

Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations

Inspector of the Independent Commission Against
Corruption

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Office of the Inspector of the Independent Commission Against
Corruption



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The Hon. Matthew Mason-Cox, MLC
President
Legislative Council
Parliament House
Sydney NSW 2000

The Hon. Jonathan O'Dea, MP
Speaker
Legislative Assembly
Parliament House
Sydney NSW 2000

By hand

Dear Mr President and Mr Speaker

In accordance with section 77A of the *Independent Commission Against Corruption Act 1988* (ICAC Act), I furnish to each of you for presentation to the Parliament my *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*.

Pursuant to section 78(1A) of the ICAC Act, I recommend that the Report be made public forthwith.

Sincerely

A handwritten signature in black ink, appearing to read "Gail Furness".

Gail Furness SC
Inspector of the Independent Commission Against Corruption

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1 Foreword

The Independent Commission Against Corruption (the ICAC or the Commission) is accountable to a Parliamentary Committee and the Inspector of the ICAC. The Inspector is an independent statutory officer whose role is to oversee the operations and conduct of the ICAC. I commenced a 5-year term as Inspector on 1 July 2022. My functions include auditing the operations of ICAC for the purpose of monitoring compliance with the law of the State and assessing the effectiveness and appropriateness of the procedures of ICAC relating to the legality or propriety of its activities.

I am pleased to present to the Presiding Officer of each House of Parliament my first audit report: *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations*.

This Report contains content about self-harm and suicide which may be distressing to some readers. If you need support, you can contact

- [Lifeline](#) 13 11 14
- [Suicide Call Back Service](#) 1300 659 467
- [Mental Health Line](#) 1800 011 511
- [Beyond Blue](#) 1300 224 636
- [Headspace](#) (for people aged 12-25) 1800 650 890.

2 Introduction

It is widely accepted that an effective ICAC is critical in instilling and maintaining trust and confidence in public administration. It does this by, among other things, investigating, exposing and preventing corruption in public office, in accordance with the law. Along with other integrity bodies, the Commission has significant coercive powers including requiring persons to produce documents and attend compulsory examinations, which are held in private, as well as public inquiries. These powers can be exercised many times during the course of an investigation.

There is no doubt that the process of investigations is often long and emotionally demanding for those involved. They can negatively impact on a person's psychological wellbeing as well as those close to that person. It is not only when the outcome of an investigation is known, but the investigative process itself that can threaten the reputation, employment and welfare of those involved. When a hearing is attended by significant media attention, the impact can be heightened.

In order for the Commission to maintain public trust it is necessary that it ensures that witnesses and other involved persons are appropriately and effectively supported throughout its investigations.

This is not only important for the mental health of those the Commission engages with, but there are also potential benefits to the Commission providing effective welfare support including witnesses being able to participate more fully or at all.

When deciding to conduct this audit, I had in mind these matters as well as the following events in Victoria and NSW.

Victoria

Before commencing in my position, I was aware that in earlier years, there were incidents in Victoria where the health and safety of witnesses before the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian equivalent of the ICAC, were compromised, in one case with tragic consequences. The Victorian Inspectorate, my equivalent in Victoria, investigated complaints by two police officers regarding their treatment by IBAC during IBAC investigations. In October 2018, the Inspectorate furnished to the Victorian Parliament a Special Report on the welfare of witnesses in IBAC investigations in which it made a number of recommendations.

I also knew that in January 2022, a former mayor under investigation by IBAC had died by suicide. The Victorian Parliamentary Integrity and Oversight Committee (the Victorian Committee) then reported in October 2022 on the *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare*. IBAC was one of the agencies the subject of the report.

The Victorian Committee, in addition to making inquiries of the agencies which are accountable to it, sought information from other integrity and non-integrity agencies as well as international bodies. It received 30 submissions and held two days of hearings.

I have had the benefit of the submissions made to the Victorian Committee, including from the ICAC. I have also closely considered the Victorian Committee's report. I note that the legislation governing the work of IBAC has significant differences from that in NSW, but nevertheless, I have been greatly assisted by the report and the submissions made to the Victorian Committee.

New South Wales

A few days after my appointment I received a letter from the ICAC advising that a witness had taken his own life after giving evidence before an ICAC public inquiry. I refer to that person as witness A.

Following receipt of that information, I became aware that in 2018 a witness who was due to give evidence in a compulsory examination before the ICAC, took his own life.

Soon after, I determined to conduct an audit of the operations of the ICAC for the purpose of

- monitoring compliance with the *Work Health and Safety Act 2011* (NSW) and
- assessing the effectiveness and appropriateness of the procedures of the ICAC

relating to the welfare of witnesses and others involved in the ICAC's investigation activities (collectively referred to as witnesses in this Report).

Then, prior to commencing the audit, I was advised by the Commission that a witness recently gave evidence at a public inquiry. The Commission asked him to provide various things and answers over the following days. Owing to concerns about his welfare, the witness was taken to a mental health facility for assessment. I refer to that witness as witness B.

In September 2022, after commencing the audit, I was informed by the Commission that a witness who gave evidence during a compulsory examination had died by suicide some months after giving evidence. I refer to that witness as witness C.

The audit process

The audit was conducted in two parts. First, having advised the Commission of the terms of my audit, I sought from the Commission details of its policies and procedures in relation to the welfare of witnesses.

In order to understand the principles which should be adopted in ensuring that the Commission has in place proper procedures and processes and that the Commission's procedures embody those principles, I engaged a consultant, Simon Brown-Greaves on 9 September 2022. Mr Brown-Greaves is a registered psychologist who has had extensive experience working in the criminal justice system in Australia. I provided Mr Brown-Greaves with those policies and procedures as detailed by the Commission.

Mr Brown-Greaves was asked to

1. advise me as to best practice principles in this area including by reference to the work publicly available of other relevant integrity and law enforcement bodies, for example, the IBAC in Victoria, and
2. review and assess, by reference to best practice principles, the measures taken by the ICAC to ensure, so far as is reasonably practicable, that the health and safety of other persons involved in its investigation activities is not put at risk from work carried out as part of the conduct of the ICAC.

Mr Brown-Greaves provided me with his report on 9 December 2022. His report is annexed to this Report. His qualifications and experience are set out in an appendix to his report.

I provided the Commission with a copy of Mr Brown-Greaves' report and welcomed any submissions. The Commission accepted the recommendations made by Mr Brown-Greaves with one qualification which is set out in chapter 4 of this Report. I also provided the Commission with this Report in draft form and, again, welcomed any submissions. The Commission accepted and supported my recommendations and sought clarification as to the timing and funding of support, which has been provided in this Report.

Secondly, in order to understand the steps taken by the Commission in relation to witnesses A, B and C, I reviewed whether the Commission had followed its procedures concerning its dealings with each of them. The purpose of this aspect of the review was not to investigate the manner and cause of either death, as that is properly a matter for the NSW Coroner. Further, the purpose was not to consider whether the Commission could or should have acted differently in respect of the circumstances presented in each case.

Rather, it was limited to an exercise to determine whether the Commission was applying its procedures in each case. That exercise has assisted me in understanding any further matters which should be the subject of this Report, in addition to those already raised by Mr Brown-Greaves.

This Report

This Report is divided into four parts. The first part sets out the legal framework governing the Commission's obligations in relation to the welfare of witnesses and others involved in the ICAC's investigation activities.

The second part summarises the advice given by Mr Brown-Greaves.

The third part sets out the results of the review concerning witnesses A, B and C.

The final part is the conclusions I have reached and recommendations I have made.

3 Relevant legal framework

The ICAC's management of witness welfare is governed by the *Independent Commission Against Corruption Act 1988*, the *Work Health and Safety Act 2011* (NSW) and the *Public Interest Disclosures Act 1994*.

Independent Commission Against Corruption Act 1988 (the Act)

The ICAC was established in 1988. The ICAC's principal functions are

- to investigate and expose corrupt conduct in the NSW public sector
- to actively prevent corruption through advice and assistance, and
- to educate the NSW community and public sector about corruption and its effects.

The ICAC has various powers under the Act and other legislation to enable it to conduct its investigations. These include power to

- obtain a statement of information from a public authority or public official (s 21)
- obtain documents or other things by serving a written notice (s 22)
- enter and inspect public premises to inspect documents and other things and take copies of any document (s 23)
- conduct a compulsory examination (private hearing) (ss 30, 35)
- conduct a public inquiry (ss 31, 35)
- apply for the issue of a search warrant (s 40)
- prepare a report in relation to any matter that has been or is the subject of an investigation (s 74)
- apply for a warrant to use a surveillance device (*Surveillance Devices Act 2007*)
- obtain approval for the conduct of an operation that would otherwise be unlawful (*Law Enforcement (Controlled Operations) Act 1997*)
- obtain authorisation for ICAC officers or others to use a false identity (*Law Enforcement and National Security (Assumed Identities) Act 2010*)
- apply for a telecommunications interception warrant and a stored communications warrant and obtain access to existing and prospective telecommunications data (*Telecommunications (Interception and Access) Act 1979*).

The Act has a number of provisions specifically and more generally relevant to the welfare of those involved in ICAC investigations.

Foremost is that the Commission has to be satisfied it is in the public interest to conduct a compulsory examination or public inquiry. The Commission must take into account, in determining whether or not it is in the public interest to conduct a public inquiry, any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry), and whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of persons concerned (ss 30, 31).

Witnesses can be protected by the Commission exercising its power to direct that certain matters be kept confidential, where it is satisfied it is in the public interest to do so. These include any evidence given before it, any information that might enable a person who has given or may be about to give evidence before the ICAC to be identified or located and the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry (s 112).

However, importantly for the welfare of witnesses, the Act provides that it is not a contravention of a direction under s 112, to publish any evidence, contents of a document or information to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person who has given or may be about to give evidence at a compulsory examination or public inquiry.

Further, a person who is required by notice to produce things or by a summons to give evidence cannot disclose information about the notice or summons that is likely to prejudice the investigation to which it relates (s 114). Similarly to s 112, disclosure is permitted to a registered medical practitioner or registered psychologist for the purposes of counselling but only in respect of a person required to give evidence. That permission is not granted to a person required to produce a statement of information or a document but is limited to those giving evidence. I comment on this provision later in this Report.

There are specific provisions directly relating to the safety of witnesses. Section 50 of the Act provides that, if it appears to the ICAC that, because a person is assisting the ICAC, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the ICAC may make such arrangements as are necessary to protect the safety of any such person, or to protect any such person from intimidation or harassment.

Under s 93 of the Act, it is a criminal offence for any person to injure a witness or person assisting the Commission.

Finally, and fundamentally, while the Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate (s 17(1)), the ICAC is required to afford procedural fairness.

Section 30(3) provides that a person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated.

Those required to attend a public inquiry are entitled to be informed of both the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated (s 31(6)).

If the ICAC considers it is in the public interest to do so, it may hold part of a public inquiry in private (s 31(9)). This may be done having regard to the welfare of those affected by the evidence to be given.

The ICAC is required to give a reasonable opportunity for a person giving evidence at a compulsory examination or public inquiry to be legally represented (s 33).

The Commission is required to give those against whom it is proposed to make an adverse finding in a report, a reasonable opportunity to respond to the proposed adverse finding, and the Commission must include in the report a summary of the substance of the person's response that disputes the adverse finding, if the person requests the Commission to do so.

