



Pacific Judicial
Integrity Program

Judicial Officers' Fraud and Corruption Online Course

Via Zoom - 18, 25 & 31 May, 8 & 15 June 2023



**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence



Session 4: Trial Management

Thursday 8 June, 2023

Honourable Chief Judge Brian Devereaux SC
Honourable Judge Brad Farr SC
District Court of Queensland

Session 4: Trial Management



1. Welcome & Introduction (5 minutes)
2. Chief Judge Devereaux & Judge Farr's presentation (30 minutes)
3. Questions & Answers on presentation (30 minutes)
4. Discussion Questions on Trial Management (30 minutes)
5. Introduction to next week's session & scenario (5 minutes)
6. Session Wrap-Up (5 minutes)

Fraud/Corruption Trials



- Can be difficult legally
- Voluminous in documentary evidence content
- Complicated factually and lengthy



Trial Management



- By the trial judge,
- Both pre-trial and during the trial
- Can be of considerable benefit and of particular importance



Why is Trial management important?



- The running trial by **counsel**
- The **time** the trial takes
- The way **documentary evidence is presented**
- The **early resolution** of disputes of law
- The **jury's early understanding** of the issues and of the relevant law and
- The **fairness** of the trial.



The longer the trial is expected to take



More important pre-trial management is because at this stage the Court has the greatest ability to play an appropriate part in the way in which the trial will proceed.



Lawyers don't look forward to these trials



Why?

What does this lead to?



Qld District Court approach:



- **Proactive** role in pre-trial management
- **Holding mentions or pre-trial reviews** on a reasonably regular basis
- There are a **range of issues** addressed



Mentions & Trial Reviews



- **First mention at** presentation of the **indictment** to the Court
- The parties won't be able to inform the Court as to the way in which the matter will be dealt with – particularly so for long, complicated matters



First Mention



- Most matters adjourned for at least **a month** enable the lawyers to do what is needed
- Complicated matters for longer
- Length of adjournment will depend on nature and the complexity of the matter



Keep pressure on parties at Mentions How?



- **Set pre-trial hearing dates – why?**
- **Verbal criticism – why?**
- **Set a trial date – why?**
- **Frequent mentions – why?**



Ask the Parties



To identify the **issues** that will be in contest – whether they are issues of law or fact.



Why?



- **Focus counsel's mind** on what is important
- Helps **identify issues** will require pre-trial ruling
- Helps identify **prosecution witnesses** required to give evidence



Why?



- Helps **identify exhibits** need to be tendered during the trial and through which witness or witnesses
- Helps parties determine if **admissions** can be made re non-controversial areas



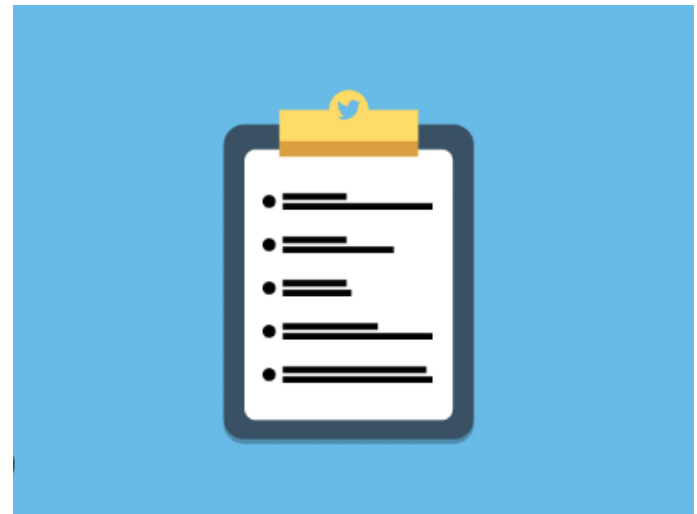
Remember

- Defence not obliged to reveal the defendant's case
- Doesn't prevent the defence and prosecution lawyers working to ensure the Court's time is not wasted on irrelevant or uncontested matters
- How to promote this process?



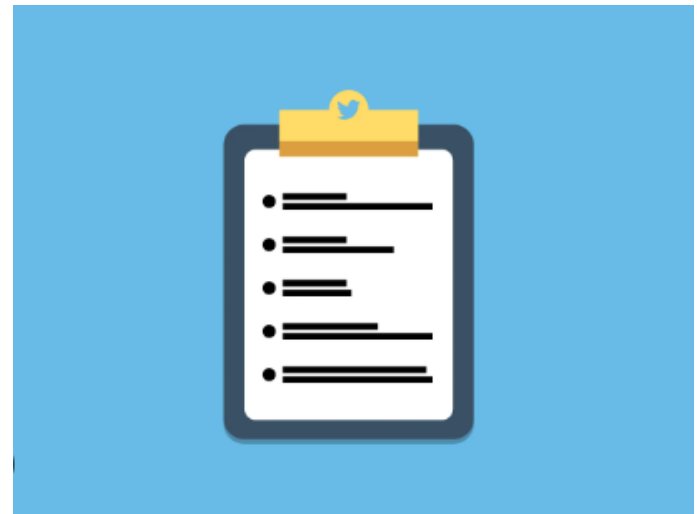
Can help defence & prosecution?

