

MEDIA RELEASE

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Fair Work Commission needs an appeals body - AMMA boss to tell mining forum

THE head of national resource industry employer group AMMA (Australian Mines and Metals Association) will this evening tell a Perth mining forum that inconsistent decisions, structural issues and a lack of confidence in the system mean the Coalition Government must fast-track a new expert appeals body for the Fair Work Commission (FWC).

[Addressing more than 200 resource professionals](#) at the AMMA 2013 West Coast Industry Forum, chief executive Steve Knott will argue that Australia's federal IR tribunal, the FWC, is suffering from 'too many chiefs, not enough Indians' and is dominated by Labor-affiliated appointees.

"The former Labor Government made 26 appointments to the tribunal in the past six years, 18 that had union or Labor-affiliated backgrounds. Of those 26 appointments, nearly one-third (8) were presidential appointments," Mr Knott will tell forum delegates this evening.

"Of the 46 members now comprising the Fair Work Commission, half are presidential members and half are commissioners. A business, tribunal or judicial structure that runs with 50% of its establishment at managerial or presidential levels is not reflective of modern day organisational structures."

Mr Knott will also highlight the 'politicking' around the functions and role of the tribunal in the six years under Labor. Combined with an inefficient, top-heavy leadership structure, he will argue the politicisation of tribunal functions has undermined employer confidence in its decisions.

Compounding this issue, he will say, were two new vice president roles created by former workplace relations minister Bill Shorten which effectively demoted two long-standing Howard-appointed VPs.

"In addition to the politicisation of appointments, including the demotion of existing members to make way for new Labor appointees, the inconsistent nature of some decisions handed down by different commission members signals the need for an independent appeal jurisdiction," Mr Knott will say.

Some areas that have seen conflicting decisions handed down by different commissioners include:

- The rights of employers to use onsite urine testing in their drug and alcohol testing policies;
- The lawful dismissal of employees found distributing pornographic material on work computers;
- The lawful dismissal of employees found to have physically assaulted colleagues;
- The capacity for enterprise agreements to include provision for "loaded hourly rates" (ie incorporating annual leave into the up-front hourly wage rate); and
- Approvals of enterprise agreements, particularly around the requirement for commission members to ensure mandatory flexibility clauses are capable of delivering genuine flexibility.

"(These) areas of conflicted decision-making are a matter of public record. Another example of concern about the quality of decision making, which is on the public record, are some members whose decisions have frequently been overturned on appeal," Mr Knott will say.

"AMMA would envisage the proposed appeal body consisting of a small, experienced expert panel of three to five members for each case, which could be part of the existing Fair Work Commission to avoid the expense of establishing a new tribunal and the associated infrastructure.

"This would hopefully have the effect of bringing some much-needed rigour and accountability into the decision-making processes of single commissioners. It would also be in step with international practice in this area and allow a semblance of independence and impartiality to be maintained."

Contact: AMMA media manager, Tom Reid on 0419 153 407