

# Exhibits

OFFICIAL: Sensitive

Chapter Owner: Forensic Evidence & Technical Services Command

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(This chapter should be read in conjunction with specific instructions related to the use of EFIMS and the [Exhibit Procedures Manual](#).)

(Chapter updated 4 November 2022 [Mandatory Review])

## **Executive Summary – Short Guide to Exhibit Management**

This chapter provides overall guidance to police regarding the effective management of exhibits. The aims of the guidelines outlined in this chapter are:

- to ensure compliance with relevant legislation such as that relating to the Post-Conviction DNA Testing and Double Jeopardy guidelines
- to ensure secure retention of exhibits where there is a legitimate need to retain items due to their evidentiary or investigative value and, conversely, ensure that exhibits are not kept for longer than necessary, and
- to assist Commanders in making appropriate and timely decisions in relation to exhibit disposals.

In order to remove any confusion about the current status of exhibit management policy, these guidelines replace all previous State-wide memos, notices, circulars, policy notices and Standing Operating Procedures. These guidelines are supported by an Exhibit Procedures Manual and a 'Frequently Asked Questions' option on the NSWPF intranet site for the Metropolitan Exhibits and Property Centre (██████████).

However, the guidelines in relation to photographing exhibits, approved by the Premier's Delivery Unit Charge Streamlining Report (2008) should be read in conjunction with these guidelines.

Exhibits subject to the Post-Conviction DNA Testing or Double Jeopardy provisions of the Crimes (Appeal and Review) Act 2001 are dealt with separately at the end of this chapter.

## **Exhibits not subject to the Post-Conviction DNA Testing or Double Jeopardy provisions**

Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) deals with the retention and disposal of exhibits in police custody.

In relation to all unsolved crimes and ongoing investigations (other than those subject to Double Jeopardy provisions), Commanders are to exercise their discretion to retain or dispose of exhibits based on normal investigative processes. It is expected that this will be done on a case-by-case basis.

The actual seizure of an item is often unnecessary. On most occasions, photographs of an exhibit will suffice as evidence. You only need to keep the actual item where there is something special about it that would not be obvious from the photograph. Examples of exhibits that should be kept include items that:

- are to be analysed or tested in some way and/or
- have a unique characteristic, label or marking.

The circumstances of each case will dictate whether the actual item needs to be retained. If you have seized an exhibit and have satisfied yourself that it is no longer needed as evidence, it must be disposed of in accordance with Part 17 of LEPR. Normally this will be by returning it to the owner or person who had lawful possession of it before it was seized.

However, there are exceptions to this general rule, such as the requirements to retain exhibits relevant to the Post-Conviction DNA Testing and Double Jeopardy guidelines set out at the end of this chapter. These requirements will be in relation to very serious offences.

It is the Commissioner's expectation that normal exhibit disposal processes will be followed by all staff. This means that proper attention to detail must be given and due diligence must be followed and that police should err on the side of caution to ensure that no exhibits that are still lawfully required to be kept are accidentally or inadvertently disposed of.

## **Responsibilities**

### **Commanders**

Police Area/District Commanders and equivalent Specialist Commanders are accountable for the overall effective management of exhibits. This includes transportation, retention, security, safe handling and disposal of exhibits. All officers have a duty and obligation to assist in this regard. Safe handling and storage of exhibits includes minimising potential risks under the Work Health and Safety Act 2011 in regard to weapons, other prohibited items and contaminated or hazardous exhibits.

Police Area/District Commanders and equivalent (of or above the rank of Superintendent) shall ensure that when the officer in charge (OIC) of a case ceases employment with the NSWPF or is absent for any lengthy period (3 months or more), all pending investigations including exhibit responsibilities are allocated to another officer.

Police Area/District Commanders and equivalent (of or above the rank of Superintendent) may make decisions regarding the retention or disposal of exhibits when the OIC is attached to their command. They must advise the exhibit staff where the exhibit is secured, of their decisions.

### **Officer in Charge**

The OIC of a case is to ensure that exhibits (regardless of where they are stored) are only retained in police custody for as long as they are needed for investigative purposes or as evidence in a prosecution. The majority of exhibits seized will never be required for tender before a court and all police are responsible for promptly returning exhibits to the rightful owners or seeking authorisation for appropriate disposal.

Where a decision has been made to keep an exhibit for the prosecution of an offence, regardless of whether the offence is proved or dismissed, do not dispose of it until at least 28 days after the court proceedings have finished and only with appropriate authorisation as discussed below (ref. as pp. 5, 7 and 8).

**In the case of drug exhibits taken to FASS for analysis the remainder of the whole drug exhibit must also be collected from FASS and returned to PAC's once the certificate has been received or once FASS have decided that no further analysis of the drug exhibit will be required. The responsibility for collection of these drug exhibits from FASS rests with the Officer in Charge of the Investigation.**

FASS drug exhibit storage area is not to be used for the long-term storage of drug exhibits due to limited space and should not be used as an alternative to police exhibit holding facilities.

