

21 March 2024

Paid Agent Working Group
Fair Work Commission

By email: consultation@fwc.gov.au

Paid Agents & The Fair Work Commission

The Employment, Diversity and Inclusion Committee (**EDI Committee**) welcome the opportunity to provide feedback in relation to: Paid agents and the Fair Work Commission Options paper dated 7 March 2024 (**Options Paper**).

Please do not hesitate to contact the Society if it can assist further.

Yours faithfully



LUKE RHEINBERGER
EXECUTIVE DIRECTOR

SUBMISSION TO FAIR WORK COMMISSION

1. INTRODUCTION

The EDI Committee is a committee established by the Council of the Law Society of Tasmania (**LST**), as a source of expert advice and support to the LST on matters concerning employment, diversity and inclusion.

The EDI Committee is comprised of ten lawyers who practice in local and national firms, the Crown Solicitors' office as well as in-house. It assists the LST to accomplish its policy, regulatory and functional responsibilities as prescribed by governing legislation and/or the LST's strategic plans and other milestone statements.

The EDI Committee has witnessed first-hand challenging conduct from some paid-agents in the Fair Work Commission, and the ramifications and impacts that conduct can have on clients.

2. OUR SUBMISSION

The EDI Committee is grateful for the opportunity to contribute a response to the Options Paper. We congratulate the Paid Agent Working Group on the content and structure of the Options Paper.

In our submission, we highlight the importance of a wholistic approach to the management of paid agents, as well as the importance of accountability mechanisms. To that end, the EDI Committee supports an approach whereby challenging paid-agent behaviour is managed by a combination of internal, external and legislative measures.

Our responses to the options listed in Tables 5 – 7 (inclusive) appear below. We would welcome the opportunity to discuss these further with the team if that would be beneficial.

3. RESPONSES

3.1 Response: Options listed in Table 5

(a) Options 1 and 6

The EDI Committee supports the provision of a facts sheet, as well as updates to the Fair Work Commission's website.

We note that some parties do not appreciate that a paid agent is *not* a legal practitioner. The Committee has reviewed the websites of a number of local paid agents (Human Resources and workplace advisors) and notes that it is difficult to identify whether the paid agents are legal practitioners or not.

In light of this, it would be prudent to include information about how a party can determine whether they are represented by a lawyer or paid agent (e.g. reference to the relevant legal services board) and the difference between a lawyer and paid agent.

(b) Option 7

With respect to Option 7, the EDI Committee's view is twofold. First, that the Code of Conduct should include obligations to ensure a paid agent has the necessary skills and experience to assist a party. Further that the paid agent has properly disclosed that they are not a legal practitioner.

Second, that it would be beneficial to consider, at the time of determining any section 596 application:

- (i) Whether a paid agent has agreed to the Code of Conduct; and
- (ii) Whether a paid agent can demonstrate that they are complying with the requirements of the Code of Conduct, whether or not they have agreed to it.

A paid agent's compliance with a Code of Conduct may be relevant to a determination of whether representation would enable the matter to be dealt with more efficiently (s 596(2)(a) and to questions of fairness (s 596(2)(b) and c)).

(c) The EDI Committee agrees with the other options listed in Table 5.

3.2 Response: Options listed in Table 6

(a) Option 10

The EDI committee supports this option in principle, but notes the challenges that many Community Legal Centres and pro-bono legal services face in delivering their ordinary services within the scope of their funding.

(b) Option 11

The EDI Committee supports option 11.

- (c) In light of the observations made above at paragraph 3.1(a) we consider that it would be appropriate in some circumstances to refer complaints about paid-agents to the relevant legal services board and/or inform parties that they have the right to do so. Where paid-agents are creating an impression, or failing to correct an assumption, that they are a legal practitioner, there is a risk that they are engaging in unqualified legal practice. In those cases it is appropriate that the relevant legal services board be informed so that it may investigate.

3.3 Response: Options listed in Table 7

The Committee supports the options listed in table 7.

4. CONCLUSION

Should you have any queries regarding this submission, please contact Emily Creak (Member, EDI Committee) on 0400 955 183 or ecriek@pageseager.com.au or Harriet Farquhar (Chair, EDI Committee) on 0447 009 767 or harriet.farquhar@auroraenergy.com.au.

**Employment Diversity & Inclusion Committee
Law Society of Tasmania**