

Return of property held by the State

As a victim of crime in New South Wales, under the Charter of Victims of Rights you have the right to reclaim your property held by the State once the property is no longer required for investigation or by the courts.

The Charter of Victims Rights Number 10 declares if any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.

Being a victim of crime can be distressing and the processes involved in a criminal prosecution may be confusing for some people. This information sheet shows how property is handled and the processes involved to retrieve your property.

The investigation and possession of my property

When police arrive at a crime scene, the police officer, who is sometimes referred to as the 'first response officer', will probably collect evidence – this may include taking possession of some of your property which might be used as evidence to assist in an investigation or in a court if there is to be a trial or hearing.

The police officer will also obtain your personal details, description of the offender and seek any other information that could assist with the investigation. Any further evidence collected at a later time will be retained and recorded along with your case and personal details.

In very serious cases such as sexual assault and home invasion, the matter will be handed over to detectives to investigate and the crime scene may be quarantined. Detectives are likely to question the victim or witnesses again, visit the crime scene, possibly take photographs, arrange for fingerprints, and search for further evidence, which may involve taking possession of some additional property.

What happens to property if it is a serious case?

Sometimes property retained by the police holds particular significance for a case and has to be held to assist in an investigation or used in a prosecution in court. There are very stringent conditions and procedures, which must be followed to ensure that property is kept safely and securely.

In some instances property will be confiscated if it is found to be contraband, or illegally obtained, drugs or firearms and in some circumstances police will destroy the property.

When will my possessions be returned?

In most instances police officers involved in the investigation of a crime have responsibility for holding property, called 'exhibits'. These items are held in a safe room at the police station. Your property is given an official record number.

Police are advised to keep exhibits no longer than is necessary. They will photograph, fingerprint or analyse if needed and return the item(s) to the owner as soon as practicable.

Whilst every attempt will be made to return your property promptly, the return of property is made on a case by case basis, as some property could be used for evidence in court cases. This means that it could be some time before the property is returned, as the evidence may need to be retained for the hearing/court. If an appeal is made against a conviction, the property may need to be held as evidence for a longer period of time, until the appeal is complete.

Due to advances in DNA and scientific testing, evidence which has traces of human material, such as blood and other body fluids, (for example, following a sexual assault), will, in serious matters, be retained by police indefinitely.

Police responsibility when exhibits are not needed for a hearing/trial

The police officer in charge of an investigation should have access to detailed records of where the property is held at all times. If property is not required for a hearing or court trial, then police officers are directed to immediately return the property to the victim of crime when:

- ♦ there are no rival claims for ownership
- ♦ the property has been photographed
- ♦ return of the property will not affect court proceedings
- ♦ the property is not needed and the owner is known.

It's best that you go to the police station in person to collect your property. Police officers must obtain written and signed authorisation of the owner before giving your property to a third person.

Property may be disposed of if the owner has been notified and the property has not been collected within 28 days. In this instance unclaimed property is either disposed of by auction or other appropriate means.

What is my responsibility?

You need to advise police what you would like done with your property, indicating if you wish to have it returned, or not.

In order for police to return property, you must advise police as soon as possible when you have changed address and/or telephone number, so that police can contact you.

If my evidence is used during a hearing/trial at a Local Court, District Court or Supreme Court

During the hearing/trial, items of property (other than drugs or guns, which police take responsibility for) that are required as exhibits are marked for identification and listed in the Record of Exhibit Registry. Exhibits are retained by the Court Officer for the duration of the hearing. These are held in a secure and safe place.

The Record of Exhibit records the exhibit number, description of the item, date received, which party tendered the document and its location and identifies who has custody of each item of property.

Role of the Office of the Director of Public Prosecutions (ODPP)

In matters prosecuted by the ODPP, property tendered as exhibits remain with the courts during the hearing. After the hearing has concluded either the police or ODPP will take possession of the property. If the ODPP has any exhibits that belong to the victim, they will return them to the police, who have special procedures to ensure that the exhibits are returned as soon as possible after the criminal prosecution process has been concluded. Where there has been a conviction in a matter, police will wait a certain period of time before returning the property in case an appeal has been lodged by the offender against his or her conviction. Where the accused is found not guilty then the property can be returned to the victim as soon as possible.

What happens after the Local Court or District Court hearing?

Court staff generally return all exhibits to the person responsible for producing the items to the court at the completion of the hearing/trial. Depending on the nature of the item it could be the police officer in charge, the ODPP prosecutor or the defence lawyer.

Some items returned to the police or the ODPP are marked for identification. These items are stored securely and returned to the relevant party that tendered them at the conclusion of the hearing. Please liaise with the police officer in charge of your case or the prosecutor for the return of those items.

There may be occasions where defence lawyers may have a victim's property that has been used as an exhibit. At the conclusion of the hearing you can ask the prosecutor to request the court to have it returned to you.

After Supreme Court trials

At the conclusion of a Supreme Court trial ODPP lawyers will collect the documentary exhibits tendered by the prosecution, such as photos, plans and transcripts. The police will collect all other physical exhibits tendered by the prosecution. Please note all drugs and illegal firearms are the responsibility of police and won't be returned.

What happens if there is an Appeal?

Appeals can delay the return of property. Where an appeal is lodged, or is likely to be lodged, the court, ODPP or police will retain exhibits to produce at the appeal hearing.

Who should I contact to retrieve my possessions?

If you are unsure where to begin to locate your property, contact the police officer in charge of your matter. If that officer is unavailable ask to speak to the Supervising Sergeant at the police station where the officer works. This police station will have a record of where your property is.

Alternatively if the matter went to court:

- ♦ Local Court matter - speak to the police officer in charge of the case or to the prosecutor.
- ♦ District Court matter - speak to either the police officer in charge or the ODPP lawyer.
- ♦ Supreme Court matter - speak to either the police officer in charge or the ODPP lawyer.

Other assistance that may be available

At any time you may ask a support person to assist you when making inquiries about your case. You can also ask for an interpreter if English is not your first language.

You can also contact the Victims of Crime Bureau (VCB) to find out if any other assistance can be given to you under the Charter of Victims Rights. The VCB may assist you to liaise with the police department, the ODPP and/or the courts if you have any concerns.

For further assistance, please contact the VCB:

Phone (Sydney metro area)..... (02) 8688 5400
Freecall (except from mobiles)..... 1800 633 063
TTY machine (for hearing impaired)..... (02) 8688 5575
Email..... vcb@agd.nsw.gov.au
Website www.lawlink.nsw.gov.au/vs

Please note: This document is a guide only. Due to regional variations, different rules may apply to Local, District and Supreme Courts as well as Children's Courts in addition to Drug and Coroner's Courts.