Law Council
OF AUSTRALIA

9 April 2026

The Hon Justice Adam Hatcher
President
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

By email: consultation@fwc.gov.au

Dear Justice Hatcher

Final round of consultation on paid agents resources

1. The Law Council is grateful for the opportunity to provide a submission to the Fair Work Commission's final round of consultation about proposed paid agents resources.

2. This submission has been prepared with the assistance of the Law Society of New South Wales, the Queensland Law Society, and the Industrial Law Committee of the Law Council's Federal Dispute Resolution Section.

3. As noted in our submission to the Commission in response to the 2024 Options Paper, the Law Council shares the Commission's concerns about the conduct of some paid agents, which can significantly detract from the efficient operation of the Commission and lead to poorer outcomes for parties.[1]

4. The Law Council continues to support, in principle, amendments to the *Fair Work Act 2009* (Cth) (**FW Act**) to provide for a system by which the Commission can formally register paid agents.

5. In lieu of legislative reform, the Law Council supports the Commission in implementing measures to increase the regulation of paid agents and to outline minimum expected standards of conduct. We welcome the development of resources by the Commission and consider that they will assist in raising the overall conduct of paid agents as well as ensuring that applicants before the Commission are better apprised of the standards of service that they are entitled to expect when engaging a paid agent.

6. We make the following comments in relation to the draft Paid Agent Code of Conduct, the Fact Sheet on Representation by a Paid Agent, and the Paid Agent Pre-Conciliation Disclosure Form.

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[1] Law Council of Australia, Submission to the Fair Work Commission, Paid agents and the Fair Work Commission (28 March 2024) 1.

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Paid Agent Code of Conduct

7. Subject to the observations and proposed amendments below, the Law Council supports the introduction of the Paid Agents Code of Conduct. We welcome specification in the Code that non-compliance may result in the refusal or revocation of permission for a paid agent to participate in conferences and hearings before the Commission. This possibility is likely to strengthen compliance, encourage best practice and promote consumer/client confidence.

The relevant head of power

8. We have assumed that the final version of the Code of Conduct would be issued pursuant to the head of power in sections 576(2) and 577 of the FW Act for the Commission to provide assistance and advice about its functions, and in support of its general power to determine who may appear before it pursuant to section 596. However, having regard to the mandatory phrasing of parts of the draft Code of Conduct, the Law Council raises for the Commission's consideration whether a formal head of power must nevertheless be expressly invoked to make clear the statutory basis for the Code of Conduct. We note that the analogue Code of Conduct in South Australia is expressly supported by subsection 26(5) of the *Fair Work Act 1994* (SA), which authorises the making of a code of conduct by regulation.

Permission

9. The draft Code of Conduct sets out that 'a paid agent must have permission from the Commission before they can participate in a hearing or conference'.

10. We suggest that it would be preferable for this section to be more specific as to the circumstances where a paid agent is not required to seek this permission. In this respect, we note that Rule 13 of the *Fair Work Commission Rules 2024* (Cth) (**Rules**) sets out the circumstances whereby permission does not need to be sought for representation. This includes, for example, participation in a conference conducted by a member of the staff of the Commission in relation to an unfair dismissal application.[2]

11. The 'Permission' section of the Code of Conduct should also include reference to the fact that the Commission retains the discretion in all circumstances to direct that a person is not to be represented by a lawyer or paid agent in a matter except with the permission of the Commission.[3]

Settlements

12. We suggest that the first sentence of this section be amended as follows:

> *Amounts payable as part of an agreed settlement (settlement payments) must, <u>in all circumstances,</u> be paid directly to the client, rather than to the paid agent.*

13. This will ensure that, even where the client has given their permission for the settlement payments to be paid to the agent and/or the opposing party has also

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2 See, eg, *Fair Work Commission Rules 2024* (Cth) r 13(2(b).
3 Ibid r 13(3).

consented, that this does not occur. This amendment is in the interests of protecting the applicant, considering that paid agents, unlike lawyers, are not bound by strict trust accounting rules. It will also address concerns raised in the Commission's 2024 Options Paper, including that some paid agents may have been holding out that they had authority to receive the settlement payment when this had not in fact been granted.[4]

Professional conduct and ethics

14. In addition to the requirements set out under this heading, we suggest further requirements be included in the bullet point list, namely that paid agents must:

    - comply with all practice notes, orders and directions of the Commission; and
    - only file an application in the Commission that has reasonable prospects of success on the basis of provable facts and a reasonably arguable view of the law.

