

**Submission
No 7**

**PERFORMANCE OF VICTORIAN INTEGRITY AGENCIES 2020/21:
FOCUS ON WITNESS WELFARE**

Organisation: Independent Commission Against Corruption New South Wales

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INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES

SUBMISSION TO THE PARLIAMENT OF
VICTORIA INTEGRITY AND OVERSIGHT
COMMITTEE

April 2022

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Introduction

This submission is made by the NSW Independent Commission Against Corruption (“ICAC”) to the Parliament of Victoria Integrity and Oversight Committee.

By letter dated 10 March 2022, the Committee Chair sought the ICAC’s responses to the following questions:

1. What is the relevant legal framework bearing on your management of the welfare of members of the public, persons of interest, witnesses and others involved in agency investigations?

This would include, for example, legislative provisions relating to the holding of public hearings and confidentiality requirements.

2. What are your current policies, procedures and information relating to the management of the welfare of members of the public, persons of interest, witnesses and others involved in agency investigations?
3. What are your standard practices regarding the management of witness welfare and related issues?
4. What best practice principles do you use as benchmarks for the management of witness welfare and related matters? What are the sources of these principles?

Before responding to the above questions, a brief overview of the ICAC is set out in Part 1 of the submission.

Part 2 of the submission sets out the ICAC’s response to question 1.

Part 3 of the submission sets out the ICAC’s response to questions 2, 3 and 4.

Part 1: Overview of the ICAC

The ICAC was established in 1988 by the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) and commenced operations in 1989.

The ICAC’s mandate under s 2A of the ICAC Act is to investigate, expose and prevent corruption involving or affecting public authorities and public officials and to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and the community. The ICAC also investigates conduct that may involve certain specified criminal offences that the NSW Electoral Commission refers to the ICAC for investigation under s 13A of the ICAC Act.

Corrupt conduct is defined in s 7, s 8 and s 9 of the ICAC Act.

Section 12 of the ICAC Act provides that, in exercising its functions, the ICAC shall regard the protection of the public interest and the prevention of breaches of public trust as its “paramount concerns”.

Section 12A of the ICAC Act stipulates that, in exercising its functions, the ICAC is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

The ICAC may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.¹ An investigation may be in the nature of a preliminary investigation.²

Only a very small percentage of matters received by the ICAC are made the subject of an investigation.

The ICAC has various powers under the ICAC 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 of the ICAC Act)
- obtain documents or other things by serving a written notice (s 22 of the ICAC Act)
- enter and inspect public premises to inspect documents and other things and take copies of any document (s 23 of the ICAC Act)
- conduct a compulsory examination (private hearing) (s 30 of the ICAC Act)
- conduct a public inquiry (s 31 of the ICAC Act)
- apply for the issue of a search warrant (s 40 of the ICAC Act)
- prepare a report in relation to any matter that has been or is the subject of an investigation (s 74 of the ICAC Act)
- 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*)

¹ Section 20 of the ICAC Act.

² Section 20A of the ICAC Act.

- 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 ICAC is an investigative body that can make findings of fact and can make findings of corrupt conduct against public officials and others who engage in serious corrupt conduct. Not every investigation will produce findings of corrupt conduct or even adverse factual findings. The purpose of an investigation is to determine the truth or otherwise of the allegations under investigation. As such, an investigation may find that there was no corrupt or improper conduct.

Section 74 of the ICAC Act provides that the ICAC may prepare reports in relation to any matter that has been or is the subject of an investigation. The ICAC is required to prepare such reports in relation to any matter referred to the ICAC by both Houses of Parliament and in relation to matters where the ICAC has conducted a public inquiry. All such reports are to be furnished to the Presiding Officer of each House of Parliament. Reports are invariably made public by a Presiding Officer upon being furnished.

Section 74A(2) of the ICAC Act requires the ICAC to include in such a report a statement in respect to each “affected” person as to whether or not in all the circumstances the ICAC is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence.

An “affected” person is a person described as such in the reference made by both Houses of Parliament or against whom, in the ICAC’s opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

As with other investigative commissions, the ICAC is not bound by the rules or practice of evidence.³In addition, although the privilege against self-incrimination does not apply in ICAC hearings and witnesses can be compelled to answer questions. If they give their evidence under objection⁴ their evidence cannot generally be used against them in criminal proceedings (the notable exception is for the purposes of an offence under the ICAC Act). Thus, it is often the case that the evidence available to the ICAC upon which it makes its findings will differ from the admissible evidence available to be used in any subsequent criminal proceedings.

