

Personal details

First name

Meriel

Last name

O'Sullivan

Organisation

Redd HR/IR Consultancy

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 Support

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

Support

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

Neutral

Refresh arrangements to refer complaints to the ACCC

Neutral

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

Neutral

Use the field below to make written submissions about options involving legislative change

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Final thoughts

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

Consideration could be given to the provision of support roles that assist individuals through their

engagement with the Fair Work Commission. There are a range of models for this already in place, including in the Court system, and in the Victorian worker's compensation system. For the latter, see the operations of the Workplace Injury Commission, plus Worker Assist and Union Assist, all which provide a range of services and supports to assist individuals to understand and navigate the conciliation and arbitration processes.

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

I have experience appearing in the Commission as a Paid Agent, acting for both employers and employees at different times. I do not fall under the category of 'Regular Paid Agent' referenced in the Options Paper. On a number of occasions I have been concerned by what I view as improper conduct of some Paid Agents, including the provision of incorrect information to the employee, a demonstrated lack of understanding of jurisdictional issues, and the pursuit of matters with no reasonable basis of success. I support the options proposed, as positive steps to improve the professionalism Paid Agents, and to provide better support for vulnerable people in their engagement with Fair Work Commission processes.

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

As a side issue, I have at times sought to appear with an applicant in an unpaid capacity - as a support person or an advocate, working on a pro bono basis. This has caused confusion with the Commission at times, with a lack of clarity on whether this constitutes being a Paid Agent for the purposes of the Act, and whether the other Party can object to such an appearance. It could be helpful to have more clarity and consistency on this.