



**Memorandum of Understanding**

**between**

**the Commerce Commission**

**and**

**New Zealand Police**

## **This memorandum of understanding**

**Between** The Commerce Commission (the Commission)

**And** The Commissioner of New Zealand Police (Police)

**Together** referred to as the Parties

### **Introduction**

1. The Commission is New Zealand's primary competition, consumer and regulatory agency. It is an independent Crown entity established under section 8 of the Commerce Act 1986 with statutory functions under that and other statutes, including, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001 and the Dairy Industry Restructuring Act 2001 (Commission Statutes).
2. Police operates under the Policing Act 2008. Police functions include:
  - keeping the peace;
  - maintaining public safety;
  - law enforcement;
  - crime prevention;
  - community support and reassurance;
  - national security;
  - participating in policing activities outside New Zealand; and
  - emergency management.
3. The Parties currently work together and offer advice to each other. They wish to formalise their relationship and specify the terms and conditions under which this will occur.
4. The Parties acknowledge the "Information Gathering and Public Trust" Model Standards issued by the State Services Commission on 18 December 2018<sup>1</sup> and recognise the expectation recorded there that formal agreements between agencies working together give the public confidence that powers are being used appropriately.

### **Objectives**

5. The objectives of this Memorandum of Understanding (MOU) are to facilitate:
  - the investigation of people, companies and other entities suspected of breaching the Commission Statutes and the criminal law; and

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<sup>1</sup> Available online at <https://ssc.govt.nz/resources/information-gathering-and-public-trust/>

- the skills development of staff within each Party.
6. These objectives will be achieved through promoting a collaborative working relationship between the Commission and Police based on a spirit of goodwill and co-operation, and by:
- pursuing Joint Investigations (as that term is defined in [13]);
  - sharing information, where appropriate and practicable;
  - co-operating over search warrants and other investigative steps;
  - co-operating in communication and media strategies;
  - supporting training and secondment opportunities; and
  - consulting on relevant strategic priorities and policy initiatives.

### **Victim focus**

7. The Parties recognise the importance of supporting victims of crime in Police and Commission investigations.
8. The Party leading an investigation will ensure that appropriate support is provided to victims of crime, including:
- providing information and access to support services;
  - explaining what they can expect to happen during the investigation;
  - giving case updates; and
  - providing any other service required by the Victims' Rights Act 2002.

### **Review of MOU and schedules**

9. The Parties agree that from time to time they may develop protocols relating to specific procedures and activities. Where appropriate, these will be attached to this MOU as schedules.
10. The Parties' representatives will meet every five years, or as otherwise agreed by the Parties, to review this MOU and schedules.
11. Either Party may terminate the MOU by giving three months' notice in writing to the other Party.
12. Modification or termination of schedules may be undertaken by mutual written agreement between the Parties.

### **Co-ordination of Joint Investigations**

13. Joint Investigations occur when both Parties have expressed an interest in investigating the same person, company or other entity, concerning possible breaches of the statutes enforced by the Parties (Joint Investigations).

14. The Parties will endeavour to co-ordinate their investigative and other material steps when undertaking Joint Investigations, including as to the matters at [6] above.

### **Consultation on media releases/statements**

15. When undertaking Joint Investigations, each Party will, where practicable, consult with the other before providing information or comment to the media.

16. Each Party will raise any operational or policy concerns through appropriate internal channels at the other Party, rather than through the media.

### **Training**

17. The Parties support the development of joint training opportunities involving both Police and Commission staff.

18. The Parties will support where possible, opportunities to second personnel with the other party, where this would benefit one or both.

### **Issue or dispute resolution**

19. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity by local representatives or managers, wherever possible.

20. Only when matters remain unresolved or require further adjudication should they be referred to the Parties' senior management representatives listed in [26] of this MOU.

### **Costs**

21. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the Party incurring the cost.

22. For the avoidance of doubt, the Commission will continue to be charged for Police vetting requests pursuant to the Policing (Cost Recovery) Regulations 2017.

