

25 March 2024

Fair Work Commission – Paid Agents Working Group

By e-mail: [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au)

Dear Sir/Ma'am,

**Subject: AWCC Submission to the Fair Work Commissions Paid Agents Options Paper 2024**

The Australian Workforce Compliance Council Ltd (AWCC) makes the following submission to the Fair Work Commissions Paid Agents Working Group's options paper.

The creation of AWCC was a key outcome of research into the prevention of workforce non-compliance including wage-theft. However, during that research, we identified a number of national capability gaps, including those of paid agents in the areas of Fair Work Administration (Unfair Dismissal and General Protections claims), Workplace Investigations and Workplace Mediation, including Conciliation and Arbitration.

AWCC submits the following report which includes a number of recommendations in relation to Paid Agents Options paper, and shares with the FWC some of its research and future plans for this stream of operational labour law practitioners.

Our contact for any queries is Ciaran Strachan CEO AWCC Ltd via email [ciaran.strachan@awcc.asn.au](mailto:ciaran.strachan@awcc.asn.au)

Your sincerely,

**Ciaran Strachan**  
Chief Executive Officer  
Australian Workforce Compliance Council Ltd



Australian Workforce  
Compliance Council

# AWCC Submission to Fair Work Commission - Paid Agents Options paper 21 March 2024



The Australian Workforce Compliance Council Ltd

Australian Company Number (ACN): 663 421 805

Australian Business Number (ABN): 1166 342 1805

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[Annex B - AWCC comparison Table with FWC Paid Agents Working Group Discussion Paper](#)

[Annex C - 2022 Complaints, Institute of Certified Bookkeepers](#)

# 1. About AWCC Ltd

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## 1.1 Background on the creation of AWCC Ltd and its relation to Paid Agents

- (a) AWCC Ltd was created following three years of research into wage-theft and other payroll related non-compliance.
- (b) The Australian Workforce Compliance Council Ltd (AWCC), Australia's first and only membership based (not for profit) association for payroll and payroll related Employment Technology Providers (Employtech) was incorporated on 22 October 2022.
- (c) AWCC Ltd also scoped out the potential for a practitioner framework for Industrial Relations Practitioners, and identified needed capabilities which were:
  - (i) Workplace Investigations (civil and not criminal),
  - (ii) Mediation, including conciliation and arbitration,
  - (iii) Ethics/Code of conduct and related Practitioner self and integrated regulatory models,
  - (iv) A non HR affiliated association which focussed on Australian labour law practitioner requirements, including litigation and operations (non-lawyer).
  - (v) Forms of self-regulation and Government integrated regulation.

## 2. Executive Summary

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### 2.1 Purpose of the Submission

- (a) The purpose of this submission is to provide feedback to the Fair Work Commissions Paid Agents Working Group Discussion paper, and share with that group some of AWCCs practitioner research, in addition to two recommendations.

### 2.2 Methodology

- (a) AWCC Ltd used a number of methods to consolidate its response via this submission, these included:
  - (i) Consolidate and where appropriate (ahead of our proposal to all nine Governments), reference three years of research toward increasing operational labour law experts capabilities.
  - (ii) Reference our research and related research to date.
  - (iii) Ensure the FWC is made aware of other contributing factors affecting the current conduct of paid agents, including a lack of education and professional associations operating in this space.

### 2.3 Conclusions

- (a) AWCC Ltd makes the following conclusions and recommendations to the FWC.
  - (i) AWCC Ltd is of the opinion that, due to HR's negative impact in this space by there being no association driven appropriate degree/education and self-regulation or integrated regulation framework, the FWC is forced to consider all options posed in the discussion paper in order to fill these national capability gaps and in turn, maintain the public trust in the Fair Work Commission and where possible, protect the public including applicants and defendants alike.

### 2.4 Recommendations:

- (a) AWCC Ltd recommends the FWC, where practicable, implement all options within the paper, including Tables 5, 6 & 7.
- (b) Based on information shared in this submission, AWCC further recommends Tables 6 & 7 be expanded as follows:

#### **Table 6: Options involving other agencies or organisations**

- Implement arrangements for referral of matters (pertaining to Table 5) to a new register of "Practitioner Associations" for 1<sup>st</sup> level action and agreed upon, supported framework.

