



21 March 2024

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

Dear Working Group,

Re: Paid Agents and the Fair Work Commission Options Paper

The Australian Hotels Association (**AHA**) welcomes the opportunity to make a submission to the Paid Agents Working Group, in response to the Paid Agents and the Fair Work Commission Options Paper of 7 March 2024 ('the Options Paper').

The Australian Hotels Association (**AHA**) is an organisation of employers in the hotel and hospitality industry registered under the *Fair Work (Registered Organisations) Act 2009*. Its diverse membership of more than 5,600 businesses includes pub-style hotels plus three, four and five-star international accommodation hotels. AHA members provide a wide range of services to the Australian public including accommodation, food, beverage, wagering, gaming, retail liquor, functions, events, live music, and entertainment.

The AHA's members are serviced by branches located in every Australian state and territory and a Canberra-based national office. As well as being members of their respective state or territory branch, accommodation hotels are represented by the National Accommodation Division. The AHA branches employ 15 lawyers and specialists providing advice to members on workplace relations, including advice on awards and the *Fair Work Act 2009* (**the Act**).

The AHA branches regularly appear for members involved in individual dispute matters before the Fair Work Commission¹ ('the Commission'). These individual dispute matters are primarily unfair dismissal applications, general protections claims and general protections involving dismissal matters. As such, the AHA branches regularly interact with paid agents representing applicants in these matters.

Many of the AHA's observations regarding challenging paid agent conduct has been addressed in the Options Paper, however, additionally we note the following examples as experienced by our members:

- The paid agent attends conciliation between 10 and 30 minutes late, unsettling the applicant and detracting time for the respondent;
- The paid agent contacts the respondent for settlement discussions without instructions or authority from the applicant to settle the matter, or prior to lodging the claim with the Commission;

¹ By virtue of section 596(4) of the Act, the advocates employed by the AHA branches are not required to seek permission in order to represent their members.

- The paid agent fails to educate the applicant about the process or a negotiated outcome, resulting in frustrated negotiations;
- Repeated failures to particularise a claim in any meaningful way;
- The paid agent is reluctant to settle the claim for anything less than their representative fee, irrespective of the merits of the case.
- The paid agent that is referenced on the relevant application form is rarely the paid agent that then appears during the conciliation conference.


The AHA acknowledges that participating in a Commission process can be daunting for any inexperienced party. Our submissions are not intended to limit a party's ability to be represented before the Commission however we remain concerned about the fiscal and operational detriment experienced by our members when certain paid agents commence applications without regard to the merits or veracity of the material before them, leading to what we view to be vexatious claims.

The AHA notes that this is particularly evident in general protections involving dismissal applications, where an applicant's employment has been terminated during the minimum employment period for a valid reason. As these applicants are ineligible to pursue an application for unfair dismissal remedy, the AHA notes with concern that some paid agents are commencing general protections applications as an attempt to invoke jurisdiction, where there is no more than a cursory attempt amongst the unfair dismissal argument being run, to particularise the breach of the general protections provisions of the Act. This can be costly for our members to respond to such vexatious applications, and potentially even more so for the applicants who, at most, may receive a resignation in lieu of a termination decision and no financial compensation to offset the invoice they receive from the paid agent for their 'representation'.

The AHA supports the proactive options put forward by the Working Group to better regulate the conduct of challenging paid agents. In particular, the AHA submits it is appropriate for paid agents to first agree to, and abide by, a code of conduct before they are granted leave to represent a party in a matter. Any substantiated complaints regarding a breach of the code of conduct should require the Commission's special consideration² before permission is granted for further representation.

The AHA confirms it can appear at the Commission's consultation sessions to ventilate these issues further and to provide further information, if needed.

Thank you for the opportunity to have made this submission.



STEPHEN FERGUSON
AHA NATIONAL CEO

² As per the Full Bench's consideration of whether permission should be granted for Employee Dismissals to appear as paid agent on behalf of applicants pursuant to section 596 of the Act – *Employee Dismissals [2024]* FWCFB 154.