Since the commencement of its work in 1989, the ICAC has conducted numerous investigations and undertaken significant corruption prevention work to strengthen NSW public administration against corruption.

The ICAC does not institute or conduct criminal proceedings. The decision on whether or not to commence criminal proceedings as a result of an ICAC investigation is a matter for the NSW Director of Public Prosecutions (DPP).In NSW the DPP conducts any prosecutions arising from ICAC investigations. If the ICAC has obtained admissible evidence of the commission of a criminal offence in another State, the Commonwealth or a Territory, then the ICAC will furnish such evidence to the Attorney General or to the appropriate authority of the jurisdiction concerned.

³ Section 17(1) of the ICAC Act.

⁴ See s 37 and s 38 ICAC Act.

Part 2: Relevant legal framework

This Part of the submission addresses the following question:

What is the relevant legal framework bearing on your management of the welfare of members of the public, persons of interest, witnesses and others involved in agency investigations?

This would include, for example, legislative provisions relating to the holding of public hearings and confidentiality requirements.

The *Work Health and Safety Act 2011*

In New South Wales the *Work Health and Safety Act 2011* (“WH&S Act”) provides a framework to secure the health and safety of workers and others who come into contact with a workplace.

Section 19 of the WH&S Act provides that a person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

- a) workers engaged, or caused to be engaged by the person, and
 - b) workers whose activities in carrying out work are influenced or directed by the person,
- while the workers are at work in the business or undertaking.

That section also provides that a person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

The primary duty of care in s 19 is relevantly owed to two categories of people: “workers” and “other persons”.

Officers of the ICAC, independent counsel engaged by the ICAC and others engaged by the ICAC to provide services are “workers” who are “at work” such as to engage the duty in s 19 of the WH&S Act. A witness or other person (including legal representatives) involved in an ICAC investigation would be “other persons” to whom the duty in s 19 of the WH&S Act applies.

Under the WH&S Act the duty to ensure health and safety requires the ICAC to eliminate risks to health and safety, so far as is reasonably practicable (s 17(a) of the WH&S Act). If it is not reasonably practicable to eliminate risks, the ICAC must minimise risks so far as is reasonably practicable (s 17(b) of the WH&S Act).

Section 18 of the WH&S Act gives meaning to the words “reasonably practicable”. That section provides as follows:

- 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.

In 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.

Under s 27(1) of the WHS Act, there is a duty, which applies to senior ICAC officers, to exercise due diligence to ensure compliance with duties and obligations under the WH&S Act. The duty to exercise due diligence requires each such officer to take reasonable steps to ensure that an adequate system is in place to ensure the ICAC complies with its obligations under the WH&S Act. It is also an ongoing duty, which requires each officer to supervise compliance with that system.

The ICAC’s policies, procedures and practices for managing the welfare of those involved in its investigations, and which are discussed in Part 3 of this submission, have been developed taking into account the above provisions of the WH&S Act.

The ICAC Act

The ICAC Act has a number of provisions relevant to the welfare of those involved in ICAC investigations, including protection against unnecessary reputational damage.

The ICAC may, for the purposes of an investigation, conduct a compulsory examination (private hearing) or public inquiry but only if satisfied it is in the public interest to do so (ss.30(1) & 31(1) of the ICAC Act). In determining whether or not it is in the public interest to conduct a public inquiry the ICAC is required, under s 31(2) of the ICAC Act, to consider the following:

- a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
- b) the seriousness of the allegation or complaint being investigated,
- c) any risk of undue prejudice to a person’s reputation (including prejudice that might arise from not holding an inquiry),
- d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

The ICAC’s Operations Manual, which outlines the procedure for the conduct of public inquiries, provides that considerations to be taken into account by the ICAC in applying the criteria in s 31 of the ICAC Act include:

- a) whether public exposure would be likely to:
 - educate the public about serious corruption or systemic failures and issues
 - encourage others to come forward with information relevant to the investigation
 - encourage public agencies to engage in reform and/or establish public understanding of why change is necessary
- b) the seriousness and nature of the conduct alleged, for example:
 - whether the conduct involves a criminal offence or offences
 - the seniority or standing of the public official/s involved
 - the level of sophistication, organisation and planning

- the number of persons involved and whether the alleged conduct is systemic
- c) whether the allegations are already in the public domain and the public inquiry would:
- provide a transparent mechanism for public officials and others to be publicly accountable for their actions
 - enable persons the subject of the allegations, including false accusations or innuendo, an opportunity to provide an account
- d) the desirability of enhancing public confidence in the operations of the ICAC by demonstrating openness and public accountability in the ICAC's conduct of investigations.

