



21 March 2024

Paid Agents Working Group
Fair Work Commission
consultation@fwc.gov.au

Dear working group,

Submission regarding Paid Agents review

Although the subject matter is not entirely relevant to our services or associations; these submissions hope to assist the Fair Work Commission in its review of paid agents by providing our unique experience and support as an innovative advocacy and administrative service in industrial and employment relations and professional worker associations.

Contents

About Red Union Support Hub.....	2
Structure.....	2
Member sentiments regarding structure.....	2
Offerings to workers.....	2
Stakeholders.....	3
Red union industrial officers, advocates, and agents.....	3
Our work.....	3
Pre-existing issues.....	5
Limitations.....	5
Our concerns - why we are providing a submission.....	5
Acknowledging the issues.....	6
Table 1: Concerns about payment arrangements and fee structures.....	6
Table 2: Concerns about the quality of representation.....	6
Table 3: Concerns about contacting the paid agent.....	6
Table 4: Other concerns about paid agent behaviour.....	6
Feedback.....	6
Table 5 - internal options.....	7
Table 6 - external entities.....	7
Table 7 - legislative.....	7
In brief.....	8

About Red Union Support Hub

1. Red Union Support Hub, and red union associations, aspire to provide affordable and reliable industrial and advocacy services to members in a professional, lawful, and efficient manner; so they may be contented, protected, and productive at work.

Structure

2. Red Union Support Hub (ABN 46 072 946 153) (**‘Red Union Support’**) provides professional and advocacy services to a collection incorporated associations (colloquially known as “red unions”).
3. These red union associations include:
 - a. QNURSES FIRST INC.,,
 - b. VNURSES FIRST INC.,
 - c. VWORKERS FIRST INC.,
 - d. QTEACHERS FIRST INC.,
 - e. VTEACHERS FIRST INC.,
 - f. VWORKERS FIRST INC.,
 - g. QEDUS INC., and
 - h. CWEA INC.
4. Secretaries, advocates, and industrial officers are remunerated from red union association member fees, facilitated by Red Union Support’s services, advocates are appointed by each association executive committee as officers to serve members interests.
5. Each red union incorporated association is compliant regarding rules, executive, quorum, and reporting requirements as regulated by the Australian Securities and Investments Commission.

Member sentiments regarding structure

6. Members of red union associations appear overwhelmingly content with this structure, because their services remain reliable and supportive and member fees are not misused for any matters not of interest. Almost 20,000 members actively chose these associations over alternative registered organisations.
7. While we recognise that many workers, and particularly senior delegates of large industrial associations and employee organisations, may prefer to be involved in political union activities, our members mostly appear to prefer less politics so they can focus on their priorities such as work, career, family, and other activities.
8. Economic factors of competition, consumer theory, and customer focus theory have driven our services and have resulted in consistent genuine growth and customer satisfaction (as reflected in the reviews and internal feedback of our members broadly - see for instance [NPAQ](#) 4.8 out of 5 stars with 200+ reviews, and [TPAQ](#) Google reviews).

Offerings to workers

9. Memberships for red unions’ services are approximately \$480 + GST per year for a full time worker and provide:
 - a. AHPRA required professional indemnity insurance (for employee healthcare members where required);

- b. Direct and prompt access to our team of industrial officers, agents, and advocates; and
- c. Case manager assistance with referring to specialist law firms where legal practice is required (for example Red Union Legal Pty Ltd, Saines Legal for industrial matters, and other specialist firms such as Little's for personal/workplace injury or workers compensation).

Stakeholders

10. All members of the associations we serve are independent contractors and employees. Red Union's only real economic stakeholders are the members it serves.
11. Due to economics of consumer theory, and Red Union's focus on their central stakeholders (members), Red Union is entirely interested in achieving the wellbeing of each individual member and members collectively to the best of its ability within the legislative environment and frameworks of the member(s) jurisdiction.
12. The reason the interests of Red Union consistently align with the members of red union associations is because Red Union prides itself, and benefits from, delighting members with prompt, contactable, professional support and representation when they most require it, which leads to better results in membership for the associations that fund Red Union's services.

Red union industrial officers, advocates, and agents

13. Red Union's advocacy team (or 'case managers'), relevant to this submission, consists of:
 - a. lawyers;
 - b. students at law;
 - c. graduates of relevant degrees (such as justice and society) with customer experience;
 - d. Former experienced delegates / area managers from registered organisations; and
 - e. employees who have previously volunteered for an association and have shown capacity to become professional advocates, industrial officers, and agents.

Our work

14. We have, and continue to:
 - a. facilitate bargaining as individually appointed bargaining agents (en masse) for dozens of EBA negotiations on behalf of members of associations including logs of claims and officer attendance at negotiations (36 as ratified overall);
 - b. provide timely assistance in hundreds of industrial matters including representation and support in;
 - i. common grievances,
 - ii. bullying complaints,
 - iii. discrimination complaints,
 - iv. disputes regarding entitlements,
 - v. reviews and appeals,
 - vi. performance improvement plans,
 - vii. show cause processes, and
 - viii. entitlements;

- c. advocate for members' human rights including representation of 1400 complaints and representative complaints;
- d. alleviate anxiety or confusion of members regarding their rights or difficulty at work with an accessible empathetic hotline; and
- e. refer workplace / employment matters to legal practitioners with no extra expense for existing members.

