

Information for parliamentarian employers

The Parliamentary Workplace Support Service (PWSS) can provide you with advice on how to deal with conduct issues relating to your staff.

Parliamentarians may make referrals to the IPSC

As a parliamentarian you have existing duties under the *Work Health and Safety Act 2011 (WHS Act)* to ensure the health and safety of persons in any place where you or your workers perform work. The establishment of the IPSC does not affect these duties.

There is no requirement in the *Parliamentary Workplace Support Service Act 2023 (PWSS Act)* for people who have duties under work health and safety laws to make reports to the IPSC. Rather, referring a matter to the IPSC is an option available to ‘officers’ under the WHS Act to support their existing duties under that Act. What is appropriate will depend on the circumstances.

A parliamentarian may refer a person who they employ, or who works predominantly from their office (their employee), to the IPSC. A referral may be made either:

- to support their employee as a complainant, or
- to refer their employee as a respondent.

A referral to the IPSC must be made in writing and include:

- details of the allegation,
- any evidence relevant to the conduct issue,
- the name and contact details of the referrer, and
- the name and contact details of the complainant (if any).

A referral to the IPSC must be made with the complainant’s consent. An exception is where the referrer is reasonably satisfied a referral is reasonably necessary to comply with a duty under work health and safety law. If you are unsure whether to refer a matter to the IPSC, you can obtain advice from the PWSS.

If you make a referral, the IPSC will notify you when they decide whether or not the IPSC will investigate. This notification will set out reasons for the decision.

Can I refer alleged criminal conduct to the police?

The Behaviour Codes include a requirement to comply with all Australian laws, as well as a ‘prohibition’ on conduct that could be criminal, for example assault and sexual assault. As such, the IPSC may receive complaints about conduct that could be criminal.

If you refer a complaint to the IPSC about potential criminal conduct, the IPSC will confer with police to decide whether it is appropriate for them to investigate.

The PWSS Act does not prevent a parliamentarian from making reports of criminal conduct, including assault or sexual assault, directly to police. However, if there is a complainant and they do not consent to a referral to the police, it is recommended that advice is obtained from the PWSS on what should be done.

Irrespective of whether a referral of criminal conduct is made to the IPSC or to the police, officers may have obligations to take actions that are reasonably practicable to ensure work health and safety. It may also be necessary to inform Comcare of an incident. The PWSS can provide advice to parliamentarians and *Members of Parliament (Staff) Act 1984 (MOP(S) Act)* employees on work health and safety obligations.

Will I be informed if my employee is part of an IPSC investigation?

The IPSC may disclose information, including personal information, to the employer of a complainant or respondent where:

- the complainant has consented to the disclosure, or
- the IPSC is satisfied the information is relevant to the employer's work health and safety duties.

Separately, the IPSC must give a respondent's employer notice of a decision to investigate if:

- the complainant has consented,
- the IPSC is reasonably satisfied the information is relevant to the employer's work health and safety duties, or
- there is no complainant.

Can I suspend an employee who is under investigation by the IPSC?

Yes. Under section 18 of the MOP(S) Act, you can suspend an employee from duties at any time if you consider that there are appropriate grounds to do so. The *Fair Work Act 2009* may limit the circumstances in which you may lawfully suspend a person from duties.

In some cases, the investigating Commissioner may recommend that you suspend your employee from duties on work health and safety grounds.

An initial suspension period may not exceed 30 days, but may be extended, including on recommendation by the IPSC. A suspension period would generally be with pay, unless you are satisfied that exceptional circumstances exist to justify suspension without pay.

You must inform the PWSS before, or as soon as practicable after, suspending an employee from duties.

Will I receive a copy of an investigation report relating to my employee?

A copy of a final investigation report will be provided to you, if:

- you referred the conduct issue to the IPSC, or

- if your employee is employed under the MOP(S) Act, and is the respondent.

Do I have to enforce sanctions recommended by the IPSC?

If the IPSC recommends that you impose a sanction on your employee, and you consider there is a reason not to impose the sanction, you may apply to the IPSC for an internal review of the recommendation. An application for internal review is required to be made within 28 days of receiving the final investigation report, unless extended.

If you do not seek an internal review, you are required to impose any sanction recommended by the IPSC in relation to your employee (see section 20 of the MOP(S) Act).

The Behaviour Code for Australian Parliamentarians requires parliamentarians to implement IPSC recommendations in relation to their staff, and states that a failure to do so may result in a breach of the Code.