#### **Table 7 – Options involving proposals for legislative change (noting any change is a matter for Parliament)**

- Amend the Act to provide a system whereby a FWC registered Practitioner Association can register Paid Agents into the same register as stated in point 10 table 7 (Amend Act to provide a system for the Commission to register paid agents. See {33}-{35}). This register will require an approved FWC framework be implemented by the Practitioner Association in order for it to be eligible to register.

### 3. History and research on Fair Work Operations

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3.1 From 2020 to 2023, AWCC Conducted the following research on Fair Work operational experts, including paid agents and those who interpret modern awards.

- (a) AWCC reviewed over 22 Universities and their degrees in: Law, Employment Law, Commerce, Business, Human Resources, Industrial Relations, Workplace Relations and Employment Relations.
- (b) AWCC also reviewed the following certifications, integrated certifications (with degrees) and integrated practitioner frameworks.
  - (i) All Law Societies, including the only three which have WR/IR specialist certifications (Law Institute of Victoria, NSW Law society and Queensland Law Society), and recognised degrees for the purpose of certifications, of which there are only three, all are face to face and in Melbourne and Sydney only.
  - (ii) All related associations who have non-regulated members that operate in this space including the Australian Human Resource Institute (AHRI). Also their related degrees which are required to be certified by AHRI were reviewed.
  - (iii) Other self and integrated regulated professions were examined, including Medical professions and their regulated Act, Tax Agents, Business Activity Agents, and Migration Agents.
  - (iv) Government regulated integrated entities were also reviewed including the [Tax Practitioners Board](#) and [Professionals Standards Scheme](#).
- (c) Other aspects were reviewed including trends between the most trusted professions in Australia ([Annex A](#)). Of which, almost the entire top 1/3<sup>rd</sup> or 33% were a regulated profession, meaning either the association or entity managing the profession was supported by a legal instrument which controlled the professional's ability to practice in that profession. These were:
  - (i) A state or Federal Act, ie, State Act for Law Societies/Bars or for Medical Professionals, the [APHRA Act](#). Of which both had a regulatory capability.
  - (ii) Proof of practitioner "pruning" ie, the Tax Practitioner Board produces regular reports of outcomes with regards to [board investigations](#) ranging from censorship to de-registration.
  - (iii) Many of these relied on professional organisations who "opt in" to an integrated regulatory model.
- (d) AWCC also interviewed a number of Practitioners and organisations who regularly work in the Unfair Dismissal and Workers Rights space. [Annex B](#) contains a reconciled list of our findings with that of the Fair Work Commissions observation's within the paid agents discussion paper. AWCC noted the following:
  - (i) There is no association operating outside of Law Societies and State/Territory Bars that are conducting appropriate degrees, education and training, in addition to practitioner regulation to the same standard of the legal profession for labour law, including the Fair Work system. Of note were the following deficiencies: Only the resolution institute taught one module of mediation, however, that unit was only linked to family law degrees, not IR or employment law degrees.

- (ii) Most solicitors who no longer practiced law, but rather specialised in workplace investigations, all stated they will remain with law societies due to the credibility and there being no alternative as they generally do not consider HR or its associations to be up to the same standard, in particular, the regulation of its members and education (there isn't any).
- (iii) There is no appropriate qualification for workplace investigations, only a criminal Certificate IV/Diploma is available. This was voiced by current and ex Fair Work Ombudsman Investigators and career self-employed workplace investigators.
- (iv) There is no appropriate degree in this space, and even the only three designed for Lawyers (Masters of Employment Law/Relations), do not adequately capture the operations of Fair work, nor do they cover any investigations or mediation Units. They are also only available via face to face learning in metro Sydney and Melbourne. All stated to AWCC they have no plan to go online (confirmed in 2023).
- (v) All solicitors and non-solicitors who specialise in Unfair Dismissal claims stated they would consider moving to a new association if one existed which offered a credible alternative to law societies. One investigator was completing a Juris Doctor in Law and stated it had zero units of use to UD and workplace investigations, however it enabled her to be recognised as an expert due to the credibility of being a lawyer.
- (vi) One Workplace Investigator consultant based in South Australia stated that The South Australian Government requires all workplace investigators to be members of a Private Investigators association in order to be eligible to work for its Agencies/Departments.

