

Submission: Safe Work Australia Consultation Paper – Improving Dispute Resolution under the Model Work Health and Safety Laws

Introduction

1. The Mining and Energy Union (**MEU**) is the principal trade union representing employees in the coal mining industry. Our membership also includes workers in power stations, coal export terminals, locomotive drivers in the Pilbara, and those employed in metalliferous mining. We represent approximately 25,000 workers across Australia's mining and energy industries.
2. Our members are based in regional communities across the country. They work in coal mines in the Hunter Valley, Central Queensland, the Illawarra, Lithgow and Mudgee in Western New South Wales, Collie in Western Australia's South West, and Tasmania. They are also employed in metalliferous mines in the Pilbara and Far West New South Wales, as well as in power stations in the Latrobe Valley, the Hunter Valley, the Lake Macquarie region of New South Wales, and Central Queensland.
3. The MEU welcomes the opportunity to make a submission to Safe Work Australia's Consultation Paper on Improving Dispute Resolution under the Model Work Health and Safety Laws. Workplace safety is a priority for of paramount the MEU and its members and we have a significant interest in ensuring that model WHS dispute resolution mechanisms are appropriate, efficient, accessible and fair.
4. The MEU supports improving the current legislative framework by strengthening the dispute resolution processes in the model WHS laws.
5. The MEU submits that it would be appropriate for Safe Work Australia to adopt the Queensland approach in the Model WHS Laws, allowing work health and safety disputes to be referred to a specialist industrial tribunal for arbitration and binding orders. Our submission also recommends that the Model WHS Laws incorporate additional measures in respect of dispute resolution processes to strengthen enforcement.

Summary of MEU Recommendations

- **Strengthen dispute resolution pathway in the Model WHS Laws:** amend the Model WHS Laws to provide clear dispute resolution pathway, referral to relevant state/territory industrial tribunal or commission to deal with the dispute, without first requiring appointment of a WHS inspector.
- **Enforcing tribunal orders:** workers, Health and Safety Representatives and registered trade unions should have standing to enforce compliance with an order made by a state/territory industrial tribunal.
- **Time limit for enforcing contravention of tribunal orders:** a 2-year time limit should apply for enforcing a tribunal order, allowing workers and unions sufficient time to

identify non-compliance and attempt resolution at the workplace level before commencing litigation.

- **Payment of civil penalties for breach of a tribunal order:** when a court imposes a civil penalty for breach of a tribunal order, it should be empowered to direct that the penalty be paid to the applicant or the applicant's representative body (including a union).
- **Best practice model:** Safe Work Australia should consider adopting a check inspector system including industry safety and health representatives (ISHRs) as the best practice model of WHS regulation in higher risk industries, enhancing dispute resolution and worker safety.

Current approach to dispute resolution processes under the model WHS laws

Question 1

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

6. The MEU agrees generally with the conclusions of the 2022 Review of SafeWork South Australia,¹ 2022 Review of Queensland Work Health and Safety Laws² and the 2018 Boland Review of model WHS laws,³ with respect to shortcomings identified with respect to dispute resolution processes under WHS laws. These respective reviews recommended that WHS laws be amended to provide a clearer dispute resolution pathway, enabling WHS disputes to be referred to a relevant industrial tribunal or commission.
7. Under the current approach adopted by the Model WHS laws, where a dispute arises between relevant parties about a WHS issue, the default dispute resolution procedure in the Model WHS Regulations applies unless the parties have an agreed dispute resolution procedure. Should a dispute not be resolved through this procedure, the only option for an affected party is to request that an Inspector be appointed to assist in resolving the dispute.
8. As identified in the Consultation Paper, WHS inspectors' core function is facilitating compliance. To this end, inspectors are equipped with a range of regulatory tools to aid monitoring and enforcement. While inspectors can issue notices and provide advice or recommendations, they do not have the power to arbitrate WHS disputes. In practice, this means that some disputes remain unresolved. As will be discussed below, the current approach does not meet the legislative objectives of providing 'timely, final and effective' dispute resolution.⁴

¹ John Meritt, *Independent Review of SafeWork SA* (16 December 2022).

² Charles Massey, Craig Allen and Dierdre Swan, *Review of the Work Health and Safety Act 2011 – Final Report* (21 December 2022).

³ Marie Boland, *Review of the Model Work Health and Safety Laws: Final Report* (December 2018).

⁴ Explanatory Memorandum, Work Health and Safety Bill 2011 (Cth) [353].

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?

9. The MEU welcomes the recommendation that Model WHS Laws be amended to provide a pathway to refer disputes to a relevant specialist state/territory tribunal. This would provide a much-needed mechanism for an enforceable outcome in WHS disputes. Having a mechanism for final arbitration incentivises parties to resolve WHS disputes, serving to facilitate compliance.
10. We note that Queensland, South Australia and New South Wales have already enacted reforms enabling WHS disputes to be referred to the relevant state industrial tribunal in those jurisdictions.⁵

Improving dispute resolution processes under model WHS laws – are specialist tribunals the best approach?

