

Senate Standing Committee on Education and Employment

**QUESTIONS ON NOTICE
Additional Estimates 2013-2014**

Agency - Fair Work Commission

Department of Employment Question No. EM0497_14

Senator McKenzie provided in writing.

Question

FWC - Appeals against decisions

What action has the President of the Fair Work Commission taken to counsel Commissioner John Ryan following the high number of upheld appeals against his decisions?

Answer

The relevant sections of the *Fair Work Act 2009* are:

612 FWC's functions etc. may generally be performed by single FWC Member

(1) A function or power of the FWC may be performed or exercised by a single FWC Member (other than an Expert Panel Member), as directed by the President, except as provided by this Subdivision.

Note: The President gives directions under section 582.

582 Directions by the President

The President may give directions

(1) The President may give directions under subsection (2) as to the manner in which the FWC is to perform its functions, exercise its powers or deal with matters.

(2) The President may give a direction that is of a general nature, or that relates to a particular matter, to one or more of the following persons:

(a) an FWC Member;

(3) The direction must not relate to a decision by the FWC.

A similar matter has been previously raised during Senate Estimates on 30 May 2011 and 17 October 2012. The following extracts from Hansard are relevant:

30 May 2011 (page 46)

Senator ABETZ: . . . last time we had a discussion about those commissioners who had a higher number of appeals upheld against them than others . . .

Justice Guidice: I do not think that is an appropriate matter for me to comment on . . . All I can say about it is that the way in which errors in decision making are dealt with is through the appeals system.

17 October 2012 (page 38)

Senator ABETZ: . . . But there is a particular commissioner who has now had appeal after appeal upheld against his decisions . . .

Justice Ross: You mean seek to influence how they arrive at their decisions or their conclusions?

Senator ABETZ: Or to try to counsel them to ensure that the decisions they make are such that they will not be overturned on appeal time and again.

Justice Ross: I think the danger with that approach is that it can be misconstrued. It could be taken as me issuing them with a formal direction that they need to adopt a particular view of the legislation or a particular approach. I think the most transparent way of dealing with legal error is the appeal mechanism. If there are broader concerns about the competence of any member or any issue like that, that is a matter for parliament.