## 4. Practitioner Association opt in Models, how they work and benefits

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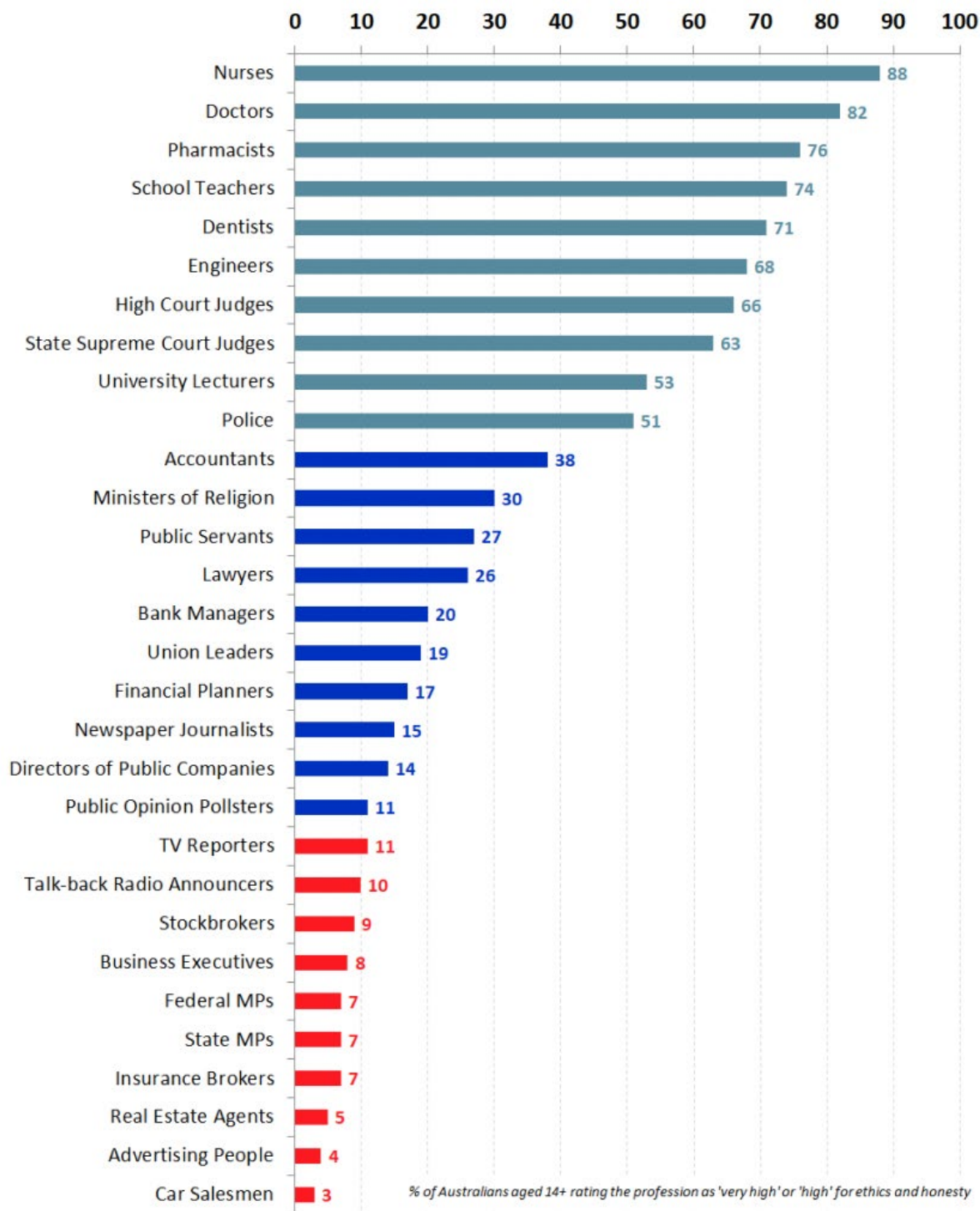
### 4.1 Practitioner Association models

