**Gathering, Managing and Handling Evidence**

**- Policy and Procedure**

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| **Purpose**  This document outlines the policy and procedure for gathering, managing and handling evidence. |

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| **Implementation Officer** | Manager Licensing and Compliance  Licensing and Compliance Investigators  Authorised Persons | |
| **Relevant Documents:** | BIOSECURITY FORMS:  ADA-01 to ADA-18  PDA-01 to PDA-07  PPAA-01 to PPAA-05  Caution Card  Direction Notice Use – Policy and Procedure (for ADA, PDA, PPAA)  Official Notebook Policy and Procedure | |
| **Relevant Legislation** | *ACT Civil and Administrative Tribunal Act 2008*  *Animal Diseases Act 2005*  *Criminal Code 2002*  *Evidence Act 2011*  *Legislation Act* *2001*  *Nature Conservation Act 1980*  *Pest Plants and Animals Act 2005*  *Plant Diseases Act 2002* | |

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# INTRODUCTION

The outcome of an investigation relies on gathering reliable, relevant and admissible evidence to determine that can be presented to a court or tribunal.

This policy and procedure has been prepared to provide guidance to authorised persons involved in locating and collecting exhibits and outlines a standardised set of procedures for the collection, identification and security of exhibits collected and retained for evidentiary purposes.

**When an investigator decides that material held by TAMS is relevant to an investigation, this material should be treated as evidence until no longer required for the investigation and/or prosecution. The security and continuity must be maintained from seizure to disposal (Australian Government Investigation Standards 2011, Page 22).**

**EVIDENCE**

## Rules of Evidence

Evidence law consist of technical rules that determine what is admissible in court. If the evidence is admissible, this means it can be used to prove or disprove a fact or facts in issue before the court.

Authorised persons, inspectors or veterinary officers should be aware of the types of evidence that is admissible.

Evidence must be relevant to the alleged offence, and will generally be excluded if:

* it is based on hearsay, opinion, character or propensity; or
* if it was illegally, improperly or unfairly obtained.

The *Evidence Act 2011* codifies the rules of evidence and should be referred to where required.

## What Constitutes Evidence?

Evidence is anything that tends to prove or disprove an element, or elements, of an offence.

Evidence can be presented to the court in the following forms:

* oral evidence (word of mouth, by a witness to the court);
* documentary evidence (a fact brought to the knowledge of the Court by inspection of a document produced to the Court); and
* real evidence (evidence supplied by material objects produced for the inspection of the Court).

Items of documentary and real evidence presented to Courts are referred to as ‘exhibits’. It is the responsibility of the person who identifies and takes possession of any such items to ensure that the integrity of the exhibit is maintained.

## Identifying Physical Evidence

During the course of most investigations, authorised persons will be confronted with the task of identifying items of physical evidence. The make-up of these items may range from material goods to documents.

Authorised persons must be aware of the need to preserve potential evidence and the importance of ensuring that there is **no interference with exhibits** and that **the crime scene is preserved where required**. The evidentiary value of the item must be properly assessed before it is moved or interfered with.

The person locating the item should consider the following matters:

* Is there a need to capture an image of the scene prior to disturbing anything? If so, this can be done by photograph, video, or even notes or a drawing detailing the layout of the scene and items of interest.
* Are samples required to be taken?
* What is the best method of collecting the item of evidence? Are gloves required? How can the item be best identified and recorded?
* Have all potential witnesses relevant to this event or involved in the continuity chain been identified?
* Should directions be issued for a biosecurity risk?
* Are further resources required to handle and manage the evidence?
* Is professional/expert assistance required?

**Criminal Code 2002**

The *Criminal Code 2002* codifies the general principles of criminal responsibility under territory laws. The Code outlines the meaning of intention, recklessness, negligence and what is meant by strict and absolute liability. Section 36 of the Code also outlines the defence of “mistake of fact” for strict liability offences. Authorised persons need to be aware of these provisions to ensure all necessary evidence is identified.

## Elements of an Offence

When gathering evidence you should consider the elements of an offence and any possible defences in order to identify evidence to prove that element.

For example, section 32 of the *Animal Diseases Act* *2005* states that ‘a person commits an offence if the person does something that communicates a disease or disease agent to an animal.’

The elements of this offence are:

1. Identity
2. Date
3. Location
4. Did something
5. That communicated
6. A disease or disease agent
7. To an animal

Each element must be proved beyond reasonable doubt. Identity, date and location are common elements of all offences.