All police are reminded when handling drug exhibits, they must always follow the instructions in the Police Handbook and the Exhibit Procedures Manual.

The Director FASS is responsible for the destruction of A & B Samples once analysis has been completed.

## **Evidentiary value**

### **Police generally**

The return or disposal of exhibits is dependent on the need for their retention for evidentiary purposes during an investigation or prosecution. Continued retention needs to be considered before, during and after prosecutions, including any appeal period.

In most cases, exhibits should be photographed, or video recorded (or both) and when required, subjected to forensic analysis. Once this has occurred, there is normally no further need for their retention. Ensure the photographs or video recording show all pertinent features of the physical exhibit. In accordance with Part 17 of LEPR, they should then be returned promptly to the owner or person who lawfully possessed them before seizure, provided it is lawful for that person to have possession of them.

As a general rule, exhibits should only be retained when their physical production is necessary or desirable at court. However, when dealing with serious offences, it is normally desirable to retain exhibits for production at court.

- For example, all weapons and implements used in the commission of a serious criminal offence, i.e. homicide, armed hold-up, serious assaults etc, are to be retained.
- Additionally, some exhibits may have distinctive characteristics or features that would not be adequately conveyed to a court without their physical production.

Section 75 of the *Criminal Procedure Act 1986* provides that if an exhibit has been obtained and it is impossible or impracticable to copy it, the prosecutor must serve a notice on the accused person, specifying a reasonable time and place at which they can inspect it. The accused must then be allowed a reasonable opportunity to carry out that inspection.

After the accused person has been given a reasonable opportunity to inspect the exhibit, the need to retain it may be reviewed before the termination of the proceedings.

Consider each case on its own merits, considering whether disposal or return of the exhibit would weaken the prosecution's case. It is important to highlight here that an exhibit may also be potentially exculpatory i.e. provide evidence which would be favourable to an accused and may assist in establishing their innocence. Such exhibits should also be retained.

In short, where an exhibit is not required for any evidentiary purpose, then actions should be taken promptly to return or dispose of it in accordance with Part 17 of LEPR.

## **Retention and timely disposal**

### **Police generally**

Exhibits that have been photographed or video recorded, and/or forensically analysed and which have no further special or forensic evidentiary value should not be retained just so they can be tendered at court. This is a critical stage for effective exhibit management – a decision must be made as to whether the physical exhibit is required to be kept. Police are not entitled to keep exhibits “just in case” they might be presented in court.

Unless an exhibit of money has special evidentiary features, it should be forensically analysed (where necessary), photographed or video recorded, and then banked at the earliest opportunity for payment into the Crown Trust (Exhibit Moneys) Account. If exhibit money has been paid into the Crown Trust (Exhibit Moneys) Account, immediately report the result of court proceedings and include any order of the court or reasons for dismissal. Refer the report to the Commander or equivalent for a decision on disposal. Exhibit money must not be disposed of on EFIMS until it has been returned to its rightful owner or transferred to Consolidated Revenue.

The Charter of Victim's Rights within the *Victims' Rights Act 1996* provides that when property is held for the purpose of an investigation or evidence, inconvenience to the victim should be minimised and the property returned promptly.

Where exhibits are retained as evidence, the OIC of the case must submit a report within 28 days after the finalisation of the proceedings with a recommendation as to the disposal or retention of the exhibits. If an appeal has been lodged, the report is to include whether the exhibits are required to be retained for the appeal. The report is to include any specific court order regarding the exhibits. If necessary, consult with the police prosecutor or DPP lawyer who conducted the prosecution.

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### **Fireworks Exhibits**

The OIC should contact SafeWork, NSW, and request an examination of exhibit fireworks by a SafeWork NSW Dangerous Goods Inspector, who will issue an "Expert Certificate".

For **Fireworks: Miscellaneous Property** see Chapter M – **Miscellaneous Property**.

### **Project Valley (Metropolitan Exhibits & Property Centre)**

Project Valley is a FETS Command initiative commenced in 2020 with the aim of reducing exhibits on hand at the MEPC for matters where:

- the convicted offender was sentenced to a term of imprisonment, and has now completed that sentence;
- forensic samples that require temperature-controlled conditions;
- exhibits that do not fit the Centre's criteria for long term storage.

After an exhibit is returned to a PAC / PD, exhibit officers are to liaise with OIC's and conduct a review of the exhibit, before disposing of the exhibit in accordance with procedure or retaining the exhibits as per Police Handbook instructions.

For further information contact the MEPC on E/N 73560.

