

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on the day of 2004 ,

BETWEEN

THE COMMISSIONER OF POLICE for the NSW Police, of care of the Director, Legal Services, NSW Police, Level 11, The Ferguson Centre, 130 George Street, Parramatta, NSW, 2150 ("NSW Police"), of the first part,

AND

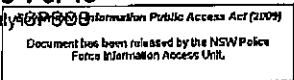
BISHOPS AND LEADERS OF RELIGIOUS INSTITUTES of the Catholic Church in NSW, represented by the Executive Director of the Catholic Commission for Employment Relations ("Catholic Church"), Level 14, Polding Centre, 133 Liverpool Street, Sydney, NSW 2000, (*additional parties*) of the second part, and

hereinafter jointly referred to as "the parties" .

WHEREAS:

- A. The NSW Police is established and has responsibilities arising from the *Police Service Act* 1990 including the enforcement of criminal laws involving offences committed within the territorial limits of the State of New South Wales.
- B. Bishops and leaders of religious institutes of the Catholic Church in NSW have responsibilities to deal with complaints of physical and sexual assault by Church personnel, generally dealt with according to the arrangements set out in the *Towards Healing* document published by the Catholic Church in Australia.
- C. (*additional parties*)
- D. The NSW Police the Catholic Church in NSW and (*additional parties*) wish to put in place a Memorandum of Understanding in respect of the establishment and/or formalisation of operational understandings and protocols between them.

The parties record the following Understandings as follows:



1. RESPONSIBILITIES OF PARTIES

The parties record the operational arrangements and/or understandings in the Schedules hereto signed by each of the parties or authorised delegates of the parties ('the Understandings').

2. TERM

- (a) This MoU takes effect on the date that the authorised delegate of the last party signs and expires two years from that date.
- (b) The Schedules attached to this MoU take effect on the date that the authorised delegate of the last party signs that Schedule, and expires two years from that date.

3. REVIEW and AMENDMENT

- (a) The parties will review this MoU every 12 months or at such other intervals as are agreed in writing herein or in any Schedule as the case may be.
- (b) No amendment is permitted to this MoU except as may be made in writing and signed by the signatories hereto.

4. CONFIDENTIALITY

- (a) The parties understand and are required to comply with the terms of the *Privacy and Personal Information Protection Act 1998* (NSW) where applicable.
- (b) The parties agree 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 by law.
- (c) The parties agree that no information howsoever obtained will be used to defame any person including but not limited to NSW Police members, members of the Public and personnel of the Catholic Church, (*additional parties*).
- (d) The parties agree that the information will not be used for any purpose outside the terms of this MoU.

5. DEFAULT and TERMINATION PROCESS

- (a) Any default of any Understanding referred to in this MoU or any Schedule hereto is to be notified in writing to the defaulting party setting out full details of the alleged default.
- (b) Following 5(a), the party said to be in default will be allowed a period of one calendar month to correct the default if that be the case or if that not be the case make representations in response.
- (c) In the event that the parties cannot agree after reasonable endeavours to resolve any dispute in accordance with this MoU, then either party may terminate the MoU by notice in writing.

6. LAPSE or EXTENSION

- (a) At the end of the term of this MoU the MoU will lapse unless both parties have agreed in writing to extend this MoU for an agreed period.
- (b) Before the expiration of this MoU the undersigned authorised delegates (or their successors) of the parties may agree in writing to extend this MoU for an agreed period.
- (c) Notwithstanding any other paragraph in this MoU, either party may terminate this MoU in its entirety or any Understanding set out in this MoU by providing at least one calendar month's notice in writing to the delegates of the other parties (or their successors) authorised to receive notices pursuant to this MoU or in any Schedule hereto.

7. DISPUTE RESOLUTION

- (a) In the case that a dispute arises out of, or in relation to the content of this MoU, the parties will endeavour in good faith to settle all matters notified in writing as being in dispute between them.
- (b) If any dispute referred to in the preceding paragraph is not settled after the best efforts of the parties the matter will be resolved in accordance with the Guidelines established by the Premier of NSW for dispute resolution between public authorities.

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

- (a) The parties expressly agree that this MoU does not create any contractual relations or other legally enforceable obligation between the parties and is not intended by the parties to be enforceable in any court, mediation or arbitration except as may have been set out in this MoU.
- (b) The parties expressly acknowledge that this MoU is not a substitute for any legislation and cannot override any provision in legislation that is inconsistent with this MoU or any Schedule thereto.

