



Improving WHS dispute resolution

Improving dispute resolution under the model work health and safety laws

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ACTU
australian council of trade unions

Contents

About the Australian Council of Trade Unions.....	1
Discussion paper questions	1
Question 1: <i>Do you have any comments on the current dispute resolution processes under the model WHS laws?</i>	1
Question 2: <i>Do you have any comments on the recommendation (as made in the reviews outlined above) that WHS laws be amended to provide an option for referral of disputes to a relevant specialist tribunal?</i>	2
Question 3: <i>Do you have any comments about the advantages and/or disadvantages of specialist tribunals in the work health and safety dispute resolution context? In answering, please provide any comments on how specialist tribunals align with the policy intent described above.</i>	3
Question 4: <i>Do you have any comments on the Queensland approach to dispute resolution including referral to a specialist tribunal? Please provide any comments on how the Queensland approach aligns with the policy intent described above.</i>	4
Question 5: <i>Do you have any comments on the inclusion of compulsory steps in the model WHS Act, such as requiring that an inspector be appointed, or waiting for a set period of time to elapse, before a dispute is referred to a specialist tribunal for resolution?</i>	5
Question 6: <i>Do you have any comments on whether proceedings against a person for contravening a tribunal order should be brought before the specialist tribunal by a person affected by the order, or only the WHS regulator?</i>	5
Question 7: <i>Do you have any comments on the implementation of a specialist tribunal, within a particular jurisdiction/s?</i>	6
Question 8: <i>Do you have any further comments on options for improving dispute resolution processes under the model WHS laws?</i>	6

About the Australian Council of Trade Unions

The Australian Council of Trade Unions (ACTU) is Australia's sole peak body of trade unions, consisting of affiliated unions and state and regional trades and labour councils. There are currently 35 ACTU affiliates, which together have nearly 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors. As the collective voice of Australian workers, the ACTU plays a central role in shaping national policy and advocating for improved rights, conditions, and protections at work.

The ACTU is committed to advancing work health and safety for all Australian workers through a rights-based, participatory approach. The ACTU has two member positions for SafeWork Australia, representing the interests of workers and ensuring that the voices and experiences of working people are central to national WHS policy and regulatory development.

The ACTU's strategy is focused on supporting unions to actively organise workers around healthy and safe work. This includes winning and embedding new health and safety rights at work and building the capacity of unions to use both new and existing rights to organise. By empowering unions and their members to take collective action, the ACTU seeks to ensure that work health and safety is not just a matter of compliance, but a fundamental right that is actively realised in every workplace.

The ACTU acknowledges the Traditional Owners of Country throughout Australia and recognises their continuing connection to land, waters, and community. We pay our respects to Elders past and present. The ACTU's office in Melbourne is located on the lands of the Wurundjeri people of the Kulin Nation. We honour their custodianship and acknowledge that sovereignty was never ceded.

In making this submission, the ACTU acknowledges and supports the submissions made by other Trades and Labour Councils and affiliated unions, including Unions NT, Queensland Council of Unions, SA Unions, the Shop, Distributive and Allied Employees Association (SDA), United Workers Union and the Australian Education Union (Tasmanian Branch).

Discussion paper questions

Question 1: *Do you have any comments on the current dispute resolution processes under the model WHS laws?*

The current dispute resolution framework under the model WHS laws is an important starting point, but in practice, it too often fails to deliver a timely and final resolution of complex or serious workplace health and safety issues. Where an issue is not resolved at the workplace level through issue resolution or where inspector involvement is unable to resolve the matter, disputes can persist for extended periods, creating ongoing risk to workers, uncertainty for duty holders and unnecessary strain on workplace relationships.

A key limitation of the current framework is that, while inspectors can assist and use compliance tools, there is no mechanism for final resolution of the dispute when inspector involvement does not yield an outcome, and inspectors have no authority to arbitrate outcomes.

We support introducing a clear, accessible WHS dispute resolution pathway to an independent specialist tribunal as a practical backstop: to resolve entrenched safety disputes and secure timely, enforceable outcomes where workplace and inspector-assisted processes do not deliver resolution.

This would be an important improvement, but it should sit alongside stronger arrangements that enable workers and their unions to drive compliance and seek effective remedies when WHS duties are breached, including the right for registered unions have standing to initiate prosecutions for breaches of WHS laws.

Question 2: Do you have any comments on the recommendation (as made in the reviews outlined above) that WHS laws be amended to provide an option for referral of disputes to a relevant specialist tribunal?

Yes. We support amending the model WHS laws to provide an option to refer workplace health and safety disputes to an independent specialist tribunal for conciliation, mediation and (where necessary) arbitration and binding orders.

The issues identified in these reviews closely reflect the on-the-ground experience of unions and their members. In practice, some WHS disputes can remain unresolved for years, particularly where inspector powers are not able to address the underlying issues

or where issues intersect with enterprise agreements or other legislative frameworks that sit outside an inspector's jurisdiction.

In our affiliates' experience, a specialist tribunal 'backstop' can shift parties toward earlier agreement and satisfactory outcome, where that is not possible, deliver timely, authoritative and enforceable outcomes that improve safety.