### **Seizure of Exhibits**

#### **Officer in charge of the case**

Before seizing an item as an exhibit, you should first consider what evidentiary purpose would be served by taking it. Property should only be seized as an exhibit if you are satisfied it is needed for evidence in your investigation or a prosecution. You have no general power to seize property.

When you seize property from a person as an exhibit, check or count it and where possible record it in the person's presence at the earliest opportunity. Include any visual damage to the property. Exhibits remain in the custody of the seizing officer or, in large operations, the officer assigned to handle them, until entered into EFIMS.

In the event that the seizure of cryptocurrency is contemplated, please refer to the **Cryptocurrency Seizure SOPs**

## **Retention of Exhibits**

### **Police generally**

When an exhibit is first brought to the police station the need for its retention must be assessed by the seizing officer and the supervisor/exhibit officer. If a photograph or a video recording of the exhibit will suffice, make the necessary photographing/recording arrangements, if not already carried out at the time of seizure. The exhibit should then be returned or disposed of in accordance with Part 17 of LEPRA and the **Exhibit Procedures Manual**.

Responsibility for on-going decisions to retain or dispose of the exhibit rests with the Commander of the OIC. The OIC would be consulted, but the relevant Commander is ultimately accountable for exhibit management decisions. Where appropriate, Commanders should consult with the OIC and/or the Office of the Director of Public Prosecutions.

### **Disposal of exhibits after the termination of proceedings**

#### **Police generally**

On receipt of the report from the OIC following the finalisation of proceedings, Commanders are to arrange for the disposal of exhibits. Exhibits that cannot be returned to owners or to those from whom they were seized, may be sold at public auction. All actions taken to return exhibits to owners are to be recorded against the relevant EFIMS entry as a permanent record should there be a future claim against Police for wrongful disposal of the relevant property.

Retained money exhibits and the proceeds of auctions are to be banked for payment into the Treasurer's Consolidated Fund. Note that the costs incurred for conducting the auction cannot be deducted from the proceeds. If the exhibit is not money or is not fit or suitable for sale, or fails to sell at public auction, the Commissioner of Police has directed that Commanders may exercise their discretion to destroy the exhibits in the most appropriate way and in accordance with *Work Health and Safety Act 2011* requirements.

### **Hydroponic equipment**

Under no circumstances are police to donate seized hydroponic equipment to schools, universities, TAFE colleges or other institutions.

Unacceptable health and safety risks are associated with hydroponic equipment that may be contaminated by *Aspergillus* spores and/or fingerprint powder.

Hydroponic equipment should be disposed of by:

- Police obtaining a 'Disposal of Dangerous Exhibit Order' from the Local Court
- Making enquiries at a local level to source an appropriate contractor to deal with the safe destruction of all hydroponic equipment.

### **Firearms, prohibited weapons and ammunition**

#### **Updating the status of stolen property**

Property that is the subject of theft is entered onto COPS and is assigned a status, (e.g. stolen, recovered, returned to owner, etc).

It is important to maintain COPS Events and Cases with information as it comes to hand, including changing the status of stolen property as it is recovered, (or other), as a failure to do so may result in inappropriate situations such as:

- actions taken against innocent parties because identified property is still listed as stolen after it has been recovered;
- return of the property to the wrong entity;
- ambiguity in dealing with persons of interest found in possession of property.

A common problem with inaccurate records is when property is returned to a victim after an insurance company has paid out on a claim. In these circumstances, ownership of the property most often transfers to the insurance company.

To overcome this issue, police should obtain insurance details from the victim at the time of the crime report and enter this onto COPS.

When police take possession of recovered property that an insurance company has a claim of ownership over, they should notify the insurance company of its recovery.

For insurance claims for the Suncorp group of companies, (including Suncorp, AAMI, GIO, Apia, Vero, Shannons, Just Car, Insure My Ride, Terri Sheer, CIL and Bingle), please contact the police only contact details of:

Attention: Salvage Co-ordinator Australia

email: [REDACTED]

Telephone: [REDACTED]

### **Suspended investigations**

#### **Offences punishable by life imprisonment**

When investigations for offences punishable by life imprisonment have been suspended, any exhibits are to be retained. Similarly, when other investigations have been suspended and the relevant Commander or equivalent is of the opinion that it would not be in the public interest to dispose of the exhibits, they should be retained. Continued retention is to be reviewed after ten years (and annually thereafter) by Commander or equivalent (Superintendent or above). The factors set out below in relation to stalled or suspended investigations generally will be pertinent to these reviews.