## Evidence Matrix

For complex and serious matters consider using an evidence matrix to assist in carrying out the investigation to ensure all necessary evidence is identified. Refer to the Annexure 1 for an Evidence Matrix Template.

**Official Notebooks**

Authorised persons, inspectors or veterinary officers must use their official notebook to record evidence and related information.

**Refer to Official Notebook Policy and Procedure**

**See section 86 of the *Evidence Act 2011* which provides that you will only be able to refresh your memory using your notes with leave of the court where you:**

1. **made the notes when they were fresh in your memory: and**
2. **the notes are accurate.**

## Gathering Evidence

When gathering evidence authorised persons, inspectors and veterinary officers should:

* understand the legislation and your statutory powers;
* plan ahead to ensure you have the right equipment for the type of investigation, such as gloves, sample bags, blank labels, permanent markers, camera, storage for bulky items and direction notice templates;
* record accurate and detailed observations of all circumstances relating to the alleged offence, such as dates, locations, distances, times, weather conditions, stock etc;
* take photographs as evidence wherever possible, and make written notes to support the photographic evidence (including date, time and description of the image);
* record names, addresses and contact details of all people present at the site of the alleged offence;
* ensure detailed and correct labelling is securely attached to all evidence and use evidence tamper bags where necessary;
* ensure continuity and security of evidence by completing the Chain of Custody Form and Exhibit Register held by the Manager of Compliance and Licensing (refer to Annexures 2 and 3). This includes recording what evidence has been collected, where and how it has been taken and stored, how it is labelled, and who is in charge of it.

# HANDLING EVIDENCE

## Preserving Exhibits

Although it is not possible to describe detailed methods for the collection and packaging of all exhibits that are likely to be encountered during an investigation, there are several principles which should be observed.

## Handling

The general rule in handling an exhibit is to do so as little as possible, and to do it in such a way as to leave it as close as practicable to its original condition.

## Labelling

Each article or sample of material should be securely labelled in a way that the label will not become detached in packing or handling. The label should bear a distinctive letter or number allotted to the article in the notes made at the scene, as well as the date and time when the authorised person, inspector or veterinary officer took possession of it. Where a label is not used the officer gathering the evidence should clearly describe the article in his/her notebook.

It is essential that the chain of custody form be completed where samples are taken and that any specific sampling procedure is followed and method for taking the sample is recorded.

In some cases evidence bags may be required which enables the exhibit to be sealed.

## Preservation

Exhibits should be preserved to ensure that they are produced as evidence in the condition in which they were obtained. In some cases it may not be possible to retain the exhibit intact, and some testing procedures may alter or destroy the exhibit. However, all precautions should be taken to ensure that exhibits are delivered to the laboratory or other place of examination in their original condition.

## Continuity

An investigator is responsible for the care of exhibits until they are ready to be presented to the court. This means that that the names of all persons having custody of the exhibit, together with the time and date that possession changed, should be accurately recorded. All these persons or links in the chain may be required to provide, at a later time, direct evidence of continuity of their possession of the exhibit to the court.

## Documents

As with any exhibit, it is important to preserve a documentary exhibit. Some points which should be considered are:

* not folding, stapling, perforating, or attaching stickers or labels to the actual documents;
* not writing on documents;
* avoiding unnecessary handling of documents;
* placing documents in preferably clear envelopes (porous in nature in order to allow the documents to ‘breathe’) as soon as practicable after obtaining them and ensure the envelope is large enough to contain the document unfolded;
* original documents must not be annexed to statements;
* entering the document/s into the exhibit register; and
* avoid permitting unauthorised persons to handle a documentary exhibit, which could facilitate deliberate or accidental damage.

# MANAGING EVIDENCE

Once evidence is identified as proving an element of the breach/offence, it should be treated as an exhibit and labelled. In some cases you will exercise statutory powers to take samples, take copies of documents, conduct tests, take photographs or seize evidence.

**You must understand your scope of statutory powers available under the relevant legislation.**

The test for the admissibility of an exhibit is its relevance to the event in issue or the accused under trial. Unless it can be proved that there is a relationship between the exhibit and the facts in issue, the item will not become an exhibit.

The integrity of evidence for court can be enhanced by following these guidelines:

* record the evidence by photographing the item in situ at the time it is seized;
* identify the authority under which the evidence was seized;
* maintain continuity of possession;
* retain original notes;
* use the correct receptacles/storage
* secure items in order to preserve them as close as practical to the original form, and
* keep each item separate.

