

Personal details

First name

Joseph

Last name

Kelly

Organisation

Kelly Workplace Lawyers

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

Support

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

Oppose

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

Support

Use the field below to make written submissions about internal options

{Empty}

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

{Empty}

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

The definition of "paid agent" needs to be amended to include "any person who holds themselves out as a paid agent", rather than making the definition contingent on a person who "charges or receives a fee".

As we observed in a recent decision before the Commission, a person can:

- a. nominate on a Form F8 that they are a paid agent;
- b. seek leave to appear as a paid agent, AND
- c. successfully defend a costs application by arguing that they never charged for their services.

A paid agent may escape a cost order by simply delaying the issuing of an invoice to a client until after the time to make a cost application has passed.

See: Little Henri v Positive HR [2023] FWC 2048 - PR765250

Final thoughts

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

{Empty}

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

{Empty}

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

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