commission has already tried this, somewhat unsuccessfully. The Commission cannot impose its terms of settlement on parties. We are aware that settlements have fallen over because of this very issue.
10	There are often difficulties associated with applicants filing, or not filing, documents and so it may be this option will create increased administrative burdens.

Table 6: Options involving other agencies or organisations

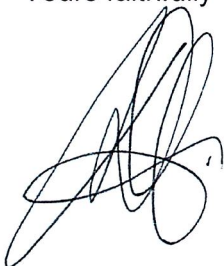
1	This option has merit and should be considered further. However, we are cognisant of the limited resources that community legal centres have. QLS would urge that specific funding be allocated to CLCs for this purpose.
2	The ACCC should have a role in ensuring compliance with the Australian Consumer Law within the FWC environment. However, these arrangements have occurred in the past and have not generally yielded lasting results. For example, even if one company/business is reprimanded and leaves the market, another, similar one enters in its place quite quickly.

Table 7: Options involving proposals for legislative change (noting any change is a matter for Parliament).

1	<p>This option is worth considering further as some form of regulation will lead to a clear set of rules about conduct, as well as a complaints mechanism where disciplinary action can be taken. However, the FWC would need to be appropriately resourced to administer this system.</p> <p>Consideration could, in the future, be given to whether some training could be provided to registered paid agents.</p>
2	<p>QLS is of the strong view that legal representation in the Commission should be as of right and not require the permission of a Commissioner or conciliator. Any amendment to the legislation that required an assessment of factors to be undertaken before a lawyer was able to represent their client would be concerning and may cause increases in costs and delays.</p> <p>As the paper notes, lawyers have ethical duties and are regulated in relation to their ability to practise and how they charge their clients. There are complaints mechanisms in place and requirements to engage in continued professional development.</p> <p>Legal representatives assist matters to progress in the Commission. Having a lawyer present, even if the other party is unrepresented, often helps all parties to understand the process, the issues at play and can save the parties and the Commission time.</p> <p>We are not in a position, as present, to comment on an amendment that is restricted to a 'paid agent', but any proposal to include a lawyer in such a reform is opposed by QLS.</p>

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Rebecca Fogerty
President