Once an exhibit comes into the possession of an investigator, utmost care should be taken to ensure that the chain of possession is not broken. In other words, an investigator must be able to show to the court, if required, that the exhibit has retained its evidentiary integrity from the moment it came into their possession to the time it is presented as evidence in court.

## Seizure

**Power to Seize**

When seizing item/s, ensure you are aware of the enabling legislation which gives you the power to seize the item/s, and ensure you clearly state the person the item was seized that you are exercising a power of seizure.

The power to seize differs between the pieces of legislation. You must always refer to the relevant legislation. The requisite grounds for each piece of legislation are linked in the following table:

|  |  |
| --- | --- |
| **Legislation** | **Requisite grounds to seize** |
| *Animal Diseases Act 2005* | Section 71  <http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/act/consol_act/ada2005138/s71.html?stem=0&synonyms=0&query=animal%20diseases%20act%20section%2071> |
| *Nature Conservation Act 1980* | Section 133  <http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/act/consol_act/nca1980237/s133.html?stem=0&synonyms=0&query=nature%20conservation%20act%20section%20133> |
| *Pest Plants and Animals Act 2005* | Section 37  <http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/act/consol_act/ppaaa2005231/s37.html?stem=0&synonyms=0&query=pest%20plants%20and%20animals%20act%202005> |
| *Plant Diseases Act 2002* | Section 28  <http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/act/consol_act/pda2002152/s28.html?stem=0&synonyms=0&query=plants%20diseases%20act%20section%2028> |

For example: Section 71(1)(a) and section 71(1)(b) states that a thing can be only seized by an authorised person who enters premises under Part 6 of the *Animal Diseases Act 2005* if:

1. the authorised person is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
2. seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

**Seizure Receipts**

A seizure receipt must be given to the person that clearly describes the thing seized. The *Animal Diseases Act 2005* (ADA) and the *Pest Plants and Animals Act 2005* ( PPAA) require specific information to be included on the seizure receipt. For seizures under the ADA and PPAA, the seizure receipt must include:

1. a description of the thing seized;
2. an explanation of why the thing was seized;
3. the authorised person's name, and how to contact the authorised person;
4. if the thing is moved from the place of seizure—where the thing is to be taken.

**Seized Items**

Once an item is seized or an exhibit is obtained in the conduct of an investigation it must be entered into the exhibit register along with the completion of any custody forms to demonstrate continuity of evidence. In some cases the items will be placed in tamper proof evidence bags.

A record of seized property should be completed and saved on a secure hard drive and a copy retained with the exhibit.

**Exhibit Register**

The *Exhibit Register Book* records ALL withdrawals or deposits of physical evidence from the Evidence Cupboard, and is kept inside the cupboard to record transactions in chronological order.

The Exhibit Register must provide:

* the name and position of the officer withdrawing or depositing evidence;
* the time and date of withdrawal or deposit;
* the investigation file number relating to the physical evidence;
* the purpose of withdrawal; and
* the signature of handling officer.

***The exhibit should be recorded in the Exhibit Register and allocated an exhibit number. The information in the Exhibit Register should include the full details as recorded on the property seizure record.***

***Any subsequent movements of the exhibit should be recorded in the Exhibit Register. This must include the date, the name and signature of the person taking the exhibit, the reason and the destination.***

## Digital Evidence

**Photos**

For digital photo evidence, the photos must be saved on two CDs. The disks must be labelled with either “Master Copy” or “Working Copy”. The Master Copy must be entered into the exhibit register with the copies of the photos. The Working Copy must be stored on a secure hard drive.

For complex matters a List of Images form should be completed and saved on a secure hard drive (see Annexure 4).

**Audio**

For audio evidence, where a digital recording device is used to a record an interview, the investigating officer must provide the interviewee with a full recording on a CD as soon as practicable under the covering letter.

A second CD must be entered into the exhibit register. The third CD is to be used by for transcription purposes and is to be transcribed as a ‘Record of Interview’.

**Video**

For conventional or digital video evidence, two copies must be provided by the investigating officer. One copy will go onto the investigation file and the other will be entered into the exhibit register.

The digital video should also be stored on a secure hard drive.

**Chain of Custody Form**

If physical evidence is removed from the evidence cupboard, a Chain of Custody Form (see Annexure 3) – must be completed and remain attached to the evidence at all times.