- (a) Practitioner Associations who have opted into a regulated or integrated regulated mode are listed within the Government or Regulatory Authority as a recognised practitioner association. Here is a list of recognised practitioner associations for the [Tax Practitioner Board](#)
- (b) Practitioner Associations who wish to opt into a Government Regulated model must satisfy membership requirements in order to be listed within the recognised practitioner association register, generally these consist of:
  - (i) Agreed practitioner framework between the association and regulator, this may include: approved code of conduct, proof/evidence of a minimum education and character standard.
  - (ii) Evidence of, or regular proof of self-regulation. This may include an MOU to share investigation information on members, including past members. 1<sup>st</sup> level action of complaints such as a low level report from the FWC to the practitioner association where payment terms and conditions were not clear to a client and the member association provides both a public and FWC response, in addition to mediation services for the rectification of the complaint and any re-training as required of the member.
  - (iii) Evidence of low-level administration and action. Ie, some Bookkeeping associations and Accounting bodies which are registered with the TPB publish templates and training which are mandatory for onboarding and offboarding clients. They also provide customer and member mediation services for low level misunderstandings to ensure a 1<sup>st</sup> level of consumer protection. Evidence of this low-level action is usually reported within the association's annual report and by that associations Complaints Committee. An example from the 2022 ICB (Institute of Certified Bookkeepers) Annual Report is contained at [Annex B](#).
  - (iv) The Association itself must be appropriately structured and member owned. The word association unlike Union, Chamber of Commerce or University is not a protected title and therefore, open to abuse by fake or privately owned entities which are not able to opt into these types of frameworks.
  - (v) Many associations are also members of the Professional Standards Scheme, including all law societies. This scheme has a legal instrument in every state and territory which limits liability, has the potential to lower insurance premiums, protects the consumer and does so in return for evidence of self-regulation. It should be noted this entity recently entered into an MOU with the Tax Practitioner Board and such an MOU may be worth exploring by the FWC with regard to mandating any paid agent framework. Other non-legal member owned practitioner associations who have entered the PSS include Computing, Building Surveyors and Accounting Associations. More information on the [PSS can be found here](#).



**Annex A – Most trusted professions in Australia 2021**

Reference [Roy Morgan Research](#)



# FWC & AWCC paid agent comparison Table 1 (p.8)



Observations by FWC and AWCC		FWC	AWCC
<p><b>Table 1 (p. 8),</b>  <b>Concerns about payment arrangements -</b>                      Note, these are summarised, not word for word.</p>	<p>Settlement fees not recieved by applicant, or in dispute (between agent/FWC). Applicant believes they have paid their FWC applicant fee to paid agent. AWCC notes several ACCC notices, including one <u>dated December 2020 for alleged conduct by Dismissals Direct Pty Ltd</u> for alleged non payment of settlement fees.</p>	✓	✓
	<p>Unsatisfactory service by agent, including inability to be contacted or respond in timely manner, or respond at all.</p>	✓	✓
	<p>Disputed payment terms and conditions, including irrevocable authority for settlement moneys, which the applicant claims they were not aware. Or agreeing to fees for non-monetary settlement, in excess of \$3,000 (AWCC found these could be as high as \$7,000).</p>	✓	✓
<p><b>AWCC IR Practitioner Research (2020-2022)</b></p>	<p>Payment terms and conditions not clearly articulated (or articulated at all) in either a writtern or formal proposal.</p>		✓
	<p>No evidence of a 1st level association dispute management process by associations (other than law societies or equivalent) who advocate their members are ER/IR or WR experts, including various Australian and international HR associations.</p>		✓
	<p>No appropriate AQF 8/9 (Post Graduate) education on Ethics or relivant practitioner Code of Conduct and enforcement for associations (other than law societies/equivalent) who advocate their members are ER/IR or WR experts, including various Australian and international HR associations.</p>		✓
	<p>Innapropriate or no professional standards enforcement by associations (other than law societies/equivalent) who advocate their members are ER/IR or WR experts.                      Examples include:                      - No evidence of disciplinary committee activity, either via external reports including AGM notice or other.                      - No consequences of member disciplinary action, including criminal or civil, fine, removal from Professional Standards Scheme (if entered into one) or circulation with State/Federal Regulators/Stakeholders, ie, the Fair Work Ombudsman, Fair Work Commission or Tax Practitioners Board.                      - Potentially unethical contract terms and conditions. Ie, 3-5 year service contract with automatic renewal clause with limited non renewal window (1-3 months).                      - Advice on risk given by sales person to faciliate commission on Fair Work services contract, not Fair Work Practitioner.</p>		✓