9. NOTICES

(a) Any notice in writing pursuant to the administration of this MoU is to be received by:

(i) If to the NSW Police:

Commander
Child Protection & Sex Crime Squad
NSW Police
Locked Bag 5102
Parramatta NSW 2124
Facsimile no. 02 8835 8688

(ii) If to the Catholic Church:

Executive Officer
Professional Standards Office
Catholic Commission for Employment Relations
Level 14, Polding Centre
133 Liverpool St
Sydney NSW 2000
Facsimile no. 02 9267 4559

(iii) If to the (additional parties):

(b) Any notice in writing pursuant to any Schedule to this MoU is to be received by the nominee of the parties named therein or, if no such nominee in that Schedule, to the abovementioned persons nominated to receive same.

10. THIS DOCUMENT SUPERSEDES PREVIOUS ARRANGEMENTS AND UNDERSTANDINGS

The arrangements in this MoU and any Schedule thereto 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.

Signed by Michael North Holmes)
Director of Legal Services, NSW Police))
as the duly authorised delegate of)
the Commissioner of Police)

.....
(signature)

Date:

Signed by Michael McDonald)
Executive Director, Catholic)
Commission for Employment)
Relations as the duly authorised)
delegate of the Bishops and leaders)
of religious institutes of the Catholic)
Church in NSW)

.....
(signature)

Date:

Signed by)
.....)
..... as the duly authorised)
delegate of (additional party))

.....
(signature)

Date:

SCHEDULE ONE

REGARDING THE EXCHANGE OF INFORMATION

Objective and scope

1. This Schedule records the understanding between the Catholic Church, (*additional parties*) and the NSW Police in order to facilitate aspects of liaison, mutual cooperation and the exchange of information for the purposes of investigations of complaints and data collection regarding physical and sexual abuse by Church personnel involved in positions of pastoral care, (*employees, ex-employees and employment applicants of additional parties*).
2. Nothing in this schedule affects the exercise of any party's discretion as to whether or what matters the party investigates.

Persons who may exchange information

3. Only authorised officers of the Catholic Church, (*additional parties*) and of the NSW Police may exchange information pursuant to this MoU.
4. An officer is an authorised officer of the Catholic Church if the Executive Officer, Professional Standards Office of the Catholic Commission for Employment Relations has written to the Commander, Child Protection & Sex Crime Squad NSW Police, advising him/her that the officer is an authorised officer.
5. An officer is an authorised officer of the (*additional party*) if the ...(*executive officer or similar*)..... has written to the Commander, Child Protection & Sex Crime Squad NSW Police, advising him/her that the officer is an authorised officer.
6. An officer is an authorised officer of the NSW Police if the Commander, Child Protection & Sex Crime Squad, has written to the Executive Officer, Professional Standards Office of the Catholic Commission for Employment Relations, of the Catholic Church, (*executive officer or similar of additional party*) informing him/her that the officer is an authorised officer.
7. All parties shall maintain an up-to-date list of authorised officers, and provide access to the list, when required to do so by the corresponding agency.
8. An officer's authorisation may be revoked by the party which granted the authorisation. If a party revokes the authorisation of one of its officers, the revocation is not effective for the purposes of this MoU until it has been communicated, by notice in writing, to the other party and confirmation has been received from the other party of the revocation of authority for the officer in question.

Exchange of information

9. The parties acknowledge that any information provided under this MoU is compiled from a variety of sources which may not necessarily be reliable (particularly in relation to criminal intelligence). Accordingly, the parties do not warrant or represent that the information is free from errors or omissions. Whilst every care has been exercised in the provision of the information, neither party is liable to the other for any consequences arising from such errors or omissions, including any loss which may be incurred as a result of reliance on the accuracy or completeness of the information.
10. Pursuant to clause 3 of Schedule One, information must not be exchanged except in response to a written request from either:
- (i) the Executive Officer, Professional Standards Office of the Catholic Commission for Employment Relations; or
 - (ii) *(executive officer or similar of additional party)*
 - (iii) the Commander, Child Protection & Sex Crime Squad, NSW Police; or
 - (iv) an authorised officer.
11. The parties undertake to notify each other in writing of any specific sensitivities which may relate to the information exchanged.
12. To ensure that the confidentiality and integrity of the information exchanged between the parties is maintained, each agency will maintain a register and other appropriate documentation necessary to ensure that there is an audit trail.
13. Both parties will be responsible and accountable for ensuring that the arrangements made with respect to:
- (i) the security and storage of information exchanged;
 - (ii) records associated with the exchange of information; and
 - (iii) the destruction of that information/records,
- are in accordance with any statutory obligation or agency policies and procedures which the parties are obliged to comply with.