### **Legal**

23. Nothing in this MOU shall make either Party liable for the actions of the other or constitute any legal relationship between the Parties.

24. The provisions in this MOU are to be read subject to any Chief Executive, State Services or Cabinet directives, and any enactment, regulations, rules or applicable case-law.

25. Where there are changes to Government policy which affect the purpose and functions of this MOU, each Party agrees to inform the other of those changes at the earliest possible time thereafter and both Parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.

26. The Parties' representatives for the purposes of this MOU are:

**Senior Management Representatives**

**Commission**

General Manager, Competition and Consumer Branch  
44 The Terrace  
Wellington  
Telephone: (04) 924 3720

**New Zealand Police**

Assistant Commissioner, Investigations  
Police National Headquarters  
180 Molesworth Street  
Wellington  
Telephone: (04) 474 9499

**Operational Representatives**

**Commission**

Head of Consumer  
44 The Terrace  
Wellington  
Telephone: (04) 924 3458

**New Zealand Police**

National Manager, National Criminal Investigations Group  
Police National Headquarters  
180 Molesworth Street  
Wellington  
Telephone: (04) 474 9499

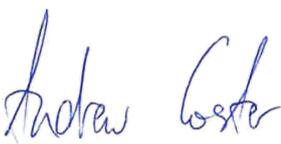
**Signed by the Commerce Commission**



Anna Rawlings  
Chair  
Commerce Commission

Date: Thursday 23<sup>rd</sup> April, 2020

**Signed by the Commissioner of Police**

Andrew Coster: 

Date: Tuesday 9th June, 2020

## **Schedule 1 to the MOU between the Commerce Commission and the Commissioner of Police: Information Sharing**

### **Purpose**

1. The purpose of this Schedule is to facilitate the sharing of information, where appropriate, to enable the Parties to achieve the objectives of the MOU and in particular the objective of co-ordinating Joint Investigations.

### **Principles**

2. The Privacy Act 1993 allows agencies to share *personal information* without informing the affected person, even where the person has expressly instructed the agency not to do so, as expressed in [4] below.
3. The Parties may share *confidential information* with each other on a confidential basis, either with the consent of the person who is the subject of the information, or where there is a significant public interest in sharing the information, as expressed in [4] below.
4. The Parties agree to share information (personal or confidential) in accordance with the purpose/s for which it was collected, or where it is necessary to:
  - uphold or enforce the law, including the prevention, detection, investigation, prosecution and punishment of offences;
  - prevent or lessen a serious threat to public health or safety; or
  - prevent or lessen a serious threat to the life or health of any person.

### **Designated positions**

5. Each Party will designate positions that will be authorised to make requests for information from the other Party.
6. For Police, designated positions are:
  - Constabulary members holding the rank of Detective Senior Sergeant or above;
  - Police members acting in one of the positions above; and
  - any other position that may be advised from time to time.
7. For the Commission, designated positions are:
  - Chief Adviser or above;
  - Principal Investigator or above; and
  - any other position that may be advised from time to time.

### **Format and timing of requests**

8. Requests for information from the other Party will be made in writing to the relevant Operational Representative as specified in [26] of this MOU.

9. Oral requests may be made in urgent situations, if:
  - a delay may place the life or safety of any person or the public at risk; or
  - a delay may lead to the destruction, concealment, alteration or damage to evidential material or other property.
10. Oral requests will be followed up by a written request as soon as practicable, or as agreed at the time of the request.
11. Requests for information will specify:
  - the information required (identifying the documents or information sought, identity of relevant individuals, addresses etc.);
  - the purpose for which the information is sought;
  - the timeframe in which the information is needed, and the reasons for any urgency requested;
  - any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted; and
  - any other relevant matters.
12. The Parties agree to respond to requests for information as soon as is practicable, and within the timeframe requested, or as otherwise agreed. In the case of an urgent request, the parties will consult to ensure a response to the request is expedited if possible.

### **Proactive sharing of information**

13. The Parties agree to proactively share information or intelligence where this is consistent with the principles set out in this Schedule and objectives of this MOU.

