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14 July 2008

The Honourable Julia Gillard
Deputy Prime Minister
Minister for Employment and Workplace Relations
Suite MG 41
Parliament House
CANBERRA ACT 2600

Dear Deputy Prime Minister,

TENURE OF AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION MEMBERS

As AMMA understands it, come 1 January 2010 Fair Work Australia will take over the functions of the Australian Industrial Relations Commission and the Commission will be abolished. Further, while it is envisaged that his Honour the President may have a role in Fair Work Australia, there is no guarantee of a role for other members of the Commission. In AMMA's view this represents a serious disturbance to what has long been a bi-partisan position in respect of tenure.

As the Workplace Relations Act (the Act) currently stands members of the Commission are provided with a legislative guarantee of tenure in office. Section 71(1) of the Act provides that '*A member of the Commission holds office until the member resigns, is removed from office or attains the age of 65 years*'.

While s.82 does provide for removal of Presidential Members from office and s.86 provides for termination of the appointment of Commissioners, this is clearly something that is not lightly done. Putting such matters as bankruptcy, absence from duty or engaging in outside employment in respect of Commissioners to one side, what is required is '*proved misbehaviour or incapacity being presented to the Governor-General by both Houses of Parliament in the same session*'. This has historically been the case irrespective of which political party held office.

As I understand it security of tenure stretches back to 1904. There was one notable exception to the security of tenure convention when the Australian Conciliation and Arbitration Commission was abolished and the Australian Industrial Relations Commission was established. This occurred during the Hawke Government in what has commonly been referred to in IR circles as the 'Staples affair'. Justice Staples was the only Commission member not to be appointed to the Australian Industrial Relations Commission when then IR Minister Peter Morris announced the appointments on 27 January 1989.



Justice Staples aside, it has long been the collective view of both sides of politics that a guarantee of tenure is to be viewed as a positive. Certainly AMMA is of this view, if for no other reason that it assists in placing members of the Commission in a position where they can make decisions about the matters that come before them based purely on equity, good conscience and the substantial merits of the case without fear or favour.

AMMA urges the Government to announce that all members of the Commission will have an on-going role in Fair Work Australia. This is as close as one can come to preserving the status quo in respect of tenure. In AMMA's view this has the benefit of preserving the position whereby the stakeholders in the Commission continue to perceive it as a truly independent body, and not leave the Commission open to the perception or allegation of bias during this period of transition to Fair Work Australia.

Should any appointments be required in addition to the current Commission members, and for all future appointments, AMMA takes no issue with the appointment process outlined in your address to the National Press Club on 30 May 2007.

I urge you to give this request your earnest consideration.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Steve Knott'. The signature is fluid and cursive, with the first name 'Steve' and the last name 'Knott' clearly distinguishable.

Steve Knott
Chief Executive
Australian Mines and Metals Association