



President's statement

Paid agents and the Fair Work Commission – publication of Report and Recommendations

Justice Hatcher, President

Sydney, 9 September 2024

[1] This statement concerns the publication of the report and recommendations of the Fair Work Commission Paid Agents Working Group.

Background

[2] Lawyers and paid agents can generally represent parties in matters before the Commission only with the permission of the Commission under s 596(2) of the *Fair Work Act 2009* (subject to certain exceptions). Lawyers are required to be admitted to the legal profession and are subject to regulation of their qualifications, conduct, ethics and financial dealings. There are no qualification requirements for paid agents, nor are they subject to any professional scheme that regulates their conduct.

[3] Many paid agents are competent professionals who act in the best interests of the parties they represent. However, Commission Members and staff have observed some paid agents engaging in conduct that may not be in the best interest of the paid agent's client, may not assist the Commission to exercise its powers in a manner that is efficient or quick, or is otherwise concerning. In some cases, the Commission has received complaints from parties about the conduct or practices of paid agents. These concerns are exemplified by the Full Bench decision of 22 December 2023¹ and my subsequent recommendation² in *Howell v Elite Elevators Corporation Pty Ltd* and the more recent Full Bench decision in *Massey & Ors v Brighter Access Ltd & Ors*.³

[4] In January 2024, I directed the establishment of a Paid Agents Working Group (working group) to review the procedures that apply to the participation of paid agents in Commission proceedings and consult on potential options to manage challenging paid agent conduct. The working group involved three presidential members of the Commission and senior members of staff.

¹ [2023] FWCFB 265.

² [2024] FWC 206.

³ [2024] FWCFB 353.

[5] The objective of the working group was to identify measures aimed at ensuring that all paid agents appearing before the Commission:

- conduct themselves in an ethical and honest manner;
- act in the best interests of the parties they represent; and
- operate in accordance with standards that are broadly consistent with what would be expected of a lawyer in the same circumstances.

[6] The working group undertook an extensive consultation process, which received significant stakeholder interest and engagement. In response to an [options paper](#) published on 7 March 2024, the working group received 44 written submissions from individual members of the community, paid agents, law firms, unions, community legal services, law societies, employer associations and other state and federal organisations.

[7] During April 2024, the working group held public consultations with stakeholders, in person and online, attended by 18 organisations. The working group also held meetings with the Western Australian Industrial Relations Commission (WAIRC), the Australian Competition and Consumer Commission (ACCC), the South Australian Employment Tribunal (SAET), the Federal Court of Australia and the Federal Circuit and Family Court of Australia.

[8] The working group is today publishing its report and recommendations on paid agents and the Commission.

Recommendations

[9] The working group has made five specific recommendations for reform of the Commission's practices relating to the participation of paid agents in Commission proceedings. These are detailed in the working group's report. The recommendations pick up options 2, 3, 4, 6, 9 and 11 of the [options paper](#) earlier published by the working group and also incorporate proposals advanced by stakeholders in their submissions.

[10] I have considered, and determined to accept, all the recommendations made by the working group. As the recommendations primarily relate to the conduct of unfair dismissal and general protections matters, implementation will be led by myself in conjunction with the Commission's National Practice Lead for Unfair Dismissals and General Protections (Commissioner Johns) and the leading staff of the Dispute Resolution Support Team.

[11] In keeping with the Commission's commitment to implementing change in an open and transparent manner, the working group will continue to engage with stakeholders about these measures and their impact. It is expected that the issues raised will be revisited in the next 12 months. Further information about the implementation of these measures will be provided in due course.

[12] While not part of the recommendations of the working group, the report published today notes that a further option, involving the registration of paid agents, had broad support from stakeholders throughout the consultation process. This option would require legislation and regulatory support in order to be implemented.

[13] On behalf of the working group, I wish to extend my appreciation to the bodies and individuals who participated in the consultation process. I would also like to thank the Commission Members and staff who have formed part of or supported the work of the working group.

PRESIDENT