



Employers push for Fair Work review

Exclusive

David Marin-Guzman

Resources and energy employers are urging the federal government to launch a “full scale” review of the Fair Work Commission over claims it is politicised and stacks full benches with Labor appointees.

The Australian Mines and Metals Association has raised “serious concerns” about the commission with Attorney-General and Minister for Industrial Relations Christian Porter, including claims new Coalition appointees have been treated “shabbily” and overlooked for key cases.

The industry body outlined its concerns in a letter to the minister last week that pushed for the Productivity Commission to review how public funding for the commission “could better support positive workplace outcomes”. Suggested terms of reference include “recommending processes for transparent review of full bench allocations and assessing individual tribunal member workloads and performance”.

AMMA also urged the government to appoint seven new commissioners in the next 12 months, despite the majority of the tribunal already being made up of Coalition appointees.

“The dysfunction and inefficiencies at the FWC are compounding legislative challenges with the current Fair Work Act,” AMMA chief executive Steve Knott said in the letter. “Improving the performance of the tribunal would go a long way towards resolving many of the concerns of employers with Australia’s present day.”

The letter ramps up employer pressure on the federal government over industrial relations reform, which so far the minister has limited to “incremental” changes in areas such as underpayment, small business dismissal protection and enterprise bargaining.

Mr Knott’s letter said employers were concerned about “unjustifiable delays” in agreement approvals, “over-allocation” of Labor appointees to full benches, “over-reliance” on conciliators at the expense of tribunal members and unfair dismissal findings for safety-related sackings.

The letter also includes several claims that president Iain Ross has

sidelined recent Coalition appointees.

“Put simply, some of the new appointees have been treated very shabbily,” Mr Knott said.

In particular, he cites the president’s letter to members last year, reported by *The Australian Financial Review*, that said most of the new Coalition

appointees, all deputy presidents, would do conciliation work and other minor matters for the short term.

Mr Knott also said several new appointees had “waited months and months for a single meeting or communication with the president and this only occurred eventually at their initiative”.

“It has been well over a year since the appointments and it is widely understood that not all have yet had a meeting or single communication with the president.”

Further, he said, there were “numerous examples” where Coalition appointees had been overlooked in key full bench determinations.

Vice-president Adam Hatcher, a barrister and former Labor candidate, is in charge of the appeals roster, including full bench compositions.

Data collated by AMMA showed that for the past three years two thirds of all full bench members had been ALP appointees.

Even with an overall majority of Coalition appointees in 2019, Coalition members still made up only 36 per cent of full bench members, just slightly more than in 2018.

Full bench decisions in 2019 were also seven times more likely to be all ALP members than all Coalition members, with 49 matters all ALP appointees and just seven all Coalition.

“While Coalition appointees are now in the majority, it often appears they are just ‘unlucky’ when full benches are determined,” Mr Knott said.

The commission has 23 Coalition appointees and 19 Labor appointees.

The Coalition tipped the balance in its favour in December 2018 when it appointed six new members, all from employer backgrounds and many relatively young, despite President Ross only asking for one.

However, AMMA argues total member levels are still below the 46 when Labor left office in 2013 and encour-

aged the Coalition to make “a minimum” of four new appointments with “strong consideration to those with legal qualifications and/or business experience”.

The total number would increase to seven due to three pending retirements this year.

The proposal will be controversial with unions and Labor, which last year raised concerns over the potentially decades-long influence that recent Coalition appointments would have on workplace decisions.