The Chain of Custody Form must provide:

* the name, position and contact details of the officer releasing physical evidence;
* the time and date physical evidence is released;
* the purpose for releasing evidence; and
* the identifying details for the evidence at the top of the form.

**Evidence Cupboard or Locker**

Physical evidence to be used in legal and compliance proceedings must be stored in a secured evidence cupboard or locker to ensure it is kept in good condition and not tampered with. The cupboard or locker must be located in a dry, secure, cool and shady place to ensure video and other sensitive evidence is not damaged.

The Manager of Compliance and Licensing is responsible for ensuring the provision and security of evidence in cupboards or lockers. The key is to be kept by them or a responsible officer designated by them. The key holder must ensure only selected staff have access to the key and have knowledge of the whereabouts of the key(s) at all times.

**Filing Physical Evidence**

During active investigations, original exhibits evidence must be stored in the evidence cupboard or locker and must be placed on the relevant file. Once the investigation and legal proceedings are finalised and there is no further investigations or proceedings in relation to that item of physical evidence, the item must be dealt with in accordance with any court orders or where no court orders are made then the item must be kept in accordance with record keeping obligations.

# Auditing

The exhibit register will be audited annually to ensure:

* the accuracy of the records;
* independent scrutiny of the procedures associated with possession of exhibits by an agency;
* the security of the exhibits meets with agency policy; and
* that continuity of evidence has been maintained.

The audit will examine 10 per cent of the holdings with the Manager of Compliance and Licencing holding responsibility for ensuring the audit is carried out appropriately. The results of the audit will be presented to the Regulatory and Enforcement Panel.

# ANNEXURES

1. Evidence Matrix Template
2. Example Exhibits Book
3. Chain of Custody Form
4. List of Images
5. Record of Seized Property

**Evidence Matrix Template**

**Name of Defendant:**

**Act and Offence Provision:**

| **Points of Proof\Elements** | **Admissible Evidence**  **(including details of witnesses)** | **Additional Required/Potential**  **Evidence** | **Avenues of Inquiry for Additional Evidence** | **Defences, Exemptions**  **or Provisos** | **Evidence of Defences, Exemptions or Provisos** |
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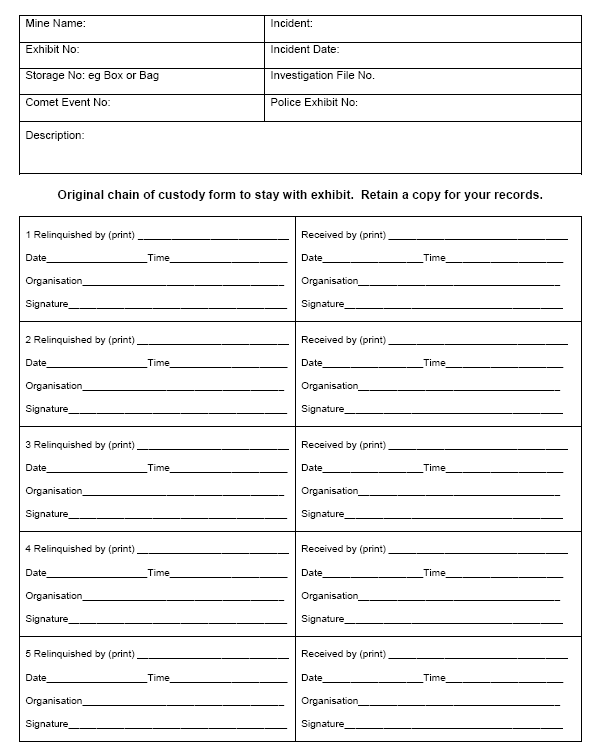
Note

* The full and correct offence provision should be used.
* Complete an Evidence Matrix for each offence.
* That the defendant is the person accused (ie. identity), place of offence and date of offence are points of proof and should be included in matrix.

## *Example Exhibits Book*

| **Exhibit**  **No.** | **Date**  **Taken** | **Time** | **From** | **To** | **Item Description** | **Location**  **Collected From** | **Photo**  **ID** |
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## *Chain of Custody Form*



**LIST OF IMAGES**

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| --- | --- | --- | --- |
| File No: |  | Matter: |  |
|  | | | |
| Photographer : |  |  |  |
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| **Image No:** | **Description** |
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**RECORD OF SEIZED PROPERTY**

The following was seized from:

Name:

Address: Post Code ..

Act and Section:

|  |  |
| --- | --- |
| **Seizing Officer and Date Seized and Seizure Receipt Number** | **Description of Seized Property** |
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