

NSWPF REF: 09/0131

## THIS MEMORANDUM OF UNDERSTANDING ,

which is to come into effect on the 8<sup>th</sup> day of May 2009, is made

### BETWEEN

**THE COMMISSIONER OF POLICE** for and on behalf of the New South Wales Police Force of 1 Charles Street, Parramatta, NSW 2150 ("NSWPF")

### AND

**THE COMMISSIONER** of the **HEALTH CARE COMPLAINTS COMMISSION** of Level 13, at 323 Castlereagh Street, Sydney NSW 2000 ("HCCC")

### BACKGROUND :

- A. The NSWPF is established and has responsibilities pursuant to the *Police Act, 1990 (NSW)* including the investigation of persons involved in committing or intending to commit criminal offences within the territorial limits of the State of New South Wales and also the maintenance of records detailing the criminal convictions of various persons.
- B. The Health Care Complaints Commission is an independent statutory authority established pursuant to the Health Care Complaints Act 1993 (NSW) to deal with complaints about health service providers by receiving and assessing complaints about health service providers, by either resolving complaints or assisting in the resolution of complaints or investigating serious complaints including prosecuting serious complaints against registered health practitioners before the relevant registration board, professional standards committee or tribunal. The Commission also investigates and can make orders regarding the practice of unregistered health service providers.
- C. The parties wish to document their operational understandings and agreed protocols in respect of the exchange of information regarding separate or joint investigations by the parties of health service providers.

The parties have reached the following understandings:

#### 1. RESPONSIBILITIES OF PARTIES

The operational arrangements, understandings and protocols reached between the parties are contained in this Memorandum of Understanding ("MoU"), which includes the Schedules hereto signed by the parties.

#### 2. TERM (indefinite term)

This MoU takes effect from the above mentioned date and continues until it is either:

- (a) superseded by a subsequent MoU of the parties, or
- (b) terminated, at the written request of one of the parties, provided that such termination should, whenever possible, only occur after some prior consultation with the other party.

#### 3. REVIEW and AMENDMENT

- (a) The parties intend to review this MoU every 2 years or more frequently, if circumstances so require.
- (b) Any amendments to this MoU must be made in writing, signed on behalf of the parties. However, the costs or fees specified herein, can be varied, by consent, via exchange of e-mail or correspondence between the respective section managers of each party.

#### 4. CONFIDENTIALITY

- (a) The parties understand that in the absence of any overriding legislative authority they are required to comply with the relevant provisions of the *Privacy and Personal Information Protection Act 1998 (NSW)* and any other applicable legislation governing the subject matter of this MoU.

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- (b) The parties hereby undertake to keep all information howsoever obtained confidential and to respect the privacy of any individual except as may be required for release by one party to the other party for a law enforcement purpose or otherwise as may be required or permitted by law.
- (c) The parties will ensure that the information exchanged or provided under this MoU will only be used for the purposes specified herein and that, further, access to such information will be limited to only those officers, of the HCCC, who require such information for the purpose of conducting an investigation under the *Health Care Complaints Act 1993 (NSW)* and officers, of NSWPF, carrying out relevant Police investigations.

**5. DISPUTE RESOLUTION and TERMINATION PROCESS**

- (a) In the case that a default occurs or a dispute arises out of, or in relation to any operational arrangements, understandings or protocols in this MoU, the parties will endeavour in good faith to resolve such matters promptly .
- (b) If any dispute referred to in the preceding paragraph is not resolved after the best efforts of the parties the matter should either be referred to the each party's respective Minister for resolution or further advice, or by either party terminating the MoU by notice in writing.

**6. NO CONTRACTUAL OR ENFORCEABLE LEGAL RELATIONS TO ARISE and RELATIONSHIP WITH LEGISLATION**

- (a) The Parties do not intend this document to create legal relations or constitute a legally binding contractual agreement between them, or to be the subject of any court, mediation, or arbitration proceedings.
- (b) The parties expressly acknowledge that this MoU is not a substitute for any legislation and therefore cannot override any provision in legislation that is inconsistent with this MoU including any Schedule hereto.
- (c) In order to ensure that the parties comply with the relevant legislative provisions, all requests for information or documents made by the HCCC of the NSWPF under this MoU will be:
  - (i) in writing ,
  - (ii) signed by an authorised officer of the HCCC, and
  - (iii) made pursuant to S.34A of the *Health Care Complaints Act 1993 (NSW)*

**7. NOTICES**

Any notice in writing pursuant to this MoU is to be given to the persons specified in the Schedules or such other person as is specified in writing to the other party.

**8. THIS DOCUMENT SUPERSEDES PREVIOUS ARRANGEMENTS AND UNDERSTANDINGS**


The arrangements, understandings and protocols contained in this MoU supersede all previous arrangements in relation to the same or similar subject matter whether or not such previous arrangements were recorded or reduced into writing and signed by the agencies that are party to this MoU.