Conduct of investigations

14. Personnel of the Catholic Church and *(additional party)* will encourage complainants who allege that a criminal offence has been committed to report the matter to the NSW Police. Where the alleged victim of a criminal offence does not wish for the matter to proceed to a prosecution, the victim will still be encouraged to report to NSW Police. NSW Police have an interest in receiving reports of abuse and sexual assault offences to assist in the development of an understanding of the nature and scale of abuse and sexual assault in NSW (whether or not individual matters result in prosecutions).

15. Personnel of the Catholic Church and (*additional party*) will comply with relevant laws mandating them to report child abuse. The obligation to report the matter will be explained to the complainant.
16. On receiving a report of physical or sexual abuse, NSW Police personnel will respond with sensitivity and consideration to the needs of the victim(s).
17. NSW Police acknowledge that, for a variety of reasons, victims reporting criminal offences to police sometimes prefer to avoid taking part in a criminal investigation and prosecution. Where possible, NSW Police would like to provide these victims with an opportunity to make a written acknowledgment to NSW Police that they do not wish a criminal investigation/prosecution to take place.
18. Where a victim indicates to personnel of the Catholic Church or (*additional party*) that they do not wish to have contact with NSW Police, the personnel of the Catholic Church or (*additional party*) will endeavour to obtain a written acknowledgement from the victim indicating their wishes.
19. Where a victim does not wish to have contact with NSW Police, the Catholic Church or (*additional party*) still has a right and an obligation to conduct its own investigation to determine whether the alleged offender should remain in a position of responsibility over others. The Catholic Church or (*additional party*) will not proceed to conduct its own investigation without receiving a signed statement from the complainant indicating they do not wish to report the matter to NSW Police.
20. Where a victim does not wish to have contact with the NSW Police, the Catholic Church or (*additional party*) may provide details of the alleged offence (including the alleged offender's name) to NSW Police but withhold the name of the victim.
21. If in the course of a Catholic Church or (*additional party*) assessment, allegations emerge for the first time which indicate that a criminal offence may have been committed, the Catholic Church or (*additional party*) assessment procedure shall cease immediately and the matter will be dealt with in accordance with clauses 14, 15, 18, 19 and 20.
22. Where the Catholic Church or (*additional party*) is aware that an investigation of their personnel is being undertaken by the NSW Police, those parties will not knowingly take action that could interfere with the NSW Police investigation. Internal investigations of alleged misconduct will generally be delayed until any NSW Police investigation of the same personnel is complete.
23. In instances where NSW Police conduct an investigation of Catholic Church or (*additional party*) personnel which does not proceed to a criminal prosecution, NSW Police will generally make available the brief of evidence or partial brief of evidence to the employing party on request. This information will be provided to assist the employer to determine the level of risk to children or vulnerable persons posed by their personnel, while minimising the need for re-interview of victims.

24. In the course of receiving and investigating reports the Catholic Church and (*additional party*) will become aware of allegations of misconduct on the part of their personnel that constitute criminal offences. In these cases the Church will provide information to the NSW Police that may be the basis of a NSW Police investigation, or may be used for intelligence purposes.
25. Where the Catholic Church or (*additional party*) is to carry out an assessment of the risk posed by their personnel, they may request access to information and intelligence possessed by the NSW Police. The NSW Police may provide access to relevant information and intelligence when its provision may reduce risks to the safety and wellbeing of members of the community, especially children and vulnerable persons.
26. Catholic Church or (*additional party*) personnel will use their best endeavours to ensure that assessments are undertaken in such a manner as not to interfere with the proper processes of the criminal law including criminal investigations, whether such is known to be in progress or could reasonably be contemplated.
27. The Catholic Church or (*additional party*) may seek advice from NSW Police to assist determinations on whether a person under investigation should be asked to stand down from office during the NSW Police investigation.
28. Where a complainant has indicated in writing to the Catholic Church or (*additional party*) that he or she does not wish to make a complaint to NSW Police, and the complainant subsequently makes a report to the NSW Police, the Catholic Church or (*additional party*) will, on request, provide to the NSW Police such information concerning how the investigation was conducted, the findings of an assessment and the outcome of the complaint, as is possible without breaching an obligation of confidentiality to any person. The Catholic Church or (*additional party*) will also, on request, inform the NSW Police of the names of any witnesses who may be able to provide the NSW Police with relevant information in relation to the matter.
29. Where the NSW Police request to see the statement of complaint, and other documents relating to the complainant's account of the alleged offence, the NSW Police shall first obtain the complainant's written permission for these documents to be made available.
30. Where the NSW Police request to see documents relating to the accounts of other persons who provided information to assist in the assessment, the NSW Police shall first seek the written permission of those persons for these documents to be made available.
31. The Catholic Church or (*additional party*) shall make available the report of an assessment and any other matter relevant to the accused's account of events only if authorised in writing by the accused or if required to do so by court order.
32. Priests may be expected to rely on such legal defences as are available to them if an application is made to compel them to reveal the contents of a sacred confession, disclosure of which is forbidden by Canon Law.