Further, the Commission must not include in the report any information in the person's response that would identify any person who is not the subject of an adverse finding, unless the Commission is satisfied that it is necessary to do so in the public interest, and is satisfied that doing so will not cause unreasonable damage to the reputation, safety or well-being of a person who is not the subject of an adverse finding, and includes in the report a statement that the person identified is not the subject of any adverse finding (s 79A).

Under s 31B of the Act the ICAC is required to issue procedural Guidelines relating to the conduct of public inquiries. The Guidelines are required to provide guidance on

- a. the investigation of evidence that might exculpate affected persons
- b. the disclosure of exculpatory and other relevant evidence to affected persons
- c. the opportunity to cross-examine witnesses as to their credibility

- d. providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence
- e. any other matter the Commission considers necessary to ensure procedural fairness.

The Guidelines are published on the ICAC's public website.

The Guidelines also provide as follows

7.4 The Commission will seek to ensure that an affected person has a reasonable opportunity to address material, upon which the Commission may rely, which is adverse to his or her interests.

7.5 Counsel Assisting should bring to the attention of any affected person, either through the process of examination of the affected person or other witnesses, the tendering of documentary or other evidence in the course of the public inquiry or by way of submissions, potential adverse findings against the affected person that Counsel Assisting contends should be made by the Commission, and the substance of the evidentiary grounds for such findings.

7.6 If any further potential adverse findings are identified during the drafting of the investigation report that were not identified in Counsel Assisting's submissions, the Commission will notify the relevant affected person(s) of the potential adverse finding and provide the person(s) with an opportunity to make submissions in relation to the potential adverse finding.

Work Health and Safety Act 2011 (NSW) (WH&S Act)

The WH&S Act imposes a duty of care on the ICAC to ensure, so far as is reasonably practicable, that the health and safety of workers and other persons is not put at risk from work carried out as part of the conduct of the business or undertaking (s 19).

Section 17 provides that that duty requires the ICAC to eliminate risks to health and safety, so far as is reasonably practicable, and if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

Section 18 defines what is 'reasonably practicable'

*In this Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including —*

- (a) the likelihood of the hazard or the risk concerned occurring, and*
- (b) the degree of harm that might result from the hazard or the risk, and*
- (c) what the person concerned knows, or ought reasonably to know, about —*
 - (i) the hazard or the risk, and*
 - (ii) ways of eliminating or minimising the risk, and*
- (d) the availability and suitability of ways to eliminate or minimise the risk, and*
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.*

The ICAC, in its submission to the Victorian Committee defined officers of the ICAC, independent counsel engaged by the ICAC and others engaged by the ICAC to provide services as 'workers' who are 'at work' such as to engage the duty in s 19. A witness or other person (including legal representatives) involved in an ICAC investigation are 'other persons' to whom the duty in s 19 applies.

In that same submission, the Commission said '*considering what is 'reasonably practicable' a balancing exercise is required, in which the greater the magnitude of the risk and the greater the gravity of the harm, should the event occur, the higher the duty to take precautions*'. I agree.

Section 27(1) of the WH&S Act imposes a duty which applies to senior ICAC officers to exercise due diligence to ensure compliance with the duties and obligations under that Act.

In addition, the WH&S Act requires the ICAC to notify SafeWork NSW of a 'notifiable incident' which includes the death of a person (ss 35, 38).

The Work Health and Safety Amendment Regulation 2022 under the WH&S Act amended the Work Health and Safety Regulation 2017 with effect from 1 October 2022.

Division 11 of the Work Health and Safety Regulation 2017 requires a person conducting a business or undertaking to implement measures to manage psychosocial risks. A psychosocial risk is a risk to the health or safety of a worker or other person arising from a psychosocial hazard. A psychosocial hazard is a hazard that arises from, or relates to —

- (i) the design or management of work, or
- (ii) a work environment, or
- (iii) plant at a workplace, or
- (iv) workplace interactions or behaviours, and

may cause psychological harm, whether or not it may also cause physical harm.

Public Interest Disclosures Act 1994 (the PID Act)

NSW public officials can report suspected corruption to the Commission under the PID Act.

The PID Act provides protections relevant to the welfare of those who make public interest disclosures.

These include a requirement for the ICAC to keep the identity of a person who makes a public interest disclosure confidential unless specific exceptions apply. There is also protection from detrimental action taken against such a person that is substantially in reprisal for them having made a disclosure. Detrimental action includes action causing, comprising or involving

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from or prejudice in employment
- disciplinary proceedings.

The ICAC publishes information on its website as to how it deals with public interest disclosures which indicates that

Once a matter is reported, the ICAC considers whether the PID Act applies to the information. The ICAC may seek further details to assist this consideration.

If a public official provides their name and contact details, the ICAC will confirm in writing that the information has been received. If they have not already given consent for their identity to be disclosed to another agency, they will be asked to indicate in writing whether or not consent is given to being identified. Generally, identities will be kept confidential even if consent is given to being identified, unless the ICAC has to release names for the matter to be properly examined.

...

If the ICAC determines that the matter raised should be treated as a public interest disclosure, the PID Act requires the ICAC to advise the claimant within six months about the intended action. The ICAC may decide to take direct action on the information provided or may decide, in appropriate circumstances, to refer it to another agency.

On 13 April 2022, the *Public Interest Disclosures Act 2022* received assent. By proclamation it will commence on 1 October 2023. Until commencement of that Act, the PID Act remains in force. The 2022 Act is intended to simplify the public interest disclosure process, provide more comprehensive protections and clarify the duties that agencies have to take steps in response to the disclosures received. The ICAC, like other public agencies, will need to update its policies and procedures to reflect the changes.

4 The Commission's policies and procedures

In March 2020, the then Inspector asked the Commission to advise, among other things the steps it took to manage risks to the health and safety of persons whose health, particularly mental health, and safety may be impacted by work carried out by the Commission.

The Commission provided a detailed response, which included reference to various Work Instructions, Manuals, Guidelines and the like. The Commission advised that there was no one overarching written policy dealing with management of risks to the health and safety of persons whose health and safety may be impacted by the full range of work carried out by the Commission. It advised that specific training had not been provided and there was only one occasion on which the Commission had been approached by legal representatives concerned about the mental health of a witness.

On 15 May 2020, the Commission provided the Inspector with a draft witness welfare policy, which was with the Chief Commissioner for comment before being submitted for wider internal consultation and endorsement. I understand that that policy has since been confirmed with minimal changes. It remains in place.

On 8 July 2022, I sought information about

- any changes to the Commission's policies since the death of the witness in 2018 and since May 2020 as well as its current policies
- training provided to staff and others
- whether the notices and summonses currently issued under the Act, contain reference to s 114(3)(d) of the Act, that is that a person who has been required to give evidence can disclose that to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling
- whether the Commission's Employee Assistance Program (EAP) services are available to witnesses before the Commission, and if so, how it is accessed by them and
- what current 'relevant welfare services' the Commission officers advise are available.

In response, by letter dated 18 July 2022, the then Commissioner provided various Manuals and advised that

...the Commission's Operations Manual Work Instruction IM02-A Managing risks to the health and safety of those involved in investigations...was formally issued on 25 September 2020. It is in substantially the same form as the draft document provided to the Inspector under cover of Mr Waldon's email of 15 May 2020.

As a consequence of adopting the work instruction, the Commission's Information for witnesses brochure was updated to include a new section on witness welfare and protection.

A copy of the most recent version of the brochure is also enclosed. Information concerning witness welfare and protection is at pages 5-7. The brochure is available from the Commission's public website and is also provided to witnesses required to attend a compulsory examination or public inquiry.

In my letter of 28 April 2020, I referred to and provided copies of the Commission's Operations Manual Work Instruction IP03-A dealing with security and risk management for Commission hearings, the Hearing Risk Management Plan, Operations Manual Policy and Procedure IP09, the search warrant Risk Management Plan and Operations Manual Guideline IM02-A Communications management guideline - Self-harm by people involved in ICAC investigations. These remain in place.

Notices issued under ss 21 and 22 of the ICAC Act refer to s 114 of the ICAC Act and note that information may be disclosed to an employee, agent or other person in order to obtain information to comply with the notice if the person has been directed not to inform the person to whom the

information relates about the matter, to obtain legal advice or for the purpose of, or in the course of, legal proceedings.

Summonses issued under s 35 of the ICAC Act requiring a person to attend and give evidence at a compulsory examination contain similar information. I note that reference to s 114(3)(d) (disclosure to a registered medical practitioner or registered psychologist) has not been included in such summonses. This omission has been rectified and the following additional basis on which information about the summons may be disclosed has been added to the body of the summons:

- to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person required to give evidence by this summons.

The Commission does not generally seek to restrict those receiving a summons to attend and give evidence at a public inquiry from divulging information about the summons or public inquiry.

In June this year, the Commission arranged for participation of Commission staff in an accredited mental health first aid course being provided through EML, the Commission's workers compensation insurer. The course will be conducted on 19 and 20 July 2022 and will involve providing participants with practical skills, including how to identify and assist a person experiencing mental health problems. The course is based on international mental health first aid guidelines. The course provider is ... an accredited master instructor in mental health first aid who has trained more than 1,500 mental health first aiders over nearly 100 courses.

Nine Commission officers, including two investigators and one lawyer, will attend the course. Attendance is voluntary rather than mandatory as only nine spaces were available. Course participants will receive a copy of a mental health first aid manual to keep and will be eligible to become an accredited Mental Health First Aider.

The Commission will explore sourcing other mental health first aid providers with a view to either running future programs in-house or externally to facilitate a more tailored program specific to the Commission's needs.

In addition, as a result of the death of [witness A], the Commission has made contact with Beyond Blue to discuss what additional steps should be taken to assist the Commission to educate our staff who interact with witnesses about mental health, including what signs to look for and appropriate responses.

The Commission's Employee Assistance Program (EAP) may be recommended to persons whose health and safety is considered by the Commission to potentially be at risk arising from a Commission investigation or may be accessed on request by such persons. The availability of EAP is referred to in the Commission's Information for witnesses brochure.

The current "relevant welfare services" that can be advised by Commission officers as available are those identified under "Welfare services" on page 8 of Work Instruction IM02-A.

On 22 August 2022 I wrote to the Chief Commissioner advising him of the commencement of my audit and requesting a combined PDF of all current versions of the Commission's documents relevant to the management of the welfare of witnesses and others involved in the ICAC's investigation activities. The Chief Commissioner provided the requested material on 25 August 2022.

ICAC policies and procedures

The key documents which record the Commission's approach to health and safety, as provided by the Commission on 25 August 2022 are set out in Mr Brown-Greaves' attached report.

In summary, the Commission's approach to witness welfare includes staff training, checking intelligence and other holdings, preparation of individual and operational risk assessments and plans, seeking input from medical practitioners, where necessary, making available the Commission's EAP and providing information to witnesses about available supports.

The ICAC has set out its requirements of staff in the table below, which is reproduced from its Work Instruction IM02-A.

