



Abuse in Care
Royal Commission of Inquiry

MEMORANDUM OF UNDERSTANDING

New Zealand Police and The Royal Commission of Inquiry into Historical Abuse
in State Care and in the Care of Faith-Based Institutions

October 2019

MEMORANDUM OF UNDERSTANDING BETWEEN THE ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH-BASED INSTITUTIONS AND THE NEW ZEALAND POLICE

1. BACKGROUND AND PURPOSE

On 12 November 2018, the Government established the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions (the Royal Commission).¹ The Royal Commission's Terms of Reference (Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018) are available at:

<http://www.legislation.govt.nz/regulation/public/2018/0223/latest/LMS118772.html>

- 1.1 This Memorandum of Understanding (MOU) documents the understanding reached between the New Zealand Police (Police) and the Royal Commission concerning incident referral and investigative processes, in the context of the work of the Royal Commission.
- 1.2 The Royal Commission and Police (collectively referred to as the Parties) wish to work together in a constructive manner, to achieve the aims set out in clause 1.1. The Parties therefore wish to record their agreement about how they will work with each other in this MOU.
- 1.3 This MOU is intended to record the relationship between the Parties, not to create any legally enforceable obligations. The Parties will interpret this MOU consistently with the Inquiries Act 2013, the Royal Commission into Historical Abuse in State Care and in the Care of Faith-Based Institutions Order 2018, the Policing Act 2008, and the Royal Commissions' Terms of Reference.
- 1.4 The Parties have decided to set up a dedicated Group to undertake work and facilitate a collaborative working relationship between the Parties. The overall purpose of the Group is to work collaboratively to develop mechanisms to support achievement of the aims set out in clause 1.1.
- 1.5 Representatives from each of the Parties will be part of the Group. The Terms of Reference for the Group, as agreed by the Parties, are detailed in **Schedule 1** of the MOU.
- 1.6 Unless the Parties agree to end it earlier, this MOU will continue to apply for the life of the Royal Commission, as required.

¹ Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018. This continued and broadened the inquiry of, and replaced, the Royal Commission of Inquiry established by the Inquiries (Royal Commission of Inquiry into Historical Abuse in State Care) Order 2018.

2. PRINCIPLES OF WORKING TOGETHER

- 2.1 The Royal Commission recognises the need to reflect the principles of transparency and accountability in the work it undertakes pursuant to the mandate set by Government. It recognises that it will operate in accordance with applicable public service standards and policies.
- 2.2 The Royal Commission recognises the need to be responsive and flexible in its dealings with Police. Police recognise that the Royal Commission is a one-off project working to tight timeframes imposed by the Terms of Reference. Police acknowledge that in order to deliver on its Terms of Reference, the Royal Commission may have time-sensitive and bespoke requirements that fall outside Police' normal business models. Police will take reasonable steps to facilitate these needs (as permitted by its legislative and operational needs at all times).
- 2.3 The Parties are committed to work together with the common goal of supporting incident referral, information sharing, and investigative processes related to the work of the Royal Commission. In doing so, each Party agrees to the following principles:
- (a) **Good Faith:** to act in good faith to carry out its obligations as set out in this MOU;
 - (b) **Autonomy:** to accept and recognise that each Party is an autonomous entity or group and that it is entitled to make its own decisions on any recommendations made to it in accordance with this MOU;
 - (c) **Co-operation:** to co-operate with each other and work as a team so as to support the Royal Commission to achieve its objectives;
 - (d) **Communication:** to communicate openly and honestly with each other and to keep the communication lines open to ensure effective decision making by the Parties. The Parties will act constructively and openly to avoid conflicts or disputes and, if any arise, will deal with them promptly and resolve them in a fair manner; and
 - (e) **Timeliness:** to contribute, make decisions and communicate with the other Party in a timely manner to ensure the goals are progressed efficiently and effectively.
- 2.4 **Operational Implications:** to operate in accordance with **Schedule 2** of the MOU.

3. SPECIFIC OBLIGATIONS OF PARTIES

- 3.1 Each Party agrees to fulfil the following obligations in relation to the process of incident referral from the Royal Commission to the Police:

- (a) **Support:** to provide all reasonable support, information, materials and assistance to enable it to meet its obligations under the MOU;
- (b) **Meetings:** to meet via the Group at times reasonably requested by each other during the period of the MOU to plan and agree on any actions necessary to give effect to this MOU;
- (c) **Notices:** to provide a key contact and an email address or addresses for all communications to the Parties relating to the work of the Royal Commission.

4. REVIEW OF THE MEMORANDUM OF UNDERSTANDING

- 4.1 This MOU will be reviewed every twelve months, and may be amended at any time by agreement of the Parties.

5. DISPUTE RESOLUTION AND REPRESENTATIVES

- 5.1 The Parties will promptly notify each other if they consider a dispute or difference arises under this MOU and then will promptly meet to discuss the dispute or difference that has arisen.
- 5.2 The Executive Director (ED) of the Royal Commission and the New Zealand Police's General Manager: Professionalism and Assurance (GM) are expected to discuss and resolve any non-operational issues arising from this agreement. Operational issues will be raised through Police' usual escalation process.
- 5.3 If the ED and the GM are unable to resolve any issues, the issue will be escalated to the Chair of the Royal Commission and the Commissioner of Police for resolution.