The ICAC protects against unnecessary reputational damage by only commencing a public inquiry where there is probative evidence to suggest corrupt conduct has occurred or is occurring or, in the case of a referral by the Electoral Commission under s 13A of the ICAC Act, where probative evidence has been obtained of a possible criminal offence to which that section applies. The ICAC's usual practice is to gather evidence, including by conducting compulsory examinations with relevant witnesses and affected persons, before considering whether to conduct a public inquiry. This assists the ICAC to assess the evidence and to address the matters set out in s 31(2) of the ICAC Act.

The decision to conduct a public inquiry must be authorised by the Chief Commissioner and at least one of the other two Commissioners (s 6(2) of the ICAC Act).

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) of the ICAC Act).

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) of the ICAC Act). This may be done in circumstances where it is appropriate to do so, including having regard to the welfare of those affected by the evidence to be given.

Under s 31B of the ICAC Act the ICAC is required to issue guidelines relating to the conduct of public inquiries. The guidelines are required to provide guidance on the following aspects of the conduct of public inquiries:

- 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 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 of the ICAC Act).

Under s 112 of the ICAC Act, where satisfied it is in the public interest to do so, the ICAC may direct that:

- a) any evidence given before it, or
- b) the contents of any document, or a description of any thing, produced to the ICAC or seized under a search warrant issued under the ICAC Act, or

- c) 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, or
 - d) the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry, or
 - e) any written submissions received by the ICAC (including, but not limited to, submissions made by Counsel assisting the ICAC),
- shall not be published or shall not be published except in such manner, and to such persons as the ICAC specifies.

Such a direction is usually made with respect to evidence given in a compulsory examination. A direction may also be given with respect to evidence given in a public inquiry where, inter alia, it is considered it is necessary to do so in the public interest to protect the welfare of a person involved in the investigation.

In conducting its public inquiries, the ICAC observes and complies with the principles of natural justice.

Section 50 of the ICAC Act makes provision for the protection of witnesses and other persons assisting the ICAC. It 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:

- a) to protect the safety of any such person, or
- b) to protect any such person from intimidation or harassment.

Any such arrangements may involve the ICAC directing the Commissioner of Police or a prescribed public authority or prescribed public official to:

- a) provide any protection, or
- b) provide personnel or facilities or both to assist in providing protection, or
- c) to otherwise assist in the provision of protection.

The ICAC may also make an order to protect a person's safety or to protect a person from intimidation or harassment. It is a criminal offence for anyone to contravene such an order.

Under s 93 of the ICAC Act, it is a criminal offence for any person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person for or on account of the person:

- assisting the ICAC; or
- giving evidence to the ICAC.

The Inspector of the ICAC

The Inspector of the ICAC also has a role in ensuring that the ICAC appropriately manages the welfare of those involved in ICAC investigations.

The principal functions of the ICAC Inspector are set out in s 57B of the ICAC Act. They are to:

- audit the operations of the ICAC for the purpose of monitoring compliance with the law of NSW
- deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the ICAC or ICAC officers

- deal with (by reports and recommendations) conduct amounting to maladministration (including delay in the conduct of investigations and unreasonable invasions of privacy) by the ICAC or ICAC officers
- assess the effectiveness and appropriateness of the procedures of the ICAC relating to the legality or propriety of its activities.

The Inspector has extensive powers. These include the power to:

- investigate any aspect of the ICAC's operations or any conduct of ICAC officers
- require ICAC officers to supply information or produce documents or other things relating to the ICAC's operations or conduct of ICAC officers
- require ICAC officers to attend before the Inspector of the ICAC to answer questions or produce documents or other things relating to the ICAC's operations or the conduct of ICAC officers
- investigate and assess complaints about the ICAC or ICAC officers
- recommend disciplinary action or criminal prosecution against ICAC officers.

The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the minister, in response to a complaint made to the Inspector or in response to a reference by the Committee or any public authority or public official.

