

**DEED OF AGREEMENT**

**THIS DEED** is made this      first                      day of              December                      2016

**PARTY**              SafeWork NSW of 92-100 Donnison Street, Gosford, NSW 2250 ("SafeWork")

**AND**                      NSW Police Force of 1 Charles Street, Parramatta NSW 2150 ("NSWPF")

**Background**

- A. On 8 September 2010, [REDACTED] was fatally wounded when executing a search warrant on residential premises in Western Sydney with a number of other officers. [REDACTED]  
[REDACTED]  
[REDACTED]
- B. On 31 August 2012, SafeWork (then known as the WorkCover Authority of NSW) commenced prosecution proceedings against the NSWPF in the matter of [REDACTED] [REDACTED] (*WorkCover Authority NSW v State of NSW (NSW Police Force)*) (District Court Matter No. 2012/275697) (**the Proceedings**). The Proceedings alleged a breach of Section 8(1) of the *Occupational Health and Safety Act 2000* (OHS Act) as a result of the failure of the NSWPF to ensure the health and safety of police officers when executing the search warrant on 8 September 2010.
- C. The NSWPF is committed to complying with its obligations under the *Work Health and Safety Act 2011* (NSW) (**WHS Act**) and ensuring, so far as reasonably practicable:
- a. the health and safety of its workers while they are at work in the business or undertaking of NSWPF; and
  - b. other persons whose health and safety may be affected by its business or undertaking.
- D. The NSWPF acknowledges SafeWork's concerns giving rise to this prosecution. NSWPF has implemented substantial reforms to address the issues identified in the Proceedings and agrees in accordance with the terms set out in this Deed to develop and implement additional safety measures that will enhance the safety of Officers and in turn, enhance the safety of the community.
- E. The parties have agreed that it is in the public interest that SafeWork will seek leave to discontinue the Proceedings in accordance with the terms set out in this Deed.

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## 1. Interpretation

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### 1.1 Definitions

The following definitions apply unless the context requires otherwise:

**"Court"** means the District Court of New South Wales.

**"Defendant"** means the NSWPF.

**"Proceedings"** means the proceedings before the Court.

**"Proposal"** means the proposal referred to in clause 2.1 of this Deed

**"Prosecutor"** means [REDACTED] SafeWork New South Wales.

### 1.2 General

Headings are for convenience and do not affect interpretation. The following rules of interpretation apply unless the context require otherwise.

1.3 The singular include the plural and conversely.

1.4 A **gender** includes all genders.

1.5 Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning.

1.6 A reference to any **party** to this Deed or any other agreement or document includes the party's successors and substitutes or assigns.

1.7 **Clause** means a clause of this Deed.

1.8 A reference to any **agreement** or **document** is that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed.

1.9 Unless stated otherwise, one provision does not limit the effect of another.

1.10 A reference to **includes** or **including** means includes, without limitation, or including without limitation, respectively.

1.11 All **obligations** are taken to be required to be performed duly and punctually. **Do** includes do, permit or omit, or cause to be done or omitted.

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## 2. Agreement

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The parties agree that:

- 2.1 In accordance with the Schedules which form part of this Deed, the NSWPF will:
  - 2.1.1 Publish a statement in a mainstream Sydney newspaper within 1 month of execution of this Deed as detailed in Schedule 1.
  - 2.1.2 Develop and implement additional work health and safety measures for use by the NSWPF including:
    - 2.1.2.1 an online risk assessment tool for search warrants which will facilitate the prompt and effective identification and mitigation of safety risks associated with the preparation and execution of search warrants and enhance operational safety; and
    - 2.1.2.2 an online risk assessment tool for non-search warrant NSWPF operations and activities which will facilitate the prompt and effective identification and mitigation of safety risks otherwise associated with operational/ "front line" policing contexts and activities conducted at NSWPF workplaces; and
  - 2.1.3 Share information with other Australian police forces and NSW Emergency Service Agencies on the technology solution and application of the risk assessment tools which are implemented.
- 2.2 SafeWork will seek leave to discontinue the proceedings against the NSWPF on the basis that there will be no findings made or entered against the NSWPF. Each party will bear their own costs of the Proceedings.
- 2.3 The NSWPF will provide a senior representative for the purposes of providing SafeWork, on an agreed regular basis, with progress reports as to the development and implementation of the initiatives (outlined in Schedule 2) and any additional information requested by SafeWork in verifying compliance with the terms of this Deed. SafeWork will nominate a senior representative who will receive these progress reports.
- 2.4 SafeWork will place a copy of this Deed on its website within one month of execution. This Deed will remain located on the SafeWork website until all terms have been met.

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**3. Amendment**

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An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

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**4. Counterparts**

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This Agreement may be executed in any number of counterparts. All counterparts, taken together, constitute 1 instrument. A party may execute this Agreement by signing any counterpart.

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**5. Entire Agreement**

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This Agreement contains the entire agreement of the parties with respect to its subject matter. It constitutes the only conduct relied on by the parties (and supersedes all earlier conduct by the parties) with respect to its subject matter.

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**6. Governing Law**

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This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

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**7. Severability**

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Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

EXECUTED as A DEED

EXECUTED by SAFEWORK NSW

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[Redacted Signature]

Fiona Miller  
1.12.16

[Redacted Signature]

1-12-16  
Peter Dunphy  
Executive Director

EXECUTED by NSW POLICE FORCE

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[Redacted Signature]

ADAM WHYTE  
CHIEF OF STAFF  
22.11.16

[Redacted Signature]

J. Scipione  
Commissioner.

ad / 11 / 16

**Schedule One: Public Notice**

Notice of Acceptance of a Deed of Agreement between the NSW Police Force and SafeWork NSW.

