



Pacific Judicial
Integrity Program

Advanced Managing and Reporting on Fraud and Corruption Cases Online Course

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**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence



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Session 1: Bribery

Understanding bribery offences and evidence
to manage bribery cases

Presented by:

Alicia Ditton - Judicial Registrar, Federal Court of Australia



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Understanding Bribery

What is bribery?

- **Bribery** is the act of giving, offering or accepting (or causing to be provided, offered or accepted) a benefit (ie. anything of value) to any person to improperly influence an act or decision to gain a business or personal benefit or advantage.

- A **thing of value** may be a financial or other advantage. It may include gifts, forgiveness of debts, loans, travel or hospitality, medical care, employment opportunities or protection from penalties/legal proceedings.



Issues in bribery cases

- Accused are high profile - public officials or people in positions of power.
- Factual circumstances – often involve multiple accused, sophisticated transactions across jurisdictions, carefully orchestrated/concealed and a substantial benefit/advantage involved.
- Bribery offence provisions are complex and penalties severe.
- Circumstantial evidence.
- Lengthy hearing or trial – often involve pre-trial challenges and are resource intensive.

Giving a bribe - 141.1(1) Criminal Code



- Bribery of a Commonwealth public official – maximum penalty 10 years imprisonment.
- Other similar but less serious offence – 142.1(1) of the *Criminal Code Act 1995* (Cth) giving a corrupting benefit – maximum penalty 5 years imprisonment.

Elements of the offence

- Every offence is made up of elements
- Physical element(s)
 - The act or omissions by the accused and the circumstances in which those acts or omissions took place.
- Fault element(s) - mental element
 - The intention of the accused at the time they did the acts or made the omissions alleged (e.g. intention, knowledge, wilfulness, negligence or recklessness).

Elements of s141.1(1) Criminal Code

1. **Conduct** – provide a benefit, cause a benefit to be provided, offers or promises to provide a benefit, causes an offer or promise etc – to another person .
2. **Dishonestly**
3. **Fault element** – intention of influencing a public official (who may be the other person) in the exercise of their duty.
4. The public official is a Commonwealth Public Official (**CPO**) and has duties as a CPO (no need to prove knowledge of this).

Relevant case law on elements

- For example, one of the elements is dishonesty:
- Defined in s130.3
 - (a) Dishonest according to the standards of ordinary people (partly objective element)*
 - (b) Known by the defendant to be dishonest according to the standards of ordinary people

Based on *R v Ghosh* [1982] QB 1053

*partly objective because difficult to separate this from the defendant's subjective belief – e.g. if took someone's property but believed it was his, or took property because necessary to save someone's life – would not be thought to be dishonest according to standards of ordinary people.

Draft a guide for bribery offences



- Understanding the elements of bribery offences.
- Conducting legal research on the bribery offence to assist with interpretation of the complex legal provisions/elements of the offence.
- Research not only your jurisdiction – look for cases involving similar offences in other jurisdictions.
- Draft a bribery offence guide to assist your Judge.

Understanding the evidence

- Circumstantial evidence

- Almost all bribery cases involve circumstantial evidence.
- Circumstantial evidence is evidence not drawn from a direct observation of a fact in issue.
- Direct observation – witness evidence observing or CCTV footage of the bribery conduct.
- Usually, in a circumstantial evidence case, the jury/judge is asked to infer guilt from a number of circumstances, which, when taken as a whole, eliminate the hypothesis of innocence.

Some types of evidence in bribery cases

- Business/company records
- Expert computer systems evidence
- Financial/ accounting records
- CCTV footage
- Travel records
- Telephone records
- Police statements - search warrant evidence and interviews conducted
- Witness statements – rollover witnesses



Knowing the nature of the evidence – Resource plan for the trial

- Larger courtroom
- Interpreters
- Audio-Visual Link (AVL) facilities



Knowing the nature of the evidence – Resource plan for the trial

- Listing matters with an appreciation of different time zones for overseas witnesses
- Proper document management processes – marking exhibits
- Media team



Summary – understanding the offences and evidence

Prepare a helpful offence guide for your Judge

- Understand the bribery offence charged and research relevant case law

Prepare your Court for the efficient running of a bribery trial

- Understand the evidence – helps to predict what resources will be required to run the Court.
- *Let's get started on how we do this using an example scenario to assist.*

A new bribery prosecution has arrived in your Court

- Read the summary of facts –
R v Louise Remain
- Let's look at the offence charged and break the offence into elements – what does the prosecution need to prove?



- What types of evidence could be relied upon to convict Louise Remain of the bribery offence charged?
- Feel free to be creative! You can add in some additional evidence that may have been recovered during the search warrant.
- From the evidence, can you suggest resources that may be required to conduct this bribery hearing in your Court
- Choose someone to report back.

Conclusion

- In summary, understanding the bribery offence charged and the evidence in support is helpful to when managing bribery cases.
- How is this helpful?
 - Preparing a bribery offence guide for your Judge – review of the charge and conduct legal research.
 - Preparing a resource plan for your Court – review of the facts of the case should highlight the evidence. Understanding the evidence assists in the early preparation of your resource plan.