ICAC Table of requirements

Element	Requirement
Guidance	The Commission, through this Work Instruction and appropriate training, will provide guidance to Commission officers on how to identify and manage risks to the health and safety of persons who are subject to the exercise of the Commission’s powers.
Training	The Commission has trained first aid officers. In addition, the Commission will provide ongoing mental health awareness training for Commission officers involved in the exercise of the Commission’s powers so they have a general understanding and awareness of relevant mental health issues and how to deal with them.
Notices under ss 21/22/23 ICAC Act	<p>Prior to the exercise of powers under these sections of the ICAC Act, the Chief Investigator responsible for the relevant investigation will check, or arrange to have checked, Commission intelligence holdings and any other database accessible to the Commission considered to be potentially relevant for the purpose of identifying whether there is any potential risk to the health and safety of any person who is the subject of the investigation or otherwise a person of interest to the investigation.</p> <p>Where no risk is identified that fact is to be recorded in the Commission’s case management system.</p> <p>Where a risk is identified, the Chief Investigator is to prepare an operational risk management plan setting out each risk and identifying available means of eliminating or minimising the risk. The operational risk management plan will be provided to the Executive Director, Investigation Division. Where any identified risk is assessed as significant the Executive Director, Investigation Division will inform the Chief Executive Officer and the Chief Commissioner and (if not the Chief Commissioner) the Commissioner responsible for exercising the relevant statutory power. They will be responsible for approving the strategy for dealing with the risk. If the Chief Executive Officer and relevant Commissioner(s) are not available and the matter requires urgent attention the Executive Director, Investigation Division in consultation with the Executive Director, Legal Division where available) will be responsible for approving the strategy and subsequently notifying the Chief Executive Officer and relevant Commissioner(s).</p> <p>The Chief Investigator will ensure that those Commission officers who will be responsible for exercising the relevant statutory power are cognizant of the risk(s) and the strategy to address the risk(s).</p> <p>The above procedure will not be undertaken where the subject of the investigation or any person of interest to the investigation will not be involved in or have knowledge of the exercise of the relevant power (such as where a notice under s.22 of the ICAC Act is issued to a financial institution for production of records).</p>

Element	Requirement
Search warrants – s.40 ICAC Act	<p>The Chief Investigator responsible for the relevant investigation will prepare a Risk Management Plan for the execution of any search warrant in relation to the investigation. The Risk Management Plan will include, where known, any risk to the physical and mental health of the persons likely to be present at the execution of the warrant and a management strategy to deal with those risks.</p> <p>The Operational Risk Management Plan will be provided to the Executive Director, Investigation Division. Where any identified risk is assessed as significant the Executive Director, Investigation Division will inform the Chief Executive Officer and the Chief Commissioner and (if not the Chief Commissioner) the Commissioner responsible for overseeing the investigation.</p> <p>They will be responsible for approving the strategy for dealing with the risk. If the Chief Executive Officer and relevant Commissioner(s) are not available and the matter requires urgent attention the Executive Director, Investigation Division in consultation with the Executive Director, Legal Division (where available) will be responsible for approving the strategy and subsequently notifying the Chief Executive Officer and relevant Commissioner(s).</p> <p>The Chief Investigator will ensure that those Commission officers who will be responsible for executing the search warrant are cognizant of the risk(s) and the strategy to address the risk(s).</p> <p>If, during the execution of a search warrant, a Commission officer becomes aware that there may be a risk to the physical or mental health of any person affected by the execution of the search warrant, the Commission officer will immediately notify the relevant Chief Investigator or, if the Chief Investigator is not available, the Executive Director, Investigation Division. The Chief Investigator (or Executive Director Investigation Division) will identify and implement such action as is appropriate to eliminate or minimise any such risk.</p>
Controlled Operations	<p>The <i>Law Enforcement (Controlled Operations) Act 1997</i> provides that the Commission may undertake certain authorised activity that, but for the authorisation, would be unlawful. Such activity may include Commission officers and civilian participants. Any application for authorisation to conduct a controlled operation must include a plan of the proposed operation (which, under the <i>Law Enforcement (Controlled Operations) Act 1997</i> is to be approved by the Chief Commissioner or other Commissioner authorizing the controlled operation).</p> <p>In preparing the operation plan, the Chief Investigator responsible for the relevant investigation will identify any potential risk to the health and safety of any persons to be involved in the proposed operation and include strategies for eliminating or reducing such risks. The Chief Investigator will ensure that those Commission officers involved in the controlled operation are cognizant of any identified risk(s) and the strategy to address the risk(s).</p>

Element	Requirement
<p>Summoning a person to attend at a compulsory examination – s.30 ICAC Act</p>	<p>The Chief Investigator responsible for the relevant investigation will check, or arrange to have checked, Commission intelligence holdings and any other database accessible to the Commission considered to be potentially relevant for the purpose of identifying whether there is any potential risk to the health and safety of the proposed witness.</p> <p>Where no risk is identified that fact will be recorded in the Commission’s case management system.</p> <p>Where a risk is identified, the Chief Investigator will prepare an Operational Risk Management Plan setting out each risk and identifying available means of eliminating or minimising the risk.</p> <p>The Operational Risk Management Plan will be provided to the Executive Director, Investigation Division and Executive Director, Legal Division. Where any identified risk is assessed as significant the Executive Director, Investigation Division will inform the Chief Executive Officer and the Chief Commissioner and (if not the Chief Commissioner) the Commissioner presiding at the compulsory examination. They will be responsible for approving the strategy for dealing with the risk. If the Chief Executive Officer and relevant Commissioner(s) are not available and the matter requires urgent attention the Executive Director, Investigation Division in consultation with the Executive Director, Legal Division where available) will be responsible for approving the strategy and subsequently notifying the Chief Executive Officer and relevant Commissioner(s).</p> <p>The Chief Investigator will ensure that those Commission officers who will be responsible for serving the summons and for the conduct of the compulsory examination (including any external legal practitioner engaged as counsel assisting) are cognizant of the risk(s) and the strategy to address the risk(s).</p> <p>If, during or after service of a summons, a Commission officer becomes aware that there may be a previously unidentified risk to the physical or mental health of the recipient of the summons (or the risk is greater than previously identified), the Commission officer will immediately notify the relevant Chief Investigator or, if the Chief Investigator is not available, the Executive Director, Investigation Division. The Chief Investigator (or Executive Director, Investigation Division) will identify and implement such action as is appropriate to eliminate or minimise any such risk.</p>
<p>Summoning a person to attend at a public inquiry – s.31 ICAC Act</p>	<p>The Chief Investigator responsible for the relevant investigation will prepare a Hearing Risk Management Plan for the public inquiry. It will identify any potential risk to the health and safety of those involved in the public inquiry and include strategies for eliminating or minimising such risks.</p> <p>The Hearing Risk Management Plan will be provided to the Executive Director, Investigation Division and Executive Director, Legal Division. Where any identified risk is assessed as significant the Executive Director, Investigation Division will inform the Chief</p>

Element	Requirement
	<p>Executive Officer and the Chief Commissioner and (if not the Chief Commissioner) the Commissioner presiding at the public inquiry.</p> <p>They will be responsible for approving the strategy for dealing with the risk. If the Chief Executive Officer and relevant Commissioner(s) are not available and the matter requires urgent attention the Executive Director, Investigation Division in consultation with the Executive Director, Legal Division where available) will be responsible for approving the strategy and subsequently notifying the Chief Executive Officer and relevant Commissioner(s).</p> <p>The Chief Investigator will ensure that those Commission officers who will be responsible for serving the summons and for the conduct of the public inquiry (including counsel assisting) are cognizant of the risk(s) and the strategy to address the risk(s).</p> <p>If, during or after service of a summons, a Commission officer becomes aware that there may be a previously unidentified risk to the physical or mental health of the recipient of the summons (or the risk is greater than previously identified), the Commission officer will immediately notify the relevant Chief Investigator or, if not available, the Executive Director, Investigation Division.</p> <p>The Chief Investigator (or Executive Director, Investigation Division) will identify and implement such action as is appropriate to eliminate or minimise any such risk.</p>
<p>Conduct of a compulsory examination and public inquiry</p>	<p>Prior to the commencement of a compulsory examination or a witness giving evidence in a public inquiry, where any potential risk to the health or safety of a witness has been previously identified, the Commission lawyer with carriage of the matter may enquire of the witness (or their legal representative if legally represented) whether they have any physical or mental condition that may affect their welfare. In the event advice of such a condition is provided, the Commission lawyer will notify Counsel Assisting the Commission (if any) and the presiding Commissioner with a view to determining what, if any, action needs to be taken with respect to that witness.</p> <p>Where a witness required to attend a compulsory examination or public inquiry advises a Commission officer that they consider they may be unfit to attend and give evidence, the Commission may require the person to provide a report from a suitably qualified medical practitioner setting out the person's current condition and how that impacts on the person's ability to attend and give evidence. The person must nevertheless attend the Commission in response to the summons unless released from doing so by the presiding Commissioner.</p> <p>The danger of physical risk to those attending hearings is minimised through:</p> <ul style="list-style-type: none"> • having special constables on duty to maintain security; • not allowing entry to the Commission's offices or hearing rooms by banned persons;

Element	Requirement
	<ul style="list-style-type: none"> • limiting and controlling access to public and private areas of the Commission; • electronic screening of persons wishing to enter the hearing room; • electronic monitoring of the hearing room; • not permitting glassware to be used in the hearing room; and • provision for response to a critical incident (which includes an incident involving imminent or actual serious injury to a person). <p>Where a potential risk to the health and safety of any person required to attend at a compulsory examination or public inquiry is identified, the Commission may:</p> <ul style="list-style-type: none"> • regulate the hearing so as to reduce the risk; • adjourn the hearing where appropriate; • obtain a medical report from a suitably qualified medical practitioner; • take evidence from a suitably qualified medical practitioner; • make suppression orders under s.112 of the ICAC Act; • make arrangements under s.50 of the ICAC Act (see below); • arrange for a Commission first aid officer to be present; • appoint a Commission contact officer to liaise with the person; • arrange for an appropriately qualified medical practitioner or counsellor to be present. <p>Where a person is unwell or attempts self-harm, immediate medical assistance will be sought, including in all cases of attempted self-harm the calling of an ambulance. Police will also be notified of any attempt at self-harm.</p>
Welfare services	<p>The Commission’s Employee Assistance Program (“EAP”) is available to persons whose health and safety may be at risk arising from a Commission investigation.</p> <p>If the person is a NSW public sector employee then the person may be able to seek confidential counselling through their agency’s EAP and should be so advised.</p> <p>If the person is employed in the private sector or is unemployed it may be appropriate to recommend the person visit the NSW Mental Health Commission website at: www.nswmentalhealthcommission.com.au.</p> <p>Persons can also be advised to contact:</p> <ul style="list-style-type: none"> • Lifeline on 13 11 14 • Suicide Call Back Service 1300659 467 • Mental Health Line 1800 011 511 • Beyond Blue 1300 224 636

Element	Requirement
	<ul style="list-style-type: none"> • Headspace (for people aged 12-25) 1800 650 890. <p>The Commission has available trained first aid officers and may appoint a Commission contact officer to liaise with a person.</p> <p>If a Commission officer believes that a registered health practitioner or welfare support service should be notified of a health or safety risk to a person involved in a Commission investigation, the officer will report that concern to the Chief Investigator responsible for the investigation. If the Chief Investigator determines to make such a notification, the Chief Investigator will seek to obtain the prior permission of the person for such notification and for the provision of their personal welfare details.</p>
Monitoring welfare	<p>Commission officers exercising a Commission statutory power will, at the time the power is being exercised, consider the welfare of those subject to the exercise of the relevant power with a view to identifying and dealing with any risks.</p> <p>Once the power has been exercised, the Commission officers involved in the exercise of the power will consider whether any relevant welfare support services should be notified with respect to any person the subject of the exercise of the power. If it is considered that welfare support services should be notified the relevant Commission officer will notify his/her Executive Director.</p>
Medical incident and management response	<p>Where Commission officers become aware that a person affected by the exercise of Commission statutory powers requires medical attention from a qualified medical professional, the senior Commission officer will make arrangements for the person to be offered such attention. The need for such services will be reported to the Chief Executive Officer.</p>
Section 112 restrictions on publication of evidence	<p>Section 112(3) of the ICAC Act provides that it is not a contravention of a direction given under s.112 to publish any evidence, contents of a document or information to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person who has given or may be about to give evidence at a compulsory examination or public inquiry.</p>