**NEW SOUTH WALES POLICE FORCE**

SIGNED by:

The Commissioner of Police / )  
 Michael Antrum, General Counsel ,as the duly authorised )  
 delegate of the Commissioner of Police )  
 on behalf of the NSW Police Force )  
 in the presence of: )



  
 .....  
 Witness

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**HEALTH CARE COMPLAINTS COMMISSION**  
**SIGNED by:** )

in the presence of: )

.....  
  
 Witness

.....  


**SCHEDULE 1**  
**( Addresses for service )**

Notices, including requests for information as specified in Schedule 2, pursuant to this MoU are to be served upon the following persons or such other person as is specified, from time to time, in writing to the other party.

**IN RESPECT OF THE NEW SOUTH WALES POLICE FORCE:**

Full name or title:           Manager,  
                                   Coronial Investigation Team, Homicide Squad  
                                   State Crime Command

Address for service:       NSW Police Force  
                                   LOCKED BAG 5102  
                                   PARRAMATTA NSW 2124

Fax number :                 88 35 8995

EMAIL :                     laid1dav@police.nsw.gov.au

**IN RESPECT OF THE HEALTH CARE COMPLAINTS COMMISSION:**

Full name or title:         Commissioner,  
                                   Director of Investigations, Manager of Investigations  
                                   Director of Assessments & Resolution

Address for service:       Health Care Complaints Commission  
                                   LOCKED MAIL BAG 18  
                                   STRAWBERRY HILLS NSW 2012

Fax number :                 9281 4585

EMAIL :                     hccc@hccc.nsw.gov.au

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**SCHEDULE 2****( Description of what NSWPF will do under this MoU )****Part A**

The NSWPF, upon receipt of a request from the HCCC which is:

- (a) in writing ,
- (b) signed by an authorised officer of the HCCC,
- (c) which specifies that it is made pursuant to S.34A of the *Health Care Complaints Act 1993 (NSW)*, and
- (d) relates to one specified person (“ the Subject Person” ),

-will provide the HCCC at the discretion of the relevant NSWPF Commander, the following information (excluding any information that is privileged\* ) for the purposes of conducting an investigation under the Health Care Complaints Act 1993 (NSW),

- i. A copy of the police brief;
- ii. Copy of the witness statements;
- iii. Copy of the interview material;
- iv. Copies of any exhibits that may be copied such as photographs; and
- v. Information about previous convictions;

-in respect of the Subject Person

\*Some examples of information that would be privileged are :

- (1) Information relied upon for the Application for search warrant,
- (2) Information relied upon for the Application for Controlled Operations,
- (3) Information disclosing police intelligence gathering,
- (4) Information disclosing police methodology, eg Telephone Interceptions or use of Listening Devices
- (5) Information disclosing police sources or informants

**Part B**

The NSWPF will, in respect any information provided to its officers by the HCCC under this MoU:

- (a) maintain such information in a secure environment, and
- (b) ensure that access to such information will be limited to only those officers, of the NSWPF, who require such information for the purpose of conducting a Police investigation

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Initials of Authorised delegate of NSWPF

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Initials of the Commissioner of the HCCC

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### SCHEDULE 3

#### (Description of what the HCCC will do under this MoU)

#### Part A

The HCCC will, in respect any information provided to its officers by the NSWPF under this MoU:

- (a) maintain such information in a secure environment, and
- (b) ensure that access to such information will be limited to only those officers, of the HCCC, who require such information for the purpose of conducting an investigation under the *Health Care Complaints Act 1993 (NSW)* ("the Act").

#### Part B

Subject to the following notations, the HCCC will provide NSWPF with any information (and which term includes sound or video recordings of any HCCC enquiry, "recording" ) or documents that are requested, in writing, by officers of the NSWPF, for the purpose of carrying out a Police investigation.

**Note 1:** However, any information or answers provided to the HCCC and which are rendered inadmissible, in civil or criminal proceedings, by reason of the operation of sub-section 37A(2) of the Act, need not be provided by the HCCC.

**Note 2:** If such ( inadmissible) information or answers are provided by the HCCC, then the recording, documents or transcripts containing such (inadmissible) information or answers are to bear the following marking on the top of each page or hardcover medium, as applicable :

"Warning: The information contained in this document/recording is inadmissible, in civil or criminal proceedings, by reason of the operation of sub-section 37A(2) of the Health Care Complaints Act 1993(NSW)."

(Where a recording contains both inadmissible and admissible information, its hardcover medium is to contain the following warning:

"Warning: Please be aware that some information contained in this recording is inadmissible, in civil or criminal proceedings, by reason of the operation of sub-section 37A(2) of the Health Care Complaints Act 1993(NSW).)

**Note 3:** For the sake of clarity, it is noted that sub-section 37A(2) of the Act does not apply to any *document* that came into existence prior to the date of a request for its production, by the HCCC, and such request being made pursuant to section 34A(1) of the Act .

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Initials of Authorised delegate of NSWPF

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Initials of the Commissioner of the HCCC

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