

## MANAGEMENT OF TRIALS – OFFENCES RELATING TO PORNOGRAPHY AND OBJECTIONABLE MATERIAL

*Summary: This Circular outlines the pre-trial obligations on counsel in trials relating to Classification (Publication Films & Computer Games) Enforcement Act 1996/ Censorship Act 1996 offences.*

### 1. Background

The prosecution of offences relating to pornography and objectionable material under legislation such as the *Classification (Publication Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996* may give rise to logistical issues which need to be resolved prior to trial. Issues that have arisen recently include:

- The optimal way to show the jury images which are not appropriate to show to members of the public in the gallery.
- Identifying a suitable computer for the jury to use to view images stored in computer format (as distinct from video tape or DVD format).
- The location of viewing screens in court to ensure that all parties can see the material but that it is not visible to members of the public in the gallery.

In making determinations and logistical arrangements, the objective of the Court is to ensure that the accused receives a fair trial in an open court but that sensitive material is not shown to the public gallery.

### 2. Requirement to seek directions

This procedure applies to all trials relating to *Classification (Publication Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996* offences in Western Australia (which will be referred to as “offences relating to pornographic material”).

Where there is a plea of not guilty to an offence relating to pornographic material, the Court’s expectation is that the prosecution will initiate a discussion with the defence about the issues set out in the schedule to this Circular. This discussion should be initiated at least 14 days prior to the hearing at which the matter will be listed for trial.

At the time the matter is to be listed for trial, counsel for the prosecution is to inform the Court:

- (a) that the trial concerns offences relating to pornographic material;

- (b) of the outcome of the discussions with the defence on logistical issues;
- (c) whether the accused has made or proposes to make a formal admission that the material is pornographic or objectionable as defined;
- (d) of any outstanding logistical issues relating to the matters set out in the schedule to this Circular.

If the Court is of the view that there are outstanding logistical issues, the Court will list the matter for a pre-trial hearing (*Criminal Procedure Rules* rule 34) before the duty Judge about 2 months prior to trial. The purpose of the pre-trial hearing is to resolve the logistical issues relating to the presentation of the relevant pornographic material.

### **3. Court facilitates**

Each Court in which criminal trials are conducted has the capability to play video material in both open court and the jury room. The capacity to play DVD material is possible. However, 14 days prior notice to the Registry is required in order to equip the Courtroom with the appropriate equipment.

In some Courts, material to be viewed on a computer screen can be presented in open Court, however this functionality is limited. If this facility is required, the prosecution will need to send a request to this effect to the Registry no later than 14 days after the pre trial hearing. This will allow Court staff to ensure that the appropriately equipped court is available.

If the prosecution wishes to have the material go in to the jury room, the prosecution will need to provide a laptop computer with appropriate software for use in the jury room. There should be no other material on the computer which may have the potential to prejudice the jury deliberations (eg drafts of counsel's submissions or material from other trials). The prosecution should also provide a typewritten set of instructions as to how to turn on the computer (eg any passwords) and how to access the material.

The Court's expectation is that the prosecution will make the laptop available to the defence no less than 14 days prior to the trial so that defence counsel can satisfy themselves that the material on the laptop, and the form in which it is available, are appropriate.

**MICHAEL GETHING**  
**Principal Registrar**

## Schedule

### **Issues for case management of prosecutions under the *Classification (Publication Films & Computer Games) Enforcement Act 1996 and Censorship Act 1996.***

1. Is there any issue with the form of the indictment? (*eg in some indictments each count will relate to a single image and in others each count may relate to a group of images – are particulars required?*)
2. In relation to each count does the accused propose to formally admit the element that the material is pornographic or objectionable as defined?
3. What material does the prosecution propose to show to the jury?
4. In what format is the material to be presented to the court (*eg printed photos, DVD video, VHS video, digital images [including type], downloaded website material to be viewed on a computer*)?
5. What quantity of material is proposed to be shown (*eg 456 photos, 2 hours of video, 30 mins of DVD, “captured” computer website*).
6. How is it proposed that the material will be presented to the jury? (*eg in a booklet form of selected images, on the large video screen in court, on individual computer screens for jurors, as a group in the file in which it is stored on the accused’s computer including the accused’s grouping and labelling of the material*).
7. Does the prosecution allege that the material has any particularly offensive attributes which would make it inappropriate to be viewed in open court? (*eg images of children*) If so, what arrangements are proposed so that the material can be viewed without being visible in the public gallery.
8. Are there any other logistical issues that will need to be considered? (*eg if the indictment relates to a circuit court, whether there any difficulties in the trial proceeding in a regional court or does an application to change the venue need to be considered?*).