



# WITNESS WELLBEING POLICY

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## 1. Purpose

The purpose of this policy is to set out the ACT Integrity Commission ('ACTIC') officers commitment to a fair and proper approach to witness welfare. It articulates the high expectations held by ACTIC concerning the psychological and physical wellbeing of witnesses and other persons subject to, or impacted by, the exercise of ACTIC's duties, functions and powers.

The application of this policy and related documents seeks to ensure risks to psychological wellbeing are, so far as reasonably practicable, eliminated, reduced or managed. ACTIC's primary role in relation to witness wellbeing is to provide liaison and referral support throughout the course of its dealings with witnesses.

## 2. Context

ACTIC's primary statutory function is to expose and prevent serious and systemic corrupt conduct. Witnesses, persons of interest and other persons subject to the exercise of ACTIC's duties, functions and powers may experience a level of stress, discomfort or emotional turmoil. This policy aims, so far as reasonably practicable, to reduce, through appropriate management of risks to the psychological wellbeing of persons with whom it interacts, having regard to ACTIC's purpose and function, and in accordance with relevant legislation.



The *Integrity Commission Act 2018* (ACT) (**'ACTIC Act'**) contains specific obligations and requirements that govern how it exercises its powers. For example, in conducting examinations to elicit evidence from witnesses, it must exercise this function with as little formality and technicality as is possible and, in particular – must accept written submissions as far as possible and examinations must be conducted with as little emphasis on an adversarial approach as is possible<sup>1</sup>. In deciding whether to hold an examination in public or in private the ACTIC must consider if it is in the public interest to hold a public examination and whether a public examination can be held without unreasonably infringing a person's human rights.<sup>2</sup>

Other provisions require consideration to suppress or restrict publication of information to prevent prejudice or hardship being caused to a person.<sup>3</sup> unreasonable damage to a person's reputation, safety and wellbeing.

The *Work Health and Safety Act 2011* (ACT) (**'WHS Act'**) and the *Human Rights Act 2004* (ACT) (**'HR Act'**) impose additional obligations upon ACTIC. The WHS Act imposes upon ACTIC, a duty to eliminate risks to health and safety, so far as is reasonably practicable and, if this is not reasonably practicable, to minimise those risks so far as is reasonably practicable.

It is clear in the context of the performance of the functions of the ACTIC that risks to psychological wellbeing cannot be entirely eliminated and it is therefore necessary to focus on minimising the risks of harm. What is reasonably practicable is highly dependent on the particular circumstances of each case but some general requirements can be identified. It is necessary to be intentional about weighing risk, consider the likelihood of harm occurring and the degree of harm that might result, take into account what is known or ought reasonably to be known about these matters and to undertake reasonably available ways of minimising the risk.

The HR Act requires ACTIC Officers to act compatibly with, and to give proper consideration to, human rights when making a decision.

### 3. Scope

This policy sets out ACTIC's expectations concerning the psychological wellbeing of witnesses, persons of interest and other persons subject to the exercise of ACTIC's duties, functions and powers under the ACTIC Act. The principles of this policy apply equally to persons subject to the exercise of ACTIC's duties, functions and powers under the *Public Interest Disclosure Act 2012*.

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<sup>1</sup> Section 142 of the Act.

<sup>2</sup> Section 143 (2) of the Act.

<sup>3</sup> Section 154(1)(a) of the Act.



## 4. Policy Statement

This policy outlines ACTIC's responsibilities and commitment to managing the psychological wellbeing of persons involved in or subject to the exercise of ACTIC's duties, functions and powers, in accordance with legislative requirements. It must be accepted that, in performing its investigative functions, including the examination of witnesses, matters may need to be explored that could give rise to anxiety or stress. Sometimes it will be necessary to indicate, either explicitly or implicitly, that evidence is not accepted or the person's conduct has been inappropriate. This might lead to such a person feeling disrespected or offended and carry the risk of a serious emotional or psychological response, especially if they feel their employment and/or reputation is at risk. The mere fact that such feelings might or have been engendered does not demonstrate, of itself, that there is a significant risk to the person's safety, health or welfare. It remains important, nevertheless to be aware of the signs of significant issues and take such steps as are reasonably practicable to address them, within in the limitations of the scope of this Policy.