### **Use, storage and retention of information**

14. Any shared information will only be used and kept by the receiving Party for legitimate purposes and in line with the law and that Party's policies, processes and systems.
15. The Party providing the information will, where appropriate, indicate the level of sensitivity that applies to the information or any part of the information, and any terms or restrictions that they seek to apply to use of the information. The receiving Party will wherever practicable seek to observe any stated sensitivity, terms or restrictions, or to negotiate agreed changes to these.
16. The Parties agree that shared information may be disclosed by the receiving Party to a third party, subject to any concerns raised by the originating Party regarding disclosure.
17. The Parties agree that shared information will be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.

18. The Parties acknowledge that if any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting Party.
19. The Parties acknowledge that if any civil proceedings are initiated, the High Court Rules 2016 will apply in relation to all relevant information held by either Party.

Signature



Anna Rawlings  
Chair  
Commerce Commission

Date: Thursday 23<sup>rd</sup> April, 2020  
Tuesday

Signature



Name Richard Chambers

Assistant Commissioner: Investigations  
New Zealand Police

Date 24/04/2020

## **Schedule 2 to the MOU between the Commerce Commission and the Commissioner of Police: Joint Investigations Protocols**

### **Purpose**

1. This Schedule will guide and inform the relationship between the Parties when conducting Joint Investigations and facilitate co-operation between the Commission and Police.
2. These protocols are intended to:
  - ensure co-ordination and collaboration between the Parties;
  - establish how requests for assistance from either Party are made, if only one Party is investigating a matter;
  - establish which Party should take the role of lead agency in Joint Investigations;
  - clarify roles and responsibilities;
  - ensure the Parties appreciate the respective roles and responsibilities of the other Party, and how one Party's investigation may affect the other;
  - ensure sound investigation and prosecution decisions are made in accordance with the Solicitor-General's guidelines and the prosecution policies of both Parties;
  - ensure integrity of evidence and investigations is maintained;
  - reduce duplication of effort, wherever possible;
  - minimise trauma to victims and witnesses; and
  - enhance the safety of Commission employees in the execution of their duties.

### **Protocols to be followed in any investigation**

#### **Respective investigative functions**

3. The Parties recognise each other's primary investigative functions, which are:
  - with respect to the Commission, enforcing the Commission Statutes; and
  - with respect to the Police, conducting activities aimed at investigating, detecting, preventing, and enforcing breaches of the criminal law.

#### **Scene examination and co-ordination**

4. The Parties recognise the specialist skills, experience and resources available to Police for the examination of, and evidence collection from, crime scenes.

5. The Parties recognise the specialist skills, experience and resources available to the Commission in the investigation of contraventions of the Commission Statutes.
6. The Commission will control any scene (including the securing, collection and preservation of evidence) where an offence related to the Commission Statutes may have occurred, unless otherwise agreed between the Parties.
7. Police will control any scene (including the securing, collection and preservation of evidence) where any other criminal offence may have occurred, unless otherwise agreed between the Parties.
8. Maximising safety and eliminating or minimising risk is the shared responsibility of the Parties. Where one Party becomes aware of a hazard at a scene or any other location that may pose a risk to the health and safety of any person, that Party will advise the other Party as soon as possible.
9. Each Party is responsible for the safety and protection of their respective staff, including providing the appropriate safety equipment.

### **Victim focus**

10. For the purposes of this agreement, a 'victim' has the meaning prescribed in section 4 of the Victims' Rights Act 2002, and includes:
  - i. a person against whom an offence has been committed;
  - ii. a person who, by means of an offence, suffers injury or property loss or damage;
  - iii. a parent or guardian of a child or young person who falls within i) or ii) above; and
  - iv. a family member of a person who falls within i) or ii) above, if the person dies or is incapacitated.
11. For the avoidance of doubt, the Commission will not treat as a 'victim':
  - the public generally;
  - consumers; or
  - competitors generally.
12. The Parties recognise the importance of supporting victims of crime in Police and Commission investigations.
13. The Party leading an investigation will ensure that appropriate support is provided to victims of crime, including:
  - providing information and access to support services;
  - explaining what they can expect to happen during the investigation;
  - giving case updates; and

- providing any other service required by the Victims' Rights Act 2002.

