

PRACTICE DIRECTION CRIM 1 OF 2011
DEALING WITH SECURE AND SENSITIVE MATERIALS

1. Application

- 1.1 This Practice Direction applies to all exhibits and other material tendered in criminal proceedings in the District Court, including trials, sentencing hearings, directions hearings and hearings at circuit locations.
- 1.2 Unless otherwise ordered or directed, all exhibits are retained by the Court until at least 31 days after the day on which the case is determined or dismissed (see generally [Criminal Procedure Act 2004 \(WA\)](#) (“CPA”) s170). Where there is an appeal, all exhibits are sent to the Court of Appeal. Where there is no appeal, each exhibit is returned to the party who tendered it or who appears to be entitled to it, or destroyed (see generally, [Criminal Procedure Rules 2005 \(WA\)](#) (“CPR”) r 50).
- 1.3 An exception to the general rule is that the Court may dispose of an exhibit that it considers dangerous to retain (CPA s170(2)(a)). The Court may also release an exhibit to a person who is entitled to custody of it if the Court considers that it is dangerous, impracticable or inconvenient for it to be retained, or that it is necessary for the person to have use of the exhibit (CPA s170(2)(b)).

2. Normal exhibits

- 2.1 Material or items tendered as exhibits in a criminal trial are usually stored overnight in a safe in the court. Following completion of the trial, the exhibits are dealt with in accordance with CPA s170 and CPR r50.
- 2.2 Where a party wishes to tender into evidence a large or bulky item (not otherwise dealt with in this Practice Direction), the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made. The notification should describe the item and set out the arrangements proposed by the party.

3. Pornographic and other offensive or disturbing material

- 3.1 Pornographic or other offensive material is to be brought into the Court secured in a sealed envelope clearly marked as containing pornographic material (or other appropriate description) with a large distinctively coloured label. The envelope is to contain a second unused enveloped which can be used for the return of the material.

- 3.2 Where the images are stored in an electronic medium (eg flashdrive or CD or DVD), the same procedures are to be followed as if the images were in hard copy format.
- 3.3 The parties should endeavour to agree the material which needs to be viewed as a representative sample (see generally, Circular to Practitioners, [CRIM 2007/1](#), Management of Trials – Offences Relating to Pornography and Objectionable Material).

4. Drugs

- 4.1 The Court's preference is that all evidence in relation to the actual drugs the subject of the indictment be tendered to the Court as photographic or digital images.
- 4.2 If a party wishes to bring the actual drugs into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made.
- 4.3 It is impracticable for the Court to store drugs either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Federal Police. When the prosecution brings the actual drugs into Court, it will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the drugs.

5. Weapons and dangerous items

- 5.1 The Court's preference is that evidence relating to firearms, ammunition, weapons and other dangerous items be tendered to the Court as photographic or digital images.
- 5.2 If a party wishes to bring the actual item into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made.
- 5.3 It is impracticable for the Court to store firearms, ammunition, weapons and other dangerous items either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Federal Police. When the prosecution brings the items into Court, it will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the items.

6. Explosives and hazardous substances

- 6.1 Under no circumstances are live or possibly live explosives to be brought into Court.
- 6.2 Under no circumstances are hazardous or potentially hazardous substances to be brought into Court.
- 6.3 In each case, evidence is to be led using photographs, expert reports or other means approved by the trial Judge.

7. Money and other valuable items

- 7.1 The Court's preference is that evidence relating to money and other valuable items (eg gold or diamonds) be tendered to the Court as photographic or digital images.
- 7.2 If a party wishes to bring the actual item into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made. .
- 7.3 It is impracticable for the Court to store money and other valuable items either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Federal Police. The party tendering the items will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the items.

8. Letters of Recognition

- 8.1 A Letter of Recognition is a letter from the police or other investigating agency setting out the assistance provided by an offender to the agency.
- 8.2 A Letter of Recognition is to be secured in a sealed envelope marked to the attention of the sentencing Judge, care of the Senior Associate to the Chief Judge and hand delivered to Level 11 District Court Building not less than 2 clear working days prior to the hearing date.
- 8.3 The Letter of Recognition will be returned to the relevant prosecution authority as soon as practicable after the hearing at which it is used.

PETER MARTINO
Chief Judge