ACTIC officers are required, to the extent reasonably possible as lay persons, to identify, assess and manage risks to psychological wellbeing of witnesses, persons of interest and other persons subject to the exercise of ACTIC's duties, functions and powers throughout the lifecycle of an operation, including:

- during the receipt and assessment of corruption reports and PIDs
- during investigations and examinations; and
- when developing reports and recommendations.

There are limitations in ACTIC's obligations and responsibilities with respect to mental health and safety of witnesses and others involved in ACTIC activities. This policy acknowledges that:

- i. the ACTIC does not provide diagnosis, treatment, health services or therapeutic advice to witnesses and persons of interest; and
- ii. the ACTIC's responsibility is focused on identifying and managing critical risks to the mental health and wellbeing of witnesses and others involved in ACTIC investigation activities, so far as that can reasonably be done by lay persons, and referring and/or connecting them to appropriate support services.

ACTIC aims to:

- treat witnesses, persons of interest and others involved in ACTIC activities with respect, dignity and fairness;
- identify, assess and manage, to the extent that is reasonably practicable, the health, safety and psychological wellbeing of witnesses, persons of interest and others subject to the exercise of ACTIC's duties, functions and powers; and
- meet all relevant obligations under the IC Act, WHS Act, Charter and applicable subordinate instruments.



## 5. Policy Principles

Table 1 outlines the key principles that underpin this policy.

Principle	Description
Respect, Dignity and Fairness	<ul style="list-style-type: none"> <li>ACTIC Officers are required to treat all persons they engage with in the course of their duties with respect, dignity and fairness, consistent with ACTIC's values.</li> </ul>
Harm Minimisation	<ul style="list-style-type: none"> <li>ACTIC officers are required to minimise the potential harm caused from the exercise of the ACTIC's functions and powers, to the extent it is reasonable and practicable.</li> </ul>
Care and Support	<ul style="list-style-type: none"> <li>ACTIC will provide information to people about public support services and resources available to them, and provides reminders about the availability of these services at key points throughout an investigation.</li> <li>ACTIC officers should be alert to the psychological wellbeing of persons subject to that persons dealings with the ACTIC, such that a lay person can be, and ensure they are aware of the publicly available services.</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>ACTIC staff are expected to implement these policies and procedures. ACTIC will provide sufficient training and guidance to support staff to effectively undertake their responsibilities.</li> <li>ACTIC will provide training and guidance to ACTIC Officers on identifying, assessing and managing psychological wellbeing risks to witnesses, persons of interest and others involved in ACTIC's operations.</li> <li>ACTIC will provide guidance to ACTIC officers on expectations and requirements for responding to, and escalating, identified psychological wellbeing concerns.</li> <li>Escalation means that identified concerns in relation to witness welfare are referred to a senior officer within the ACTIC to determine if additional support measures need to be implemented, including for example, referral to a relevant health professional.</li> </ul>
A proactive risk-based approach	<ul style="list-style-type: none"> <li>ACTIC, through its policies and processes will to the best of its abilities, identify, assess and manage psychological wellbeing risks for witnesses, persons of interest and other persons subject to the exercise of ACTIC's duties, functions and powers.</li> <li>Where reasonably practicable, prior to the use of ACTIC powers and throughout an operation, ACTIC officers must:</li> </ul>



