



## SENATE ESTIMATES COMMITTEE – 30 March 2017

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### PRESIDENT'S STATEMENT ABOUT EARLY DEPARTURES BY PRESIDENTIAL MEMBERS

[1] This statement addresses recent claims about the early departures of Presidential Members from the Fair Work Commission (Commission). These claims have the potential to impact public confidence in the Commission.

[2] Presidential Members who were appointed under the former *Workplace Relations Act 1996* (Cth) or the *Industrial Relations Act 1988* (Cth) are eligible for pensions under the *Judges' Pension Act 1968* (Cth).<sup>1</sup> Such Presidential Members become entitled to the maximum judges' pension once they have reached 60 years of age and have completed 10 years' service.

[3] The vast majority of Presidential Members resign from the Commission after qualifying for the maximum judges' pension and before reaching the retirement age of 65 years.

[4] Since the commencement of the *Fair Work Act 2009* (Cth), 14 Presidential Members have departed the Commission. Only two of these were not eligible for the maximum judges' pension based on age and service at the time of departure

[5] Of the remaining 12 Presidential Members who had qualified for the maximum judges' pension at the time of departure, only two chose to continue with the Commission until retirement age (Justice Boulton and Senior Deputy President Kaufman). Of the 10 Presidential Members who chose to retire early:

- half (5) retired within 9 months after qualifying for the maximum judges' pension; and
- 80 per cent (8) retired within 18 months of so qualifying.

[6] The recent resignations of Vice President Watson, Senior Deputy President Richards, Senior Deputy President Acton (taking effect on 31 March 2017) and Senior Deputy President O'Callaghan (taking effect on 30 April 2017) have all occurred within three to 16 months of them qualifying for the maximum judges' pension.

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<sup>1</sup> Item 2 of Schedule 18 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

**[7]** These early departures were anticipated, and indeed were foreshadowed by me in correspondence to the Minister for Employment of 21 December 2015 and 10 February 2017. In my letter of 21 December 2015, I noted the scheduled retirements over the next 18 months and the likelihood of a further three Presidential Members resigning in 2016-17, prior to reaching the statutory retirement age. In my letter of 10 February 2017, I noted the recent resignations of Vice President Watson and Senior Deputy President Richards (as foreshadowed), and anticipated the resignations of Senior Deputy Presidents Acton and O'Callaghan.

**[8]** If the Minister does not object I will table copies of that correspondence.

**[9]** The maximum judges' pension is 60 per cent of the Member's remuneration (as adjusted by the Remuneration Tribunal from time to time), payable for the remainder of the Member's life. For example, from 1 January 2017 (assuming the most recent Remuneration Tribunal increase is not disallowed), former Presidential Members are entitled to annual pensions as follows:

- former President - \$291,162 per annum;
- former Vice President - \$272,544 per annum;
- former Senior Deputy President - \$264,606 per annum; and
- former Deputy President - \$251,376 per annum.

**[10]** It is not uncommon for Presidential Members, once they have qualified for the maximum pension, to comment that they are, in effect, "working for 40 per cent" of their remuneration. I also understand that former Vice President Watson wrote to the Minister in 2015 regarding concerns with taxation issues relating to the judges' pension payable to Members, which could affect consideration as to the timing of their retirement.

**[11]** From 1 May 2017 there will be 41 Commission Members, including the three recent appointments of Mr Peter Anderson, Mr Alan Colman and Ms Sarah McKinnon.