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.

11. The MEU submits that in principle, specialist tribunals are advantageous in the WHS dispute resolution context, better fulfilling the policy intents of finality, efficiency, flexibility, accessibility and fairness.
12. However in practice, tribunals' ability to meet these objectives with respect to the resolution of WHS disputes is dependent on how quickly matters can be listed for hearing. While tribunals are designed to be simple, low cost and accessible, tribunals must be appropriately resourced to ensure that they are able to meet any additional demands created by an expanded jurisdiction to hear WHS disputes.
13. To ensure efficacy it is important that disputes can be referred to the tribunal promptly. The MEU recommends that the qualifying criteria for disputes to be referred be simple and straightforward, and applicants should not be required to satisfy a complex list of pre-conditions in order to refer a dispute to a tribunal for resolution.
14. To further ensure efficiency, the MEU recommends that there be no requirement for an inspector to be appointed before a dispute can be referred for tribunal determination. This is discussed in response to Question 5 below.

⁵ *Work Health and Safety Act 2011* (Qld) Pt 5 Div 5; *Work Health and Safety Act 2012* (SA) Pt 5 Div 7A; *Work Health and Safety Act 2011* (NSW) Pt 5 Div 7A.

15. In order to maximise accessibility and not place a price on the resolution of genuine safety concerns, the cost of making an application to refer a dispute to the tribunal should be free.

The Queensland approach

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.

16. The Queensland approach to dispute resolution of WHS disputes has been the product of two reviews.⁶ In the MEU's view the Queensland approach provides a sound basis for dispute resolution, however it has some limitations with respect to enforcement. In Queensland only the Workplace Health and Safety Prosecutor can commence civil penalty proceedings to enforce compliance with a tribunal order,⁷ and the penalty is payable to the State.⁸
17. The MEU recommends that the Model WHS Laws should be amended in line with the Queensland approach, with additional measures to improve enforcement: workers, HSRs and unions should have standing to initiate civil penalty proceedings to enforce contravention of tribunal orders, and the presumption should be that any penalty is paid to the person or union who initiates civil penalty proceedings, consistent with the approach in other frameworks and endorsed by the Courts.
18. Payment of civil penalties to applicants in proceedings (historically known as 'common informers') reflects a public policy decision to encourage persons other than regulators to bring actions to enforce laws that serve the public interest. As Justice Logan noted in a judgment in 2010:

The term that is used for this type of proceeding, brought by someone other than an officer of the executive government, is a proceeding brought by a common informer. There may, perhaps, unless the detail of what lies behind that description is understood, be thought to be a pejorative quality in that terminology. There truly is not. Rather, what it is, is the bringing to the attention of the courts of a transgression of a public obligation.

In industrial law, there is a very particular benefit in that occurring for the community, so that the need for adherence to obligations can be brought home more widely. In bringing the present proceedings, the applicant trade unions have done a singular service not just to their members and other workers in QR Ltd and its subsidiaries, but also to the wider community.

⁶ Charles Massey, Craig Allen and Dierdre Swan, *Review of the Work Health and Safety Act 2011 – Final Report* (21 December 2022); Tim Lyons, *Best Practice Review Workplace Health and Safety Queensland* (3 July 2017).

⁷ *Work Health and Safety Act 2011* (Qld) ss 260(1) & (2).

⁸ *Ibid* s 262(a).

[...] A trade union (or, for that matter, an employer organisation or employer which might inform), may render a particular service in circumstances where, even though a government officer such as an inspector might be permitted to bring a proceeding, for one reason or another, the executive government chooses not to do that.⁹

19. The same reasoning applies with even more force in the context of adherence to work health and safety obligations.
20. The MEU submits that it would be appropriate to adopt a two-year timeframe for enforcing contraventions of tribunal orders. This is consistent with the approach in Queensland, where the Prosecutor must commence proceedings within two years of becoming aware of the contravention.¹⁰ A two-year time limit would allow workers and unions sufficient time to identify non-compliance and attempt resolution at the workplace level before commencing enforcement litigation.

Enforcement

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?

21. The MEU recommends that consistent with the Queensland approach, the Model WHS Laws should not require that an inspector be appointed before a dispute can be referred to a specialist tribunal for resolution.
22. As identified in the Consultation Paper, dispute resolution imposes a significant administrative burden on inspectors. Inspectors commonly experience high workloads and competing priorities and are required to dedicate significant time and resources to resolving disputes, without any guarantee that their efforts will result in a final resolution of the issue.
23. While inspector involvement in dispute resolution can be highly beneficial, inspectors' successfulness in resolving disputes is dependent on individual workloads and availability, and on the parties' willingness to accept and implement the inspector's advice/recommendations. For these reasons, it would be preferable to allow for referral to a tribunal without requiring an inspector to be appointed.
24. Enabling an affected party to refer a WHS dispute to a relevant industrial tribunal for determination without first requiring that an inspector be appointed would reduce the risk of delay, and facilitate more timely resolution of disputes where necessary. This would not displace the role of inspectors in dispute resolution, and it would still be open to a party to request that an inspector be appointed to assist in resolving the dispute.