- **Only if** provided in conjunction with the **particulars of the charges**
- How to promote this process?



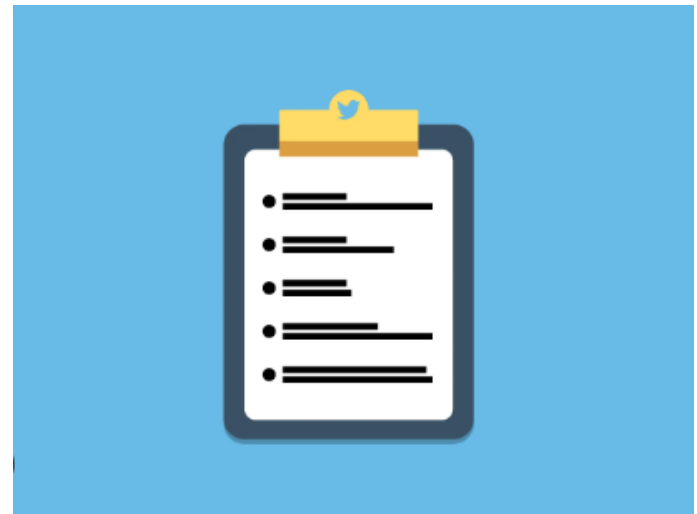
Particulars

- s.573 of the *Criminal Code* (Qld)
- Court may direct **particulars** be delivered to the accused on any matter alleged in the indictment
- May adjourn the trial for the purpose of such delivery.



Why are Particulars important?

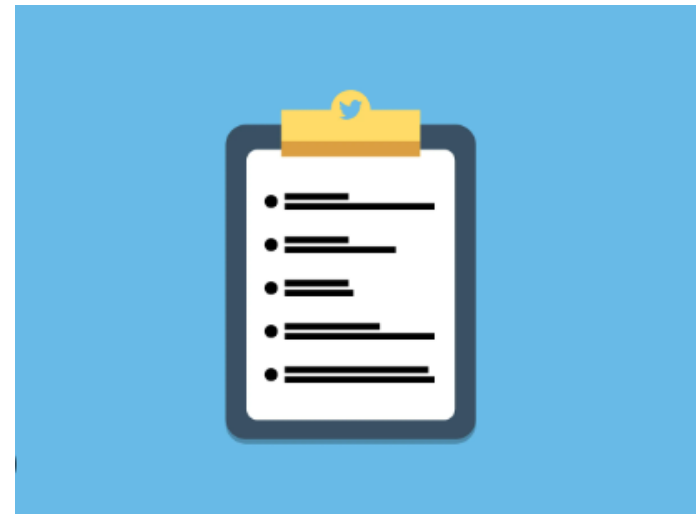
- Questions of inadmissibility of evidence due to irrelevance
- Necessary to enable the defence to make particular forensic judgements – Examples?



Particulars



- Must be read with the terms of the indictment in defining the terms of the charge and the case which the Crown has to prove.
- **Early provision** of particulars is important – why?



Checklist of issues to be addressed during pre-trial



Require the prosecution:

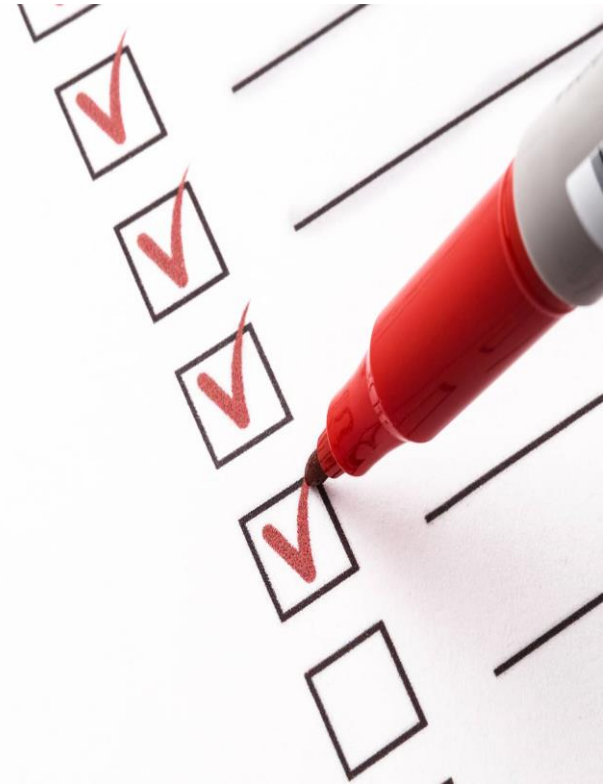
- To provide a **time schedule** for the witnesses it intends to call – why?
- Place on the record all witnesses have been **contacted/subpoenaed** & advised of the likely date they are available and will give evidence – why?