Information for Witnesses brochure

The Commission publishes on its website and provides to each witness a brochure entitled *Information for Witnesses*. It covers many matters including a section on witness welfare. Of particular note, that section advises

- *If you are unwell or under any physical or mental impediment that may affect your involvement in the Commission’s investigation or believe any physical or mental condition may be exacerbated by your involvement in the Commission’s investigation, you should inform the Commission as soon as possible so that the Commission can assess and manage any risk to your health and safety.*

- *If you are required to attend a compulsory examination or public inquiry and consider that you are unfit to attend and give evidence, you should advise the Commission officer named in your summons as soon as possible. The Commission may require you to provide a report from a suitably qualified medical practitioner setting out your current condition and how that impacts on your ability to attend and give evidence. You must nevertheless attend the Commission in response to the summons unless released from doing so by the presiding Commissioner.*
- *Where a potential risk to the health and safety of any person required to attend at a compulsory examination or public inquiry is identified, the Commission may*
 - *regulate the hearing so as to reduce the risk*
 - *adjourn the hearing where appropriate*
 - *obtain a medical report from a suitably qualified medical practitioner*
 - *take evidence from a suitably qualified medical practitioner*
 - *make suppression orders under s 112 of the ICAC Act (see below)*
 - *make arrangements to protect the safety of any person (see below)*
 - *arrange for a Commission first aid officer to be present*
 - *appoint a Commission contact officer to liaise with the person*
 - *arrange for an appropriately qualified medical practitioner or counsellor to be present.*

The brochure advises that the Commission's EAP is available to persons whose health and safety may be at risk arising from a Commission investigation. Contact details are given for a number of support services including Lifeline.

It also refers to s 114 and that disclosure of receipt of a summons to give evidence is permitted to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling). Attached to the brochure are the s 31B Guidelines referred to above.

5 Expert report

I provided the Commission's response including the documents and information referenced above to Mr Brown-Greaves. His report is annexed to this Report. I asked Mr Brown-Greaves for

1. advice as to best practice principles in this area including by reference to the publicly available work of other relevant integrity and law enforcement bodies, for example, the IBAC, and
2. a review and assessment of, by reference to best practice principles, the measures taken by the ICAC to ensure, so far as is reasonably practicable, that the health and safety of witnesses and other persons involved in its investigation activities is not put at risk from work carried out as part of the conduct of the ICAC. These include
 - a. policies, procedures, practices, manuals, guidelines, and the like in place at the ICAC in relation to the welfare of witnesses and others involved in ICAC investigation activities
 - b. materials used by the ICAC to inform witnesses and others involved in ICAC investigations
 - c. any relevant training made available to staff of the ICAC
 - d. other related activities of the ICAC.

In preparing his report, Mr Brown-Greaves reviewed policy and practices in a number of relevant and comparable agencies and considered current benchmarks in the provision of mental health and wellbeing services to vulnerable or 'at risk' populations generally and within the criminal justice system specifically.

He acknowledged that the purpose of the ICAC process is to conduct thorough and fair investigations that reasonably carry a degree of 'stress' for the individual involved (and potentially their families or close associates).

Principles

Mr Brown-Greaves set out the principles he applied in evaluating the practices and policies of the ICAC which are paraphrased below.

1. Policy that clearly states the obligations of the ICAC generally, and the obligations that apply to particular roles within the ICAC.
2. Procedures that clearly set out the expectations of officers with responsibilities under the ICAC's remit with respect to managing the mental health of witnesses and others involved in the ICAC investigation activities.
3. Recognition that the procedures will be necessarily different for varied roles within the investigative process (i.e., the obligations of the investigator will be different from the case lawyer, which in turn will be different from the roles of Commission officers who may provide administrative support or executive directors).
4. A basic premise that all ICAC officers should be clear about their role with respect to the mental health of the witnesses or other persons involved in the ICAC's investigation activities that they are working with and must be adequately trained to execute those expectations.
5. The provision of any formal mental health support or treatment should be independently provided and not delivered by the ICAC itself (i.e., through a managed referral process).
6. In general terms it is expected that staff (investigators, case lawyers and other Commission officers having contact with witnesses and others involved in the ICAC investigation activities) will have a basic capability to recognise risk to an individual's mental health or wellbeing, understand what to do in the event of such risk being identified, and be able to act accordingly.

7. The ICAC should have an administrative function, independent of an investigation, compulsory examination and/or public inquiry, where identified risks can be centrally managed and responded to.
8. There should be recognition and awareness that the risk to the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities will be dynamic and potentially changeable over the period of their involvement with the ICAC. Investigations often take significant time and procedures must ensure that witnesses and others involved in the ICAC investigation activities have ongoing measures in place to support their mental health plan over the period that the person is actively engaged in the ICAC investigation activities.
9. The obligations to manage the mental health of witnesses and others involved in the ICAC investigation activities necessarily have limits from the ICAC's perspective. This premise also extends to accepting that one should not expect Commission officers to be experts in the identification, diagnosis, or treatment of mental health conditions and that independent, qualified mental health practitioners should either be engaged or referred to for such activities. ICAC training and policy should carefully reflect this premise and focus on building basic capability around recognising risk and responding on the basis of a clear set of procedures.
10. ICAC should have an appointed Wellbeing Management Officer who manages cases where risk has been identified and ensures that reasonably practicable measures are put in place and monitored over the period that the person is actively engaged in the ICAC investigation activities. This role should be independent of the investigative process. This role should not be viewed as a 'clinical' or treatment role, but a case management and assurance role. It would be reasonably expected that this role would liaise closely with case lawyers who are running the day-to-day operations of an investigation.
11. The procedures and practices should reflect that there is a wide range of potential mental health risks associated with participation in an investigation, compulsory examination, and/or public inquiry. Whilst suicide and self-harm are paradoxically infrequent (and naturally tragic and distressing for all concerned) and often attract the most scrutiny, there are other potential negative mental health outcomes that may require action, for example, post-traumatic stress disorder, anxiety, and depression. The role of ICAC investigator or case lawyer should be to identify the possible risk so far as is reasonably practicable and take the appropriate and prescribed action. This would usually involve liaison with the Wellbeing Management Officer, should such a role be appointed.
12. Once identified, it is likely that an 'at risk' person engaged in the ICAC investigation activities will be referred to an independent mental health practitioner. The Wellbeing Management Officer would then ensure that the risk is both managed according to the correct process and that a referral has occurred. If and when the ICAC re-engage with the person, the case lawyer in consultation with the Wellbeing Management Officer will advise the team of the risk so that appropriate steps can be taken.

Key conclusions

Mr Brown-Greaves considered the policies and procedures of the Commission and made the following conclusions

- the Commission's overarching Risk Management Policy is comprehensive and a thorough and contemporary general framework
- the ICAC should not take on a role as a treatment provider to affected persons and the Commission's EAP should not be made available to witnesses and others involved in the ICAC's investigation activities

- the ICAC should ensure that the affected person is offered independent referral to a qualified mental health practitioner with AHPRA registration or can engage with their own health provider as required
- the training program offered to staff is not adequate in relation to welfare of witnesses and others involved in the ICAC's investigation activities
- the ICAC should consider establishing the position of Wellbeing Management Officer to support the implementation of the recommendations which would focus on communications with staff and persons of interest, managing the induction and training program, and ensuring effective reporting and documentation of incidents and risk management within the context of the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities.

Recommendations

Mr Brown-Greaves made the following recommendations

6.1 Policy and procedures

The ICAC should:

- 1. Introduce an overarching policy that sets out its position with respect to the welfare and psychological wellbeing of witnesses and others involved in the ICAC investigation activities.*
- 2. Ensure that the risk management framework explicitly addresses risks to the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities.*
- 3. Establish a policy that describes the role of ICAC staff, and their accountabilities for the wellbeing and psychological safety of witnesses and others involved in the ICAC investigation activities.*
- 4. Establish the extent and limits of the obligations and responsibilities held by those staff in terms of the mental health of witnesses and others involved in the ICAC investigation activities within ICAC policy. This policy position should reflect the following principles:*
 - i. The ICAC does not provide treatment or primary health services to witnesses and persons of interest*
 - ii. The ICAC's responsibility should be focused on identifying and managing critical risks to the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities, and referring and/or connecting them to appropriate supports*
 - iii. The ICAC should not refer witnesses and others involved in the ICAC investigation activities into the ICAC's contracted EAP provider.*
- 5. Ensure that procedures reflect the policy position and underpin the training process detailed in recommendation 6.2 below.*
- 6. Ensure that the procedures form the basis of the training programs specified below. The procedures should also clearly specify the actions required of a staff member in the event of any material risk to the wellbeing of witnesses and others involved in the ICAC investigation activities and include:*
 - i. Guidelines for identifying risk*
 - ii. Escalation procedures and a mechanism for immediate support and assistance*
 - iii. Clear protocols for notifying emergency services when urgent assistance is required*
 - iv. Pathway to ensure referrals are made in accordance with the ICAC policy*
 - v. Guidance for documentation and follow up*
 - vi. A feedback procedure to ensure organisational learning when risks materialise.*

6.2 Competence, Capability and Training

The competence model should focus on training ICAC staff on basic risk assessment in the mental health space, and on understanding the expected procedures to be followed in the event that a risk manifests. This would include:

7. Induction

i. All staff should receive a consistent induction package in relation to managing the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities.

8. Ongoing refresher training

i. Annual brief refresher should be considered for all staff involved with witnesses and others involved in the ICAC investigation activities. These could be short (1-hour) modules or potentially conducted as e-learning content as practicable.

9. Role specific content

i. Each staff member in a specific role dealing with witnesses and others involved in the ICAC investigation activities should receive a post induction competency-based program specific to their primary role. In particular, specific training should be considered for investigators, solicitors, and leaders/decision makers.

10. Competency based training

i. Training programs should include competency assessments where practicable. Such assessments should be conducted by a certified assessor (i.e., Certificate 4 in Workplace Training and Assessment or similar).

11. If Mental Health First Aid is kept as the “baseline” then ICAC specific modules need to be developed for specific roles which deal with witnesses and others involved in the ICAC investigation activities.

12. Culturally and linguistically sensitive content should be included in the training as ICAC staff will likely engage with witnesses and others involved in the ICAC investigation activities from a range of cultural and linguistic backgrounds. Effective procedures should include reference to some of the implications of such diversity in respect to the mental health of witnesses and others involved in the ICAC investigation activities.

6.3 General

13. Consider the introduction of an administrative role (Wellbeing Management Officer) to support the implementation of the above recommendations which would focus on communications with staff and persons of interest, managing the induction and training program, and ensuring effective reporting and documentation of incidents and risk management within the context of the mental health and wellbeing of witnesses and others involved in the ICAC investigation activities. The current advertised IBAC roles are a good basis for this role.

