

## Personal details

**First name**

Brendan

**Last name**

Richardson

**Organisation**

Real IR Solutions Pty Ltd

## Options that could be implemented internally

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

**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 Support**

**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 Support**

**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 Support**

**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 Oppose**

**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 FCFCAs as of right), and further examples of paid agent conduct the Commission receives complaints about Oppose**

**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)**

Oppose

**Align the Commission's usual terms of settlement to provide only for payment of settlement funds into a bank account belonging to the Applicant**

Support

**Amend the Fair Work Commission Rules to stipulate that Notices of Discontinuance may only be filed by Applicants or their legal representatives**

Oppose

**Use the field below to make written submissions about internal options**

Re Option #2 – How will these applications be determined?

Re Option #4 – Will the same explanation and requests for information also be given to applicants represented by lawyers to other reps?

Re Option #5 - How will these paid agents be identified? What criteria will be applied?

Re Option #7 - How will this code be formulated? Will the Commission be inviting input from paid agents?

Re Option #10 – What happens if the applicant doesn't file a notice of discontinuance?

I generally support the Fair Work Commission taking a proactive stance in reviewing and implementing changes within its remit in relation to regulating the 'challenging' conduct of paid agents appearing in matters before the Commission. That said, I am concerned that an even handed approach is not being considered for other representatives including those from law firms. The inference appears to be that it is only paid agents that have engaged in 'challenging conduct'. With respect that is from my experience to ignore that some law firms also engage in similar conduct.

Indeed of the 969 formal complaints made to the Victorian Legal Services Board for the year 2022/2023 54% involved disputes over legal costs or service quality issues and 45% involved potential disciplinary matters such as where the lawyer's conduct may have breached the professional conduct rules.

(Source: VLSB 2022-23 Annual Report p16.)

## **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**

From my experience law firms request that the terms include specific arrangements for payments as often as paid agents.

I submit that in the event an applicant has not received their settlement monies if applicable that they should have the capacity to refer that issue back to the FWC.

## 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**

Support

### **Use the field below to make written submissions about options involving legislative change**

I support the registration of paid agents and believe the list of registered paid agents should be published on the Commission's website.

In relation to amending the Act if this was to occur it should apply to all representatives.

## Final thoughts

### **Do you have any further suggestions you would like to put forward in response to the issues posed in the options paper?**

This submission is in addition to my responses given in the on line survey.

Whilst I understand that the Fair Work Act refers in s 596 to non- lawyer representatives as 'paid agents' this is not the terminology ordinarily used. The usual references to such representatives are more commonly: 'consultants' and 'advisors'.

As indicated I generally support the Fair Work Commission taking a proactive stance in reviewing and implementing changes within its remit in relation to regulating the 'challenging' conduct of paid agents appearing in matters before the Commission. That said, I am concerned that an even handed approach is not being considered for other representatives including those from law firms.

By way of introduction, I am a self-employed Industrial Relations Consultant in my own practice, Real IR Solutions Pty Ltd (formerly BPR & Associates Pty Ltd). I have operated my practice for a total of 10 years to date in two separate stints; from 2011 to 2019; and since April 2023.

I have worked predominantly as an industrial relations specialist for the past 40 years. My employment has in particular included the following appointments:

- Group general Manager Industrial Relations- Crown Resorts Limited 2019 to 2023
- Manager - National Employee Relations – Foster's Group Limited – 1994 to 2011
- Industrial relations advisor roles with two employer associations: the then Victorian Employers' Federation (now the Victorian Chamber of Commerce and Industry) and the Australian Federation of Construction Contractors – 1984 to 1992.

I note the Commission's comments regarding the lack of qualifications held by some paid agents. For the record I hold the following educational qualifications:

- Bachelor of Economics
- Bachelor of Laws

- Graduate Diploma of Business in Labour/Management Relations
- Master of Business in Industrial relations/Human Resources Management

In addition to the above qualifications, I also hold various accreditations including being an accredited and licensed investigator with Victoria Police under the Private Security Act 2004 (Vic) for the purpose of conducting investigations in Victoria. This license requires me to submit to various police checks and re registration each three years.

I also maintain current indemnity, third party liability, and workers compensation insurance.

As indicated above I have a Bachelor of Laws degree, but I am not admitted to practice as a lawyer.

In my capacity as a self-employed consultant, I have been engaged by employers in various industry sectors including manufacturing, hospitality, construction, automotive, and service. My engagements have included representing organisations in various matters before the Commission and other tribunals including unfair dismissal and general protections claims; acting as an advisor and/or bargaining representative in enterprise agreement negotiations; advising on compliance matters; and conducting workplace investigations.

