

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this 17th day of

April Two thousand and Two **BETWEEN the NEW SOUTH WALES COMMISSIONER OF POLICE** of 14-24 College Street, Darlinghurst, in the State of New South Wales (hereinafter referred to as the “NSWP”) of the one part **AND the DIRECTOR-GENERAL OF THE NEW SOUTH WALES DEPARTMENT OF HEALTH for and on behalf of NSW HEALTH** (hereinafter referred to as “NSW Health”) of 73 Miller Street, North Sydney in the State of New South Wales of the other part hereinafter jointly referred to as “the Parties” and

WHEREAS:

- A. NSW Health has responsibility for the safekeeping of Newborn Screening Blood Samples (otherwise known as Newborn Screening Cards or “Guthrie blood spots”).
- B. The NSWP in limited circumstance requests NSW Health to provide access to specific Newborn Screening Blood Samples as a consequence of NSWP investigations of certain crimes.
- C. NSW Health and the NSWP wish to put in place a protocol as set out herein for the NSWP to obtain the consent in certain circumstances from persons to the use of Newborn Screening Blood Samples and access arrangements.
- D. The Parties are required to comply with the terms of the *Privacy and Personal Information Protection Act*, 1998 and legislation requiring people working in NSW Health system to maintain confidentiality of information acquired in the course of their work.

IT IS HEREBY RECORDED AS FOLLOWS:

- 1. The Parties hereby enter into a Memorandum of Understanding (“this Memorandum”) in relation to the circumstances in which NSW Health will provide the NSWP with access to Newborn Screening Blood Samples, being blood samples taken from newborn babies.
- 2. The NSWP may, where there is no other reasonable means of matching the sample, seek access to specific Newborn Screening Blood Samples of particular named persons where the information will assist them in the execution of their duties in the following circumstances:

- (1) for the purpose of identifying human remains: and/or
 - (2) where the NSWSP is in possession of a forensic sample or samples suspected to come from a victim of a crime taken from a suspected crime scene in relation to the commission of an offence involving harm to another person's life, safety or liberty and that victim cannot be located.
3. The NSWSP must make reasonable efforts to secure the consent in writing of the:
- (a) next of kin of the person from whom the Guthrie Spot was taken where that person is an adult; or,
 - (b) the parent or guardian of the person from whom the Guthrie Spot was taken where that person is under the age of eighteen years,
- and a copy of that consent is to be provided to NSW Health.
4. Notwithstanding clause 3, the NSWSP may not be required to seek consent from a parent, guardian or next of kin if to do so in the following circumstances:
- (a) it is impracticable to do so and, in such circumstances, the NSWSP must advise NSW Health in writing as to why it is impracticable; or
 - (b) it would compromise or be likely to compromise an on-going operation or investigation which is intended to prevent or lessen a serious or imminent threat to the life or health of an individual to whom the information relates or to any other person. [In the circumstance where the parent, guardian or next of kin is a suspect or might reasonably be expected to refuse consent, it is anticipated that the NSWSP will rely on clause 5 to obtain access].
5. Nothing in clause 2 operates to prevent disclosure to NSWSP of samples or information held in relation to samples as required by law, such as by search warrant. However, the NSWSP acknowledges the importance of maintaining confidence in the way Newborn Screening Blood Samples are collected, stored and used subject to appropriate security and privacy safeguards and undertakes to exercise its legal powers accordingly.
6. The relevant members of the NSWSP having exclusive authority to make applications to NSW Health for access to Newborn Screening Blood Samples are as follows:
- (a) the Director, Forensic Services Group; or
 - (b) any Deputy Commissioner of Police.
7. Except in the case of an emergency, applications for access by the NSWSP to Newborn Screening Blood Samples must be made in writing to the authorised delegate of NSW Health as set out in clause 8 hereof, and describe by name (and where available date of birth) the person of interest and declaring

that the purpose for which access is required is within the circumstances as are set out in Clause 2(1) and Clause 2(2).

8. The authorised person of NSW Health to receive applications arrange access or decline applications for particular requests for access is (however described):

Director
New South Wales Newborn Screening Programme
Children's Hospital at Westmead
Hawkesbury Road
Westmead NSW 2145
Facsimile: 9845-3121

or otherwise as notified in writing from time to time by NSW Health.

9. Following receipt of an application, the authorised delegate of NSW Health as set out in clause 8 will as soon as practicable advise the NSWSP's Director, Forensic Services Group or particular Deputy Commissioner of Police (as the case may be) in writing whether the request for access has been approved or declined.
10. The authorised delegate of NSW Health as set out in clause 8 will keep a permanent record in writing of all applications. The authorised person will provide the Office of the Privacy Commissioner with the following information on an annual basis:
- (a) The number of applications made by the NSWSP in that year;
 - (b) The number of such applications approved; and,
 - (c) The number of search warrants executed in relation to access to Newborn Screening Blood Samples.
11. NSW Health agrees that the Children's Hospital at Westmead is to provide access to Newborn Screening Blood Samples at an agreed time at Westmead or such other arrangements as may be agreed between the Parties.
12. The NSWSP will be given access to the relevant Guthrie Spot(s) under supervision of a suitably qualified and authorised officer of NSW Health for sampling and recording purposes.
13. For the avoidance of doubt, the NSWSP acknowledges and agrees that custody and control of Newborn Screening Blood Samples remains at all times with NSW Health.

14. The NSW Police will within twenty-eight (28) days of the signing of this Memorandum advise its sworn police officers by way of memorandum or other internal publication of the limitation on access to Newborn Screening Blood Samples and the procedures set out herein.

15. The provisions of this Memorandum are binding upon and inure to the benefit of both of the Parties and their respective successors and assigns.

16. If any dispute arises between the Parties such dispute is to be resolved by consultation between the Minister of Police and the Minister responsible for NSW Health in accordance with any Premier's Guidelines issued from time to time in respect of the settlement of disputes between agencies.

17. This Memorandum will be construed as being subject to the laws of the State of New South Wales.

IN WITNESS OF THIS MEMORANDUM, the undersigned authorised representatives of the NSW Police and NSW Health execute this Memorandum effective as of the day and year first written above as follows.

Signed by)	
The Acting Director-General of the)	
Department of Health)
For an on behalf of NSW Health)	Acting Director-General, Department of
In the presence of:)	Health

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Witness

Signed by Michael North Holmes)	
General Manager, Court and Legal Services)	
As the delegate of the New South Wales)
Commissioner of Police)	General Manager, Court and Legal Services
Director-General, Department of)	
In the presence of:)	

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Witness