15. We suggest that these standards will assist the efficient conduct of matters before the Commission as well as providing further protection against the behaviours described in the Option Paper around the filing of poor-quality applications by paid agents, for example applications that fail to adequately explain the basis of a breach of the general protections.[5]

Communication and Disclosure

16. We suggest an amendment to the first paragraph as follows:

    > *A paid agent must be honest, respectful and transparent in their communications with the Commission, their client, and other parties, including any representative.*

17. This amendment will assist in ensuring better standards for all parties involved in a Commission matter involving a paid agent.

Fact sheet: Representation by a paid agent

"What is the difference between a lawyer and a paid agent?"

18. In addition to noting that there are no set requirements or qualifications to become a paid agent, we suggest that the fact sheet should also note that there is no nationally recognised training for this role and that paid agents, unlike lawyers, are not subject to professional conduct standards, professional indemnity insurance requirements or regulatory oversight (including in relation to costs).

"Things to consider when deciding whether to hire a paid agent or lawyer"

19. The fact sheet notes the following:

    > *When considering whether to hire a paid agent or lawyer to represent you, you should …*

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4 Fair Work Commission, Paid agents and the Fair Work Commission (Options Paper, 7 March 2024) 8.
5 Ibid.

- *be realistic about the outcome you want from your case and the fees involved. In unfair dismissal and general protections cases where a payment is made, the average amount paid is only around 5 to 6 weeks' wages. Consider if this will cover the paid agent's or lawyers' fees, and what (if anything) would be left for you.*

20. In our view, it is unhelpful to provide the guidance "around 5 to 6 weeks' wages" without any other context (for example, whether the unfair dismissal occurred during a probationary period). That is particularly so where the 5- to 6-week estimate does not reflect the Commission's settled approach that the 26-week cap on compensation is not the starting point for a determination of applicable compensation.[6]

21. We suggest that, if the Commission is to rely on this data, it should recommence publishing conciliation and arbitration outcome data in a more complete manner, as occurred in its Annual Reports prior to 2019–20. For example, at that time, more granular data in relation to unfair dismissals in respect of conciliations and arbitrations was published, including the outcomes/orders made and the monetary payment/compensation granted.[7] We suggest such information would give potential applicants to the Commission a more realistic sense of outcomes in these matters.

22. If the guidance with respect to 5 to 6 weeks' wages is to remain in the document, it should be clarified (as the Law Council understands it) that the figure refers to settlement payments made in a conciliation conference, as opposed to any payment ordered by the Commission or a Court (for general protections matters).

Paid agent pre-conciliation disclosure

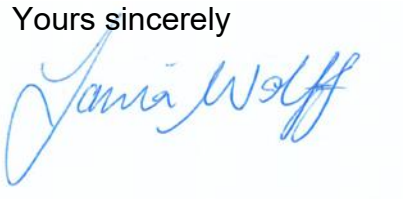
23. The Law Council supports the introduction of this document, which is in the interests of transparency and fairness for a person engaging a paid agent.

24. We further suggest that, if a paid agent is signing a document on behalf of their client (for example, an application form), they should additionally be required to declare that they have read, and will comply with, the Paid Agents Code at this time in the Commission process.

Contact

25. Please contact John Farrell, Executive Policy Lawyer, [redacted] if you require further information or clarification.

Yours sincerely



Tania Wolff
President

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6 *Sprigg v Paul's Licensed Festival Supermarket* [1998] AIRC 989 (as endorsed *in Bowden v Ottrey Homes Cobram and District Retirement Villages* [2013] FWCFB 431).

7 Fair Work Commission, Annual Report 2018–19: Access to Justice (September 2019), Appendix D.