

21 March 2024

Justice Adam Hatcher  
President  
Fair Work Commission  
GPO Box 1994  
Melbourne VIC 3001

By email: [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au)

Dear Justice Hatcher,

**Submission to the paid agents and the Fair Work Commission options paper**

Basic Rights Queensland welcomes the opportunity to provide comment on the paid agents and the Fair Work Commission Options Paper (Options Paper) released on 7 March 2024 and strongly supports options to improve challenging paid agent conduct.

***About Basic Rights Queensland and Working Women Queensland***

Basic Rights Queensland Inc. (BRQ) is an incorporated non-profit organisation and community legal centre registered with the Australian Charities and Not-for-profits Commission.

BRQ provides free information, advice, advocacy and legal services in Queensland state-wide. BRQ supports vulnerable and disadvantaged people in relation to social security, disability discrimination and to those who experience mental health concerns.

Working Women Queensland (WWQ) is a part of BRQ. WWQ provides provide free advice, support and information for vulnerable women in relation to employment related matters, including sexual harassment and gender discrimination. WWQ employ a team of solicitors, industrial advocates and one social worker who offer a holistic, interdisciplinary approach. WWQ is the only specialist women's employment service of its kind in Queensland.

WWQ provide services through the Workplace Advice Service (WAS) and support women through the Commission, including by providing representation and support through conciliation and at conferences relating to unfair dismissal, general protections and other applications.

### ***Challenging paid agent conduct***

We welcome the Commission's commitment to ensuring all paid agents appearing before the Commission:

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

It is our experience there are paid agents who take advantage of the most vulnerable members of our society, including those who are suffering financial disadvantage, are from culturally and linguistically diverse backgrounds, are experiencing domestic and family violence, are young, or are facing other forms of intersecting oppression.

Participating in any type of matter before the Commission can be an acutely stressful experience for parties, some of whom have never been involved in such proceedings. We support steps to protect vulnerable members of our community from predatory conduct.

### ***Kiana's Experience***

Kiana\* was referred to WWQ by a service supporting her through family and domestic violence. Kiana was experiencing acute financial insecurity because of losing her job. Kiana has a diagnosed mental health condition.

Kiana sought assistance from WWQ after engaging with a paid agent in relation to her dismissal. The paid agent placed pressure on Kiana to sign a 6-page costs agreement, which included a No Win No Fee Guarantee. Kiana shared with us that she did not read the agreement prior to signing.

The paid agent charged an administration fee of \$99.00 which was non-refundable. The agreement also called for a professional fee of \$4,332 plus GST, payable even if Kiana abandoned the claim prior to conciliation or prior to the paid agent undertaking any work.

The No Win No Fee clause appeared to be highly restrictive and complex, as noted in [20] of the Options Paper.

WWQ considered that Kiana would have had better prospects filing a claim for unfair dismissal, rather than the general protections claim filed by the paid agent, as noted in Table 2 of the Options Paper.

A review of the application filed by the paid agent found the form had misstated the commencement of employment date, some of the information appeared to be cut and pasted from another unrelated matter and the nexus between the exercised workplace right and the alleged adverse action was tenuous.

The agreement also required payment of settlement proceeds to be paid to the paid agent's bank account.

Kiana shared that she received nothing from her employer and nothing from the paid agent. She felt that paid agent did not fight for her, and they took everything from her in payment.

### ***Lina's Experience***

Lina\* was referred to WWQ for advice about a dismissal matter, which was proceeding to hearing in the Queensland Industrial Relations Commission.

Lina shared that she was originally advised and represented by paid agent who had assisted her to prepare and file an unfair dismissal application in the Fair Work Commission.

The state-based respondent employer had made jurisdictional objections to the application, on the basis it has been filed in the incorrect jurisdiction. The objections were ultimately ignored by the paid agent.

Lina found it challenging to reach the paid agent, repeatedly contacting them to no avail.

When the paid agent eventually returned Lina's calls, they informed Lina that she would need to make a new application in the Queensland Industrial Relations Commission. By this time, Lina had done so without any assistance from the paid agent. The paid agent did not admit or explain their jurisdictional error.

The state-based respondent employer made a jurisdictional objection to the new application, on the basis that it had now been filed out of time. By this time, the paid agent had withdrawn their representation and did not offer to assist Lina, for example by pleading their representational error in relation to the jurisdictional objection.

Lina's application had limited prospects of success at hearing as there appeared to be a valid reason to terminate her employment. The paid agent had offered to assist Lina on a "no win, no fee" basis and had withdrawn when there were no longer prospects of her obtaining a settlement sum.

### ***Proposals for responding to challenging paid agent conduct***

BRQ welcomes the proposed solutions set out in table five and six of the options paper.

We further suggest that the introduction of a statutory cooling off period for clients of paid agents may assist, allowing them to withdraw from a paid agent agreement without penalty.

### ***Provision of further information***

The introduction of a fact sheet, as set out in table five as option number one, would mirror current practice in other jurisdictions. For example, when a conciliation is listed in the Queensland Human Rights Commission, parties are provided a fact sheet entitled "*All About Conciliation*," which details procedure, how a complaint could be resolved (including possible outcomes), and next steps following conciliation. Such a fact sheet could be made available to all parties before the Commission.

We would suggest the fact sheet provides information on where a party can obtain further advice (for example directing to the WAS booking page) and information on where a party can make a complaint about the conduct of a paid agent.

### ***Increased access to advice and information***

BRQ currently provide services through the WAS and would welcome referrals to provide advice to applicants who fall within our service criteria and have not received settlement monies, as suggested in table six, option ten.

BRQ would also welcome eligible referrals through the WAS prior to applicants engaging paid agents. A focus in increasing awareness and uptake of the WAS would provide another option for vulnerable workers who otherwise turn to paid agents.

### ***Terms of settlement***

While we welcome the Commission amending its usual terms of settlement to ensure the inclusion of clauses requiring payment to be made directly to the Applicant, we also call for the Commission to review its terms of settlement more generally.

The usual terms should be brought in line with the *Respect@Work Guidelines on the use of confidentiality clauses in the resolution of workplace sexual harassment complaints*. Workplace sexual harassment and discrimination is not isolated to sexual harassment disputes before the Commission and is often relevant conduct in UD and GP applications. Confidentiality clauses should not be a standard term of settlement agreements involving sexual harassment and discrimination and should be assessed on a case-by-case basis.

### ***Registration of paid agents***

The introduction of a legislative requirement for a person to be a legal practitioner or registered industrial agent to appear in proceedings could have a flow on impact beyond paid agents. For example, industrial officers who provide services at no cost to parties through industrial organisations like community legal centres, including BRQ, could be captured in a registration system.



While we do not oppose the introduction of a registration scheme, we are eager to ensure that requirements for registration are not financially prohibitive or exclusionary based on socio-economic factors, or factors like an irrelevant criminal history. Industrial officers play an important role in the provision of holistic, person-centred service delivery.

BRQ especially welcomes a code of conduct like Schedule 1 of *Industrial Relations (Industrial Agents) Regulations 1997* (Western Australia).

Registration of paid agents will further enhance the Fair Work Commission's powers according to s.596(2) of the *Fair Work Act 2009* ('the Act') and the *Fair Work Commission Rules 2013*.

We thank you for the opportunity to participate in this consultation process.

If you would like further information or would like to discuss the submission, please contact Eloise Dalton on 07 3421 2505 or [eloised@brq.org.au](mailto:eloised@brq.org.au).

Yours sincerely,

Basic Rights Queensland



Kara Cook

CEO

*\*name changed for privacy*