14. Establish a basic referral network of appropriately qualified mental health practitioners with AHPRA registration, including some who may have the capacity to respond promptly in the event of a critical incident.

15. Develop a suite of collateral products (handouts, checklists, and awareness materials) that are fit for purpose and provide easy access when needed.

16. All such collateral would also be centrally located on the ICAC’s intranet and be updated regularly (an accountability of the proposed support role).

I accept Mr Brown-Greaves’ advice as to the applicable principles and agree with his recommendations.

Additional matters

There are five additional matters which arise from Mr Brown-Greaves' report for my consideration.

How long should the assistance be provided?

The first issue is whether the Commission should engage with witnesses and others only during the active stage of their involvement with the investigation, that is, giving evidence or whether it should extend to receiving counsel assisting's submissions, preparing their submissions and/or ultimately being provided the report which has been furnished to Parliament.

In my view, as a matter of principle, the ICAC should remain in contact with those persons who they have assessed as remaining at risk, for as long as that risk exists (which is unlikely to extend beyond when the Commission has furnished its report to Parliament). That is, the extent of assistance should be determined as a result of an ongoing risk assessment informed by expert opinion, where necessary, and the input of the Wellbeing Management Officer. That position should be reflected in the relevant policies.

Who should fund the treatment for those referred by the Commission?

The second and related issue is the funding of any short term or ongoing treatment by medical and allied health professionals to whom the Commission has referred the person.

The Chief Commissioner advised me that he agreed with the proposal that the ICAC should offer vulnerable persons referral to an independent qualified mental health practitioner where such persons are not already engaging with their own health provider, however, noted that the report was silent as to who should bear the cost of such a referral. If it were to be the Commission, then it will impact on the Commission's financial resources and may require additional funding.

I note that position in relation to funding.

In my view, the circumstances of witnesses and others involved in the ICAC's investigation activities will undoubtedly vary. The nature and extent of their involvement, their personal and financial circumstances and their mental health requirements are likely to be different. It would not be appropriate to impose an unvarying requirement as to who should meet the costs in all cases. The Commission should consider these matters as well as others which might arise to determine whether it should meet some or all costs or not. The Commission should publish the criteria it will take into account in determining each case. In my view, it is likely that it would only be in exceptional circumstances that the Commission would meet all those costs.

Adequate information to witnesses

Thirdly, I consider that the provision of timely and adequate information to witnesses and others involved in the ICAC's investigation activities is a necessary component in reducing the potential negative impact of their engagement with the Commission.

Clearly, the *Information for Witnesses* brochure will need to be updated as the Commission responds to the recommendations made and the observations set out in this Report. I would welcome the opportunity to comment on the updated version of the information to be provided to witnesses.

Sections 112 and 114 of the Act

Fourthly, as noted above, a witness who is summonsed to appear and give evidence can disclose to a registered medical practitioner or registered psychologist various matters which would otherwise not be permitted, while a person who is required to produce things, can not disclose such matters to such a health practitioner.

I see no reason in principle why the service of a notice to provide a statement of information or produce a document may not give rise to welfare issues for the recipient, albeit perhaps of a less acute manner than a summons to appear and give evidence.

I recommend that s 112(3) and s 114(3)(d) of the Act be amended to include notices under s 21 and s 22.

Further, I note from transcripts available to me of compulsory examinations conducted by the Commission in the past that, it appears that the usual information provided to witnesses in explaining the effect of a direction under s 112, did not include reference to the permission for disclosure to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling.

In my view, the Commission should ensure that when that explanation is given to witnesses, it must include reference to disclosure to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling.

Guidance for assessment officers

Finally, it is also the case that assessment officers within the Commission will come into contact with people who may be at risk of self-harm. While the training induction package contemplated by Mr Brown-Greaves includes all staff, the Commission should develop guidelines for assessment staff and other non-investigative staff who regularly engage with the public.

The Commonwealth Ombudsman has published *Guidance for Complaint Handlers on Dealing with Risks of Harm*, to which the Commission may wish to have regard.

6 Observations on process for witnesses A, B and C

As set out above, in order to understand the steps taken by the Commission in relation to witnesses A, B and C, I reviewed whether the Commission had followed its procedures concerning its dealings with each of them. The purpose of this aspect of the review was not to investigate the manner and cause of death or consider whether the Commission could or should have acted differently in respect of the circumstances presented in each case.

Rather, it was limited to an exercise to determine whether the Commission was applying its procedures in each case. That exercise has assisted me in understanding any further matters which should be the subject of this Report, in addition to those raised by Mr Brown-Greaves.

I have not set out the details of the involvement of each witness with the Commission nor the relevant operations. I do not think it is necessary nor desirable for that material to be made public through this Report. However, I have been provided with detailed information from the Commission about each witness and have based my conclusions on that information.

I have concluded that the Commission has generally complied with its welfare procedures then in place in relation to witnesses A, B and C. However, what was revealed by my audit is a number of matters which will need consideration by the ICAC when revising the procedures in line with the recommendations made by Mr Brown-Greaves.

First, the process of assessing and responding to identified risks may not be complete when, tragically, a witness dies by suicide, or it becomes clear that a witness' mental health has been seriously impaired. There are likely to be others involved in the investigation who may be impacted by these matters. Indeed, it was clear from the public transcript, that following the death of witness A, other witnesses and legal representatives were affected and applications for adjournments, generally and specifically in the case of some witnesses were made. Concerns were also raised about the cultural sensitivity of continuing the hearing the day the news of Witness A's death was known. Some participants also sought access to counselling services.

In similar circumstances in the future, the role of the Wellbeing Management Officer should be to advise investigators, case lawyers and presiding Commissioners what should be done. It would be expected that those with leave to appear and their lawyers as well as Commission staff should be offered services as described in Mr Brown-Greaves' report. Staff debriefings may be appropriate.

Consideration would need to be given to appropriate time frames for adjournments as well as taking evidence in different forms, for example, the tendering of a compulsory examination transcript. Any cultural considerations would need to be determined and responded to appropriately. Further, for those following the hearing online, information about support services could be advised during the hearing and on the Commission's website.

Secondly, the procedures require a check of the Commission's intelligence holdings and any other database accessible to the Commission considered to be potentially relevant for the purpose of identifying whether there is any potential risk to the health and safety of any person who is the subject of the investigation or otherwise a person of interest to the investigation, to be carried out before the issue of any compulsory notice or summons or exercise of a search warrant. In many operations it is likely that that the issue and execution of such instruments will occur on more than one occasion and probably over many months. The Commission should consider updating the profile created from that check periodically throughout an investigation.

Thirdly, as set out above, the WH&S Act requires the ICAC to advise SafeWork NSW of the death or serious injury of a person arising out of the conduct of the business or undertaking.

The ICAC did not notify SafeWork NSW of the deaths of witnesses A and C, nor that witness B had been taken to a mental health facility for assessment.

I asked the Commission to advise me the reasons for not notifying SafeWork NSW. The Commission replied that each of the events did not occur in its workplace and there was a lack of information available to the Commission as to the connection between each event and the Commission's conduct of the relevant investigation.

I accept that there must be a connection between the business activities and the notifiable incident and the fact that each event occurred away from the ICAC's premises is a relevant consideration.

There is information available concerning witness C which lessens the connection between his death and his involvement with the work of the Commission. I accept the Commission's reasoning in relation to not notifying SafeWork about witness C.

In relation to witnesses A and B, the events occurred very soon after their engagement with the Commission. However, I accept that there is little information about their personal circumstances. Thus, on balance, I accept the Commission's reasoning in relation to not notifying SafeWork about witnesses A and B.

Finally, the *Information for Witnesses* brochure should be provided to all witnesses, regardless of whether they are legally represented.

7 Conclusions

This audit has been timely given the events which have occurred since my appointment some months ago and the recent report by the Victorian Committee.

I have been greatly assisted by the report of Mr Brown-Greaves and I agree with the principles and recommendations made by him and note that the ICAC accepts the recommendations, while seeking more information about the matter I deal with at point 4 below.

In respect of my audit in relation to witnesses A, B and C, I have found that the Commission generally complied with its procedures then in place.

I make the following recommendations, the reasons for each are set out in the Report.

1. The Commission should as soon as is practicable implement the recommendations made by Mr Brown-Greaves.
2. Section 112(3) and s 114(3)(d) of the Act should be amended to include notices under s 21 and s 22.
3. As matter of principle, the Commission should remain in contact with those persons who they have assessed as remaining at risk, for as long as that risk exists. That is, it should be as a result of an ongoing risk assessment informed by expert opinion, where necessary, and the input of the Wellbeing Management Officer. That position should be reflected in the relevant policies.
4. The Commission should publish the criteria it will take into account in determining who should meet the costs of any short term or ongoing treatment by medical and allied health professionals to whom the Commission has referred the person.
5. The Commission should ensure that a witness is told when a s 112 Direction is made that disclosure to a medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling, is permitted.
6. The role of the Wellbeing Management Officer should include advising investigators, case lawyers and presiding Commissioners as matters arise during the course of an investigation, in particular following a distressing event with a witness or other person engaged with the Commission's investigation.
7. The Commission should consider updating the profile created from checks periodically throughout an investigation.
8. The Commission should develop guidelines for assessment staff and other non-investigative staff who regularly engage with the public in relation to contact with people who may be at risk of self-harm and suicide.

8 Annexure: Report by Mr Simon Brown-Greaves



Audit of Welfare of Witnesses and Other People Involved in ICAC Investigations

December 2022

Prepared for Gail Furness SC

Inspector of the Independent Commission Against Corruption

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The material within this document is owned by the Office of the Inspector of the Independent Commission Against Corruption (ICAC). No part of this document or any information contained within it may be disclosed without the prior consent provided by the Office of the Inspector of the ICAC.

ACKNOWLEDGEMENT

FBG Group acknowledge that Aboriginal and Torres Strait Islander peoples are the Traditional Custodians of the lands on which we work, and we acknowledge their continuing connection to land, waterways, and community.

We pay our respects to all Aboriginal and Torres Strait Islander people and acknowledge Elders past, present and emerging.



1. SCOPE AND PURPOSE OF REPORT

This report has been prepared by Simon Brown-Greaves for Gail Furness SC who is the Inspector of the Independent Commission Against Corruption (ICAC) in NSW. Mr Brown-Greaves is a Registered Psychologist with over 40 years' continuous registration with the Australian Health Practitioner Registration Agency (AHPRA) and he has extensive experience working in the criminal justice system in Australia. A detailed CV is attached in Appendix A.

The Inspector is:

- Conducting an audit of the operations of the ICAC for the purpose of monitoring compliance with the *Work Health and Safety Act 2011 (NSW)* and,
- Assessing the effectiveness and appropriateness of the procedures of the ICAC relating to the welfare of witnesses and others involved in the ICAC's investigation activities.

Mr Brown-Greaves has been engaged by the Inspector to provide:

1. Advice as to best practice principles in this area including by reference to the work publicly available of other relevant integrity and law enforcement bodies, for example, the Independent Broad-based Anti-corruption Commission (IBAC) in Victoria, and
2. A review and assessment of, by reference to best practice principles, the measures taken by the ICAC to ensure, so far as is reasonably practicable, that the health and safety of witnesses and other persons involved in its investigation activities is not put at risk from work carried out as part of the conduct of the ICAC. These include:
 - Policies, procedures, practices, manuals, guidelines, and the like in place at the ICAC in relation to the welfare of witnesses and others involved in ICAC investigation activities
 - Materials used by the ICAC to inform witnesses and others involved in ICAC investigations
 - Any relevant training made available to staff of the ICAC
 - Other related activities of the ICAC.