Request for information from third parties

33. Where a law enforcement body or agency, which is not a signatory to this MoU, makes a formal request for information to;
- (i) the NSW Police with respect to information provided by the Catholic Church to the NSW Police or (*additional party*) to the NSW Police ; or
 - (ii) the Catholic Church with respect to information provided by the NSW Police to the Catholic Church,
 - (iii) (*additional party*) with respect to information provided by the NSW Police to the (*additional party*).

the parties have agreed that prior to the third party's request for information being processed, the request shall be in writing and will be brought to the attention of the agency which originally provided the information to seek approval for its release to the third party.

The notifying agency shall await a response before proceeding to process the request. Should no response be received within 14 days a further notification shall be sent and upon the expiry of 14 days from the date of sending of the second notification if no response is received then the request shall be processed.

34. A "law enforcement body or agency" is defined as:
- (i) the police service of any State or Territory within Australia;
 - (ii) any other authority responsible for the enforcement of the laws of the Commonwealth or of the States or Territories; or
 - (iii) any other authority responsible for the enforcement of the laws of another country or within another jurisdiction.
35. If information provided pursuant to this MoU becomes the subject of a subpoena, freedom of information request or other legal demand for access, the agency which received the information from the original agency must immediately notify the agency, to enable it to advise of any intended action relating to the release, disclosure, publication or production of such information.

Dissemination of MoU

36. This MoU is to be circulated to relevant officers of the Catholic Church (*additional party*) and the NSW Police to ensure that the staff of each agency are aware of its contents and their responsibilities under it.

Signed by Michael North Holmes)
Director of Legal Services, NSW Police)
as the duly authorised delegate of)
the Commissioner of Police)

.....
(signature)

Date:

Signed by Michael McDonald)
Executive Director, Catholic)
Commission for Employment)
Relations as the duly authorised)
delegate of the Bishops and leaders)
of religious institutes of the Catholic)
Church in NSW)

.....
(signature)

Date:

Signed by)
.....)
..... as the duly authorised)
delegate of (additional party))

.....
(signature)

Date:

SCHEDULE TWO

LIST OF AUTHORISED OFFICERS

Information will be exchanged between authorised officers of NSW Police, and the Catholic Church.

In accordance with clause 4 of Schedule One to the Memorandum of Understanding the following persons are authorised officers of the Catholic Church.

Position	Phone No.
Executive Director, Catholic Commission for Employment Relations	02 9390 5255
Executive Officer, Catholic Commission for Employment Relations	02 9390 5255
....	
All above contactable on fax number	02 9267 4559

Information will be exchanged between authorised officers of NSW Police and (*additional party*).

In accordance with clause 5 of Schedule One to the Memorandum of Understanding, members holding the following positions within (*additional party*) will be authorised officers:

Position	Phone No.
...	
...	
....	
fax number	

In accordance with clause 6 of Schedule One to the Memorandum of Understanding, members holding the following positions within the NSW Police will be authorised officers:

Position	Phone No.
Commander, Child Protection and Sex Crime Squad	02 8835 8666
Intelligence Coordinator, Child Protection and Sex Crime Squad	02 8835 8666
....	
All above contactable on fax number	02 8835 8688

Signed by Michael North Holmes)
Director of Legal Services, NSW Police)
as the duly authorised delegate of)
the Commissioner of Police)

.....
(signature)

Date:

Signed by Michael McDonald)
Executive Director, Catholic)
Commission for Employment)
Relations as the duly authorised)
delegate of the Bishops and leaders)
of religious institutes of the Catholic)
Church in NSW)

.....
(signature)

Date:

Signed by)
.....)
..... as the duly authorised)
delegate of (additional party))

