



**Office of the Victorian
Information Commissioner**

Witness Welfare Management Policy

Version 1.0



Witness Welfare Management Policy

Witness welfare management policy	3
Purpose	3
Policy statement	3
Legal Framework	3
<i>Equal Opportunity Act 2010 (EO Act)</i>	3
<i>Occupational Health and Safety Act 2004 (OHS Act)</i>	3
<i>Victorian Charter of Human Rights and Responsibilities Act 2006 (Human Rights Charter)</i>	4
<i>Victorian Inspectorate Act 2011 (VI Act)</i>	4
Welfare Support	4
Related Documents	8
Internal	8
Corporate Policies and Procedures	9
Roles and Responsibilities	9
Review of policy	9
Authorisation/version information	11

WITNESS WELFARE MANAGEMENT POLICY

PURPOSE

- 1 The purpose of this policy is to set out for staff assisting the Victorian Information Commissioner and Deputy Commissioners the requirements for managing witness welfare risks. It concerns witnesses and other people other than employees involved in investigative processes undertaken by the Office of the Victorian Information Commissioner (**OVIC**) under the *Freedom of Information Act 1982 (FOI Act)* and the *Privacy and Data Protection Act 2014 (PDP Act)*. The application of this policy strives to eliminate or reduce these welfare risks, where it is reasonably practicable to do so.

POLICY STATEMENT

- 2 OVIC recognises its investigation process, participation in an investigation process voluntarily or by the use of coercive powers to compel a person to participate in an investigation, may have a potential and significant impact on the mental and physical welfare of a person. Witnesses may also experience adverse mental or physical impacts at other points in OVIC's investigations, such as during the making and publishing of investigation reports, the making of recommendations and the issuing of compliance notices.
- 3 OVIC is committed to ensuring it meets its witness welfare obligations, and acknowledges that assessment and mitigation of welfare risks is part of a continuous process to be considered during all phases of the exercise of the Information Commissioner's functions and powers.
- 4 OVIC uses a risk-based approach to managing the welfare of witnesses and persons other than OVIC employees who are involved in an investigation or the use of coercive powers by OVIC. In exercising investigative and coercive powers, the Information Commissioner and OVIC staff will:
 - (a) eliminate or reduce risks to health and safety of persons subject to the use of investigative or coercive powers, to the extent that is reasonably practicable; and
 - (b) act in accordance with the Human Rights Charter, and give proper consideration to the human rights of the person involved in the investigative process when making decisions.

LEGAL FRAMEWORK

- 5 The following legislation is relevant to witness welfare management.

Equal Opportunity Act 2010 (EO Act)

- 6 Section 4(1) of the EO Act defines services as including services provided by a government department, public authority, State owned enterprise or municipal council.
- 7 Section 45 of the EO Act requires a service provider such as the OVIC to make reasonable adjustments for a person with a disability.

Occupational Health and Safety Act 2004 (OHS Act)

- 8 OVIC is an employer according to the definition provided in section 5 of the OHS Act.

- 9 Pursuant to section 23(1) of the OHS Act, OVIC (an employer) must ensure, so far as is reasonably practicable, that persons other than its employees are not exposed to risks to their health or safety arising from the conduct of OVIC's undertaking.
- 10 Section 20 of the OHS Act provides that employers have a duty to eliminate or reduce risks to health and safety so far as is reasonably practicable.

Victorian Charter of Human Rights and Responsibilities Act 2006 (Human Rights Charter)

- 11 The Victorian Information Commissioner and OVIC staff are public authorities as defined in section 4 of the Human Rights Charter.
- 12 Section 10(b) of the Human Rights Charter provides that a person must not be treated or punished in a cruel, inhuman or degrading way. This includes treatment that humiliates or debases a person, shows a lack of respect to a person, or diminishes the dignity of a person.
- 13 The Human Rights Charter recognises that legislation such as the FOI Act and PDP Act may mean that public authorities are required to act in a way, or make a decision in a way, that limits a human right. However, section 38(1) of the Human Rights Charter obliges a public authority to act in a manner that is compatible with human rights, and to give proper consideration to human rights when they are making decisions.