## **Witnesses**

14. The Parties acknowledge that providing statements may be distressing for victims and witnesses and that multiple interviews should be avoided where practicable.
15. The Parties recognise the specialist skills, experience and resources available to each Party in conducting investigative interviews.
16. The Parties recognise that:
  - the Commission has the legislative authority to compel any person to provide information, documents or appear before the Commission to give evidence;
  - subsequent interviews of these witnesses by Police may be inadmissible as evidence; and
  - where a witness is known to be of interest to both Parties, any Police interview should be conducted first, unless otherwise agreed by the Parties.
17. In the case of Joint Investigations, as the Commission and Police identify witnesses that they may wish to interview during an investigation, they will:
  - advise the other Party of the names of those witnesses;
  - provide a broad indication of the nature of their intended enquiries with those witnesses; and
  - agree whether an interview is most appropriately conducted by Police or the Commission.
18. Where both Parties have a stated interest in interviewing a witness, the following procedure will apply, unless otherwise agreed by the Parties and subject to their respective legal and operational constraints:
  - Police and the Commission will discuss how the interview(s) will be conducted;
  - Police will interview the witness, without Commission personnel present in the room;
  - as soon as practicable, the Police will provide a copy of the interview and/or interview transcript to the Commission;
  - if required, the Commission may conduct a further interview, without Police personnel present, to ascertain further information; and
  - the Commission will provide a copy of the interview and/or interview transcript to Police.

19. Where a witness is being interviewed by Police, a Commission investigator may monitor the interview from outside the interview room, where practicable and appropriate. In these circumstances, the witness will be advised that a Commission investigator is present in an observation capacity only, unless agreed otherwise.
20. If urgency dictates that an interview must be conducted without consulting with the other Party, the Party that conducts the interview will advise the other Party as soon as practicable.
21. Personnel from one Party may make a request to interview personnel from the other Party or seek a written statement where appropriate.

### **Engagement of Experts**

22. The Parties will consult regarding the engagement of experts that may assist in Joint Investigations.
23. Where experts are jointly engaged, the Parties will consult and agree upon the scope and terms of the experts' proposed engagement and will agree on sharing the resulting costs.

### **Searches and exhibits**

24. The Commission's powers to search are set out in the Search and Surveillance Act 2012, section 98A of the Commerce Act 1986 (which also applies to the Telecommunications Act 2001 and the Credit Contracts and Consumer Finance Act 2003), section 47 of the Fair Trading Act 1986 and section 29I of the Dairy Industry Restructuring Act 2001.
25. Police powers of search are set out in the Search and Surveillance Act 2012.
26. The Police have the power to search without warrant in particular circumstances, within the legislative limitations.
27. The Parties agree to consult to avoid duplication of effort in conducting searches. Where appropriate, the Parties agree that:
  - Police may execute a search with or without warrant, or obtain a Production Order, to obtain evidence relevant to both investigations; or
  - both Parties may obtain search warrants and execute simultaneously. In these circumstances, the Police will have overall control of the search due to the wider powers available to Police.
28. Where one Party has authority to seize evidence without warrant or to seize evidence outside the scope of an issued search warrant, the Parties will consult each other to ensure that the evidence is secured by the Party with authority.
29. All scene exhibits will be managed by the Party in control of a scene, subject to the Parties' statutory powers.

30. The Parties will consult each other to ensure that any exhibits of interest to one or both parties are secured by the Party in control of the scene. The other Party will, where appropriate, be provided with access to exhibits, or copies of exhibits.
31. The Parties will consult each other to agree upon the scope, terms and how to apportion costs of storage or other costs of an exhibit.
32. The Parties recognise the importance of maintaining the integrity and chain of custody of exhibits, including where both Parties require an exhibit for Court proceedings. The Parties may assist each other by providing witness statements from their employees for establishing the securing and/or chain of custody of exhibits seized.

