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## New research backs reform at the Fair Work Commission

EMPLOYERS in the resources and energy sector welcome new research into the performance of the Fair Work Commission (FWC), with recommendations to improve unfair dismissal processes, encourage greater consistency in discretionary decisions and simplify the awards system reflecting the industry's longstanding positions.

The FWC released two new research reports today. The [first](#) examined user experiences of unfair dismissal processes, and the [second](#) more broadly identified how the tribunal's procedures and resources could better meet the needs of small business.

Common themes across the reports that align to the priorities of AMMA members included:

- Growing numbers of unfair dismissal applications were bringing “significant workload pressures” on the FWC and could be addressed by early screening of unmeritorious claims.
- Respondents (business owners and/or managers) were in particular frustrated by conciliation processes including that they were too focused on reaching a monetary settlement and not on the facts or merits of a claim.
- The workplace relations system more broadly is “confusing and overwhelming” for both applicants (employees) and respondents (business owners / managers).
- There was a need for “greater consistency and predictability in the way FWC members exercise discretion” (Agile report page 4).
- Smaller employers viewed the FWC's determinative processes as “legalistic, procedural fault-finding expeditions” that unfairly disadvantaged smaller employers (Agile report page 13).
- A minimum threshold should be established for unfair dismissal and general protections (adverse action) claims before being served on an employer; and FWC members should have a mechanism to dismiss a claim before a respondent is required to respond.
- The “modern awards” system needs reform to make it less complex and more accessible, and smaller employers should be more easily able to reach enterprise agreements as an alternative to strict award compliance.

### Comments by AMMA Chief Executive, Steve Knott:

“AMMA's membership is very diverse, with around half of our members having less than 100 employees. The issues identified by small-and-medium enterprises with the Fair Work Commission impact resources and energy sector employers as much as any sector,” Mr Knott said.

“It is little surprise that both reports show SME employers consider the unfair dismissal process a “waste of time” and focused on “go away money” rather than the facts and merits of claims. It's also unsurprising that employers find our workplace relations system confusing and overly-complex.

“For example, why discuss how we can make a prehistoric, globally-unique system in the so-called “modern awards” workable in a dynamic, evolving economy? We should be following the example of New Zealand which ditched its awards system in 1991 to catch up with the rest of the world.



“Many of the findings released today are consistent with evidence from AMMA’s surveys and discussions with members since the Fair Work system was introduced in 2009.

“It’s about time our national decision makers acted on the feedback of employers and indeed employees, and made our workplace relations framework more simple and workable in the real world.

“The resources and energy industry operates in a highly dynamic, globally competitive industry.

“We are far from immune to the adverse impacts that come from having a complicated, restrictive workplace relations system and an inefficient workplace tribunal, when the rest of the world is becoming more efficient and more competitive.

“On the Fair Work Commission specifically, it is clear there are resourcing issues that could be addressed by the urgent appointment of more tribunal members. The research released today has found the FWC is under significant workload pressures, while the 2018 Federal Budget papers noted it was failing to meet its target on agreement making timeframes.

“AMMA’s position, which we recently [communicated](#) to Minister for Small and Family Business, the Workplace and Deregulation, Craig Laundy, is that the government would be well justified in appointing at least seven new tribunal members by the end of this year.

“This would raise the number of tribunal members from the current 39 members to 46 members – corresponding with the size of the Fair Work Commission when the Australian Labor Party was last in government in 2013.”

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