Victorian Inspectorate Act 2011 (VI Act)

- 14 Section 11(5) of the VI Act provides the following functions to the Victorian Inspectorate in respect of officers of the OVIC:
- (a) To monitor the exercise of coercive powers by officers of the OVIC; and
 - (b) To monitor whether procedural fairness requirements have been complied with by officers of the OVIC in:
 - (i) the exercise, or purported exercise, of coercive powers under the FOI Act and PDP Act; and
 - (ii) the conduct of investigations under Part VIB of the FOI Act; and
 - (iii) the making of recommendations under section 61L of the FOI Act; and
 - (iv) the making of investigation reports under section 61Q of the FOI Act; and
 - (v) the making of compliance notices under Part 3 of the PDP Act.
- 15 The VI Act also empowers the Victorian Inspectorate to receive complaints about the conduct of officers of the OVIC, investigate and assess the conduct of officers of the OVIC, and to report on and make recommendations as the result of the performance of its functions relating to the OVIC and its officers. Complaints about conduct of officers of the OVIC may include complaints about witness welfare-related matters.

WELFARE SUPPORT

- 16 When requesting a witness to participate in an investigation – either through the exercise of a coercive power or voluntarily – OVIC staff must:
- (a) adhere to the Fact Sheet, Opening Script and Witness Welfare Checklist; and

- (b) consider the principles set out in OVIC's *Policy and procedure for exercising coercive and other powers (May 2021)*.

17 The welfare of a person should be considered before, during and after their participation in an investigation.

18 The table below is a consolidation of the expectations of the OVIC regarding welfare support, including those expectations detailed in OVIC's operational policies, procedures, and guidance materials.

Category	Expectation
Guidance	OVIC offers guidance to OVIC staff in dealing with challenging behaviour in the course of their employment.
	OVIC provides specific guidance to OVIC staff on the identification and management of welfare risks to witnesses and other persons involved in OVIC investigations, review processes, or complaint processes.
	OVIC provides training to OVIC staff involved in investigations, review processes, or complaint processes with training on welfare management for witnesses and other persons involved in OVIC investigations, review processes, or complaint processes.
Training and continuous improvement	OVIC prioritises mental health first aid training for relevant OVIC staff involved in investigations, review processes, or complaint processes.
	OVIC staff debrief at the conclusion of an investigation, review process, or complaint process in order to share lessons learned, including those relating to welfare, internally to foster continuous improvement.
Communication	OVIC staff modify their communication style and methods as required to meet the individual needs of witnesses with whom they are communicating. Witnesses must be treated with respect and dignity.
	OVIC offers and makes reasonable adjustments to enable people to access and use our services, regardless of whether they identify as a person with a disability.
	OVIC provides relevant and timely information to people about our processes, their role in our processes, and their rights and responsibilities when engaging with us.
	OVIC staff provide regular updates to parties, and where possible/practicable, foreshadow any potential next steps or outcomes.

	<p>OVIC staff consider the timing of communications when providing information about potentially adverse outcomes or opinions to people.</p>
	<p>OVIC staff take reasonable steps to engage directly with parties affected by the Victorian Information Commissioner’s or Deputy Commissioners’ decision-making, including providing reasons for decisions and explaining any avenues available for internal or external review of the decision.</p>
<p>Response to threats of suicide or self-harm</p>	<p>Where OVIC staff identify welfare concerns, OVIC proactively shares information with relevant people such as a registered health practitioner or a welfare support officer, bodies (including Victoria Police), or authorities to prevent or lessen the risk of harm to a person’s health, safety or welfare.</p> <p>Where an OVIC staff member considers that such people, bodies or authorities should be notified of such a risk, OVIC will seek to obtain prior permission from that person to disclose their personal information.</p> <p>Where a person talks about suicide or self-harm, staff should:</p> <ul style="list-style-type: none"> • check if the person is serious; • show they are concerned; • consult their manager or another senior member of staff about what to do; • link the person with people or services that can help. <p>Where there appears to be a serious or imminent risk to a person, such where staff consider the person to be at high risk of suicide or self-harm, or a risk of harm to others, OVIC staff should:</p> <ul style="list-style-type: none"> • notify their manager or another senior member of staff; • if possible, gather adequate information to support an emergency response; • if on the phone, attempt to keep the person on the phone, seek further information and provide support by talking to the person calmly; and • where considered necessary, contact an emergency provider such as Victoria Police about the risk of harm and request they conduct a welfare check on the person.
<p>Timeliness and quality assurance</p>	<p>OVIC has timeliness performance measures to ensure the exercise of the Victorian Information Commissioner’s functions are not protracted or unduly burdensome on affected parties.</p>

