

Internal reviews of conduct issues

The PWSS Act provides for internal review of decisions made by the IPSC. A review panel of three Commissioners will be constituted to consider any review application made.

An application for internal review must be made within 28 days after receipt of the final report, unless an extension is provided.

A review application must be in writing and set out the reasons for seeking review. For example, you may consider there is new credible evidence relating to the conduct issue, or that the decision was unreasonable or disproportionate.

Can I apply for an internal review of a conduct issue?

A respondent may apply to the IPSC for review of:

- a decision that you have engaged in workplace misconduct, or
- if you are a Members of Parliament (Staff) Act 1984 (MOPS) employee, or another person who works for a parliamentarian predominantly at a parliamentary workplace (a 'designated worker'):
 - a decision to recommend a sanction (including a particular sanction) be imposed against you,
- if you are a parliamentarian:
 - a decision to impose a sanction, or
 - a decision to refer a serious breach finding to the Privileges Committee of a House of the Parliament.

A complainant may apply to the IPSC for review of:

- a decision that the respondent has not engaged in workplace misconduct,
- if the respondent is a MOPS employee or designated worker:
 - a decision to recommend a sanction (including a particular sanction) be imposed against them,

- if the respondent is a parliamentarian,
 - a decision to impose a sanction, or
 - a decision to refer a serious breach finding to the Privileges Committee of a House of the Parliament,
- a decision not to impose or recommend a sanction if a finding has been made that the respondent engaged in workplace misconduct,
- a decision not to refer a serious breach finding to the Privileges Committee of a House of the Parliament.

An employing parliamentarian of a MOPS employee respondent may apply to the IPSC for review of a decision to recommend an action be taken against the employee.

What is the process for an internal review?

Once an application for a review has been received, the Chair Commissioner must provide written notice to:

- the respondent,
- the complainant, and
- if the respondent is a MOPS employee, their employer.

The Chair Commissioner will constitute a review panel to deal with the application, consisting of three Commissioners. This panel cannot include any Commissioner involved in the original decision.

The review panel may conduct their review in such a manner as they think fit but must complete the review as expeditiously as the requirements of the review process and proper consideration of the matter permits.

The review panel has discretion as to whether a particular review is conducted based on information already provided, or if they require further information.

The review panel may dismiss an application at any time if they are satisfied that the application:

- is frivolous, vexatious, misconceived or lacking in substance,
- was not made in good faith, - has no reasonable prospects of success, or
- is otherwise an abuse of process of the IPSC.

If the review panel undertakes a review of the original decision, it must (by majority):

- confirm the original decision, or
- change the original decision, or
- set aside, and make a new decision in place of, the original decision.

Who is notified of the outcome of an internal review?

The review panel must, as soon as practicable, give written notice of their decision and reasons for the decision to:

- the applicant for the review,
- the complainant,
- the respondent,
- the referrer (if the conduct issue arose from a conduct issue referral), and
- the respondent's employer (if the respondent is a MOPS employee).

Notices of review decisions must exclude information the review panel is satisfied is sensitive.

In addition to the above:

- the Prime Minister will be given written notice if the respondent is a Minister and the review decision makes or affirms a finding that the Minister has engaged in workplace misconduct, and
- the Leader of a Parliamentary party will be given written notice if the respondent is a Presiding Officer who is a member of that Parliamentary party and the review decision is to refer, or affirm a decision to refer, a serious breach finding to the Privileges Committee of a House of the Parliament.

If the review panel decides to recommend that another person take action against the respondent, written notice of the review decision will also be provided to that person. This would apply where a recommendation is made that a Presiding Officer remove access to the Parliamentary precincts. It would also apply if a recommendation is made to an employer who is not a parliamentarian to take action against their employee.

If the respondent is a parliamentarian or a MOPS employee, written notice of the review decision and reasons for the decision may also be given to the CEO of the PWSS.

A review decision is final. There is no further internal review right in relation to a review decision.

Am I able to see a copy of the final report?

Those parties to an IPSC investigation who can seek review of an initial IPSC decision (outlined above), will be given the final report once it has been prepared. This informs their decision whether to seek internal review.

If no review is sought, a review application is dismissed, or a review decision affirms the original decision, then a copy of the final report setting out the original decision must also be given to:

- the referrer (if the conduct issue arose from a conduct issue referral),
- a Presiding Officer (if that Presiding Officer is to take an action),
- the Prime Minister (if the respondent is currently a Minister and the respondent has engaged in relevant conduct),
- the Leader of a Parliamentary party (if the respondent is a Presiding Officer who is a member of that Parliamentary party and the Privileges Committee of a House of the Parliament is to make a recommendation),
- the respondent's employer (if the respondent is not a MOPS employee and the employer is to take an action).

Final reports must exclude information the review panel is satisfied is sensitive.

These individuals would not receive a copy of the final report if the review decision is different from the original decision.

Will the outcome of the review be made public?

Generally, decisions of the IPSC are not published. This includes outcomes of internal reviews.

However, the IPSC may publish a statement containing information about a matter, including information about a review, where information about the matter is already publicly available, in order to afford fairness to any person or to correct erroneous reporting.



Additionally, the IPSC may publish a statement identifying a parliamentary respondent where:

on separate occasions, more than one adverse finding has been made against a parliamentarian, or

the parliamentarian fails to comply with a sanction imposed by the IPSC.

Can I seek external review of an IPSC decision?

You may be able to seek judicial review of an IPSC decision under the *Administrative Decisions (Judicial Review) Act 1977* or within the Federal Circuit and Family Court of Australia or the High Court's original jurisdiction.