15. Our data show that in 2022 our teams:

- a. Took 19,517 calls, and
- b. assisted members in recovering \$661,302.59 in entitlements or penalties.

16. Our data show that in 2023 our teams:

- a. Took 21,594 calls;
- b. sent 26,041 emails;¹
- c. attended 1,827 meetings;
- d. participated in 9 ratified EBA negotiations including for example QLD Breweries Yatala EA 2022, Healthscope EBA 2022 - Nurses, UnitingCare Health Nurses and Midwives EA 2022, Aurora Healthcare (WA Hospitals) Nurses Enterprise Agreement 2022;
- e. continue to be involved in 13 EBA negotiations on behalf of members;
- f. successfully resolved and satisfied (i.e. "won") 29 tribunal or commission matters either through conciliation or arbitration;
- g. referred with funding 11 matters to be represented by external law firms;²
- h. achieved a successful judgement from a Registrar of the Federal Circuit and Family Court on behalf of four members via the Fair Work small claims procedure; and
- i. assisted members in recovering \$447,502.98 in entitlements;

17. During a request for support, our advocates and industrial officers will frequently make contact with members. In 2023; Red Union Support advocates and association industrial officers would make, on average:

- a. 4.33 contacts with a member before closing a member support inquiry;
- b. 2 contacts with a member before closing a general industrial inquiry;
- c. 14.11 contacts with a member/employer for industrial officer support tickets; and
- d. 33.06 contacts with a member/employer/3rd party before closure of an advanced industrial matter.

18. In the last 30 days:

- a. Our average support ticket (meaning an inquiry that requires a professional case manager) response time is 10.9 hours;
- b. referred 5 matters with funding to external law firms; and

¹ This counts only emails between member support /case managers / advocates / officers and members, not including en masse emails (e.g. marketing).

² Not including referral of non-industrial matters, which we do not cover for.

- c. we have received 253 support tickets from members.

Pre-existing issues

19. We regularly receive calls from non-members in times of crisis, particularly where their current employee organisation will not answer the phone or provide representation. Usually we will refer them to appropriate public services but only very occasionally will we represent a pre-existing issue. Current members take priority.
20. If, in a rare circumstance, a pre-existing issue is undertaken for a member, Red Union Support will notify the worker that it will attempt to recover some of the costs. This cost recovery fee has never exceeded 20% of outcome after tax for industrial / paid agent issues and in only one instance 45% of outcome (but not more than legal fees) when requiring external legal practitioners.
21. All pre-existing matters result in net-loss and appear not in the interests of current members, therefore some cursory assistance and guidance towards public sources, legal aid, or appropriate solicitors is usual practice. They are only pursued if there is a collective or public benefit that outweighs cost.

Limitations

22. We recognise our associations aren't entitled to, nor do we advertise, the privileges allowed for registered employee organisations.
23. Occasionally, our members report disapproval from competing organisations or associations, which we refer to as expected territorialism.
24. Given the breadth and growth of our services, we are still organising full coverage for more jurisdictions.

Our concerns - why we are providing a submission

25. Although all of our advocates are industrial officers pursuant to the *Fair Work Act 2009* (Cth); we have concerns about being wrongfully portrayed as entities that display or enable 'challenging paid agent conduct' and thus tarnishing our professional team.
26. Some public State jurisdictions have litigated to exclude our members' choices of representation and reduce members' freedom of association or access to justice, usually in the interests of donor organisations.
27. As such, we anticipate misinformation from organisations about our services which may deny our members the representation they choose and enjoy.
28. Further, we make close and routine connections with workers in their times of need, and empathise with workers that are taken advantage of, believing this an injustice not conducive to the right to a fair hearing.
29. We believe we help achieve the overarching Objects of the *Fair Work Act 2009* (Cth) through our affordable professional services, and are concerned that our members may be impacted by our wrongful association with entities that display 'challenging paid agent conduct'.

Acknowledging the issues

30. We refer to the Paid Agents Options Paper and recognise and agree with the concerns of the Fair Work Commission including 'challenging paid agent conduct', particularly the concerns on pages 8 to pages 9 ('**Challenging Conduct**').

31. We recognise that there has been ‘challenging paid agent conduct’, such as behaviour of Unfair Dismissals Australia and Unfair Dismissal Experts displayed *Samuel Howell v Elite Elevators Corporation Pty Ltd* [2023] FWCFB 265.

Challenging Conduct

32. Red Union Support and red union associations’ industrial officers aspire never to display Challenging Conduct in its work.

Table 1: Concerns about payment arrangements and fee structures

- a. We have no history of predatory payment arrangements or fee structures, which are affordable and equitable.

Table 2: Concerns about the quality of representation

- b. Our industrial officers and advocates that would be representing at the Fair Work Commission are professional in that they are only those who:
- i. have displayed competency in resolving minor disputes and grievances,
 - ii. are usually either lawyers or students at law,
 - iii. have training and guidance of experienced advocates, and
 - iv. our service also refers to law practices should our team not have sufficient expertise or confidence on a matter.

