



Law Council
OF AUSTRALIA

Office of the President

10 February 2020

The Hon Iain Ross AO
President
Fair Work Commission
PO Box 1994
MELBOURNE VIC 3001

By email: stakeholderrelations@fwc.gov.au

Dear Justice Ross

Proposed Amendments to the Fair Work Commission Rules 2013

The Law Council welcomes the opportunity to provide comments to the Fair Work Commission (**the Commission**) regarding the proposed changes to the Fair Work Commission Rules 2013 (Cth) which were released for comment on 24 January 2020.

The Law Council supports the proposed change to Rule 11, which currently requires each lawyer or paid agent acting for a party in a matter before the Commission to give notice that they act to the Commission and the other parties.

The Chair of Industrial Law Committee of the Law Council's Federal Litigation and Dispute Resolution Section, Ingmar Taylor SC, wrote to you on 6 September 2019, identifying concerns with the practical effect of Rule 11 in its current form. He noted that the breadth of the current Rule, which requires each lawyer and paid agent who is acting for a person in relation to a matter before the Commission to provide notice to the Commission, goes beyond that which is required by section 596 of the *Fair Work Act 2009* (Cth) and creates some unexpected difficulties. Specifically, it requires multiple lawyers working for a client to each notify, causing an unnecessary administrative burden both for law firms and the Commission and the potential for confusion. It also requires a lawyer who is only giving advice, but is not otherwise acting, to notify and so become an address for service despite having no ongoing role. Mr Taylor SC also noted that in respect of barristers, the obligation to notify the Commission conflicts with the rules that govern their conduct.

The change to Rule 11 that is proposed will make the giving of notice that a lawyer or paid agent acts for a party voluntary and is the responsibility of the party (rather than the lawyer or paid agent). This change will address the concerns noted above. It also reduces the regulatory burden.

The Law Council commends the Commission on proposing this sensible and appropriate change.

The Law Council does not comment on the balance of the other proposed change to the Rules, concerning notification by bargaining representatives.

In the first instance, please contact Mr John Farrell, Senior Policy Lawyer, on (02) 6246 3714 or at john.farrell@lawcouncil.asn.au, if you would like any further information or to discuss.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Pauline Wright', written in a cursive style.

Pauline Wright
President