



Government of Western Australia
Department of Mines and Petroleum
Resources Safety

MINES SAFETY AND INSPECTION ACT
– WHAT EMPLOYEES AND EMPLOYERS
NEED TO KNOW

Occupational Safety and Health Tribunal

Establishment of the Occupational Safety and Health Tribunal

The Occupational Safety and Health Tribunal came into effect on 4 April 2005.

What is the Occupational Safety and Health Tribunal?

The Occupational Safety and Health Tribunal is a body established to deal with some administrative matters under the OSH and MSI Acts. Matters include appeals against the decisions of the WorkSafe Commissioner and the State Mining Engineer — for example, in relation to reviews of notices.

Many of the functions to be carried out by the Tribunal were previously dealt with by safety and health magistrates. Prosecutions will continue to be dealt with by safety and health magistrates in the Magistrates Court of Western Australia.

The Tribunal operates under the auspices of the Western Australian Industrial Relations Commission (WAIRC). Under the approach adopted, a single Commissioner of the WAIRC, with appropriate occupational safety and health expertise, has been appointed to hear the relevant matters. This Commissioner also performs functions as a member of the WAIRC under the *Industrial Relations Act 1979* (IR Act), as well as the specific functions under the OSH and MSI Acts.

It is recognised that the WAIRC Commissioner appointed to the Tribunal cannot always be available to hear a matter. To address this issue, the changes also provide for another member of the WAIRC to hear matters when necessary.

What claims go to the Tribunal?

Matters that may be referred to the Tribunal include administrative and other matters that arise under the changes to the OSH and MSI Acts. The Tribunal will hear appeals and related OSH Act and MSI Act matters, including:

- the review of a decision by the WorkSafe Commissioner or the State Mining Engineer on the establishment of a safety and health committee
- the review of a decision by the WorkSafe Commissioner or the State Mining Engineer to change a safety and health committee
- the review of a decision by the WorkSafe Commissioner or the State Mining Engineer regarding a prohibition or improvement notice
- resolving a safety and health representative election result that the WorkSafe Commissioner or the State Mining Engineer could not resolve
- the disqualification of a safety and health representative
- a change to entitlement for time off work with pay to attend a safety and health representative training or payment for safety and health representative training in the safety and health representative's own time
- a 'discrimination' claim by a safety and health representative.

The Tribunal has jurisdiction to hear certain matters concurrently. This applies where one is an unfair dismissal claim before the WAIRC in accordance with the IR Act and the other is a matter specified in the OSH Act or the MSI Act that may be heard by the Tribunal.

For some matters, conciliation is available if the Tribunal considers it appropriate.

Will there be a right to legal representation before the Tribunal?

Yes, there is a right for parties to have legal representation before the Tribunal.

How do I make an application to the Tribunal?

The Tribunal shares a website, reception counter, and hearing rooms with the WAIRC, which is located at:

16th Floor
111 St Georges Terrace,
Perth, WA 6000
Telephone: +61 8 9420 4444
Free call for country callers:
1800 624 263
Facsimile: +61 8 9420 4500

A matter is referred to the Tribunal by completing a Notice of Referral to the Occupational Safety and Health Tribunal, which can be obtained directly from the WAIRC by phone or fax or www.wairc.wa.gov.au (follow the links to Applications and then Forms).



Where a referral notice relates to a decision by the WorkSafe Commissioner or the State Mining Engineer on a prohibition or improvement notice, the referral notice must be filed at the WAIRC within seven days of the decision.

Can the decision of the Tribunal be appealed?

A decision of the Tribunal can be appealed to the Full Bench of the WAIRC.

The appeal must be lodged within 21 days of the decision against which the appeal is brought.

An appeal is lodged by filing a Notice of Appeal to the Full Bench. The form can be obtained directly from the WAIRC or downloaded from www.wairc.wa.gov.au (follow the links to Applications and then Forms).

Want to know more?

For information on safety and health in the mining industry, look at the Resources Safety website at www.dmp.wa.gov.au/ResourcesSafety

The *Mines Safety and Inspection Act 1994* and Mines Safety and Inspection Regulations 1995 are available from the State Law Publisher's website at www.slp.wa.gov.au

The information in this brochure is intended as a general guide only. The relevant Acts and regulations should be consulted for detailed information, or contact your regional inspectorate.

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