At the outset of this project, a brief of engagement was provided to Mr Brown-Greaves detailing the following:

- An introduction to the Independent Commission Against Corruption (ICAC) including:
 - The role and function of the ICAC
 - The jurisdiction to which the ICAC extends
 - The powers applicable to the ICAC when an investigation occurs
 - The bodies to which the ICAC is held accountable.
- The background to the audit including details pertaining to deaths by suicide in recent times of witnesses and others involved in ICAC investigation activities
- A list of 18 ICAC policies and procedures of relevance, the full list of which is detailed in Section 3 of this report
- Key observations of the Inspector regarding some of the aforementioned policies and procedures
- An overview of ICAC training, which is further detailed in Section 4 of this report.

This report essentially focuses on describing the benchmarks and principles that relate to the care and support of witnesses and others involved in ICAC investigation activities.

The author has experience in working with a range of comparable agencies on issues around the mental health and wellbeing of both staff and witnesses including:

- Victoria Police witness protection programs
- Victorian Coroners Court support programs
- Victoria's IBAC
- Other courts and regulatory bodies including WorkSafe (Victoria).

It is important to note that this report focuses on the issues surrounding the provision of reasonable services, measures, and risk mitigation strategies that apply to witnesses and others involved in ICAC investigation activities and does not extend into other areas of the operation of the ICAC.

I am cognisant of the need to ensure that agencies are aware of and comply with their obligations under relevant legislation (in this case the *Work Health and Safety Act 2011 (NSW)*) and are also aware of contemporary evidence-based practice in the provision of mental health services.

To ensure consistency of language and terminology throughout this report, the following definitions are necessary.

- "Investigators" is a general term that refers to anyone whose primary role is to investigate allegations of corruption.
- The term "witnesses and others involved in the investigation" applies to anyone who is being investigated; is a witness to an investigation or is included within the investigators' remit. It does not refer to employees of the ICAC.
- "Case lawyers" are the ICAC staff solicitors who are managing cases as their primary role.
- "Wellbeing Management Officer" is a term used in this report to refer to a possible new role within the Agency (as per recommendation 13) that has as its primary function responsibility to ensure that the ICAC is managing its obligations around the wellbeing of witnesses and others involved in the investigation. This role does not currently exist at the ICAC.
- "Senior Authorised Officer" is a term used to describe a senior decision-making staff member of the ICAC who has the authority to make decisions in relation to how witnesses and others involved in an investigation are dealt with by the ICAC. Current policy refers to Executive Directors as an example of this role. In practice, this term will apply to an escalation point for any of the above-described roles seeking advice or a decision at a senior level.
- "Witness Liaison Officer" is the term adopted recently by IBAC in Victoria as part of its new approach to safeguarding the mental health and wellbeing of witnesses (and other persons involved in investigations). I have not used this same term in the context of the ICAC, preferring the broader term of Wellbeing Management Officer as described above. The general intent of these roles is similar, providing a dedicated and independent role that ensures the policy, processes and risk management around mental health are well managed by the Agency.

2. PRINCIPLES GUIDING THE ADVICE

In preparing this report, I have reviewed policy and practices in a number of relevant and comparable agencies and considered current benchmarks in the provision of mental health and wellbeing services to vulnerable or “at risk” populations generally and within the criminal justice system specifically.

It is broadly accepted that being required to participate in anti-corruption processes in any way carries potential risk to the mental health and wellbeing of the involved participant. This risk covers a full range of possible reactions and risks from being unaffected, all the way through to being at risk of self-harm and suicide. These possibilities are connected of course to the nature of the person’s involvement, but also to the inherent attributes (personality, history, and experience of similar events for example) of the person.

It is also accepted that the purpose of the ICAC process is to conduct thorough and fair investigations that reasonably carry a degree of “stress” for the individual involved (and potentially their families or close associates). It is important to note that an effective strategy to support witnesses and others involved in ICAC investigation activities in this context is designed not to eliminate risk, but to manage it as reasonably as possible while still achieving anti-corruption outcomes in the public interest.

The following principles provide guidance to assist in evaluating the practices and policies of any agency with a duty to support the mental health of involved persons, by reference in particular to the ICAC.

- Policy that clearly states the obligations of the Agency generally, and the obligations that apply to particular roles within the Agency.
- Procedures that clearly set out the expectations of officers with responsibilities under the Agency’s remit with respect to managing the mental health of witnesses and others involved in ICAC investigation activities.
- Recognition that the procedures will be necessarily different for varied roles within the investigative process (i.e., the obligations of the Investigator will be different from the case lawyer, which in turn will be different from the roles of Commission officers who may provide administrative support or Executive Directors in the Agency).
- A basic premise that all ICAC officers should be clear about their role with respect to the mental health of the witnesses or other persons involved in ICAC investigation activities that they are working with and must be adequately trained to execute those expectations.
- The provision of any formal mental health support or treatment should be independently provided and not delivered by the ICAC itself (i.e., through a managed referral process).
- An expectation that any staff (investigators, case lawyers and other Commission officers having contact with witnesses and others involved in ICAC investigation activities) will have a basic capability to recognise risk to an individual’s mental health or wellbeing, understand what to do in the event of such risk being identified, and be able to act accordingly.
- The presence of an administrative function, independent of an investigation, compulsory examination and/or public inquiry, where identified risks can be centrally managed and responded to.

- There should also be recognition and awareness that the risk to the mental health and wellbeing of witnesses and others involved in ICAC investigation activities will be dynamic and potentially changeable over the period of their involvement with the ICAC. Investigations often take significant time and procedures must ensure that witnesses and others involved in ICAC investigation activities have ongoing measures in place to support their mental health plan over the period that the person is actively engaged in the ICAC investigation.
- It is important to note that the obligations to manage the mental health of witnesses and others involved in ICAC investigation activities necessarily have limits from the Agency's perspective. This premise also extends to accepting that one should not expect Commission officers to be experts in the identification, diagnosis, or treatment of mental health conditions and that independent, qualified mental health practitioners should either be engaged or referred to for such activities. ICAC training and policy should carefully reflect this premise and focus on building basic capability around recognising risk and responding on the basis of a clear set of procedures.
- The ICAC should have an appointed Wellbeing Management Officer that manages cases where risk has been identified and ensures that reasonably practicable measures are put in place and monitored over the period that the person is actively engaged in ICAC investigation activities. This role should be independent of the investigative process. Again, this role should not be viewed as a "clinical" or treatment role, but as a case management and assurance role. It would be reasonably expected that this role would liaise closely with case lawyers who are running the day-to-day operations of an investigation.
- The procedures and practices should reflect that there are a wide range of potential mental health risks associated with participation in an investigation, compulsory examination, and/or public inquiry. Whilst suicide and self-harm are paradoxically infrequent (and naturally tragic and distressing for all concerned) and often attract the most scrutiny, there are other potential negative mental health outcomes that may require action, for example, post-traumatic stress disorder, anxiety, and depression. Again, the role of the ICAC Investigator or case lawyer should be to identify the possible risk so far as is reasonably practicable and take the appropriate and prescribed action. This would usually involve liaison with the Wellbeing Management Officer, should such a role be appointed.
- Once identified, it is likely that an "at risk" person engaged in ICAC investigation activities will be referred to an independent mental health practitioner. The Wellbeing Management Officer would then ensure that the risk is both managed according to the correct process and that a referral has occurred. If and when the ICAC re-engage with the person, the case lawyer in consultation with the Wellbeing Management Officer would then advise the team of the risk so that appropriate steps could be taken.

The *Work Health and Safety Act 2011* (NSW) clearly sets out some of the key principles that guide the ICAC's approach to managing the mental health and wellbeing of witnesses.

*In this Act, **reasonably practicable**, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all*

(a) the likelihood of the hazard or the risk concerned occurring, and

- (b) the degree of harm that might result from the hazard or the risk, and*
(c) what the person concerned knows, or ought reasonably to know, about—
(i) the hazard or the risk, and
(ii) ways of eliminating or minimising the risk, and
(d) the availability and suitability of ways to eliminate or minimise the risk, and
(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

3. RISK MANAGEMENT

Following on from the principles outlined in Section 2 of this report, I will separate my advice into the following sections: Risk Management, Competence, Capability and Training, Policy Regarding Suicide and Self-Harm Risks, and then provide recommendations.

In terms of managing the mental health of witnesses and others involved in ICAC investigation activities, an effective approach to risk would have the following attributes:

1. An organisational general risk management framework
2. Documentation that supports the risk management approach in the form of policy and procedures
3. A specific section of the framework that deals with mental health with respect to witnesses and others involved in ICAC investigation activities
4. An effective communication process ensuring that the above are effectively embedded.
5. A feedback loop that ensures organisational learning when risks materialise.

Further, effective risk management processes should include the following elements:

- A high-level statement of organisational position (sometimes referred to as a “risk appetite” statement as it is at ICAC)
- Identification of hazards (this would refer to ICAC activities/requirements, for example, calling a witness or other person involved in ICAC investigation activities, taking a statement, subpoenas etc.)
- Analysis of associated risks (i.e., witnesses and other persons involved in ICAC investigation activities called to give evidence may experience symptoms of distress, and consequently a risk to their mental health is evident)
- Likelihood/severity/impact analysis and reporting
- Identification of management and mitigation options for each hazard and risk
- An aligned incident management system.

I have noted and read the following documents provided to me:

1. Risk Management Policy No 81 September 2020
2. Operations Manual - OM Policy and Procedure IM02 – Investigation Planning and Conduct

3. Operations Manual – Work Instruction IM02-A - Policy and Procedure OM-IM02 – Managing risks to the health and safety of those involved in investigations
4. Operations Manual – Guideline IM02-A – Policy and Procedure OM-IM02 - Communication management guideline – Self-harm by people involved in ICAC investigations
5. Operations Manual – OM Policy and Procedure IP03 – Compulsory Examinations and Public Inquiries
6. Operations Manual – Work Instruction IP03-A – Policy and Procedure OM-IP03 - Security and Risk Management for Commission Hearings
7. Operations Manual – OM Policy and Procedure IP09 – Use of ICAC Investigation Powers (Except under s35)
8. Hearing Risk Management Plan
9. Search Warrant Risk Management Plan
10. *Information for Witnesses* brochure
11. Compulsory Examination Protocol
12. Public Inquiry COVID-19 Protocol
13. Summons to appear and give evidence (under s35)
14. Summons to appear and produce documents (under s35)
15. Summons to appear and give evidence and produce documents (under s35)
16. Summons to appear and produce documents (LLP) (under s35)
17. Section 21 notice, and
18. Section 22 notice.

In the context of a “best in class” approach at the ICAC, I would expect all the above elements to be in place, well understood by all parties, effectively executed, and documented with a practical review process in place.

In my experience, it is also important to identify that all reasonable mental health hazards/risks are openly discussed and agreed, and that the review process enables regular reviews, updates and learnings from incident debriefs to be included.

Having reviewed the documents supplied to me, I consider the following to be most pertinent.

Risk Management Policy No 81 September 2020

The first consideration relates to the overarching Policy 81. This is a comprehensive and, in my view, thorough and contemporary general framework. It clearly sets out the expectations from a risk perspective and the actions required of staff to ensure risks and hazards are identified effectively and managed or mitigated. It does not (nor should it necessarily) mention mental health or wellbeing risks, so these are the subject of subordinate policies.