I have also assisted and represented individuals in various matters such as unfair dismissal, general protection, and entitlement claims.

In some cases, I have been engaged and/or referred by law firms to conduct workplace investigations on their behalf or assist their clients with bargaining for enterprise agreements.

I have always charged on either an hourly or daily fee basis save that I have not charged most of the individuals that I have assisted or represented, that is they have been conducted on a pro bono basis. All clients are provided with a letter and terms of engagement setting out the precise scope of services, fees to be charged, and other formalities.

I have never charged a client on a 'no win – no pay' basis, or on an uplift, or contingency fee basis. Except for certain consultancy and legal firms, I am not aware of any industrial consultants operating on a no win – no pay' basis, or on an uplift, or contingency fee basis. From my experience the firms engaging on a 'no win no pay' basis are primarily involved in unfair dismissal and general protection matters with some law firms also acting on these arrangements in personal injury matters.

Whilst I acknowledge that there are some 'rogue' operators, I submit that the vast majority of consultants provide a valued and ethical service to their clients.

It may appropriate to consider why do organisations engage consultants? I believe that such an investigation would disclose that key reasons will include the experience and expertise of the consultant, costs, industry knowledge, and industrial relationships.

With regards to the Commission's Options paper the inference appears to be that it is only paid agents that have engaged in 'challenging conduct'. With respect that is from my experience to ignore that some law firms also engage in similar conduct.

Indeed of the 969 formal complaints made to the Victorian Legal Services Board for the year 2022/2023 54% involved disputes over legal costs or service quality issues and 45% involved potential disciplinary matters such as where the lawyer's conduct may have breached the professional conduct rules.

(Source: VLSB 2022-23 Annual Report p16.)

I am concerned that the Commission appears to be overreaching in some of its potential recommendations by imposing a range of standards not applicable to other representatives appearing before the Commission. Essentially the Commission appear to be punishing a collective group for the challenging conduct of a minority group.

I make the following comments and observations on some of the findings presented in the Commissions options paper. I do not doubt that these observations are genuine. I have personally either witnessed or been aware of such conduct occurring. That said, I am also personally aware of similar complaints being made against law firms.

1. In relation to the proportion of applications before the Commission involving regular paid agents whilst the data presented at pages 6 to 7 is useful it would be more meaningful if for comparison purposes it also showed the number of legal firms that regularly appear in unfair dismissal and general protection matters.

2. In relation to the comments made regarding challenging paid agent conduct observed it is not clear how this information has been collated or what weight can be attached to it. How many formal complaints have been made? How many complaints have been made against other representatives?

3. I agree that on-line Google searches show paid agents offering unfair dismissal services, but the paper omits to note that these are vastly outnumbered by the number of law firms appearing. In relation to the options listed in Table 5 (Options that could be implemented internally) I make the following comments:

Re Option #2 – How will these applications be determined?

Re Option #4 – Will the same explanation and requests for information also be given to applicants represented by lawyers to other reps?

Re Option #5 - How will these paid agents be identified? What criteria will be applied?

Re Option #7 - How will this code be formulated? Will the Commission be inviting input from paid agents?

Re Option 0 – What happens if the applicant doesn't file a notice of discontinuance?

In relation to the comments made at page 14 re Terms of Settlement, from my experience law firms request that the terms include specific arrangements for payments as often as paid agents.

In relation to the registration of paid agents at page 15, I support the registration of paid agents and believe the list of registered paid agents should be published on the Commission's website.

In relation to amending ss 596 and 609 of the Fair Work Act at page 16, with respect if this was to occur it should apply to all representatives.

In relation to the consultation process set out at page 18 I would be happy to participate if requested by the Commission.

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

In the course of both my employment with various organisations, and in my capacity as a self-employed consultant, I have dealt with various paid agents and legal firms representing individuals in unfair dismissal and general protection matters on a no win-no pay basis.

From my experience the main concerns that have been raised by individuals using paid agents (and law firms) operating on a 'no win – no pay' basis include the following:

- Making claims that lack merit and have no prospect of success if they were to proceed;
- Creating false expectations on the likely outcomes to their clients;
- Dragging proceedings out;
- Not properly informing their clients of their fee arrangements;
- Misrepresenting to their clients the terms of settlement;
- Abandoning their clients if the process is not favourable to them.

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