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- a) any matters affecting the ICAC, including, for example, its operational effectiveness or needs, and
- b) any administrative or general policy matter relating to the functions of the Inspector, and
- c) any other matter relating to the exercise of a function to audit, deal with or assess any matter that the Inspector considers warrants the making, in the public interest, of a special report.

The Inspector is also required to prepare annual reports.

Reports made by the Inspector are made public by a Presiding Officer and are published on the Inspector's website.

The Parliamentary Committee on the ICAC

The Parliamentary Committee on the ICAC ("the Parliamentary Committee") is the means by which the ICAC is accountable to the NSW Parliament. It was established by resolution on 6 April 1989 and was re-established on 19 June 2019.

The Parliamentary Committee comprises members of both the Legislative Council and the Legislative Assembly.

The functions of the Parliamentary Committee are set out in s 64 of the ICAC Act. They are to:

- monitor and review the exercise by the ICAC and the Inspector of the ICAC of the ICAC's and Inspector's functions
- report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the ICAC or the Inspector connected with the exercise of its functions to which, in the opinion of the Parliamentary Committee, the attention of Parliament should be directed
- examine each annual and other report of the ICAC and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report
- examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change that the Parliamentary Committee thinks desirable to the functions, structures and procedures of the ICAC and the Inspector
- enquire into any question in connection with its functions referred to it by both Houses of Parliament, and report to both Houses of Parliament on that question.

The Parliamentary Committee cannot investigate a matter relating to particular conduct, reconsider a decision by the ICAC to investigate, not to investigate or discontinue an investigation, or reconsider any findings, recommendations, determinations or other decisions of the ICAC in relation to a particular investigation or complaint.

The Parliamentary Committee conducts public inquiries and publishes reports on those inquiries. Information with respect to each inquiry and copies of inquiry reports can be accessed through the NSW Parliament website.

The Parliamentary Committee recently completed an inquiry into the reputational impact on an individual being adversely named in the ICAC's investigations. The Committee's November 2021 report on its inquiry is accessible from the NSW Parliament website. The findings made in the report include the following:

Finding 1

The nature of reputational impact is varied and includes economic, business, social and psychological effects.

Finding 5

There is currently a broad range of safeguards in place to minimise reputational impact on individuals being adversely named in the ICAC's investigations.

Finding 6

Some reputational impact is unavoidable if the ICAC is to be effective in its work to investigate, expose and prevent corruption.

Finding 8

Many stakeholders agree that the current safeguards for reputational impact are adequate and no changes are necessary.

Part 3: Policies, procedures and practices relating to welfare

This part of the submission addresses the following questions:

What are your current policies, procedures and information relating to the management of the welfare of members of the public, persons of interest, witnesses and others involved in agency investigations?

What are your standard practices regarding the management of witness welfare and related issues?

What best practice principles do you use as benchmarks for the management of witness welfare and related matters? What are the sources of these principles?

The ICAC acknowledges that its investigations, particularly where they involve a public inquiry and/or a public report, can adversely impact on the welfare, including the mental health and/or reputation, of those involved in the investigation.

Welfare management

Any person who is involved in an ICAC investigation who is unwell or is under any physical or mental impediment that may affect their involvement in the ICAC's investigation or may be exacerbated by their involvement in the ICAC's investigation is encouraged to inform the ICAC so that the ICAC can assess and manage any risk to their health and safety.

The ICAC uses a risk-based approach to managing the welfare of those involved in its investigations. This is reflected in a specific procedure for managing risks to the health and safety of external parties involved in its investigations. The purpose of the procedure is to ensure such risks are identified and dealt with appropriately so that, where practical, they are eliminated or minimised.

The procedure provides that if any ICAC officer becomes aware that a person involved in an ICAC investigation is unwell, suffers from any physical or mental illness, or other condition that may affect their involvement in the ICAC's investigation or is receiving medical treatment, the ICAC officer will, as soon as practicable, make a comprehensive report on the matter to the senior ICAC officer responsible for the investigation.

The senior ICAC officer responsible for an investigation is required to ensure that any identified risks are recorded in the ICAC's case management system. The risks recorded will, where relevant, include risks to the health and safety of persons involved in the investigation.

In considering any risks to the health and safety of such persons, the senior ICAC officer responsible for the investigation is required to take into account any known evidence that a person suffers from any physical or mental illness, intellectual disability, other condition that may affect their involvement

in the investigation or is receiving medical treatment and the way in which they are likely to interact with or respond to the investigation and the exercise of the ICAC's statutory powers.

