

President's code gags FWC members on appeals body

Comment

Steve Knott



As a regular user of Australia's industrial relations system, the Australian Mines and Metals Association advocates for the creation of a separate, specialist and independent appeals body to sit between the Fair Work Commission (FWC) and our courts.

Unsurprisingly, the proposal for a new independent appeals body is not popular with the commission's president, Iain Ross, who recently told the NSW Industrial Relations Society there was "no substance" to claims of inconsistent decision-making in calls for a new appeal mechanism.

Ross is an advocate for the status quo, however it is widely understood that there are differing views on the merits of a new appeals jurisdiction among other commission members. The commission's code of conduct for members, created by Justice Ross, makes him the sole spokesperson on "matters which affect the independence and standing of the commission". This effectively silences any FWC members with differing views.

In a confidential submission to federal Employment Minister Eric Abetz, AMMA detailed our concerns with commission appeal mechanisms and argued for a more efficient,

practical system based on international best practice.

We argued that the FWC president's views should carry no more weight or authority than those of any other submitting party. His submission should also not be assumed to be representative of views within his own tribunal.

A new appeals tribunal would bring Australia up to international best practice, including in the UK, and ensure decisions are more consistent and established precedents are followed, without the need for Federal Court action.

Employers have become frustrated by FWC decisions involving matters that should never be subject to the discretionary, activist whims of tribunal members seeking to substitute their values and priorities for those of experienced managers, employers and employees.

Recent examples include undermining scope to dismiss employees for fighting, distributing pornography on work computers or having illicit substances in their system.

A clearer, more authoritative final level of tribunal will keep these seemingly clear-cut matters from our court system and address the perceived politicisation of the commission in recent years.

Steve Knott is chief executive of resource industry employer group, the Australian Mines and Metals Association.