

This document is currently under review

Welfare management for IBAC investigations

1. Purpose

The purpose of this policy is to set out for Independent Broad-based Anti-corruption Commission (IBAC) officers the requirements for managing the welfare risk of persons other than employees arising from IBAC investigations and the use of associated powers. The application of this policy and associated guideline ensures these welfare risks are, where reasonably practical, eliminated or reduced.

2. Context

Section 23 of the *Occupational Health & Safety Act 2004* (OHS Act) imposes upon IBAC, as an employer, a duty to ensure, as far as is reasonably practicable, that 'persons other than employees' are not exposed to risks to their health and safety as a result of IBAC's conduct. Section 20 of the OHS Act provides that employers such as IBAC are under a duty to eliminate or reduce risks to health and safety, to the extent that is reasonably practicable. The *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) also contains specific obligations relating to the safety and wellbeing of others.

Section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Human Rights Charter) obliges IBAC officers to act compatibly with human rights, and give proper consideration to human rights when making decisions. The Charter of Human Rights recognises that legislation, such as the IBAC Act, may mean IBAC is required to act in a way, or make a decision, that limits a human right.

3. Policy statement

IBAC is committed to meeting its welfare obligations and recognises that unique circumstances may exist that require special attention when considering and using its powers.

IBAC uses a risk-based approach to managing the welfare of persons other than employees. In exercising their investigative powers IBAC officers will:

- to the extent that is reasonably practicable, eliminate or reduce risks to the health and safety of persons subject to the use of investigative powers
- act compatibly with the rights in the Human Rights Charter (including by reasonable and justifiable limitation) and give proper consideration to human rights when making decisions.¹

This policy is to be read in conjunction with IBAC's Occupational Health and Safety Policy. The policy requirements in Table 1 apply to IBAC officers engaged in the use of IBAC powers.

For clarity, persons subject to the use of IBAC powers include, but are not necessarily limited to persons of interest (POIs), witnesses and any other persons other than employees involved in IBAC investigations.

Where there is any inconsistency between this policy and any legislation that it refers to, then that legislation prevails. If any document referred to in this policy is amended at any time, this policy should be interpreted as referring to the amended document.

¹ Refer to the guideline referenced under the supporting information section for further guidance.

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Table 1: Welfare management requirements

Element	Requirement
Guidance	1. IBAC provides clear guidance to IBAC officers on how to manage welfare risks to persons subject to the use of IBAC powers.
Training	2. IBAC provides appropriate training for relevant IBAC officers on welfare management, including psychological first aid training every two years.
Pre-interaction welfare risk assessment	3. Where reasonably practicable, prior to the use of IBAC powers, IBAC officers check IBAC intelligence holdings and other available information for indications of welfare risk to persons subject to the use of IBAC powers. 4. Where reasonably practicable, prior to the use of IBAC powers, IBAC officers conduct operational risk assessments, consider potential risks to the health and safety of persons impacted by the use of powers, and identify any available means of eliminating or reducing those risks.
Welfare support notification	5. Where reasonably practicable, IBAC officers notify persons subject to the use of IBAC powers of the welfare support resources available to them.
Welfare risk monitoring	6. When using their powers, IBAC officers monitor the welfare of persons subject to their use of powers and escalate welfare issues as required. 7. At the conclusion of exercising their powers, IBAC officers consider the welfare status of persons subject to those powers and whether they need to notify relevant welfare support services.
Medical incident management and response	8. IBAC officers using their powers ensure that, if required, persons subject to their use of powers receive medical attention from an appropriately qualified medical professional without unreasonable delay.
Welfare services	9. IBAC makes its Employee Assistance Program (EAP) available to persons subject to the use of IBAC powers as appropriate. 10. As required, and where it would not prejudice an investigation, IBAC refers persons subject to the use of IBAC powers to the person's employer's welfare support services, IBAC's EAP or public welfare support services. 11. If an IBAC officer determines that a registered health practitioner or welfare support service should be notified of a person's welfare risk, the IBAC officer seeks and obtains prior permission from that person to provide their personal welfare details.
Confidentiality notices	12. IBAC allows restricted matters in confidentiality notices to be disclosed by the subject of the notice to registered health practitioners, unless this would prejudice an investigation.
Examinations	13. IBAC provides a qualified on-site welfare counsellor at public and private examinations where a high welfare risk is identified beforehand. 14. IBAC appoints an IBAC welfare contact officer for public examinations where a high welfare risk is identified beforehand. 15. IBAC will regulate the procedure of examinations as IBAC considers appropriate.

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4. Roles and responsibilities

Table 3 describes key roles and responsibilities for this policy.