However, the tribunal option will only be effective if it is accessible in practice: it must be simple to commence, quick to list, low-cost, and not burdened by unnecessary preconditions. It should complement (not replace) the inspectorate's compliance role, and be designed so workers, HSRs and their unions can use it to secure genuine risk controls and compliance.

Question 3: Do you have any comments about the advantages and/or disadvantages of specialist tribunals in the work health and safety dispute resolution context? In answering, please provide any comments on how specialist tribunals align with the policy intent described above.

In responding to the remaining questions in this discussion paper, we refer the Agency to the submissions of the Queensland Council of Unions and SA Unions, which draw on extensive practical experience and are well placed to address these matters.

In our affiliates' experience, specialist tribunals offer clear advantages in resolving WHS disputes. Feedback from the Queensland Council of Unions and SA Unions indicates that the availability of a tribunal pathway has promoted more timely, final and effective issue resolution.

In many cases, the prospect of tribunal involvement has encouraged more constructive engagement by PCBUs, while in more entrenched or adversarial disputes, it has provided a prompt, authoritative mechanism to resolve the point of difference and secure a final outcome that improves safety.

The Community and Public Sector Union (CPSU – PSU Group) represents workers across the Australian Public Service (APS). Their members are covered by the Commonwealth

WHS framework, so do not have access to a dispute resolution pathway such as in Queensland, South Australia or New South Wales.

They have shared the experience of workers within one APS Agency, where a HSR lodged a Provisional Improvement Notice in 2021, that eventually resulted in Comcare issuing an Improvement Notice in early 2023. While recognising the complexity of the related issues, the directions outlined within the notice remain, to date, not completely complied with. Had there been an alternate option available to workers, or their union, to resolve the outstanding issues, the safety issues directly affecting workers could have been resolved earlier.

Question 4: Do you have any comments on the Queensland approach to dispute resolution including referral to a specialist tribunal? Please provide any comments on how the Queensland approach aligns with the policy intent described above.

We support adopting the Queensland approach so WHS disputes can be referred (where needed/wanted by the union/workers) to an independent specialist tribunal for mediation/arbitration and binding orders. However, we believe the following two (2) amendments should be made to strengthen the QLD model.

1. Enforcement of tribunal orders

If a tribunal makes an order and it is breached, the law should allow HSRs, workers and unions to commence civil penalty proceedings to enforce compliance (not just the regulator/prosecutor) as is currently the case in Queensland.

A dispute-resolution pathway only works if orders can be enforced by the parties who rely on them. Limiting enforcement to the WHS prosecutor can leave workers and unions without a practical remedy when non-compliance occurs.

2. Where the penalty is paid

If the court imposes a civil penalty for breaching a tribunal order, it should be able to direct that the payment be made to an appropriate applicant/representative body

(including a union), rather than requiring it to be paid automatically into consolidated revenue.

Publication of the Notice of WHS Dispute

An important feature of the Queensland approach, highlighted by the Queensland Council of Unions, is the deterrent and reputational effect of publishing the Notice of WHS Dispute on the QIRC website.

This transparency has attracted media attention and created a clear incentive for compliance. For example, a dispute involving conditions at a remote work camp in North Queensland received public scrutiny following tribunal proceedings, demonstrating how publication can drive accountability and improve safety outcomes.

Question 5: Do you have any comments on the inclusion of compulsory steps in the model WHS Act, such as requiring that an inspector be appointed, or waiting for a set period of time to elapse, before a dispute is referred to a specialist tribunal for resolution?

We do not support the inclusion of compulsory pre-conditions, such as mandatory inspector appointment or fixed waiting periods, before a dispute can be referred to a specialist tribunal. Experience from Queensland Council of Unions and SA Unions shows these requirements create/created confusion, delayed resolution, and operated largely as a box-ticking exercise rather than contributing to timely or effective safety outcomes.

Question 6: Do you have any comments on whether proceedings against a person for contravening a tribunal order should be brought before the specialist tribunal by a person affected by the order, or only the WHS regulator?

If a tribunal order is breached, enforcement should not be limited to the WHS regulator. The law should allow HSRs, workers and unions to commence civil penalty proceedings to enforce compliance, ensuring tribunal orders are practical, enforceable and effective in driving safety outcomes.

Question 7: Do you have any comments on the implementation of a specialist tribunal, within a particular jurisdiction/s?

The ACTU broadly defers to the submissions of Queensland Council of Unions, SA Unions and relevant state and territory Trades and Labour Councils on jurisdiction-specific implementation issues.

Feedback from Trades and Labour Councils and unions consistently emphasises that where jurisdictions adopt WHS dispute-resolution provisions involving specialist tribunals, effective implementation will depend on appropriate resourcing and institutional capability. Tribunals must be adequately staffed and supported by decision-makers with strong expertise in the WHS framework, as well as an understanding of how WHS issues intersect with industrial instruments and other legislative regimes, including anti-discrimination laws. This capability is critical to ensuring disputes are resolved in a timely and authoritative way and deliver genuine safety outcomes.

Question 8: Do you have any further comments on options for improving dispute resolution processes under the model WHS laws?

No further comments

The ACTU thanks Safe Work Australia for the opportunity to consult on this paper and is available for further comment or consultation if required.

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