# FWC & AWCC paid agent comparison Table 2 (p.8)



Observations by FWC and AWCC	FWC	AWCC
<p><b>Table 2 (p. 8), Concerns about quality of representation</b> (Note, these are directly quoted from the report)</p>	<p>In relation to GP applications.</p> <ul style="list-style-type: none"> <li>the application lodged by the paid agent does not explain the basis on which a breach of the general protections is alleged.</li> <li>in conference the paid agent is unable to explain the basis on which a breach of the general protections is alleged.</li> <li>the nexus between the exercised workplace right and the alleged adverse action is tenuous. For example, there might be significant time elapsed between these two factors.</li> <li>the GP application appears to have been lodged because the applicant would not be eligible to make a UD application, not because there is an alleged contravention of the GP provisions.</li> </ul> <p>The application is poorly drafted and does not reflect what the Applicant describes in conciliation. AWCC notes several instances of no investigation being carried out at all for either the applicant or respondent. However, there are mitigating circumstances for this including: no civil investigations course exists, lawyers are not trained in investigations including those with a Masters in Employment Law. This was noted as an issue by the Former Sexual Discrimination Commissioner, Kate Jenkins.</p> <p>The applicant believes they have paid their FWC application fee to the agent.</p> <p>The paid agent acting for the respondent for a UD matter, lodges form F3 on morning of Conciliation.</p> <p>The applicant claims they were told by their paid agent not to answer the conciliator's call for conciliation because the paid agent's fee for the conciliation had not been paid.</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
<p><b>AWCC IR Practitioner Research (2020-2022)</b></p>	<p>The process of filing forms and the function of the conciliation process, including form 3 and follow action, was not well understood by practitioners (including some lawyers) surveyed.</p> <p>All university degrees in Law, post graduate law, commerce, business, Human Resources and Industrial relations believe Mediation is a family law Unit only (and taught as such by the Australian College of Law), which in turn places all education, including accreditation of the Resolution Institutes Mediation unit (which teaches Conciliation) within Post Graduate Degrees for Family law only.</p>	<p>✓</p> <p>✓</p>

# FWC & AWCC paid agent comparison Table 3 (p.9)



Observations by FWC and AWCC		FWC	AWCC
<p><b>Table 3 (p. 9), Concerns about contacting the paid agent</b> (Note, these are directly quoted from the report)</p>	<p>The Paid agent does not respond to communications from the Commission. AWCC noted this with regards to clients as well. Noted several instances on Employsure (feefo and other internet reviews).</p>	✓	✓
	<p>The paid agent seeks an adjournment at the last minute, (often without legitimate reason).</p>	✓	
	<p>The paid does not attend the conciliation, conference or hearing without notice to the Applicant or Commission. AWCC notes several complaints on trustpilot pertaining to Employsure failing to keep appointments (with the exception of locking them into a 3-5 year contract).</p>	✓	✓
	<p>The applicant complains that they cannot contact their representative prior to conciliation, or that they don't know who will their representative is. AWCC notes Internet searches and first hand statements confirm this with regard to well known suppliers and some Chambers of Commerce. Chambers of Commerce mostly utilise Lawyers, many of which are not qualified in employment law, or certified specialists in employment law.</p>	✓	✓
	<p>The applicant complains that they cannot contact their representative following settlement.</p>	✓	✓
	<p>The applicant complains that they cannot contact their representative following staff conciliation and after the matter is referred on to a Member.</p>	✓	
<p><b>AWCC IR Practitioner Research (2020-2022)</b></p>	<p>AWCC noted the following issues pertaining to contact with large scale national Fair Work Service Providers.</p> <ul style="list-style-type: none"> <li>- Ex employees complaining of high pressure sales tactics to sell contracts, even if the prospect (business) didn't need their services. One complaint (trustpilot) is of a small business unable to cancel the contract after their only employee left and was not replaced.</li> <li>- Ex employees stating that customer service was limited to a 5 minute call window only.</li> <li>- Contracts Ts and Cs not clearly articulated, including automatic renewal clauses which the client was not advised about during onboarding, or when the limited window was available to cancel the contract.</li> <li>- Conflicts of interest, including potential conflicts not disclosed. One major national Fair Work Service provider only sells contracts with Professional Indemnity Insurance as it is an insurance agent. The Fair Work services which come with the insurance contract are not the focus of the contract, but in reality, the extras, however the contract is not marketed with this disclosure.</li> </ul>		✓

# FWC & AWCC paid agent comparison Table 4 (p.9)



Observations by FWC and AWCC		FWC	AWCC
<p><b>Table 4 (p. 9), Other concerns about paid agent behaviour</b> (Note, these are directly quoted from the report)</p>	The Applicant complains that they believed the paid agent is related to or part of the Commission.	✓	
	The paid agent behaves aggressively towards the conciliator.	✓	
	The Applicant holds the belief that the paid agent is a lawyer when this is not the case. AWCC also noted a number of lawyers operating as IR/WR specialists, when they were of another specialisation (commercial/family law) or have no specialisation or IR/WR qualifications other than their one and only Fair Work Unit within their GradDip Legal Practice.	✓	✓
	The paid agent files a Notice of Discontinuance without instructions or contrary to instructions.	✓	
	The paid agent ceases to act on the same day as the conciliation or just after the conciliation and in either situation the Applicant is left to run the substantive hearing alone.	✓	

