

Personal details

First name

Stephen

Last name

Farrell

Organisation

SJF Work Advice Pty Ltd

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
Support

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
Support

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)

Neutral

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

I support Option 1 except for the Commission providing examples of conduct that the Commission has received complaints about as a few bad apples can affect my reputation.

I oppose Option 2 as this would differentiate paid agents from lawyers. In my view, the process should be the same for both paid agents and lawyers. Either determine permission to represent prior to conciliations for both lawyers and paid agents or not determine permission to represent before conciliations for both lawyers and paid agents.

I oppose option 6 because it makes it appear to the general public that the Commission prefers parties to engage lawyers, rather than paid agents in GP applications. I am quite successful in engaging in GP conciliations (as a representative for both applicants and respondents) and I have entered into partnerships with law firms to refer any clients in a GP claim that proceeds to the federal court. If the Commission were to implement this option, potential clients would be steered away from my services.

Finally, I also oppose option 10 because this will cause inconvenience to my clients and impact my standing with them. Putting aside my obligations as a registered agent in Western Australia (which is not limited to my conduct in the WAIRC and IMC WA), there is redress for clients should I discontinue their claim without authorisation as outlined in the Full Bench decision [2023] FWCFB 265.

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

Neutral

Refresh arrangements to refer complaints to the ACCC

Support

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

None

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

Oppose

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

The reason why I oppose option 11 is twofold. Firstly, a paid agent's capacity is subjective and there would be differing opinions about a person's capacity to represent his or her clients. This could result in inconsistency between Commission members on whether or not to grant permission. I note that the Fair Work Act did not include the former s.100 of the WRA and I submit that this evinces parliament's intention that capacity of a representative should not be considered. Secondly, the fact that permission decision could not be appealed would be problematic both for parties and representatives themselves. It opens up the possibility of adverse decisions being made on a personal basis (knowing that any decision not to grant permission could not be appealed), rather than an objective assessment of the representative's capacity.

Final thoughts

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

Rather than having a list of paid agents on the Commission's website, I suggest that the Commission could publish a list of paid agents whose conduct is similar to that of Unfair Dismissals in the Howell case.

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

As a paid agent myself, I trust and hope that my conduct has not caused any concern for Commission members and staff.

However, when representing employers, I have come across many situations where companies advertising themselves as representing dismissed employees have lodged "pro forma" applications that contain little detail and just assert that the dismissal breached the applicant's general protections or that the dismissal was harsh, unjust or unreasonable. This makes it problematic to respond to the application and hard to identify solutions that may be explored in conciliation.

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

No