

Personal details

First name

Leanne

Last name

Tacey

Organisation

Anderson Gray Lawyers

Options that could be implemented internally

The Commission could provide parties with a fact sheet about representation in the Commission
Neutral

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
Neutral

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
Neutral

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
Neutral

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

Oppose

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

Noting that conciliation conferences are usually restricted to a time limit of 1.5 hours it may be more efficient for the conciliator member to provide the majority of information at option 4 during the private session with the paid agent and their client.

Option 1 should be strictly limited to paid agents. Lawyers already have a duty to inform clients of the information set out in option 1 excepting example of conduct that the commission has received complaints about in relation to paid agents.

Where settlement funds are paid are a matter for the Applicant and their representative regardless of whether paid agents or legally represented. It could be that the conciliator member confirms as part of the recording of the settlement agreement that the Applicant is aware and agrees to where the payment is to be paid.

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

Support

Refresh arrangements to refer complaints to the ACCC

Support

Use the field below to make written submissions about options involving other agencies or organisations

Given that CLC and pro bono services are financially stretched more government funding may be necessary to provide the necessary assistance.

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?

Given that lawyers are already highly regulated it is submitted that any changes are limited to paid agents.

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

Personally, I have had a mix but most of the ones I have dealt with have been quite reasonable to deal with and are usually reasonably informed. However, the majority of my experience is that the paid agent is acting for the Respondent employer while I am acting for the Applicant.

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

Regulation of paid agents is long overdue in not just the Fair Work Commission but in the industrial relations commissions and anti discrimination commissions. Regulation is in the public interest and benefit to ensure that Applicant's and Respondent's alike are protected from unscrupulous and/or ill informed persons.