Checklist of issues to be addressed during pre-trial



- Require prosecution to identify if any **evidentiary aides** to be used i.e. graphs, tables, videos – why?
- For large number of documentary exhibits clarify whether the prosecution will have **exhibit books** prepared in advance for each juror – why?
- Could the trial be conducted by **e-trial** – why?



Checklist of issues to be addressed during pre-trial



- How will **each document** be treated when tendered – why?
- Will **the jury** be provided with **transcript of evidence** when they retire – why important?
- Are any **admissions** to be made during the trial – importance?



Checklist of issues to be addressed during pre-trial



- Require prosecution to identify **witnesses** it will seek leave to call remotely i.e. via video or audio-link
- Require the defendant to identify any **objections** they have



Checklist of issues to be addressed during pre-trial



- Court should ensure **equipment** working properly
- Factor in **holiday periods** when listing
- Number of **reserve jurors** to be empanelled- registry should question on availability for long trial



Checklist of issues to be addressed during pre-trial



- Will you sit five days a week for long trials – why?
- Four days or 4.5 may be better
- Helpful for jurors if after the prosecutor's opening address, defence counsel gives a **brief opening statement** – why?



Commencement of Trial



- Reiterate to jury estimated **length of trial**
- After empanelment advise jury of **sitting dates**
- Inform jury of **aids** including transcript
- Advise jury **not to worry** if can't understand nature of case and issues initially



During Trial

- Start working on your **summing-up** from the very beginning of the trial - advantages of doing this?
- Make **succinct notes** at end of each day
- **Use notes** in summing up
- Make **notes of exhibits** of particular relevance



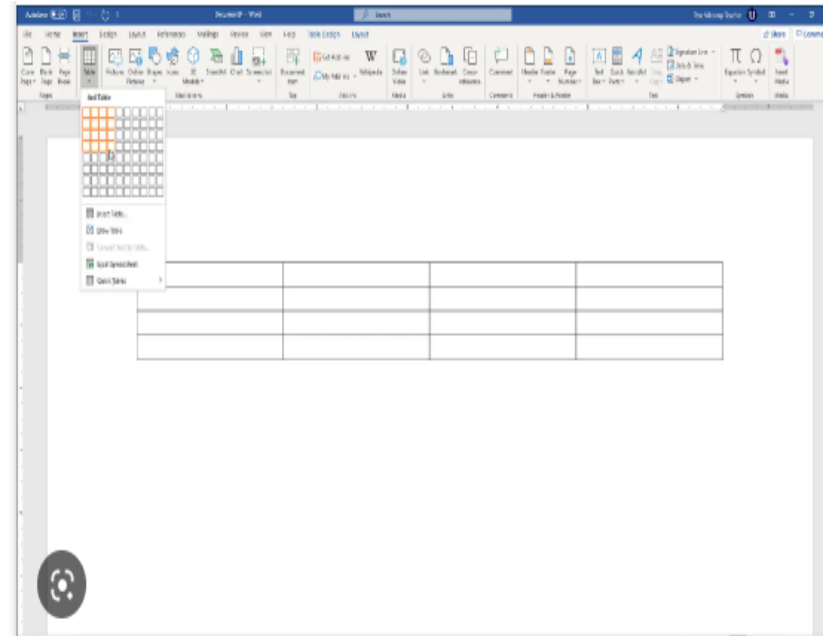
During Trial

- Provide a copy of your summing-up to counsel before delivering to jury – why?
- Use counsel to assist the trial process by asking them to assist the Court – examples?



Multiple Accused

- Ask counsel to provide a **table** showing the evidence that only relates to one or some of the defendants and the identity of the defendant(s)



Self-represented defendants

- Not uncommon in fraud/corruption cases
- Adds to the judicial burden of presiding over the trial plus sometimes substantially, to the length of the trial
- Queensland approach?



Self-represented defendants



- Pay attention to the way the defendant conducts himself/herself - why?
- The manner of questions asked by the defendant – why?
- Whether the defendant has complied with the rule in *Browne v Dunn*
- Issues in contest and may need to frequently remind the defendant of those
- Conduct of the trial by the prosecutor – why?



Self-represented Defendants



- Remain calm and detached
- Engage with them as little as possible!



Questions





Session 4: Trial Management Discussion

Breakout room discussions

Next Week: Session 5 - Evidence



- **Thursday 15 June**
- 12-2pm (GMT + 10:00)
- New Zoom link to be sent
- Session 5 Evidence Case Scenario that will be emailed to you
- Come to session ready to discuss
- **Judicial Facilitator:** Chief Judge Devereaux / Judge Farr



Due to varying locations, **local time zones for the discussion** are as follows:

Thursday 15 June, 2023	
11:00am	Koror, Palau
12:00pm	Brisbane, Australia Port Moresby, Papua New Guinea
1:00pm	Pohnpei, Federated States of Micronesia Honiara, Solomon Islands Port Vila, Vanuatu
2:00pm	Suva, Fiji Tarawa, Kiribati Yaren, Nauru Majuro, Republic of Marshall Islands
3:00pm	Nukualofa, Tonga Apia, Samoa Nukunonu, Tokelau

PJIP



See you next week!