



AFP National Guideline on forfeiture of child exploitation material

1. Security classification of instrument

This document is classified **UNCLASSIFIED** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on the disclosure of information](#).

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Acronyms

AFP	Australian Federal Police
CEM	child exploitation material
CFT	Computer Forensic Team
CDPP	Commonwealth Director of Public Prosecutions

3. Definitions

Child abuse material – is defined in s. 473.1 of the [Criminal Code Act 1995](#) (Cth).

Child exploitation material – for the purpose of this guideline includes child abuse material and child pornography material.

Child pornography material – is defined in section 473.1 of the [Criminal Code Act 1995](#) (Cth)

Commonwealth child sex offence – is defined in s. 3(1) of the [Crimes Act 1914](#) (Cth).

Data – is defined in s. 3(1) of the [Crimes Act 1914](#) (Cth).

Data storage device – is defined in s. 3(1) of the [Crimes Act 1914](#) (Cth).

Forfeiture notice – is defined in s. 23ZB(3) of the [Crimes Act 1914](#) (Cth).

Forfeitable thing – is defined in s. 23ZA of the [Crimes Act 1914](#) (Cth).

Material – is defined in s 473.1 of the [Criminal Code Act 1995](#) (Cth) and includes images both still and moving.

Member – is defined in s. 4 of the [Australian Federal Police Act 1979](#) (Cth).

Supervisor – means a member of the AFP at or above the rank of sergeant, including someone performing the duties at or above the rank of sergeant.

4. Guideline authority

This guideline was issued by National Manager High Tech Crime Operations using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

5. Introduction

This guideline outlines the procedures to be followed when a member of the AFP issues a forfeiture notice for either child exploitation material (CEM) or a computer, data storage device or another piece of electronic equipment containing CEM seized, or otherwise obtained, by Commonwealth, state or territory police.

6. Handling child exploitation material

The AFP limits members' access to child exploitation material due to the offensive and sensitive nature of the material. Members who seize a forfeitable thing must record, store, access and handle that property in accordance with the:

- [AFP National Guideline on property and exhibits](#)
- AFP National Guideline on management of child exploitation material. (currently being drafted)

Members who have not undergone psychological assessment and clearance for dealing with child exploitation material, may, after consultation with their supervisor:

- obtain assistance from or
- refer the matter to

the nearest Sexual Assault and Child Abuse Team or Child Protection Operations team.

7. Issue of forfeiture notices

Forfeiture notices in relation to child exploitation material must be issued per Part 1E of the [Crimes Act 1914](#) (Cth). AFP members' powers and responsibilities are outlined within the Act.

The information must be entered onto an AFP Forfeiture Notice – Child Abuse Material and/or

Child Pornography Material and Devices containing such Material. The notice will be produced in a triplicate booklet (containing a white, pink and yellow copy).

Notices must be issued to either:

- the person who owns (solely or jointly) the forfeitable thing, or
- if, after reasonable inquiry, the member is unable to identify the owner, the person who
 - possesses the forfeitable thing, or
 - possessed the forfeitable thing before it was legally seized.

The issuing member must:

- issue the notice at the time of seizure or as soon as practicable thereafter
- manage the entire forfeiture process (whenever possible)
- enter all the required information onto the notice
- ensure the member's most direct postal address is on the notice form (e.g. a member from Perth Office should not use PO Box 401, Canberra ACT 2601).

The member must provide the owner or possessor of the forfeitable thing the pink copy of the form by either:

- serving it in person
- leaving it at the recipients place of residence or business
- posting it to the recipient's last-known place of residence.

The member should, where possible, attempt to serve this in person.

The member may give additional copies of the forfeiture notice to anyone directly or indirectly affected by the forfeiture.

The member must also:

- create a Forfeiture Notice – Child Exploitation Material case note entry recording the details as soon as practicable
- scan the white copy of the notice into the relevant PROMIS case (using the appropriate document type) and attach to the case note entry
- record sufficient reasons to support the contest of the grounds for issuing the notice in a court of law.

8. Objections

The owner or possessor of the forfeitable thing may object to the forfeiture, in writing, within 30 days of the issue of the notice.

All objection letters received must be scanned into PROMIS and linked to the original Forfeiture Notice – Child Exploitation Material case note entry.

The Commissioner, or the relevant delegate, must decide whether the forfeitable thing should be forfeited to the Commonwealth despite the objection (s. 23ZB(6) [Crimes Act 1914](#) (Cth)). The delegate for this task is the member's supervisor, who must determine if the objection should be accepted or rejected after considering both the:

- available evidence
- forfeitable thing's connection with a Commonwealth child sex offence.

The decision, and the reasons for the decision, must be recorded in the original PROMIS Forfeiture Notice – Child Exploitation Material case note entry.

Where the supervisor considers the objection valid, the property may be returned. Notification should be made using the pro forma '[Forfeiture of CEM Advising decision re objection – accepted \(DOT, 25KB\)](#)' (AFP Forms).

Where the supervisor decides to reject the objection, the pro forma '[Forfeiture of CEM Advising decision re objection – rejected \(DOT, 70KB\)](#)' (AFP Forms) should be used.