	OVIC undertakes quality assurance activities, including case, call, and interview reviews or audits in order to monitor the performance of and identify further training needs of OVIC staff.
Pre-interaction welfare risk assessment	Prior to the exercise of the Victorian Information Commissioner’s powers, OVIC staff consider potential risks to the health and safety of persons who may be impacted by the use of those powers, and to identify any available means of eliminating or reducing those risks.
Welfare support information	OVIC staff notify persons subject to the use of the Victorian Information Commissioner’s powers and witnesses attending to give evidence on a voluntary basis of the welfare support resources available to them, including accessing independent witness welfare support provided through OVIC’s Employee Assistance Program (EAP) provider.
Welfare risk monitoring	When the Victorian Information Commissioner’s powers are used, OVIC staff monitor the welfare of parties throughout the relevant process and escalate welfare issues as required. Monitoring must occur before, during and after an interview or examination.
	At the conclusion of the exercise of the Victorian Information Commissioner’s powers, OVIC staff consider the welfare status of the person subject to those powers and whether they need to notify relevant welfare support services.
Medical incident management and response	In the event of a medical incident occurring in the course of OVIC’s investigations activities or the exercise of coercive powers, OVIC staff provide reasonable assistance to persons to receive appropriate and timely medical assistance from an appropriately qualified registered health practitioner.
Welfare services	OVIC recognises the importance of ensuring a witness can involve their own support structures, such as a legal practitioner or support person.
	OVIC seeks consent from witnesses in any of its investigations to refer them to an independent welfare support service provided through OVIC’s Employee Assistance Program (EAP) provider to facilitate the provision of welfare services as required. Where appropriate, OVIC encourages persons involved in any of its investigation, review or complaint processes to avail themselves of any other support services available to them, such as an EAP services provided by the person’s employer as appropriate
	If OVIC staff determines that a registered health practitioner or welfare support service should be notified of a person’s welfare

	risk, the OVIC staff member seeks and obtains prior permission from the person to provide their personal welfare details.
Confidentiality notices	OVIC’s power to issue Confidentiality Notices are limited to investigations of public interest complaints. Before deciding to issue a confidentiality notice, OVIC will first consider whether that action is necessary in accordance with the legislative requirements. Where OVIC is conducting an investigation of a public interest complaint, OVIC staff should refer to OVIC’s Public Interest Disclosure Management Policy and Procedures.
	OVIC allows restricted matters in Confidentiality Notices to be disclosed by the subject of the notice to registered health practitioners and certain other categories of people, unless this would prejudice an investigation.
	OVIC gives proper consideration to relevant human rights under the Human Rights Charter before deciding to issue a Confidentiality Notice.

RELATED DOCUMENTS

Internal

Privacy

Checklist – Witness Welfare

Fact Sheet – Notice to attend an examination issued under the Privacy and Data Protection Act 2014

Fact Sheet – Voluntary interviews under the Privacy and Data Protection Act 2014

Script – Compulsory examination under the Privacy and Data Protection Act 2014

Script – Voluntary interview under the Privacy and Data Protection Act 2014

Freedom of Information

Checklist – Witness Welfare

Fact Sheet – Notice to attend an examination under the Freedom of Information Act 1982

Fact Sheet – Voluntary interviews under the Freedom of Information Act 1982

Script – Compulsory Examination under the Freedom of Information Act 1982

Script – Voluntary interview under the Freedom of Information Act 1982

Regulatory Action

Guidelines for Regulatory Action

Policy and Procedure for Exercising Coercive Powers

[Regulatory Action Policy](#)

Corporate Policies and Procedures

Occupational Health and Safety Policy and Procedures

Privacy Policies and Procedures

General Privacy Policy

Website Privacy Statement

Public Interest Disclosure Management Policy

Respect in the Workplace Policy and Procedures

Risk Management Policy and Framework

ROLES AND RESPONSIBILITIES

Role at OVIC	Responsibility
Victorian Information Commissioner	<ul style="list-style-type: none">To authorise this policy, relevant related policies and any significant amendments to those documents.
General Counsel	<ul style="list-style-type: none">To ensure compatibility with the Human Rights Charter and compliance with other legislation under which the OVIC operates
Corporate Governance Committee	<ul style="list-style-type: none">To review the policy periodically and make recommendations for amendments to the Victorian Information Commissioner.
OVIC staff engaged in investigations and the use of the Victorian Information Commissioner's coercive powers	<ul style="list-style-type: none">To complete training on the application of the policy and the suite of documents relating to witness welfare, as directed.To apply the requirements of this policy and related documents during the investigation process.To apply the requirements of this policy and related documents during voluntary interactions with/interviews of persons.To apply the requirements of this policy and related documents while using OVIC coercive powers.

REVIEW OF POLICY

19 Review of this policy is due either:

- (a) Upon major changes in the structure and function of OVIC and the Victorian Information Commissioner;

- (b) 3 years from the date of authorisation or last review; or
- (c) At an earlier date at the discretion of the Victorian Information Commissioner.

AUTHORISATION/VERSION INFORMATION

Version	Date	Details
1.0	13/10/2022	Authorised by Victorian Information Commissioner