



Fair Work boss 'sidelines' Coalition appointees

Exclusive

David Marin-Guzman

Fair Work Commission president Iain Ross is sidelining the Morrison government's new employer-dominated commission appointments to lesser duties in a move some insiders say is "unprecedented".

The government appointed six new commission members last month, most from employer backgrounds, sparking outcries from Labor that the Coalition was stacking the commission.

However, in a letter seen by *The Australian Financial Review*, Justice Ross told

commission members that the new appointees, paid \$461,850 a year, would mostly be doing conciliation work and other minor matters rather than deciding cases.

The president, a former assistant secretary with the Australian Council of Trade Unions, had previously informed the government that only one new commissioner was necessary to replace departing commissioner Anna Cribb.

But Industrial Relations Minister Kelly O'Dwyer went on to appoint an additional six new deputy presidents, a position usually assigned to full bench cases.

Ms O'Dwyer said at the time that the

Continued p6

From page 1

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appointments would allow the commission to cope with its workload more effectively. The appointments followed data showing most employers are now waiting 76 days to get their enterprise agreements (EAs) approved, more than double the commission's 32 days target.

In his letter, Justice Ross said one new appointee would take on Mr Cribb's work and another promoted member would continue under current arrangements. But the other new appointees would, for the short term, chiefly mediate general protections claims, handle requests for extension of time and work on "some" contested EA cases.

One former commission member told *The Australian Financial Review* that

restricting new appointees to conciliation – work usually done on the phone by professional mediators – was "unprecedented". The former member said traditionally the president simply appointed new members to panels specialising in particular industries.

"It's petty – it's a dispute between [Justice Ross] and the minister," the former member said.

In his letter, Justice Ross cited Ms O'Dwyer's rationale for the new appointees as a response to concerns over commission members not being given conciliation work.

Employer groups have long complained about Justice Ross delegating public servant conciliators rather than commission members to mediate complex legal cases such as general protection and adverse action claims.

Former vice-president Graeme Watson, who now advises Ms O'Dwyer, was a strong critic of the practice as he argued it encouraged business to apply an "economic" approach to settlements.

Assigning the new members to conciliation – potentially replacing contract conciliators – may also assist Fair Work's budget given the government has not assigned extra money to pay for them.

Justice Ross said in his letter that the new appointments raised "significant challenges" for the commission.

He said the costs of the new appointments would total \$4.6 million from 2018 to the end of the 2020 financial year. That amounted to 10 per cent of all staff expenditure, he said.

As a result he had taken action to cut costs, including by reducing travel spending so members would have to participate in some appeal cases by video if they were held interstate.

He had also scaled back and deferred projects, reviewed all contractor and ongoing positions, and was not filling vacant staff positions.

In response to questions about the new members, Fair Work general

manager Bernadette O'Neill said "the commission will not make any comment in relation to the work of individual members".

Australian Mines and Metals Association chief executive Steve Knott said "it is expected the six new appoint-

ments ... will discharge the full range of duties expected of a FWC commissioner or deputy president".

But he said "it is expected ALL FWC members will be actively engaged in general protection claims in lieu of public service conciliators".

New deputy presidents who have started at the commission include Nicholas Lake, a senior human resources manager at BHP Billiton and ExxonMobil, and Gerard Boyce, a barrister who had worked for the AMMA and the National Electrical and Contractors Association.

Incoming members include Bryce Cross, a barrister who used to head the Chamber of Manufactures in NSW, Amanda Mansini, the director of workplace relations at AMMA, and Janine Young, a partner at law firm Corrs Chamber Westgarth.

Asked last month if Labor would consider spilling the commission if it won the election, opposition employment spokesman Brendan O'Connor told reporters that "it's a very big step for us to consider but we'll have to think our way through that".



Leyla Yilmaz, left, and Janine Young.



Bryce Cross left, and Gerard Boyce.



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INDEX 1

PAGE 2 of 2



Amanda Mansini,
above left,
Nicholas Lake,
above, and Tony
Saunders, left.