Table 3: Roles and responsibilities

Role	Responsibility
Commissioner	<ul style="list-style-type: none"> To ensure witness welfare is appropriately managed.
Chief Executive Officer	<ul style="list-style-type: none"> To ensure that effective controls are in place to manage witness welfare.
Director Corporate Services	<ul style="list-style-type: none"> To approve this policy, after consulting with Director Operations and Director Legal.
Director Operations	<ul style="list-style-type: none"> To endorse this policy.
Director Legal	<ul style="list-style-type: none"> To endorse this policy.
Manager Human Resources	<ul style="list-style-type: none"> To maintain this policy in accordance with the policy framework. To communicate this policy, and future changes, to relevant IBAC officers. To liaise with the Managers Investigations and Legal and facilitate mental health awareness training of relevant IBAC officers.
Manager(s) Investigations	<ul style="list-style-type: none"> To ensure relevant IBAC officers within their teams are aware of, understand and apply the requirements in this policy. To develop procedures relevant to the operational use of IBAC's powers, and ensure witness welfare is included in each applicable procedure. To sign off on risk assessments and applications for use of powers, ensuring welfare is appropriately considered against operational imperatives.
Team Leader Investigations	<ul style="list-style-type: none"> Review operation risk assessments prior to submission to their Manager/Director for approval.
Team Leader Facilities and Security	<ul style="list-style-type: none"> To ensure that a Facilities and Security Officer is available to attend on-premises witness welfare incidents.
Facilities and Security Officers	<ul style="list-style-type: none"> To provide security and respond to any on-premises security or witness welfare incidents.
IBAC First Aid Officer	<ul style="list-style-type: none"> To attend on premises witness welfare incidents when requested by Facilities/Security Officers or presiding IBAC officers.
IBAC officers (engaged in the use of IBAC powers)	<ul style="list-style-type: none"> To complete training on the application of this policy, as directed. To apply the requirements of this policy while using IBAC powers. To consider if the need to use of powers outweighs the potential welfare implications.
Manager Governance & Risk	<ul style="list-style-type: none"> To undertake welfare management assurance activity in accordance with IBAC's Assurance Program and report outcomes to the Executive in line with reporting framework.

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5. Definitions

Table 4 describes definitions for this policy.

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Term	Definition
IBAC powers	<ul style="list-style-type: none"> As defined in s 16 of the IBAC Act, IBAC has the power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of the Act and the performance of its duties and functions.
IBAC Officer	<ul style="list-style-type: none"> As defined in s 3 of the IBAC Act, an 'IBAC officer' means: the Commissioner; a Deputy Commissioner; the Chief Executive Officer appointed under section 33; a person employed under section 35(1); a person employed or engaged by the IBAC under section 35(2); a person engaged as a consultant under section 36.
Cognitive impairment	<ul style="list-style-type: none"> The impact of any of a range of disabilities that may limit a person's ability to think. (eg intellectual disability, acquired brain injury, some mental illnesses, autism spectrum disorder and dementia)².
Health	<ul style="list-style-type: none"> As defined in the OHS Act, includes psychological health.³
Independent person	<ul style="list-style-type: none"> A person designated by the State and not an employee of the State. In practical terms, a person who is not dependent on or affiliated with IBAC.
Intellectual disability	<ul style="list-style-type: none"> An intellectual disability is a type of cognitive impairment. The <i>Disability Act 2006</i> (Vic) defines a person with an intellectual disability as a person with both significant sub-average general intellectual functioning and significant deficits in adaptive behaviours, which become apparent before the age of 18 years.
Mental illness	<ul style="list-style-type: none"> As defined in the <i>Mental Health Act 2014</i> (Vic), a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory (eg depression, schizophrenic disorders, bipolar affective disorder, obsessive-compulsive disorder and post-traumatic stress disorder).
Mental impairment	<ul style="list-style-type: none"> Includes, but is not limited to, mental illness, intellectual disability and cognitive impairment, but excludes any self-induced temporary conditions resulting from the effects of ingesting substances⁴.
Reasonably practicable	<ul style="list-style-type: none"> In accordance with s 20(2) of the OHS Act, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety: <ol style="list-style-type: none"> the likelihood of the hazard or risk concerned eventuating the degree of harm that would result if the hazard or risk eventuated what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk the availability and suitability of ways to eliminate or reduce the hazard or risk the cost of eliminating or reducing the hazard or risk.
Risk	<ul style="list-style-type: none"> The effect of uncertainty on objectives.

² Review of the Crimes (Mental Impairment and Unfitness to be Tried Act 1997. Victorian Law Reform Commission, 2014.

³ Occupational Health and Safety Act 2004, section 5 (1)

⁴ Review of the Crimes (Mental Impairment and Unfitness to be Tried Act 1997. Victorian Law Reform Commission. June 2014.

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Safety	<ul style="list-style-type: none"> The state of being safe, which is the condition of being protected from harm or other non-desirable outcomes.
Vulnerable person	<ul style="list-style-type: none"> A person that may have particular needs that IBAC must accommodate in using its powers, including persons: under 16 years of age; who have a mental impairment or who do not have knowledge of the English language sufficient to enable them to understand questions asked or to answer them.
Welfare	<ul style="list-style-type: none"> The health, safety and wellbeing of a person⁵.
Wellbeing	<ul style="list-style-type: none"> A balancing process between a person’s resources and challenges they face⁶.

6. Breaches


Any breach of this policy must be reported to the Manager Human Resources as soon as the breach is discovered. Contravention of s 23 of the OHS Act may result in the imposition of a pecuniary penalty.

7. Supporting information

This policy is supported by:

- Occupational health and safety - Policy
- Risk management - Policy
- Risk management - Procedure
- Welfare management - Interim Guideline

8. Authorisation

Date	Name	Signature
23-10-2019	Kerryn Ellis Director Corporate Services	

⁵ Adapted from the definition of ‘General welfare’ as set forth in Article I of the U.S. Constitution.

⁶ Dodge, R., Daly, A., Huyton, J., & Sanders, L. (2012). The challenge of defining wellbeing. *International Journal of Wellbeing*, 2(3), 222-235. doi:10.5502/ijw.v2i3.4

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