	<ul style="list-style-type: none"> <li>○ conduct operational risk assessments – considering, identifying, assessing and documenting the potential risks to the health, safety and psychological wellbeing of persons affected by the use of powers, and</li> <li>○ identify and implement reasonably available means of reducing those risks.</li> </ul>
Continuous improvement	<ul style="list-style-type: none"> <li>● ACTIC strives for continuous improvement in its psychological wellbeing management practices, by reviewing and improving on relevant resources, materials and processes, where practicable.</li> <li>● ACTIC will undertake quality assurance activities, including operational debriefs and audits of its operational risk assessments of witness psychological wellbeing, to monitor performance and identify training needs.</li> <li>● ACTIC seeks feedback and guidance from its regulatory oversight bodies, external consultants, and the practices of other agencies and jurisdictions.</li> <li>● ACTIC will seek feedback from witnesses that have been engaged in the process about their experience with the ACTIC.</li> <li>● ACTIC will analyse that feedback with a view to determining whether improvements can be made in the witness welfare procedure.</li> </ul>
Limitations	<ul style="list-style-type: none"> <li>● The ACTIC will not take on any role as a treatment provider but will ensure that the affected person is aware of the treatment providers available and their contact details to facilitate direct interaction between the person and the welfare agency.</li> </ul>

## 6. Witness Psychological Wellbeing Model

All ACTIC officers who have engagement with witnesses, persons of interest and other individuals throughout the performance of their functions have an obligation to proactively implement the intent of the witness welfare principles outlined above. This includes ensuring any contact with witnesses or others that gives rise to a welfare concern is documented a risk assessment process undertaken and if required, mitigation actions undertaken.

During an investigation the allocated lead investigator has primary responsibility for assessing and mitigating witness welfare concerns. This does not absolve responsibility that all ACTIC officers who have contact with witnesses and others, including for example, ACTIC lawyers, and counsel



assisting must communicate to the lead investigator, any interactions of concern, so that an assessment of risk can be made and appropriate arrangements put into place.

All ACTIC officers who interact with witnesses or others, should, make inquiries in a neutral and courteous manner as to how a witness or other relevant person is feeling. The availability of the suite of witness welfare services should be reinforced with that person. ACTIC officers should refrain from giving any advice that could be or could be taken to be therapeutic advice.

Concerns arising from a witness' response to interactions or the inquiry about how they are feeling or where changes are observed in the behaviour of witnesses which might reasonably be taken to indicate signs of mental health deterioration must be escalated to a senior officer.

Where an immediate risk to a person's psychological wellbeing arises, such as a risk of suicide, self-harm, harm to others, extreme distress or anxiety, or family violence, ACTIC officers will escalate to emergency services immediately and contact 000. All referrals to emergency services will be notified to the CEO. Where there is a reasonable belief that there is a serious threat to a person's life, health, safety or welfare, disclosure of relevant personal information is permitted.

ACTIC officers escalate concerns about observed changes in the behaviour of witnesses, persons of interest and other persons subject to the exercise of ACTIC's duties, functions and powers, which could indicate signs of mental health deterioration.

## **7. Special Considerations for Public Examination**

ACTIC understands that with public examinations comes an increased risk to witness welfare, particularly noting personal reputational harm that may follow. The ACTIC is committed to undertaking a proactive support role to manage this increased risk to witnesses.

The ACTIC will engage with witnesses at an early stage to determine whether they have any concerns for their health and safety. The ACTIC takes seriously the need to identify and manage risks to the health and safety of those involved in its investigations and to protect witnesses against any potential harm, intimidation, or harassment.

The ACTIC proactively provides pathways for witnesses if they are unwell or under any physical or mental impediment that may affect their involvement in the ACTIC's investigation or believe any physical or mental condition may be worsened by their involvement in the ACTIC's investigation.

ACTIC may also implement strategies intended to reduce or eliminate any risk to the witness, such as:

- limiting and controlling access to public and private areas of the ACTIC.
- 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.
- provision for response to a critical incident (which includes an incident involving imminent or actual serious injury to a person).



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 ACTIC 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.
- make arrangements to protect the safety of any person.
- arrange for an ACTIC first aid officer to be present.
- appoint an ACTIC contact officer to liaise with the person.

The ACTIC will provide a witness welfare pack to each witness who receives a summons to attend a public examination, which includes the contact details for welfare support services.

## **8. Complaints about ACTIC or an ACTIC Officer**

If an ACTIC Officer receives a complaint from a witness about their conduct or about the conduct of another ACTIC Officer or ACTIC, the officer must immediately notify the CEO.

## **9. Breaches**

Any breach of this policy must be reported to the CEO as soon as the breach is discovered.