Where the supervisor rejects the objection, the matter must then be referred to the Commonwealth Director of Public Prosecutions (CDPP). In the referral, the supervisor should instruct the CDPP to apply for an order under section 23ZD of the [Crimes Act 1914](#) (Cth) for the forfeiture of the thing using the [Referral to CDPP to apply for forfeiture of CEM \(DOT, 55KB\)](#) (AFP Forms). Where possible, this referral should be made prior to the resolution of any related prosecution proceedings being conducted by the CDPP.

In accordance with subsection 23ZB(6), the CDPP must make the application if instructed by the AFP.

A person's decision to object or not object to forfeiture is not admissible as evidence against the person in a prosecution of a Commonwealth child sex offence.

9. Requests for innocuous material

Where a forfeiture notice has been issued, the person given the notice, or a person affected by the forfeiture, may request copies of innocuous parts of the forfeitable thing, or data contained in the thing (s. 23ZC [Crimes Act 1914](#) (Cth)). Normally such a request will relate to innocuous material stored on a seized computer or other electronic storage device.

The request must:

- be in writing
- be received by the AFP within 30 days of the date of issue of the forfeiture notice
- be specific enough to identify the innocuous material
- not be for child exploitation material (CEM) or information used to obtain CEM such as passwords, web addresses or programs used for the exchange or obfuscation of CEM (the Computer Forensic Team (CFT) can provide expert advice regarding this).

The [Crimes Act 1914](#) (Cth) requires that the AFP Commissioner, or the relevant delegate, must comply with a request if satisfied it is reasonably practicable to do so. This decision is delegated to the issuing member, who may choose not to comply with the request after considering s. 23ZC (3) of the same Act.

The CFT will copy and examine the seized material and provide a written opinion to the member who must consult with the CFT, via a PROMIS Operational Support Request, before making the decision. The member should ascertain:

- if the data requested is readily identifiable

- if it is reasonably practicable for the data to be copied within a reasonable timeframe (considering the volume requested)
- the timeframe for compliance
- the estimated costs incurred by the AFP in completing the request.

The costs should/must be provided by the Forensics Finance representative and relate to full time equivalent hours spent identifying, examining and copying the requested material as well as the media to which it is copied.

The member must record the decision and the reasons in the original Forfeiture Notice – Child Exploitation Material case note entry. The member's supervisor must ensure the record is adequate.

The member should then advise the person making the request of the decision using either:

- [Forfeiture of CEM advice to accept request for copies of innocuous material \(DOT, 25KB\)](#) (AFP Forms)
- [Forfeiture of CEM advice to reject request for copies of innocuous material \(DOT, 25KB\)](#) (AFP Forms)

Where the person making the request is a suspect or defendant, and the cost of complying with the request is high, members should also advise the person of the estimated costs associated with providing copies of the requested material (calculated as specified above) using '[Forfeiture of CEM Advising cost of providing copies of innocuous material \(DOT, 40KB\)](#)' (AFP Forms). This gives the person the opportunity to amend or withdraw the request.

When the request for copies of innocuous parts of the forfeitable thing is not costly and/or the person requesting the material is not a suspect or defendant the costs associated with copying the material may be met by the AFP.

If the material is to be provided, the member must submit an Operational Support Request to the CFT requesting extraction and copying of the material onto suitable media.

The [Crimes Act 1914](#) (Cth) does not specify a timeframe for responding to these requests, however, responses should be given within 28 days.

10. Disposal of forfeitable thing

Where no objection is received by the AFP within 30 days from the service of the forfeiture notice, the forfeitable thing becomes the property of the Commonwealth.

If the property is no longer required as evidence in a prosecution, the member who issued the notice must dispose of the property in accordance with the [AFP National Guideline on property and exhibits](#).

Prior to destruction, the member should ensure that images are uploaded into the:

- Child Exploitation Tracking System
- Australian National Victim Identification Library.

11. Compensation for forfeiture of electronic equipment

A person who owned, had a right to possess, or had other property in the forfeitable thing immediately before the forfeiture, may apply to the AFP for compensation for the forfeiture per s. 23ZF [Crimes Act 1914](#) (Cth).

However, a person convicted of or found in civil proceedings to have committed a Commonwealth child sex offence connected with the forfeitable thing is not entitled to compensation.

The member who issued the notice must ensure that all claims are dealt with in the manner set out in the Commissioner's Financial Instructions, which require that all claims against the Commonwealth be forwarded to AFP Legal for advice. AFP Legal should be provided with a comprehensive briefing that includes reference to this guideline when advice is sought.

12. Further advice

Queries about the content of this guideline should be referred to National Coordinator Child Protection Operations.

13. References

Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes Act 1914](#) (Cth)
- [Criminal Code Act 1995](#) (Cth).

AFP governance instruments

- [AFP National Guideline on property and exhibits](#)
- (draft) AFP National Guideline on management of child exploitation material
- [Commissioner's Financial Instructions](#).

14. Attachments

- [Attachment A - Part 1E Crimes Act \(Cth\) – Forfeiture of Child Pornography Material and Child abuse Material, s. 23ZG Delegation by Commissioner \(PDF, 130KB\)](#).