On 8 September 2010, a NSW Police Force Officer was fatally wounded when executing a search warrant on residential premises in Western Sydney with a number of other officers. The NSW Police Force sincerely regrets the incident and the lasting and immeasurable effect it has had on the family, friends and colleagues of the Officer. In response to the incident, the NSW Police Force has implemented substantial improvements to its work practices to reduce the risk of similar incidents occurring.

The WorkCover Authority of NSW (now SafeWork NSW) investigated the incident and subsequently alleged that NSW Police Force contravened section 8 (1) of the Occupational Health and Safety Act 2000.

In settlement of the alleged contravention, a Deed of Agreement has been signed between the NSW Police Force and SafeWork NSW. In signing the Deed of Agreement, the NSW Police Force is required to:

- develop and implement a technology solution (online risk assessment tool) for search warrants
- develop and implement a technology solution (online risk assessment tool) for NSW Police Force operations and activities outside the search warrant context
- share information on a confidential basis with other Australian police forces and NSW Emergency Service Agencies on the technology solution/applied risk assessment tools produced.

The total estimated value of the Deed of Agreement is \$1,000,000.

The full Deed of Agreement is available at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au).

**Schedule Two: Initiatives****Initiative 1: Develop and implement a technology solution (online risk assessment tool) for search warrants**

Development and implementation of a technology solution to facilitate the prompt and effective identification and mitigation of safety risks associated with the preparation and execution of search warrants.

This technology solution will enhance operational safety while reducing administrative burdens in the planning and execution of NSWPF search warrant operations. It will maximize operational effectiveness without compromising the fundamental priority of safety (of both police and other persons who may be affected by police operations).

**Tangible outputs/WHS outcomes:**

NSWPF to procure and implement an online risk assessment tool and software program that will achieve the following outcomes:

1. A built-in ability to analyse the validity and accuracy of risk assessments submitted, with ready availability of statistical data. Allows flexible data-mining and reporting on safety trends in particular operational contexts.
2. A link between the risk assessment tool and operational orders to allow the automatic population of information that will reduce manual data input repetition.
3. Ensuring all in the hierarchy of authorisations or review for the risk assessment tool and operational orders have immediate access to relevant information through electronic work-flows, allowing for remote and instantaneous acceptance, modification, or rejection of proposed operational orders and review adequacy of proposed safety risk control measures.
4. An electronic record of authorisation and the ability to print documentation or access relevant information remotely.
5. Significant time and cost savings associated with preparation for pre-planned operations such as search warrants and other uninvited entry and search deployments.

**Timeframe:**

To be commenced within two (2) months and completed within eighteen (18) months of the execution of this Deed.

**Cost:**

The approximate cost of this initiative inclusive of design, implementation and evaluation elements is approximately \$700,000.

**Initiative 2: Develop and Implement technology solution (online risk assessment tool) for NSWPF operations and activities *outside the search warrant context***

Develop and implement a technology solution to facilitate the prompt and effective identification and mitigation of safety risks associated with the business or undertaking of NSWPF *outside of the search warrant context*.

This technology solution will enhance safety while reducing administrative burdens for both operational/'frontline' policing contexts, and activities conducted at NSWPF workplaces. It will maximize operational effectiveness without compromising the fundamental priority of safety (of both NSWPF workers and other persons who may be affected by the business or undertaking of the NSWPF).

**Tangible outputs/WHS outcomes:**

NSWPF to procure and implement an online risk assessment tool and software program that will achieve the following outcomes:

1. A built-in ability to analyse the validity and accuracy of risk assessments submitted, with ready availability of statistical data. Allows flexible data-mining and reporting on safety trends in particular operational contexts.
2. A link between the risk assessment tool and (where relevant) operational orders or safe work method statements to allow the automatic population of information that will reduce manual data input repetition.
3. Where relevant, ensuring all in the hierarchy of authorisations or review for operational orders have immediate access to relevant information through electronic work-flows, allowing for remote and instantaneous acceptance, modification, or rejection of proposed operational orders and review adequacy of proposed safety risk control measures.
4. An electronic record of authorisation and the ability to print documentation or access relevant information remotely.
5. Significant time and cost savings associated with preparation for pre-planned operations.



**Timeframe:**

To be commenced within six (6) months and completed within twenty four (24) months of the execution of this Deed.

**Cost:**

The approximate cost of this initiative inclusive of design, implementation and evaluation elements is approximately \$270,000.

**Initiative 3: Confidential sharing of information with other Australian police forces and NSW Emergency Service Agencies on the technology solution/applied risk assessment tools produced**

NSWPF sees the opportunity to share knowledge with regard to the proposed technology solution with other policing agencies in Australia as well as other Emergency Services in NSW with the primary objective of strengthening an understanding and shared application of operational safety in potentially high risk policing/emergency services operations. These briefings will be conducted on a confidential basis to protect sensitive policing methodology, or material that is otherwise protected by public interest immunity, from being inappropriately disclosed.

**Tangible outputs:**

The confidential briefing will be provided to representatives from:

- I. Australian and New Zealand Police Forces;
- II. The Australian New Zealand Policing Advisory Agency;
- III. The Police Association of NSW (representatives for sworn NSWPF members);
- IV. The Public Service Association (representatives for unsworn NSWPF members);
- V. NSW emergency service agencies (Fire and Rescue NSW and NSW Ambulance Service); and
- VI. SafeWork.

**Timeframe:**

To be completed within twenty (24) months of the execution of this Deed.

**Cost:**

The approximate cost of this initiative inclusive of planning, coordinating and conduct elements is approximately \$30,000.