### **Requests for assistance**

33. Either Party may request assistance from the other Party in the execution of a search warrant or a surveillance device warrant.
34. The Party making such a request for assistance will consult with the other Party before an application for a warrant is made. The warrant application may include information about the nature and reasons for the assistance sought.
35. The Commission may make a request to Police:
  - for Constabulary members of Police to accompany and assist the Commission to effect entry to premises, pursuant to sections 110 and 113 of the Search and Surveillance Act 2012;
  - for Police to assist Commission staff in the execution of a search warrants, pursuant to section 110(b) of the Search and Surveillance Act 2012, and the relevant provisions of the Commission Statutes; and
  - for other assistance as may be appropriate on a case-by-case basis.
36. Police may make a request to the Commission for Commission employees to accompany and assist Police in the execution of a search warrant, pursuant to section 110(b) of the Search and Surveillance Act 2012.
37. Requests for assistance to the other Party will include the provision of:
  - a copy of the signed warrant, if applicable;
  - a copy of the warrant application, where appropriate and if applicable;
  - a copy of any risk assessment completed, and any risk mitigation measures to be adopted;
  - nature of the assistance required;
  - attendance at a briefing prior to the execution of the warrant; and
  - any other relevant information.
38. The Parties agree that any employees of one Party assisting the other in the execution of a search will, as soon as practicable, provide copies to the other

party of any notes taken during the search, in line with the requirements of the Criminal Disclosure Act 2008 or the High Court Rules 2016.

39. Any notes taken during the execution of such a search may be redacted, if necessary, before provision to the other agency, if the redacted information is able to be withheld pursuant to the provisions of the Criminal Disclosure Act 2008, the High Court Rules 2016 or other lawful authority.

### **Enforcement action**

40. Nothing in this MOU precludes either Party from taking enforcement action at any time they consider necessary. Where the Parties are undertaking Joint Investigations, the Parties agree to advise each other where this action occurs, where possible, before that action is taken.
41. The Parties acknowledge the importance of co-ordinating prosecution action where both Parties have an interest in filing charges arising from the same or related underlying facts. Where practicable, the Parties agree to consult before charges are filed in relation to an incident under investigation by both Parties.
42. The Parties recognise that consultation is an important means of achieving consistency and maintaining effective relationships, and needs to occur within reasonable timeframes.
43. The Commission will file any charges and manage any prosecutions under the Commission Statutes and, in some cases, the Crimes Act 1961.
44. Each Party will meet the costs of any prosecution initiated by that party.
45. When determining which Party will prosecute and/or which charges will be filed, the Parties will take into consideration:
- the Solicitor General's Prosecution Guidelines;
  - sections 46 and 47 of the Criminal Procedure Act 2011 and any relevant Crown Law opinion or case law;
  - the Parties' prosecution and enforcement policies and guidelines, including any Commission leniency (including Conditional Immunity) and cooperation policies; and
  - advice from the Parties' legal representatives.
46. As a general rule, prosecution of a more serious charge will take precedence over less serious charges.
47. Personnel from either Party may (subject to legal limits, including section 106(7) of the Commerce Act 1986) be called upon to give evidence in criminal or civil proceedings, including as witnesses for the defence on occasion. The Parties recognise that staff will be appearing as witnesses for the Party that called him or her.

48. Where a staff member from the other Party is called to be a witness in any proceedings, the prosecuting Party will ensure that:

- a formal statement is completed by the witness, in consultation with the staff member in charge of the case; and
- a summons is served on the witness in accordance with the provisions of the Criminal Procedure Act 2011, and the member in charge of the case and the Crown will meet with the witness prior to trial to fully discuss the case in hand as it pertains to the witness's evidence.

Signature



Anna Rawlings  
Chair  
Commerce Commission

Date: Thursday 23<sup>rd</sup> April, 2020

Signature



Name Richard Chambers

Assistant Commissioner: Investigations  
New Zealand Police

Date 24 April 2020