



Government
of South Australia

SafeWork SA

Review Recommendations Bill

Fact Sheet: Civil dispute resolution

What is changing?

The *Work Health and Safety (Review Recommendations) Amendment Bill 2024* (the Bill) amends the *Work Health and Safety Act 2012* (the Act) to implement law reform recommendations made by the [Independent Review of SafeWork SA](#).

The Bill follows [initial public consultation](#) on these recommendations conducted between September and November 2023.

Fact sheets covering the main amendments in the Bill can be found [on the SafeWork SA website](#). This fact sheet summarises amendments relating to dispute resolution processes for health and safety and cessation of work disputes.

Resolving health and safety issues

- The Independent Review recommended giving the South Australian Employment Tribunal (SAET) – the state’s independent industrial umpire – a stronger role in helping resolve disputes about health and safety issues.
- **Priority on workplace discussions:** Parties to a health and safety dispute (such as a business, worker, or health and safety representative) must make genuine efforts to resolve the issue at a workplace level before they can seek SAET’s help. The parties must notify SafeWork SA of the dispute so the regulator can consider sending an inspector to the workplace to help resolve the issue, and must provide at least 24 hours for that to occur.

Workers and their representatives cannot seek SAET’s help unless they reasonably believe the dispute involves a breach of a health and safety duty, which involves a serious risk to the health and safety of a person. This is intended to avoid the escalation of disputes over minor or trivial issues.

- **Exemption for small businesses:** A health and safety dispute cannot be referred to SAET if it involves a small business employing fewer than 15 employees. It is appropriate that small businesses such as these receive focussed support from SafeWork SA in resolving health and safety issues.
- **A stronger role for the independent umpire:** If a dispute about health and safety cannot be resolved through discussions at a workplace level, a party to the dispute can ask the SAET to help resolve the dispute.

This process will feature a strong focus on alternative dispute resolution, with SAET able to assist through conciliation and mediation, or making a recommendation or expressing an opinion. SAET may also make a binding decision if the parties all agree to arbitration of the dispute.

- **Civil penalties for WHS breaches:** If a dispute cannot be resolved through processes above, a party may apply for the SAET to impose a civil penalty for a breach of a work health and safety duty under the Act.

SAET will be able to consider all the relevant facts to determine if there has been a breach of the Act. If so, SAET can determine a fair penalty having regard to all the circumstances of the case, including the size of the business involved and any history of similar contraventions. The maximum penalty will be \$100,000 for a body corporate and \$10,000 for an individual.

Resolving cessation of work disputes

- The Act currently gives workers the right to refuse work if they have a reasonable concern the work would expose them to a serious risk to health and safety. However, the Act does not provide a clear dispute resolution mechanism if a worker exercises that right. This can leave both workers and businesses at an impasse to resolve cessation of work disputes.
- **Getting back to work:** A similar dispute resolution process to the above will be available for disputes about the cessation of unsafe work. SAET will be able to help resolve disputes through conciliation and mediation, or making a recommendation or expressing an opinion.

SAET will have the power to arbitrate whether a worker is required to return to their normal duties if all other dispute resolution options have been unsuccessful. Unlike health and safety disputes, SAET will not be able to impose civil penalties for cessation of work disputes.

Preventing vexatious claims

- The Bill includes significant safeguards against parties using dispute procedures unreasonably or vexatiously, including where proceedings are baseless or have been instituted to harass or annoy another party.
- **Striking out proceedings:** SAET will retain its existing powers to dismiss an application if it is satisfied the application has been made with no reasonable basis, or is otherwise an abuse of process.
- **Costs orders:** A party may be ordered to pay other parties' legal costs if the dispute has been instituted vexatiously, or if their unreasonable actions have caused other parties to incur costs. Unreasonable behaviour may include conducting proceedings with no real legal or factual basis, or refusing to accept reasonable settlement offers. In cases of serious vexatious conduct SAET may also impose a financial penalty of up to \$25,000 in addition to an order for legal costs.
- **Vexatious litigants:** If a party has a record of persistently instituting vexatious proceedings, SAET may prohibit them from commencing further proceedings without obtaining prior permission. This is similar orders that can currently be made against vexatious litigants by the Supreme Court.

When will these changes come into effect?

These proposals are subject to passage of legislation by Parliament.