



17 April 2026

Ms Marie Boland
Chief Executive Officer
Safe Work Australia
GPO BOX 641
Canberra ACT 2601

via email: whsframework@swa.gov.au

Dear Ms Boland,

Improving dispute resolution under the model work health and safety laws

The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) welcomes the opportunity to comment on Safe Work Australia's (SWA) proposal to improve resolution of work health and safety (WHS) related disputes under the national model WHS laws (model WHS Act, model WHS Regulations and Codes of Practice).

Most Australian small businesses operate on a small or micro scale with very limited administrative resources, raising a range of challenges which differ markedly from those faced by larger enterprises.

This includes limited expertise in managing WHS disputes which are often complex, time intensive and can also be emotionally charged. Unresolved WHS disputes can be significantly more disruptive in a smaller workplace and impact an entire workplace and other employees in a way which is more amplified than in larger enterprises.

The unique challenges of smaller enterprises were highlighted by a number of small business stakeholders in the 2018 Review of the model WHS laws.¹

Access to effective dispute resolution is of critical importance to small businesses, whether in relation to disputes with other businesses or for workplace matters such as WHS. Unresolved disputes within the workplace can see disagreements escalate in ways that can lower productivity, divert precious resources from core business activity, create operational uncertainty, and strain critical working relationships within the business.

The ASBFEO supports reforms which provide alternative dispute resolution pathways that are accessible, efficient, and flexible for small businesses

SWA's Discussion Paper indicates that the model WHS laws' current reliance on informal, inspector-led processes has resulted in numbers of disputes remaining unresolved. To address this, SWA proposes the establishment of a specialist tribunal pathway to provide a final mechanism for dispute resolution.² While the ASBFEO supports the availability of accessible pathways to resolve WHS disputes, the paper only provides limited evidence demonstrating that

¹ Marie Boland, *Review of the model Work Health and Safety laws – Final Report*, report to the Australian Government Safe Work Australia, December 2018.

² Safe Work Australia (SWA), *Consultation Paper: Improving dispute resolution under the model work health and safety laws*, SWA, Australian Government, March 2026.



the current arrangements are ineffective or require reform. It is therefore recommended that additional evidence be provided on the nature of unresolved WHS disputes under the current framework.

If there is a demonstrated need to develop an alternative dispute resolution pathway, the ASBFEO considers that a specialist tribunal could provide an effective pathway for small business if it provides: clear escalation points for specific categories of dispute; greater finality and timeliness for resolution; independent decision-makers with WHS expertise. Any new pathways should not undermine the primacy of workplace-based resolutions in the first instance.

In developing the proposal for the model WHS laws, the ASBFEO encourages SWA to apply a small business-first lens to inform its design, ensuring the process is accessible, efficient and flexible for small businesses. Drawing on the proposal's key principles of finality, efficiency, flexibility, accessibility and fairness, the ASBFEO recommends the pathway include the following features:

- participation is voluntary, with a requirement to act in good faith
- costs are low and self-representation is permissible
- participation of parties is supported by clear, practical guidance and tools focused on enabling them to understand processes and prepare to engage with them
- disputes are adjudicated by a readily available pool of experts who are familiar with the subject matter and constraints faced by small businesses
- process is timely, including short intervals between each milestone and final decision
- process/evidentiary requirements are proportionate, for example, rules of evidence may not be necessary for particular kinds of disputes
- procedural fairness is provided, including through known or understandable processes that are non-arbitrary
- forms of resolution – through mediation, conciliation or arbitration, or otherwise – are outcome-focussed and adapted to the nature of the dispute, and the process is amenable to final, sustainable outcomes, minimising scope for further proceedings.

If you require further information, please do not hesitate to contact the ASBFEO Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely

Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman