

Date: 21/03/2024

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

Dear Fair Work Commission

RE: Paid Agents Consultation Submission

Mapien Workplace Strategists (**Mapien**) is a paid agent within the meaning of section 12 of the *Fair Work Act 2009* (Cth).

Mapien regularly appears before the Fair Work Commission, both at conciliation and hearing, on behalf of employer clients in unfair dismissal, general protections, dispute and enterprise bargaining matters. Mapien, through its predecessor entities, Livingstones Australia and Strategic Human Resources, has appeared before Commonwealth and State industrial relations commissions for more than 40 years.

Submissions

Paragraph [13] of the Paid Agents and the Fair Work Commission Options Paper identifies 8 'regular paid agents' who appear in unfair dismissal or general protections matters, but does not identify those agents.

While the Options Paper highlights that challenging paid agent behaviour has been observed from agents representing both applicants and respondents, it is evident from paragraph [17] that the principal concerns identified by the Commission relate to paid agents representing applicant employees. Indeed, the vast majority (if not all) of the specific concerns detailed in each of the Tables 1 to 4 appear to relate solely to paid agents representing applicants.

Mapien only acts as a paid agent for employers. This representation frequently arises as a paid agent in responding to unfair dismissal and general protection matters. Mapien's representation extends from small business to large national and multi-national corporations. These organisations are not unsophisticated and often have internal HR or legal resources.

Therefore, the Commission should not, in its deliberations, proceed on the assumption that paid agents only represent those categories of individuals and organisations identified in paragraph [18] of the Options Paper.

Against this background, it is submitted that any measures taken by the Commission to address challenging paid agent behaviour should only be directed to paid agents representing applicant employees.

Notwithstanding the above submission, Mapien would support the options set out by the Commission in Table 5 (Options that could be implemented internally) and Table 6 (Options involving other agencies or organisations) of the Options Paper to the extent that they are limited in their application to unfair dismissal and general protection matters.

Mapien considers that the options set out in Table 7 (Legislative Change) are likely to unnecessary given the narrow scope of the concerns identified by the Commission, and the Full Bench's acknowledgement in *Ms Jane Massey & Ors v Brighter Access Ltd & Ors* [2024] FWCFB 154 at [5] that the Commission may have regard to the conduct of an individual paid agent in exercising its general discretion under section 596.

We would welcome the opportunity to further engage with the Commission in relation to this matter.

Sincerely



Ben Cooper
Head of Advocacy and Compliance - National