# Members

## 2022 Complaints Report

Requirements of being a BAS Agent Association:  
<https://www.tpb.gov.au/recognised-bas-agent-association>

Item 105 — have satisfactory arrangements in place for publishing annual statistics about:

- The kinds and number of complaints made to the association
- Findings made as a result of the complaints
- Action taken as a result of those findings

During 2022, we investigated a total of six member complaints, two of which were received and resolved in 2022, two were initiated in 2021 and finalised in 2022 and one was withdrawn prior to investigation. The sixth complaint was initiated in 2022 and finalised in 2023.

### Complaint 1

A complaint was received from the accountant of a member's client with allegations of fraudulent activity on the part of the member in 2021. Given the seriousness of the allegations, law enforcement authorities were brought in to investigate the complaint and subsequent charges of obtaining property by deception were laid.

The member in question resigned their membership and the details of the complaint have been retained on the member record.

It is expected that all members of ICB adhere to the professional code of **conduct**, including acting with honesty and integrity. Matters as serious as this may result in the termination of membership and the application of a lock out period of up to five (5) years before being able to reapply as a member. The lock out period was applied to this member.

### Complaint 2

Initiated in 2021 the complaint received related to Member (A) who had purchased a client list from another retiring member (B). Both parties had signed a written agreement for the payment of a trailing commission agreed to as part of the purchase.

Member (A) failed to make the payments required under the agreement and asserted that there were several personal challenges that had impacted their ability to meet the obligations.

Member (A) ceased active communication with Member (B) and also did not respond to the initial complaint investigations being undertaken by ICB.

Member (B) asserts unethical behaviour and therefore not adhering to our Code of **Conduct**

Member (A) agreed to commit to a payment schedule to clear the debt with ICB copied into the receipt and agreement, and was officially cautioned by ICB that if the payment schedule wasn't adhered to that membership may be suspended or denied.

As part of the ICB Code of **Conduct** it is expected that a member will honour any contractual obligations which they enter. If such obligations can't be met it is expected that open, active and ongoing communication with the other party to the agreement is maintained.

It is also expected that any member that is contacted by ICB in relation to complaints that may have been issued against them, responds to requests for information within the 21 day required response time.

# Members

## 2022 Complaints Report

### Complaint 3

Complaint received in relation to withholding access to client subscription data.

The member held the accounting file software subscription on behalf of their client. The solvency of the client was brought into question by an employee of the member and work continued as normal for a short period. The client did not respond to further communication beyond this point.

A new bookkeeper and accountant were authorised as representatives for the client. No formal communication was received from the client as to the termination of the agreement or the engagement of other representatives, rather the request came directly from the new accountant for an increased level of access to the subscription file.

The member initially agreed to provide the accountant with the increased level of access requested, however this wasn't forthcoming as at the time of the complaint, due to the outstanding fees owing to the member. Request for payment of outstanding fees to the client, which was proposed by the accountant were not honoured by the client, still over 2 months later.

The client always had full access to their data, however the request for upgraded access for the accountant was not activated.

After an initial commitment to pay the member, this had not eventuated at the time of the complaint. Multiple requests from the member for fees, including subscription fees were ignored. The member subsequently downgraded the subscription level leaving the business owner without vital functionality.

Member reminded that access to client data can not be restricted on the basis of unpaid fees, and warned that taking on a subscription on behalf of a client had the inherent risk that these types of disputes can occur.

### Complaint 4

The Member in this complaint was caught up in a family dispute due to the death of the business owner/her client.

ICB reviewed all relevant information provided and after receiving an email of support from the new manager/owner stating the member had done everything appropriately and with full authority of both the deceased and the new owners.

ICB also spoke to Accountant involved and endorsed the member's **conduct** and behaviour, saying that she always acted professionally and ethically in difficult circumstances, and whilst navigating family dispute issues.

This complaint was closed with no further action taken against the member concerned. It highlighted that having a positive relationship with client accountants can be of great benefit to both the client and the professional bookkeeper.