#### **Police generally**

In other cases when investigations have stalled or been suspended, you may consider the disposal of exhibits. You need to be satisfied that all avenues of investigation have been exhausted and there is no reasonable prospect that a prosecution will be instigated. The exhibits are to be photographed or video recorded before disposal. Factors, although not the only ones, that should be considered are:

- any serious and aggravating circumstances of the crime or, conversely, the triviality of the offence
- the age or staleness of the offence and the availability of key prosecution witnesses
- the ability and reliability of prosecution witnesses to recall their evidence under cross examination after a lengthy period
- the attitude of the victim and other key prosecution witnesses including willingness to assist in the police investigation, provide a statement and give evidence at court and participate in a forensic examination
- the overall weight of the case for the prosecution from all available and admissible evidence (e.g. whether all persons of interest have been eliminated, or whether there is a description of the offender)
- results of any legal advising sought e.g. DPP advice of no reasonable prospect of conviction
- classification of the offence at the time of initial report taken i.e. accepted or rejected
- the interests of and consequences for, any registered victim of the offence
- the need to maintain public confidence in the administration of criminal justice in the State, and the public interest.

The individual circumstances of each case will dictate the course that should be taken. The OIC of the case should address these and any other pertinent issues in a report to his/her Commander .

The following information explains how exhibits subject to Post-Conviction DNA Testing and Double Jeopardy provisions of the Crimes (Appeal & Review) Act 2001 should be maintained.

### **Special Cases - Post-Conviction DNA Testing and Double Jeopardy**

#### **Post-Conviction DNA Testing**

The DNA Review Panel closed on the 23rd February 2014. All enquiries regarding retention of biological exhibits and access to DNA testing in support of applications for post-conviction reviews can be made to the Forensic Evidence & Technical Services Command, NSW Police Force, on (02) [REDACTED].

#### **Exhibits NOT affected by Double Jeopardy Provisions**

The double jeopardy provisions only apply to offences punishable by imprisonment for 15 years or more. Therefore, where an accused person has been acquitted of an offence that has a maximum penalty of less than 15 years imprisonment, an exhibit may be returned or disposed of once 28 days have passed and the OIC has confirmed with the DPP that there have been no

appeals lodged or received.

Inquiries with the DPP should be made 3 months after the directed verdict of acquittal.

### **Exhibits affected by Double Jeopardy provisions**

Where an accused person has been acquitted of an offence punishable by imprisonment for 15 years or more, then all exhibits are to be retained.

In simple terms, the rule of law concerning “double jeopardy” means a person cannot be tried twice for the same offence. Despite this rule, in some circumstances the DPP may seek the retrial of people who have been acquitted in circumstances where:

- the person is acquitted of a life sentence offence and there is fresh and compelling new evidence, or
- the person is acquitted of an offence carrying a maximum penalty of imprisonment for 15 years or more and the acquittal is a “tainted acquittal”, or
- the trial judge directed a verdict of acquittal.

### **In case there is a future retrial in any of these circumstances, exhibits need to be retained as follows:**

- In cases involving acquittals for offences carrying life imprisonment, the exhibits are to be retained for ten years and their continued retention reviewed annually thereafter by the OIC and the relevant Commander
- In cases involving acquittals for offences carrying a maximum penalty of imprisonment for 15 years or more, the exhibits are to be kept for 5 years and their continued retention reviewed annually thereafter by the OIC and their Commander.

### **Instances where the requirement to retain these exhibits does not apply:**

- a court orders the return of the exhibit to the person to whom it belongs
- the owner of the exhibit is the victim of the offence and it is required to be returned promptly to minimise inconvenience to the victim
- the exhibit is of such size or nature as to render its retention impracticable (but only if steps are taken to retain a portion of the relevant material sufficient for DNA testing)
- the exhibit has already been subjected to DNA testing that indicates that the biological material relates only to the eligible convicted person
- the exhibit is required by or under any Act to be given to another person or destroyed.

### **Procedure to be followed in ALL cases (whether the double jeopardy provisions apply or not)**

Following acquittals in all the circumstances set out above, the OIC of the case will need to consider whether the matter is ever likely to be the subject of an application for a re-investigation or retrial. This may include a debriefing with the DPP lawyer or Crown Prosecutor who had carriage of the prosecution.

A report setting out the situation (as then known) is to be submitted to the Commander where the exhibit is retained. This will be considered in future reviews about continued retention. Should any further information come to light after the submission of the initial report, it is also to be reported and kept for future consideration.

### **Inconvenience to exhibit property owners**

#### **Police generally**

Depending on the type of exhibit, it may be detrimental and inconvenient to the owner to retain their property as evidence for any lengthy period, particularly if the owner is the victim of the crime. The need for retention may need to be explained to the person as well as their right to apply to a court for the return of their property under Part 17 of LEPR.



**Briefs of evidence and investigative case files**

Refer to approved Disposal Authority DA00059 and DA221 on the intranet regarding the archiving and disposal of briefs of evidence and investigative case files under the State Records Act 1998. Exhibits (physical evidence) are not regarded as records for the purposes of this Act and are not to be managed under this guideline.

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