



Our ref: ELC:RMs020426

2 April 2026

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Dear Dr Popple,

## **FAIR WORK COMMISSION – PROPOSED PAID AGENTS RESOURCES**

Thank you for the opportunity to contribute to the Law Council's submission to the Fair Work Commission (**Commission**) regarding its proposed resources for paid agents. The Law Society's Employment Law Committee contributed to this submission.

As noted in previous submissions to the Law Council, our members have observed that the conduct of some paid agents can significantly detract from the efficient operation of the Commission. Further, we note that in some circumstances, paid agents may not act in the best interests their clients which, as a result, can lead to poorer outcomes.<sup>1</sup>

The Law Society continues to support in principle amendments to the *Fair Work Act 2009* (Cth) (**Fair Work Act**) to provide for a system by which the Commission can formally register paid agents. However, 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 receive when engaging a paid agent.

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.

### **1. Paid Agent Code of Conduct**

#### *Permission*

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

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<sup>1</sup> See The Law Society of New South Wales, Letter to the Law Council of Australia, '[Paid Agents and the Fair Work Commission](#)', 22 March 2024. Concerns around paid agents were also acknowledged in the Options Paper produced by the FWC in 2024: See FWC, '[Paid agents and the Fair Work Commission – Options Paper](#)', 7 March 2024.

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 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.<sup>2</sup>

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 in the matter by a lawyer or paid agent except with the permission of the Commission.<sup>3</sup>

### *Settlements*

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

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

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 consented, that this does not occur. We suggest 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 Options Paper published in 2024, including that some paid agents were holding out that they had authority to receive the settlement payment when this had not in fact been granted.<sup>4</sup>

### *Professional conduct and ethics*

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.
- only file an application in the Commission which has reasonable prospects of success on the basis of provable facts and a reasonably arguable view of the law.

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 general protections.<sup>5</sup>

### *Communication and Disclosure*

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.

We suggest this amendment will assist in ensuring better standards for all parties involved in a Commission matter involving a paid agent.

## **2. Fact sheet: Representation by a paid agent**

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

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<sup>2</sup> See Fair Work Commission Rules 2024, r 13(2)(b).

<sup>3</sup> See Fair Work Commission Rules 2024, r 13(3).

<sup>4</sup> Commission, Options Paper (above n 1),8.

<sup>5</sup> Ibid.

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 also no nationally recognised training for this role, professional conduct standards or regulatory oversight.

*“Things to consider when deciding whether to hire a paid agent or lawyer”*

The fact sheet notes the following:

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

...

- 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.

In our view, it is unhelpful to provide the guidance 'around 5 to 6 weeks' wages' without any other context e.g., whether the unfair dismissal occurred during a probationary period.

We suggest that, if the Commission is to rely on this data, that it would be preferable for it to recommence publishing conciliation and arbitration outcome data in a more fulsome manner, as occurred in its Annual Reports prior to FY19-20. 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.<sup>6</sup> We suggest such information would give potential applicants to the Commission a more realistic sense of outcomes in these types of matters.

If the guidance with respect to 5 to 6 weeks' wages is to remain in the document, it should be clarified that this is a settlement payment 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**

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

We further suggest that if a paid agent is signing a document on behalf of their client (e.g., 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.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, A/g Head of Commercial and Advisory Law Reform, at (02) 9926 0285 or [Sophie.Bathurst@lawsociety.com.au](mailto:Sophie.Bathurst@lawsociety.com.au).

Yours sincerely,



**Ronan MacSweeney**  
President

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<sup>6</sup> See, for example, FWC, [Annual Report 2018-19](#), lodged 26 September 2019, Appendix D.