Operations Manual OM Policy and Procedure IMO2 *Investigation Planning and Conduct*: 4.3.3 Risks and Issues

The second document of relevance is the Operations Manual which makes specific reference to risk in S4.3.3, notably not referencing any particular risks or hazards other than ad hoc risks such as changes in legislation or flight risks of witnesses and others involved in ICAC investigation activities. The policy clearly notes the expectation that risks are identified and recorded by a staff member under the delegated authority of a duly appointed Executive Director (ED). Reference is also made to a “case manager” who is the Chief Investigator responsible for identifying and documenting risk.

Operations Manual Work Instruction IMO2-A Policy and Procedure OM-IMO2 *Managing risks to the health and safety of those involved in investigation*

The next document is the Work Instruction IMO2-A: Managing Risks to the Health and Safety of those involved in investigations. The relevant sections of this document are those in S3.3 and the associated table 1: Welfare Management requirements.

- It is generally prudent to separate procedures into urgent (“critical” or “immediate”) risks from ongoing case management risks as the procedures for each will be different. Further, the general experience with urgent risks is that they are often manifest in the presence of operational staff (i.e., in the case of ICAC investigators or case lawyers) rather than senior authorised officers (Chief Investigators or Executive Directors for example). Procedures therefore need to ensure that those operational staff are competent and clear about how to manage immediate risks of self-harm or suicide. There is a gap in the policy in my view on this issue and the ICAC should ensure that its revised policy position clearly separates urgent matters from ongoing case management.
- The table appears to reasonably identify likely hazards associated with each step of an investigation and I have no concerns with the policy in these sections.

The key issues however become apparent in the sub table: Welfare Services. In this section it is recommended that the Commissions’ Employee Assistance Program (EAP) be considered as an option when there is a mental health risk identified. In my view this is not a contemporary approach and should be reconsidered.

The ICAC itself should not in my view take on a role as a treatment provider to affected persons. Generally, the trend is that the Agency would use emergency services when the issue is urgent or critical (which is referenced in the previous sub section) and in non-urgent or ongoing welfare issues, the ICAC should ensure that the affected person is offered independent referral to a qualified mental health practitioner with AHPRA registration or can engage with their own health provider as required. This is a separate issue from the policy that ICAC can and should receive appropriately competent advice from a qualified mental health practitioner with AHPRA registration to assist in making a risk determination and in applying the most appropriate mitigation strategy.

The policy to suggest that the affected person use a separate EAP (i.e., the one provided by their employer) is reasonable and could be considered independent. In my experience however this latter choice is rarely exercised. The affected person usually feels that their mental health needs would be better served by a fully independent provider. Whether it is purely a perception or not, an organisation’s EAP is often seen as compromised as a result of the commercial connection and can be viewed as not maintaining the appropriate standard of confidentiality.

Suggesting that an affected person access the NSW Mental Health Commission website, or that they contact one of the listed services is an unlikely and ineffective strategy, particularly in urgent or

serious cases. The suggestion to call an afterhours “hot line” is unlikely to be considered a reasonable way to manage serious risk associated with an affected persons involvement in an ICAC process or activity.

The next paragraph of the Welfare Services references the Commission’s trained First Aid Officers and that the Commission “may appoint a commission contact officer to liaise with a person”. In my view this is a complex and important issue that requires more clarity and direction.

There are now two “First Aid” categories in many workplaces, the first being the traditional first aider who has an accredited certification to respond to an urgent health need in the workplace. Such officers would not carry any ongoing case management responsibility and are generally trained to respond to immediate physical risks while waiting for a paramedic to attend. There is now a second category, Mental Health First Aid (MHFA), which describes individuals trained in the skills needed for an immediate response to someone in distress while waiting for professional support. Similarly, this latter role is meant to be immediate, short term, and is associated with a 1–2-day accredited qualification.

Both roles should be separated from a dedicated (non-treatment) case management role and procedure which would be responsible for ongoing risk management and ensuring the Commission’s obligations are met while also ensuring that affected witnesses and others involved in ICAC investigation activities are provided (offered) independent health care.

It is important to note that the amount of judgement or discretion available to an ICAC officer should be kept as minimal as possible. In other words, the responsibility of the Agency and its officers should be to identify risk, and then follow a clear process whereby the affected person is offered support through an independent source and the process is managed by a sufficiently competent ICAC person which might be the Wellbeing Management Officer should such a role be appointed. The Commission should naturally be able to request and receive independent medical or psychological advice as to the mitigation of risk and to ensure that the affected person’s wellbeing is being managed. In practice, and in my experience, this is not always achieved through the person’s treating practitioner and may well be best addressed by an independent skilled mental health practitioner who can balance the treatment needs (but not do it) with the needs of the ICAC.

In my view, ICAC would not be a treatment provider either directly (i.e., by employing qualified mental health practitioners with AHPRA registration within the Agency) or indirectly, (i.e., through its EAP service or a subcontract relationship with a qualified mental health practitioner with AHPRA registration).

It should be noted that some other agencies (including IBAC and some police services) have used their EAP service to provide short term support to witnesses at risk. My view is that some of these Agencies (e.g., IBAC in Victoria) are moving away from this model and referring treatment and intervention support to an independent source.

I understand that the NSW Office of the Director of Public Prosecutions (ODPP) have a Witness Assistance Service comprised of Officers who support witnesses through ODPP prosecutions in the NSW criminal justice system, however this is not the model I recommend.

IBAC in Victoria is currently reviewing the way it supports witnesses and others involved in their investigation activities and has recently gone to market with two roles, *Manager- Witness Liaison* and *Witness Liaison Officer*. It is likely (but not confirmed) that these roles would be independent of

the investigation function and more akin to a “case manager”. Indeed, their guidelines for public interest disclosure management, published in January 2020, encouraged the appointment of a welfare manager, and provided a list of assessment questions to make this determination. Further, it stipulated that welfare support should be provided for a discloser or co-operator on an ongoing basis, regardless of whether a welfare manager has been appointed.

I understand Victoria Police employs a small number of “case managers” in the Witness Protection Program, but that formal treatment is outsourced.

A variation on this theme is found in the Coroners Court of Victoria, where the Court has a small team of Family Liaison Officers (“FLOs”) who support families and interested parties through the often-lengthy process of a Coronial Investigation (including a hearing). Again, they do not deliver therapeutic services which are managed via a referral process.

4. COMPETENCE, CAPABILITY AND TRAINING

The purpose of “training” is to ensure that an agency and its officers are competent in the carriage of the inherent requirements of their roles. Indeed, IBAC in Victoria outline the roles and responsibilities involved in the welfare management of investigations.

The policies and procedures referred to in this report carry an obligation for ICAC officers to:

- Be aware of the policies and procedures
- Understand the purpose of the various policies and procedures
- Consistently and appropriately execute those policies and procedures.

It is probably an obvious statement to note that the matters within the scope of this report, i.e., the ability to manage the mental health and wellbeing risks at ICAC are complex and evolving.

I note that the training referenced in my instructions suggest that ICAC staff will participate voluntarily in a one-off MHFA training program and that this is the extent of the training currently available to staff. Specifically, when asked to provide advice about the training provided in managing the risk to the health and safety of persons subject to the exercise of the Commission’s powers and mental health awareness, the Chief Commissioner responded with the following:

In June this year, the Commission arranged for participation of Commission staff in an accredited mental health first aid course being provided through EML, the Commission’s workers compensation insurer. The course will be conducted on 19 and 20 July 2022 and will involve providing participants with practical skills, including how to identify and assist a person experiencing mental health problems. The course is based on international mental health first aid guidelines. The course provider is Craig Semple, an accredited master instructor in mental health first aid who has trained more than 1,500 mental health first aiders over nearly 100 courses.

Nine Commission officers, including two investigators and one lawyer, will attend the course. Attendance is voluntary rather than mandatory as only nine spaces were available. Course participants will receive a copy of a mental health first aid manual to keep and will be eligible to become an accredited Mental Health First Aider.

The Commission will explore sourcing other mental health first aid providers with a view to either running future programs in-house or externally to facilitate a more tailored program specific to the Commission’s needs.

In addition, as a result of the death of [name removed], the Commission has made contact with Beyond Blue to discuss what additional steps should be taken to assist the Commission to educate our staff who interact with witnesses about mental health, including what signs to look for and appropriate responses.

A contemporary approach, aligned to the principles outlined earlier in this report would involve:

- Comprehensive training for all staff to whom the risk management policy applies on the purpose and implementation of that policy.
- Training in respect to the risks associated with the mental health and wellbeing of witnesses and others involved in ICAC investigation activities to be aligned to the policy and would therefore be tailored to the particular role of the ICAC officer.

- Common content for all staff, based on the base line expected knowledge and competence, i.e., the risk framework as it applies to the wellbeing of witnesses and others involved in ICAC investigation activities; ensuring specific role clarity for all staff; understanding of the expected actions and mitigation strategies in the event that a risk arises; and basic information about relevant mental health issues in the context of ICAC. It is my view that these requirements are unlikely to be met solely by MHFA training.
- Staff who play a more prominent role and deal regularly with witnesses and others involved in ICAC investigation activities should have a second level of training, to ensure they are reasonably competent to identify the risks to the mental health of witnesses and others involved in ICAC investigation activities and to be confident to apply this knowledge to fulfil their obligations. This training would apply to investigators and case lawyers and could include MHFA but might not need to.
- Senior staff who are duty/authority holders or decision makers in matters outlined in the policies to have competence in matters of decision making that relate to the mitigation of mental health risk (i.e., should a matter be adjourned or should a witness be required to undergo a mental health assessment to advise the process etc.). Again, this is unlikely to be MHFA but would be a specific program focusing on what decisions need to be made and how the policy would be fairly and empathically implemented in the context of an investigation.
- Addressing the question of voluntary participation (which in my view would not seem to meet the necessary standard in its current form).
- A competency-based program rather than a compliance-based approach be adopted
- The requirement of reasonably (perhaps annual) scheduled refresher programs.
- Incorporation of the baseline content/competency in the induction of new Commission officers, particularly those working in close proximity to witnesses.

MHFA is a standardised short program designed to provide participants with mental health literacy, and a 5-step action plan for intervention. It is the common standard now in Australian workplaces and is a well-researched and accredited program. Largely focused on crisis management and early intervention, it is necessarily generic and broad in terms of its content.

What it does not do is to enable specific focus on the particular risks associated with any given operating environment (such as ICAC) and also tends to cover general mental health issues and what to do in the immediate situation where there is a risk of harm to self or others.

In relationship to ICAC specifically, I cannot see evidence that:

- The training program at ICAC covers the specific risks inherent in its operating environment.
- The expected competence for ICAC officers is tailored to the role and the nature of the work that they do.
- Training will achieve a consistent level of understanding of the ICAC risk profile for witnesses and others involved in ICAC investigation activities and the expected actions required to mitigate those risks.

It is important to stress that MHFA is a relevant and helpful program as part of a “baseline” program. Without the additional focus on role specific expectations and clarity about mitigating risk in the ICAC environment, my concern would be that doing MHFA could cause confusion about the officer’s

role and create the potential for overreach in terms of supporting a distressed or at-risk witness and others involved in ICAC investigation activities.