.....
(signature)

Date:

Issue: MOUs for exchange of child protection information with external agencies

Background: Child Protection & Sex Crime Squad currently exchanges information with the employee conduct units of several government and non-government bodies. (Listed in Annexure 'A'). The purpose of the information exchange is to;

- assist police or agency investigators to determine facts pertinent to criminal prosecutions and employment suitability assessments
- prevent agency interference in police investigations
- prevent duplication of effort (including unnecessary repeated investigative interviews of the same victim)

At present, NSW information is provided to other agencies on a case-by-case basis after assessment by the Commander CP&SCS according to the responsibilities assigned NSW within the NSW Government *Interagency Guidelines For Child Protection Intervention*. This document assigns NSW the responsibilities of;

- informing relevant agencies of the progress and outcome of investigations and legal processes, and
- exchanging relevant information to progress investigations, assessments and case management as permitted by law (p. 8)

The Interagency Guidelines are an expression of agency policies intended to give effect to the *Children & Young Persons (Care & Protection) Act 1998*.

Comment: The heads of the relevant agency units (including NSW Child Protection & Sex Crime Squad) have established an information exchange regime that to some extent relies on the goodwill of the heads of those units. Some of the agency partners (for their own purposes) have sought the establishment of a child protection information exchange MOU with NSW. SCC believes that an MOU that provided a clear expression of the intentions of each partner would promote continuity and provide a framework for periodic re-negotiation or re-affirmation of each agency's commitment.

SCC will shortly commence negotiations with representatives of the partner agencies to establish an MOU. Legal Services participation in this process is sought to provide guidance on information disclosure principles. Assistance is also sought in the drafting of the memoranda to meet the requirements of the Director, Legal Services whose approval is required to execute an MOU.

NSWP/DI /

Recommendation: That Legal Services participation in these negotiations be sought.

Insp Wayne Armstrong
Child Protection & Sex Crime Squad
State Crime Command
28681 / 8835 8681
17 February 2005

1. **Commander, Child Protection & Sex Crime Squad**
2. **Commander, State Crime Command**
3. **Director, Legal Services**

Annexure A

**Child Protection & Sex Crime Squad
Child protection information exchange partners**

NSW Department of Health

NSW Department of Education & Training

Bishops And Leaders Of Religious Institutes of the Catholic Church in NSW

Anglican Church (Sydney Diocese)

Intended MOU workshop participants

Agency	Unit(s)	Representatives
NSW Department of Health	Employment Screening & Review Branch	John Greville
NSW Department of Education & Training	1. Child Protection Investigation Directorate 2. Employee Performance and Conduct Unit	TBA
Bishops And Leaders Of Religious Institutes of the Catholic Church in NSW	1. Catholic Commission for Employment Relations 2. Professional Standards Office	TBA
Anglican Church	Sydney Diocese Professional Standards Unit	TBA
NSW Police	Legal Services Privacy & Discrimination Law	Marilyn Hamilton
NSW Police	Legal Services Civil Law	Mirko Dugandzic
NSW Police	Child Protection & Sex Crime Squad	Det Supt Kim McKay Insp Wayne Armstrong

- Issue:** MOUs for exchange of child protection information with external agencies – Request for Crime Management Faculty input.
- Background:** The Child Protection & Sex Crime Squad (CP&SCS) is involved in the initiation of memoranda of understanding with several external agencies to regulate the flow of information between NSWP and those agencies. The initial proposal is for a generic MOU that will cover our relationship with four organisations: The Catholic Church, Anglican Church, NSW Department of Health and NSW Department and Education & Training.
- Comment:** It has been identified that Tamahra Manson of the Crime Management Faculty (Team 5) has knowledge and experience that would assist CP&SCS to negotiate and establish these MOUs. Her assistance is sought for this stage of the work. The work would fit within the Faculty's objective of improving organisational performance through strategic coordination of policy development and implementation.
- Tamahra's involvement is sought to assist CP&SCS staff in;
- assessing the proposed arrangements against current NSWP information release policy and practice
 - designing the proposed agreements to conform with the objectives of NSWP sexual assault and child protection policy
 - negotiating with partner agencies to accept variations to existing practice (if required).
- Recommendation:** Forwarded for favourable consideration.

Insp Wayne Armstrong
 Child Protection & Sex Crime Squad
 State Crime Command
 28681 / 8835 8681
 8 June 2005

1. Commander, Child Protection & Sex Crime Squad

2. Commander, Crime Management Faculty