

21 March 2024

Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3000

By email only: consultation@fwc.gov.au

Dear Commission

Submission in response to the Fair Work Commission Options Paper on Paid Agents

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to comment on the Fair Work Commission (**Commission**) Options Paper on Paid Agents (**Options Paper**).

About Circle Green

Circle Green is a community legal centre in WA providing state-wide specialist legal services in the areas of workplace, tenancy, humanitarian, and family and domestic violence to the WA community. Our services are aimed at assisting people from marginalised communities and who face disadvantage in gaining access to justice. You can find more information about Circle Green's services on our website: <https://www.circlegreen.org.au/>.

Workplace law services

Circle Green is the only community legal centre in WA with a specialist workplace law practice that provides state-wide services to marginalised and disadvantaged non-unionised WA workers. Our workplace law services include legal advice, casework, representation, and education on state and national workplace law. This means Circle Green has expertise in providing legal assistance to vulnerable WA workers. We are a volunteer legal advice provider for the Commission's Workplace Advisory Service.

Submission

Circle Green commends the Commission's work to address issues arising from the poor practices of some paid industrial agents. We thank the Commission for its proactive and consultative approach to managing problematic paid agents and appreciate the opportunity to contribute. We regularly hear from WA workers about the substandard, unethical, and financially exploitative practices of some paid agents. Often workers experience exacerbated financial hardship and additional psychological distress at a time when they are already facing vulnerability due to their workplace law issue. There is a compounding effect for marginalised and disadvantaged workers in particular.

Circle Green supports the measures identified in the Options Paper at Table 5, which can be implemented internally by the Commission, without any legislative amendment. Legislative amendment will, by its nature, take some time and any practical steps that can protect potential applicants from the behaviours outlined in the Options Paper in the shorter term are valuable. We also consider that, the sensible and practical measures the Commission proposes will continue to play an important role managing problematic agents even after any legislative amendment takes effect.

Registration of paid agents: the WA Industrial Relations Commission registration scheme

Option 10 (Table 7) of the Options Paper refers to the provision of a system for the Commission to register paid agents, and refers to the WA Industrial Relations Commission (**WAIRC**) registration scheme for paid industrial agents (**Registration Scheme**) under s 112A of the *Industrial Relations Act 1979* (WA) (**WA IR Act**) by way of example.

Circle Green, formerly the Employment Law Centre (**ELC**), has been vocal in advocating for stronger regulation of the conduct of industrial agents in the state IR system. ELC contributed a submission to the Ministerial Review of the State Industrial Relations System in 2018 (**Ministerial Review**), supporting the proposed recommendation to implement a Code of Conduct in relation to the regulation of registered industrial agents appearing before the WAIRC.

The Final Report of the Ministerial Review also adopted the Legal Practice Board's recommendation that a disqualified person, namely a practitioner that has been struck off the Roll of Legal Practitioners, should be prohibited from being a registered industrial agent or appearing as an agent in the WAIRC.¹ This recommendation was implemented as part of the state IR reforms that came into effect in Western Australia on 20 June 2022.

However, the annual Report of the Chief Commissioner of the WAIRC continues to describe in adequacies in its implementation and operation. For example, the Report of the Chief Commissioner in 2021-22 (**Report**) states:

As previously noted in Annual Reports, given the limited criteria for registration of industrial agents and concerns about the conduct and competency of some industrial agents, more stringent requirements for registration, possibly including a character test, as well as a process for the Commission to deal with complaints about those agents, as prior Reviews of the IR Act have recommended, are needed.

The Report also goes on to note that the WAIRC saw 'an increase in the number of unregistered industrial agents and unregistered unions attempting to represent parties, particularly in relation to disputes about mandatory vaccination policies.' This particular language suggests that the registration scheme itself is not effective at stymying incompetent practice by unregistered industrial agents.

These weaknesses in the Registration Scheme remain. There have been no amendments to the consequences for poor behaviour by registered agents, nor to the process for deregistration.

Circle Green supports a registration scheme in principle. However, we note that a scheme modelled purely on that in place the WA Registration Scheme will be unlikely to operate as intended unless the limitations evident in the WA Registration Scheme are considered and addressed.

¹ Issues around industrial agents struck off the Roll of Legal Practitioners in WA had been prevalent. See for example [Richard Hargrove v Seventh Day Adventist Church \[2010\] WAIRComm 197](#).



Referral arrangements with Community Legal Centres

Option 10 (Table 6) of the Options Paper proposes the establishment of referral arrangements with community legal centres to advise applicants who claim they have not received settlement monies.

While we support this proposal, we note that the establishment of such referral arrangements should be accompanied by adequate and sustainable ongoing funding to community legal centres so these services can be funded and resourced appropriately.

Based on our experience advising clients formerly represented by paid agents, we consider that the scope of assistance and advice should also include applicants who are being pursued by paid agents for payment of fees.

Reducing demand for paid industrial agents

While the options being contemplated are a useful starting point for addressing paid agent misconduct, it is also important to recognise the drivers of the business model underlying paid industrial agent services. We observe that paid industrial agents attract a cohort of clients who:

- cannot afford to pay for legal advice or representation from a qualified legal practitioner; and
- are not able to access free legal advice or assistance from community legal centres.

Currently, Circle Green's workplace law services are not funded at a level which would allow us to meet all incoming demand for workplace law services from WA workers. In our view, a significant driver of the current paid agent business model is unmet legal need for workplace law services.

It follows that to effectively address paid agent misconduct in the long term, the current paid agent business model needs to be disrupted by ensuring community legal centres are adequately funded to provide workers with a viable alternative source of workplace law assistance. If this can be achieved, then the demand for paid agents will inevitably decrease. Ideally, the resultant increase in market competition will favour those agents who provide a quality service, and problematic agents will no longer be able to remain in business.

Another potential driver of the paid agent business model is the current 21-day limitation period for dismissal-based claims, such as unfair dismissal and general protections involving dismissal. This short timeframe creates an environment where workers must make quick decisions about if and how they want to pursue a claim without adequate opportunity to seek advice or assistance and evaluate their options. This is consistent with the observations in the Options Paper that:

- challenging conduct by paid agents is most often seen in dismissal-related matters; and
- applicants of dismissal-based claims are more likely to seek advice or representation that is faster and easier to search or access.

Again, while we acknowledge this is outside of the scope of the current options paper, it is important to highlight how extending the time limit for dismissal-based claims could disrupt the paid agent business model and ultimately improve access to, and the administration of, justice.



We thank you for taking the time to consider Circle Green's feedback. Please contact Imogen Tatam, Senior Lawyer (Law Reform) – Workplace, at imogen.tatam@circlegreen.org.au or (08) 6148 3660 with any questions or if we can provide further information.

Yours faithfully

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