

Fair Work President's proposal for two new VPs must be rejected

AS Parliament enters its final sitting week of 2012, national resource industry employer group the Australian Mines and Metals Association (AMMA) urges the Senate to reject the Fair Work Australia President's proposal to appoint two new Vice Presidents (VPs) to statutory roles on the tribunal.

To do so would result in a potential demotion of the two existing VPs and undermine the tribunal's integrity.

AMMA chief executive Steve Knott says it is not too late for the Labor Government to confirm the appointment of the existing VPs and 'maintain the integrity and independence of the Fair Work tribunal'.

"It would be an unprecedented and extraordinary move to allow the Government and the Fair Work Australia President to collectively sideline two existing VPs by appointing two additional VPs into new statutory positions," Mr Knott says.

"If the Australian Government is intent on creating two statutory VP positions under the Fair Work Act, with additional legislative powers over all the other Deputy Presidents, those positions must go to the two existing VPs to maintain the impartiality and independence of Fair Work Australia.

"IR tribunal members such as existing VPs Lawler and Watson leave behind private sector careers knowing their tenure is secure from political change and whims. This protection is guaranteed by the fact that their removal from office would require endorsement from both houses of Federal Parliament.

"While the Fair Work Amendment Bill 2012 doesn't seek to remove the existing two VP's it does facilitate a reduced status by facilitating a demotion in the FWA hierarchy. This has never been countenanced in any real court and should be blocked by parliament.

"It is not too late for Workplace Relations Minister Bill Shorten and the Labor Government to correct this overreach and maintain confidence in Australia's workplace relations tribunal before this Bill passes to law."

A dissenting report arising from the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry on the Fair Work Amendment Bill 2012, pointed out Workplace Relations Minister Bill Shorten had 'completely failed to explain why these additional positions are required or justified, apart from the Department's submission that the President of Fair Work Australia sought the additional roles. These positions would slot in as the second and third most senior officers of the tribunal'.

The dissenting report went on to say:

"Since the announcement of these two additional positions, there has been widespread community concern, including from within Fair Work Australia."

The Coalition Senators said they were: "deeply concerned that unnecessary ALP appointed Vice Presidents would bring into question the tribunal's integrity which has already suffered considerable damage courtesy of the Health Services Union scandal".

Their strong view, and indeed that of leading employer groups including AMMA, is that existing Vice Presidents Watson and Lawler should be statutorily appointed to the positions, roles they occupied before the Fair Work Act amended their status.

Under the pre-Fair Work Act legislation, the current VPs along with Senior Deputy Presidents were recognised as having higher statutory responsibilities than their fellow commissioners.

The Labor Government removed this legislative status in 2009 under the Fair Work Act, but now seeks to reinstate the VP roles in legislation with different incumbents. This 'pea and thimble trick' facilitates the demotion in status of the current two VPs and, according to Mr Knott, would not be countenanced in the High or Federal Court. In short, he says it represents an attempt to 'stack' the tribunal with new appointments.

MEDIA RELEASE

Last week DEEWR deputy secretary John Kovacic 'belled the cat' and confirmed to the Senate Committee Inquiry that the creation of the two new VP statutory positions "was suggested by Iain Ross, President of Fair Work Australia" and was not a recommendation by the Fair Work Review Panel.

Mr Knott also notes the Law Council of Australia warned against the move in its November 14 submission to the Bill, stating "this would have the tendency to reduce the independence of the Tribunal in that it will reduce the role and privileges associated with particular individuals" (2012, p.3).

"Key employer groups such as AMMA and ACCI together with the Law Council of Australia expressed strong concerns about this proposal in each respective submission to the Senate Inquiry into the Amendment Bill," Mr Knott says.

"Fair Work Australia already comprises two VPs, nine Senior Deputy Presidents and five Deputy Presidents along with numerous Commissioners. This body has been charged with reducing disputes and increasing productivity, therefore it should confirm the existing two VPs in legislation and show some productivity leadership by reducing, not increasing tribunal members and associated costs.

"The FWA President's unprecedented call for additional VPs which effectively demotes the two incumbents, along with new Presidential powers to take over individual tribunal member matters must be rejected if FWA is to retain any semblance of impartiality and independence."

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