Under the procedure, all significant risks are to be reported to the Executive Director, Investigation Division. The Executive Director, Investigation Division must report such risks to the Chief Executive Officer who is required to notify the Chief Commissioner.

It is generally the responsibility of the senior ICAC officer in charge of the investigation to manage any identified risks so that the risk of harm is either eliminated or, where that is not practical, minimised. Where the risk is assessed as significant the Chief Executive Officer may, in consultation with the Executive Director, Investigation Division and the Chief Commissioner, determine to assign responsibility for managing the identified risk to another ICAC officer.

Where necessary to gain an understanding of the risk and how it can be effectively managed, the ICAC may seek expert advice from a suitably qualified medical practitioner.

The way in which the Commission addresses the welfare requirements of those involved in its investigations is set out in Table 1 below.

Table 1: Welfare management requirements

Element	Requirement
Training	The ICAC has trained first aid officers. In addition, the ICAC will provide ongoing mental health awareness training for ICAC officers involved in the exercise of the ICAC'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, ICAC intelligence holdings and any other database accessible to the ICAC 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 ICAC'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</p>

	<p>strategy and subsequently notifying the Chief Executive Officer and relevant Commissioner(s).</p> <p>The Chief Investigator will ensure that those ICAC 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>
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. 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 ICAC 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, an ICAC 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 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 ICAC may undertake certain authorised activity that, but for the authorisation, would be unlawful. Such activity may include ICAC 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</i></p>

	<p><i>(Controlled Operations) Act 1997</i> is to be approved by the Chief Commissioner or other Commissioner authorising 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 ICAC officers involved in the controlled operation are cognizant of any identified risk(s) and the strategy to address the risk(s).</p>
<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, ICAC intelligence holdings and any other database accessible to the ICAC 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 ICAC’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 ICAC 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, an ICAC 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 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 Executive Officer and the Chief Commissioner and (if not the Chief Commissioner) the Commissioner presiding at the public inquiry. 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 ICAC 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, an ICAC 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 officer will immediately notify the relevant Chief Investigator or, if 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>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 ICAC 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 ICAC 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 an ICAC officer that they consider they may be unfit to attend and give evidence, the ICAC 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 ICAC 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 ICAC’s offices or hearing rooms by banned persons; • limiting and controlling access to public and private areas of the ICAC’s offices; • 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 ICAC 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 an ICAC first aid officer to be present; • appoint an ICAC 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>
<p>Welfare services</p>	<p>The ICAC’s Employee Assistance Program (“EAP”) is available to persons whose health and safety may be at risk arising from an ICAC 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 • Headspace (for people aged 12-25) 1800 650 890. <p>The ICAC has available trained first aid officers and may appoint an ICAC contact officer to liaise with a person.</p>

	<p>If an ICAC 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 an 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>ICAC officers exercising an ICAC 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 ICAC 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 ICAC officer will notify his/her Executive Director.</p>
Medical incident management and response	<p>Where ICAC officers become aware that a person affected by the exercise of 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>

Managing COVID-19

The ICAC has recognised that the management of COVID-19 in the community and the workplace is an evolving situation that impacts on the welfare of those involved in its investigations. It has maintained regular contact with NSW Health and kept abreast of relevant public health orders and any advice that is publicly available on the NSW Health COVID-19 website, to ensure that the conduct of its investigations reflects current health advice.

The ICAC has decided that, until there is a substantial improvement in the COVID-19 situation in NSW, those involved in ICAC compulsory examinations and public inquiries should, as far as practicable, participate remotely by audio visual link (AVL). Only fully vaccinated persons (persons who have received at least two doses of an Australian approved COVID-19 vaccine) may attend ICAC premises for the purposes of a compulsory examination or public inquiry. Only those fully vaccinated persons whose presence on ICAC premises is deemed essential for the effective conduct of the compulsory examination or public inquiry are permitted on ICAC premises for the purpose of the compulsory

examination or public inquiry. This is determined on a case-by-case basis by the presiding Commissioner.

The ICAC has developed special protocols for the conduct of compulsory examinations and public inquiries to facilitate their conduct during COVID-19. The Public Inquiry COVID-19 Protocol is published on the ICAC's website.

The protocols are regularly monitored and reviewed and updated where appropriate.