

Credibility of the independent umpire at stake

Statement from AMMA Chief Executive Steve Knott

In yesterday's National Workplace Relations Consultative Council (NWRCC) Communiqué put out by Workplace Relations Minister Bill Shorten, the Government outlined its intention to create 'two additional statutory positions of Vice President within the federal industrial tribunal Fair Work Australia', AMMA chief executive Steve Knott said today.

The current Vice Presidents of Fair Work Australia are Graeme Watson and Michael Lawler.

"Interestingly, the Minister has not extended the communiqué or advice to confirm that the two current VPs will be appointed to the referenced new statutory positions," Mr Knott said.

"If these existing members are not going to be confirmed as the two new statutory positions with the proposed change to the legislation, the Minister should be upfront and tell us so."

Mr Knott also said that the creation of these two new statutory positions was 'puzzling'.

"There was no submission to or recommendation by the Fair Work Act Review Panel calling for those new positions despite an exhaustive process for comment and review," he said.

"The current Labor government removed the statutory reference to the positions of Vice President and Senior Deputy President with the introduction of the Fair Work Act and in doing so allowed the existing incumbents to retain their titles and benefits.

"The tribunal already has 8 Senior Deputy Presidents and 4 Deputy Presidents and, at the end of the day, Commissioners, Deputy Presidents, Senior Deputy Presidents and Vice Presidents all perform the same role in resolving industrial disputes, processing agreements, hearing unfair dismissal cases and so forth. It is a structure not known in the normal court system.

"It appears, without any real justification for the re-creation of the Vice President positions, the Minister is setting the scene for further appointments from a union or Labor-leaning background in an attempt to further influence the direction of the tribunal."

In a recently updated AMMA report titled [Fair for Who?](#) AMMA has identified that, since forming government in 2007, 12 out of Labor's 17 Fair Work Australia appointments have been ex-union officials. These appointments, together with the limited business expertise of some of the other appointments, all lead to a continued erosion of business confidence in the tribunal.

Review of Labor's commitments

"I will not be Prime Minister of this country and appoint some endless tribe of trade union officials or ex-trade union officials to staff the key positions in this body. I will not stand by and have this body become the agency of ex-trade union officials. People will be appointed on their merit..."
Opposition Leader Kevin Rudd, The 7.30 Report, 30 April 2007

MEDIA STATEMENT

"The process of appointing new members to the federal industrial tribunal will be 'rigorous and provide for bi-partisan involvement. It will ensure that all appointments made to FWA are themselves fair, balanced and made on merit alone. Never before in Australian politics has a political party volunteered to take the bias out of the industrial relations system as we are proposing to do ... It's time to achieve better than a neutered industrial umpire and a tawdry system of appointing political mates."

Deputy Opposition Leader Julia Gillard, National Press Club address, May 2007

The Labor reality

"The reality is that 12 out of 17 full-time appointees to Fair Work Australia under Labor have had union backgrounds," Mr Knott said.

"The successor to former Fair Work Australia President Justice Geoffrey Giudice, Iain Ross, also has a union background, as does the new FWA General Manager Bernadette O'Neill, both appointed in February 2012."

Credibility of independent institution at stake

"If yesterday's announcement about two additional statutory Vice President positions is a ruse for further government tribunal stacking, the task of the institution's new President, which includes in his own words to 'repair the reputational damage' to the tribunal following the HSU investigations, will be significantly more challenging," Mr Knott said.

"With more than two million actively trading businesses in Australia (higher than the 1.8 million trade union members), it beggars belief that appointments from private sector business backgrounds do so poorly in Labor's merit-based appointment process to Fair Work Australia.

"While appointed members of Fair Work Australia strive to maintain a high degree of independence and objectivity in the course of their duties, when new appointments so clearly weigh in favour of those with a union and/or Labor-aligned background, it understandably undermines employers' confidence in the system.

"With the greatly enhanced role of Fair Work Australia under the current system compared to its predecessor, appointments to the independent body have a much more profound impact on Australian businesses than was previously the case.

"With Fair Work Australia continuing to hand down decisions that are causing unease in the business community, these continuing partisan appointments are in danger of further undermining business confidence in the new IR laws," Mr Knott said.

To access AMMA's *Fair for Who* report, click [here](#).

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