A key focus in any training should also be the provision of a simple framework for identifying and acting on any significant risk to the wellbeing of witnesses and others involved in ICAC investigation activities, as well as skills to enable identification of the signs and indicators associated with potential to harm self or others. For more senior roles, this competence would extend into the complexities of exercising discretion, making judgements in time critical situations, and balancing the welfare needs of the witness with the requirements of the ICAC mandate.

In the documentation provided to me, I am unable to identify any material that would satisfy the principles noted above. There appears to be a prospective reliance on MHFA, and an assumption that completion of that program will lead to organisational competence on the issue of the mental health and wellbeing of witnesses and others involved in ICAC investigation activities.

It is arguable, but nonetheless an important consideration, to look at how ICAC (or any other agency faced with similar risks) assesses the competency of a duty holder in these circumstances. If the training programs were competency based, it is reasonable to consider some form of competency assessment. Further, in the absence of refresher training, at what point should there be a check on retained or ongoing competence? Given the stakes in the ICAC context it would be reasonable to expect:

- Refresher training (perhaps annually)
- Basic competency tests following training
- Annual checks of competence for critical roles.

5. POLICY REGARDING SUICIDE AND SELF-HARM RISKS

Any policy and procedure focused on the mental health and wellbeing of witnesses and others involved in ICAC investigation activities in any element of the criminal justice system will necessarily need to address the issues associated with suicide, self-harm, and the risk of harm to others. ICAC is obviously no exception to this requirement.

I have been informed that there have been a number of deaths by suicide since 2018 involving witnesses involved in ICAC investigation activities. Further, I have worked in other similar environments over the last four decades where the risk of suicide, self-harm and harm to others is an all too regular occurrence. These include similar projects for IBAC in Victoria, the Coroners Court of Victoria, prison and police operations in most states and territories, and indeed some early work with ICAC in the '90s when police were covered in the agencies remit. A number of learnings from this work are relevant to the current and future policy and procedure of ICAC:

- Suicide prevention should not be the core or only feature of policy relating to the mental health and wellbeing of witnesses and others involved in ICAC investigation activities.
- It is extremely difficult, even for experienced health practitioners, to accurately identify or predict suicidality.
- In the ICAC operating environment this is even more the case when witnesses and others involved in ICAC investigation activities may often be motivated to withhold information about themselves or present to ICAC in a stoic fashion such that identifying risk factors is difficult.
- Placing the burden of suicide risk identification on staff whose competence lies in other fields is unwise and indeed can in turn create understandable mental health risk for staff.
- Good policy should therefore focus on ensuring simple clear processes are in place and understood by staff so they can be confidently implemented. Treatment and ongoing support of witnesses and others involved in ICAC investigation activities should therefore be left in the domain of qualified mental health practitioners and not be internally sourced.
- Organisations such as ICAC are, in my view, better served by having resources invested in effective management and communication, with appropriate referral options in place to provide advice to the ICAC and/or to provide support to witnesses and others involved in ICAC investigation activities.

Suicide and self-harm situations are often tragic and distressing events for all parties involved. ICAC policy should also ensure that staff exposed to such situations are in turn provided with appropriate support, to ensure they feel adequately prepared for the risk, but also so that their wellbeing is effectively supported should critical incidents manifest.

The issue of risk of harm to others is similarly challenging, but the best policy and procedure would be almost identical to the above. Training staff to effectively and consistently implement policy is important and should be based around the success factors previously noted.

Other agencies faced with this risk generally have:

- Simple 1-page guidance notes for staff in identifying and managing risk of self-harm/harm to others
- Standard support/follow-up checks for staff when the procedures are executed.

Many enforcement agencies (including Australian Securities & Investments Commission and Australian Competition & Consumer Commission) have programs designed to provide staff with the skills and knowledge to manage an identified mental health risk and all focus on role clarity, simple and consistent escalation procedures, and some form of “debrief” or support for staff involved.

I would also highlight the reference in Risk Management Policy 81 which states:

“Important. Risk Transfer should be used with caution. The Commission may not be able to transfer its responsibilities under the Legislation”.

Whilst this is a legal issue outside the scope of my advice, it is important to note that the purpose of an effective system of work managing risks in the mental health space is to ensure, as best as you can, that a person receives appropriately skilled and qualified care and treatment. All such, qualified mental health practitioners with AHPRA registration carry Professional Indemnity and Public Liability Insurance because once they engage in treatment, they clearly accept passage of risk in some form. The systems referenced throughout this report should expect ICAC staff to carry out the procedures to the best of their ability, not to have an elevated skill set in terms of diagnosis or treatment of a mental health condition.

I recently saw a case in another jurisdiction where a person of interest during a protracted investigation saw at least five separate mental health professionals (some on multiple occasions), and none detected the risk of suicide. Worth noting also (and out of scope here) is the potential confusion experienced by witnesses and others involved in anti-corruption investigation activities (particularly “accused” persons of interest) as to what type of support or “counselling” they are legally allowed to access.

Lastly, the fact that one of the most detailed procedures in the materials provided to me references media, public relations, and communications in the event of a serious incident rather than detailing a procedure providing clear guidance as to how staff might mitigate, prevent or manage such risks highlights the procedural gap underpinning recommendation 6.1.

6. RECOMMENDATIONS

6.1 Policy and Procedures

The ICAC should:

1. Introduce an overarching policy that sets out the Agency's position with respect to the welfare and psychological wellbeing of witnesses and others involved in ICAC investigation activities.
2. Ensure that the risk management framework explicitly addresses risks to the mental health and wellbeing of witnesses and others involved in ICAC investigation activities.
3. Establish a policy that describes the role of ICAC staff, and their accountabilities for the wellbeing and psychological safety of witnesses and others involved in ICAC investigation activities.
4. Establish the extent and limits of the obligations and responsibilities held by those Agency staff in terms of the mental health of witnesses and others involved in ICAC investigation activities within Agency policy. This policy position should reflect the following principles:
 - i. The Agency does not provide treatment or primary health services to witnesses and persons of interest
 - ii. The Agency's responsibility should be focused on identifying and managing critical risks to the mental health and wellbeing of witnesses and others involved in ICAC investigation activities, and referring and/or connecting them to appropriate supports
 - iii. The Agency should not refer witnesses and others involved in ICAC investigation activities into the Agency's contracted EAP provider.
5. Ensure that procedures reflect the policy position and underpin the training process detailed in recommendation 6.2 below.
6. Ensure that the procedures form the basis of the training programs specified below. The procedures should also clearly specify the actions required of a staff member in the event of any material risk to the wellbeing of witnesses and others involved in ICAC investigation activities and include:
 - i. Guidelines for identifying risk
 - ii. Escalation procedures and a mechanism for immediate support and assistance
 - iii. Clear protocols for notifying emergency services when urgent assistance is required
 - iv. A clear pathway to ensure referrals are made in accordance with the ICAC policy
 - v. Guidance for documentation and follow up
 - vi. A feedback procedure to ensure organisational learning when risks materialise.

6.2 Competence, Capability, and Training

The competence model should focus on training ICAC staff on basic risk assessment in the mental health space, and on understanding the expected procedures to be followed in the event that a risk manifests. This would include:

7. Induction
 - i. All staff should receive a consistent induction package in relation to managing the mental health and wellbeing of witnesses and others involved in ICAC investigation activities.
8. Ongoing refresher training
 - i. Annual brief refresher training should be considered for all staff involved with witnesses and others involved in ICAC investigation activities. These could be short (1-hour) modules or potentially conducted as e-learning content where practicable.
9. Role specific content
 - i. Each staff member in a specific role dealing with witnesses and others involved in ICAC investigation activities should receive a post induction competency-based program specific to their primary role. In particular, specific training should be considered for investigators, solicitors, and leaders/decision makers.
10. Competency based training.
 - i. Training programs should include competency assessments where practicable. Such assessments should be conducted by a certified assessor (i.e., Certificate 4 in Workplace Training and Assessment or similar).
11. If MHFA is kept as the “baseline” program, then Agency specific modules need to be developed for specific roles which deal with witnesses and others involved in ICAC investigation activities.
12. Culturally and linguistically sensitive content should be included in the training as ICAC staff will likely engage with witnesses and others involved in ICAC investigation activities from a range of cultural and linguistically diverse backgrounds. Effective procedures should include reference to some of the implications of such diversity in respect to the mental health of witnesses and others involved in ICAC investigation activities.

6.3 General

13. Consider the introduction of an administrative role (Wellbeing Case Manager) to support the implementation of the above recommendations which would focus on communications with staff and persons of interest; managing the induction and training program and ensuring effective reporting and documentation of incidents and risk management within the context of the mental health and wellbeing of witnesses and others involved in ICAC investigation activities. The current advertised IBAC roles are a good basis for this role.
14. Establish a basic referral network of appropriately qualified mental health practitioners with AHPRA registration, including some who may have the capacity to respond promptly in the event of a critical incident.

15. Develop a suite of collateral products (handouts, checklists, and awareness materials) that are fit for purpose and are easily accessible when needed.
16. All such collateral should also be centrally located on the Agency's intranet and be updated regularly (an accountability of the proposed support role).

APPENDIX A: SIMON BROWN-GREAVES CV

Simon Brown-Greaves is an experienced Senior Executive Manager and Organisational Psychologist with more than 35 years' experience as a leader and facilitator in complex commercial and public sector environments. He has extensive experience in working at both an individual and corporate level managing multi-disciplinary teams and delivering human capital projects and services, including 13 years as the CEO and founder of FBG Group.

Simon has experience working directly with clients in environments including judicial systems, law enforcement, regulatory bodies, superannuation, banking and manufacturing, and has worked with a broad range of Federal and State Government bodies including ABS, Defence, WorkSafe, ACCC, ASIC, AER, DJCS, and Parliamentary Services amongst others. He provides expert advice on exposure risk, vicarious trauma and burnout within the Justice context, has conducted research in the Courts system in Victoria, and has been a standing member of the Wellbeing Committees in both the Magistrates and Coroners Courts.

Prior to establishing FBG Group, Simon was a Group Regional Manager at Chandler Macleod, Chief Executive Officer for the OSA Group for seven years (now known as PPC Worldwide) and held senior psychology roles in both the Victorian Office of Corrections and Victoria Police. Simon was a Fellow of the University of Melbourne, where he taught 'Professional Ethics and Giving Evidence for non-legal professionals in the Criminal Justice System', in the Criminology and Psychology departments for 10 years. In addition, Simon worked as an Expert Witness during the 1990s, giving evidence in all jurisdictions and matters including criminal trials, Victims of Crime hearings and coronial matters.

As a trusted adviser with close to 40 years' experience, Simon is an unusual combination of an Executive with real business and operational experience and client facing service delivery across multiple sectors. He has recently been appointed as the first Chief Mental Health Officer for Australia Post, the first of its type for a Government Business Enterprise. At present, Simon is working alongside the leadership team to deliver a proactive and preventative strategy to sustainably support the mental health of their workforce.

Qualifications and Memberships

- Bachelor of Science (Honours)
- Master of Science (Clinical Psychology)
- Diploma of Criminology
- Member, Australian Psychological Society
- Member, APS College of Organisational Psychologists
- Registered Organisational Psychologist

Major Areas of Focus and Expertise

- Human Capital Management
- Mental Health and Policy
- Post Incident Management
- Leadership Development
- Strategic Organisational Consulting
- Facilitation Development of Senior Management Teams
- Mergers / Acquisition Integration
- Assessment and Development
- Coaching Senior Executives
- Employee Assistance Program and CIMS

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