6. SIGNATORIES TO THE MEMORANDUM OF UNDERSTANDING

Signed on this day, 21st October 2019



Mike Bush
Commissioner of Police



Sir Anand Satyanand - Chair
Royal Commission of Inquiry into
Historical Abuse in State Care and in
the Care of Faith-based Institutions

Schedule 1 to MOU

Group Terms of Reference

Title:	Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions Group
Objective:	To support incident referral and investigative processes related to the work of the Royal Commission
Responsible to:	Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-Based Institutions and the New Zealand Police

1. Group - Composition and Appointment

Composition: The Group shall comprise of members from both parties. The core members currently are from the Royal Commission's Risk and Assurance, Survivor Accounts, Health & Safety and Legal teams; and from Police's National Criminal Investigations Group and Assurance Group. It will also include other members from both parties as and when needed to support this work.

2. Group Meeting Protocols

Meeting and Decision Protocols: The Group shall:

- (1) meet as often as the members of the Group consider appropriate relating to each area of specialty;
- (2) except to the extent specified in these Terms of Reference, regulate its own procedure;
- (3) ensure any actions arising from meetings with the Group, and any decisions made by the Group, are appropriately documented and shared between the Parties.

3. Group Members - Duties and Responsibilities

Duties and Responsibilities: The duties and responsibilities of each Group member are to:

- a) give effect to both the letter, as well as the spirit and intent, of this MOU, including these Terms of Reference;
- b) use best efforts to consult and keep up to date with the party they represent, to ensure they are representing the party's views to the best of their abilities; and
- c) report back to their party on key decisions and progress made by the Group.

Schedule 2 to MOU

Operational implications for the parties

1. Incident referral

- 1.1 The Royal Commission recognises the importance of ensuring that personal information is treated appropriately and in accordance with the principles of sensitivity, confidentiality, and informed consent.
- 1.2 Police recognise that in order for the Inquiry to fulfil its terms of reference, people who engage with the Royal Commission must feel free to make full and frank disclosures of abuse and the ongoing consequences of that abuse.
- 1.3 The Royal Commission will maintain confidentiality of information received in confidence from people who engage with the Royal Commission unless it falls within one of the four exceptions:
 - a) the participant consents to it being released; or
 - b) the information relates to serious criminal offending that is ongoing or planned for the future; or
 - c) the Royal Commission reasonably believes that disclosure of the information is necessary to prevent a serious risk to the health and safety of any person; or
 - d) disclosure is required by law, or by order of a Court.
- 1.4 In a case where referral to Police is required, the Royal Commission will refer incidents at the earliest opportunity. The mechanism for referral will depend on the circumstances, and will ordinarily include any statements provided to the Royal Commission by relevant parties (where there is consent from those parties), and other available information that the Royal Commission deems relevant, or which the Police reasonably request for the purposes of investigation and assessment.
- 1.5 The Royal Commission recognises that through engaging with large numbers of survivors, themes of abuse may come to light. Themes of abuse will be referred to the Police for consideration of criminal allegations and/or further investigation.

- 1.6 Where a Police specialist investigation is undertaken, unless otherwise requested by the complainant, the Police will ensure that the complainant is referred to an appropriate victim support agency and medical attention, where appropriate, is sought.

2. Investigation and Information sharing

- 2.1 **Incident referral:** Where a matter is referred to the Police, the Police will assess the information provided by the Royal Commission.
- 2.2 The Police undertake to accept and action referrals from the Royal Commission where information indicates that a person or persons may be at risk of immediate harm and advise the Royal Commission of the actions taken and outcome.
- 2.3 The Police will conduct an assessment of options and provide the complainant with details of the options available, which may include Police investigation, intelligence collection, or no further Police action.
- 2.4 The Police undertake to acknowledge to a complainant (or their nominated contact person) when a referral is received and to provide updated information to complainants as the assessment and investigation proceeds.
- 2.5 In addition to ongoing updates to the complainant, the Police will ensure that any resolution decision (including the decision to take no further action) is appropriately communicated to the complainant or their nominated contact person.
- 2.6 The Police will comply with any statutory obligation to notify a third party of its investigation into a referred matter such as the obligations that apply where the alleged offender is:
- a) a medical practitioner;
 - b) a teacher;
 - c) an employee of the statutory child welfare agency;
 - d) a registered sex offender; or
 - e) an employee of a State or Faith-based agency.
- 2.7 The Police will take reasonable steps to provide information to the Royal Commission regarding:

- a) the status of current investigations;
- b) finalised investigations where a prosecution has occurred;
- c) current un-finalised matters where a prosecution has occurred;
- d) known or likely timeframes before un-finalised matters are concluded; and
- e) finalised investigations where a prosecution has not occurred.

3. Costs

Both parties will be responsible for their own costs, unless other arrangements have been made by prior agreement.