Table 3: Concerns about contacting the paid agent

- c. Red Union Support and the red union associations pride themselves on being the most contactable industrial service provider in Australia.
- d. Our member support teams usually answer the phone within 15 seconds given full staffing, alternatively we will call back within 24 hours.
- e. When an industrial officer is assigned, they will be extremely contactable and receptive to member inquiries, mindful that a positive result for the member, commission, and the respondent requires timely and accurate information.

Table 4: Other concerns about paid agent behaviour

- f. Our team are very careful when representing, utilising generally the codes and ethics of advocacy, as taught to lawyers.
- g. We would be concerned if Challenging Conduct is displayed by red union associations’ officers or agents, and hope it would be immediately reported to our hotline at 1300 263 374.

Feedback

33. We are refreshed that the Fair Work Commission has balanced the right to choice of representation with the protections of vulnerable workers.

Table 5 - internal options

34. Regarding the options in Table 5 on page 12, we endorse **options 1 through 9**.
35. Regarding **option 10** - rules that disallow discontinuance by appointed agents:

- a. We note that while this does protect against wrongful discontinuance by agents, it may reduce the provision of services overall.
- b. Discontinuance may be in the interests of a worker that is not able to, disagreeable to, or tech-savvy enough to file their own notice of discontinuance.
- c. A solution may be an amendment to the rules that gives a Commissioner discretion whether to accept a notice of discontinuance from an agent, with a sub-provision giving power to case manage a matter in abeyance until satisfactory evidence of the applicant's understanding and consent to the discontinuation is provided to the Commission.

Table 6 - external entities

36. We agree with option 10.

37. Regarding **option 11 - ACCC referral**

- a. We encourage the Commission to limit complaints only to the represented party and Commissioners.
- b. The other party or observers should be able to complain about Challenging Conduct, but only with good-cause, to reduce the risk and burden of vexatious reprisals against representatives.

Table 7 - option 10 - registry of paid agents

38. Regarding **option 10 - a registry of paid agents**; we generally discourage regulations as proposed unless entirely necessary or obviously beneficial. This would place further barriers to workers accessing the Fair Work Commission. Should the Commission choose to create an agent registry:

- a. To avoid confusion and reduce inadvertent non-compliance, while noting sub-s 596(4) *Fair Work Act 2009*; the Commission should specifically clarify whether an remunerated industrial officer or registered organisation officer or delegate would also require registration.
- b. We have two WA industrial agents within our team, and we are mindful that becoming registered in that process being fairly onerous - without necessarily reflecting the competency or capacity of the agent, similar complaints have been reported in South Australia under the *Employment Agents Registration Act 1993* (SA).
- c. An improved innovative approach to these state examples could include:
 - i. Achievable requirements (i.e. by a competent law student),
 - ii. training material,
 - iii. online registration, and
 - iv. a live registry with FW registration ID.

39. **Further to Option 10**, lawyers would benefit from clarity regarding their registration obligations because:

- a. *lawyer* is defined in the *Fair Work Act 2009* as “a person who is admitted to the legal profession by a Supreme Court of a State or Territory.” (i.e. not necessarily holding a practising certificate); and

- b. this may be reasonably (or appropriately) interpreted as an entitlement to provide legal services in the Fair Work Commission without a practising certificate under some legal profession legislation (contrary to the WA example proposed in the paper).

40. Regarding **option 11 - capacity considerations when granting leave:**

- a. We appreciate the mention of section [40] and that the Commission appears cognisant of the articles within **C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)** (ILO).
- b. To reduce confusion and inadvertent non-compliance; it would need to be clear whether:
 - i. an officers of industrial associations, or
 - ii. registered organisation officers, or
 - iii. a lawyer, or
 - iv. a legal practitioner

would also need to seek leave under the proposed express capacity / competency considerations.

- c. A reading of sub-s 596(2)(a) appears to imply a requirement of capacity of which 'efficiency' is closely dependent on the competency, capacity, experience, and intentions of a representative.
- d. We strongly oppose any proposed amendments that limit workers' freedom of association, right to representation, right to fair hearing, and access to justice without good cause.

In brief

- 41. We thank the Commission for it's ongoing work assisting workers, employers, associations, and organisations within that Fair Work jurisdiction of the Commonwealth.
- 42. Red Union Support and red union associations' industrial officers are professional and always hope to assist the parties, and where appropriate the Commission, with resolution of disputes equitably and efficiently.
- 43. Given our valuable service to members', we advocate that any regulation should not limit their choice of association or right to representation without clear consideration of it's utility.
- 44. We encourage the Commission, in making any changes, to embrace innovation and ensure usability, so that workers and their representatives are not denied the enjoyment of free association.

Feel free to contact our hotline, if you'd like to speak to our author or executive(s), please contact the sender of these submissions.

Red Union Support Hub

Proudly servicing NPAA, TPAA, AMPS, SOPAA, IWUA & others

hotline@redunion.com.au | 1300 263 374