⁹ Extract from paragraphs 82 to 84 of the judgment of his Honour in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Ltd (No 2)* [2010] FCA 652.

¹⁰ *Ibid* s 261.

25. The MEU submits that it is not appropriate to impose a waiting period with respect to referral of disputes to a tribunal. Instead, an affected party should become eligible to refer a dispute once they have attempted to resolve the dispute at the workplace level.

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?

26. As stated above in response to Question 4:

- a. The MEU submits that in addition to the relevant WHS regulator, workers, HSRs and unions should have the power to initiate civil penalty proceedings to enforce any contravention of any order made by a relevant tribunal.
- b. Where an applicant worker or union initiates civil penalty proceedings for contravention, the court should be able to direct that the civil penalty be directed to the applicant worker or union. This would strengthen enforcement mechanisms, further enabling unions to assist in facilitating WHS compliance.

Implementing a specialist tribunal across jurisdictions

Question 7

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

27. The MEU does not wish to comment on the operation of specific jurisdictions' tribunals. Instead, we offer some general observations about tribunals with respect to WHS dispute resolution.
28. As stated above in response to Question 3, successful implementation requires that tribunals are adequately resourced so that matters can be listed promptly. This includes appropriate staffing. Resourcing is necessary to enable tribunals to deliver education to relevant stakeholders prior to commencement of the new laws so that stakeholders understand how to navigate making an application to the tribunal.
29. It is also vital that tribunal members determining WHS disputes have suitable skills and experience in workplace health and safety, industrial and anti-discrimination law matters. Suitably qualified and experienced tribunal members make better decisions, and do so more efficiently.
30. The above factors tend to indicate that WHS dispute settlement will not be appropriate to vest in a generalist 'super-tribunal' of the kind that deal with a wide variety of urgent and non-urgent civil and administrative claims. Specialist industrial tribunals or industrial divisions would tend to have greater capacity to afford WHS disputes the priority and individualised case management that they require.

Other matters

Question 8

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

Submission of the Australian Council of Trade Unions

31. The MEU has read the ACTU Submission to this consultation. In addition to the comments made above, the MEU agrees with and supports the ACTU Submission, including the recommendations made in that submission.

Best Practice Approach to Work Health and Safety Disputes

32. The MEU recommends that Safe Work Australia consider adopting a check inspector system as a best practice model of WHS regulation in higher risk industries.
33. The check inspector system effectively utilises full-time worker representatives as statutory appointees who are embedded in the workplace, delivering better safety outcomes across the coal mining industry. This model of regulation has been used in the New South Wales coal mining industry since 1876,¹¹ and in Queensland mines since 1910.¹²
34. Research on the Queensland check inspector system found that check inspectors provided effective WHS representation,¹³ and rarely needed to exercise their powers to cease work or issue PINs, reporting that '99 percent of issues were resolved through consultation'.¹⁴ A recent study of the check inspector system in the New South Wales coal mining industry found that the system was working effectively.¹⁵ One of the key findings was that the presence of district-level check inspectors served to facilitate greater cooperation between management and workers on health and safety issues, a key factor in achieving better health and safety outcomes.¹⁶
35. In summary, there is substantial evidence demonstrating the regulatory benefits of the check inspector model in higher risk industries. We submit that Safe Work Australia should consider the merits of this model with respect to its potential to facilitate more effective resolution of WHS disputes.

¹¹ Michael Quinlan et al, *Worker Safety and Health Representatives in the New South Wales Mining Industry* (Commissioned Report) (December 2025) 9.

¹² Ibid 31.

¹³ David Walters et al, *The Role and Effects of Representing Miners in Arrangements for Safety and Health in Coal Mining: A Global Study - Report submitted to the IOSH Research Committee, Volume 2: Case Studies in Five Countries* (IOSH, 2018) 36-38.

¹⁴ Ibid 27.

¹⁵ Michael Quinlan et al, *Worker Safety and Health Representatives in the New South Wales Mining Industry* (Commissioned Report) (December 2025) 93.

¹⁶ Ibid 94, and see generally ch 6.

Independent Review of Legislative Reform

36. If the dispute resolution pathway in the Model WHS Laws is amended, reform should be accompanied by an independent review to ensure that any legislative changes are operating as intended.
37. We submit that Safe Work Australia should conduct a review within three years of the commencement of new legislation. The review should have a broad mandate to evaluate the operation of WHS dispute resolution processes across different states and territories, and examine any differences in implementation between jurisdictions.

Mining and Energy Union

17 April 2026