



Pacific Judicial
Integrity Program

Managing and Reporting on Fraud and Corruption Cases Online Course

Via Zoom 20 & 27 July and 3 & 10 August 2023



**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence

Session 3 - Agenda



1. Welcome & Introduction (10 minutes)
2. Presentation on Procedural Steps and Documents (30 minutes)
3. Discussion Questions (30 minutes)
4. Introduction to next week's session (10 minutes)
5. Session Wrap-Up (5 minutes)



Managing and Reporting on Fraud and Corruption Cases Online Course

Session 3: Procedural Steps and Documents

Presenters: Judicial Registrar Jodie Burns, Federal Court of Australia
Assistant Registrar Victoria Belo, National Court of Papua New Guinea

Procedural steps and documents



- Overview of commonalities in process
- Charges, indictments/charge sheet and particularising fraud, bribery and other corruption offences



Procedural Fairness

Judicial Registrar Jodie Burns,
Federal Court of Australia

Procedural Fairness



- principle that runs through everything that happens in both criminal and civil law
- used interchangeably with the term **'natural justice'**
- requires that all times participants in the legal system have a right to a fair and just trial
- means fair and just principles are applied to all decision making and court procedures
- often appeals to higher courts are on the basis of a denial of procedural fairness.



Procedural Fairness - Case Law



The common law in Australia recognises a duty to accord a person procedural fairness or natural justice when a decision is made that affects a person's rights, interests or legitimate expectations.

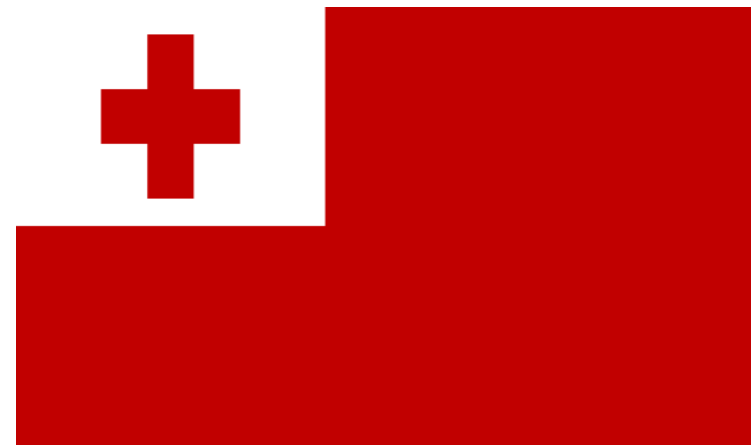
Kioa v West (1985) 159 CLR 550



- **FACTS:** Mr Kioa travelled to Australia from Tonga in 1981 for a short study course. Mr Kioa's wife and daughter followed him to Australia.
- After 3 months, Mr Kioa resigned from his job in Tonga and he stayed in Australia without a visa.
- Soon after, a massive cyclone devastated Tonga. Mr Kioa continued working in Australia and sent money home to his relatives in Tonga. He and his wife had another baby, who then had Australian citizenship.
- Immigration officials caught up with Mr Kioa and he was arrested. After his arrest, Mr Kioa applied for a new visa.
- The immigration officials report included the following statement:

Mr Kioa's alleged concern for other Tongan illegal immigrants in Australia and his active involvement with other persons who are seeking to circumvent Australia's immigration laws must be a source of concern.

Mr Kioa was not given an opportunity to respond to the immigration official's statement.



Kioa v West (1985) 159 CLR 550



Justice Mason (as he then was) at p 550 said:

“It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it... The critical question in most cases is not whether the principles of natural justice apply. It is: what does the duty to act fairly require in the circumstances of the particular case?”

Annetts v McCann (1990) 170 CLR 596



- **FACTS:** a case involving the right of two parents to make submissions at a coronial inquiry into the deaths of their two sons
- Mason CJ, Deane and McHugh JJ noted the continued evolution of the concept of procedural fairness: ‘many interests are now protected by the rules of natural justice which less than 30 years ago would not have fallen within the scope of that doctrine’s protection’.
- more recently been said that the common law doctrine has a ‘wide application and is presumed by the courts to apply to the exercise of virtually all statutory powers’.



Annetts v McCann (1990)
170 CLR 596



Chief Justice Mason and Justices Deane and McHugh in High Court at p 598 said:

“It can now be taken as settled that, when a statute confers power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment.”

***International Finance Trust Company Ltd v
New South Wales Crimes Commission (2009)
240 CLR 319***



Chief Justice French (as he then was) in the High Court of Australia said:

“Procedural fairness or natural justice lies at the heart of the judicial function... It requires that a court be and appear to be impartial, and provide each party to the proceedings before it with an opportunity to be heard, to advance its own case and to answer, by evidence and argument, the case put against it...”

Procedural fairness requires that:



- a decision-maker is impartial, and free from actual or apparent bias (the **bias rule**),
- a person whose interests will be affected by a proposed decision receives a fair hearing, including the opportunity to respond to any adverse material that could influence the decision (the **hearing rule**), and
- findings are based on evidence that is relevant and logically capable of supporting the findings made (the **evidence rule**).



Procedural fairness



In the current context, procedural fairness requires that a person brought before a court for a fraud, bribery or other corruption offence is given a reasonable opportunity, not a perfect opportunity, to put forward their case.

What does procedural fairness look like for a person brought before a court for a fraud, bribery or other corruption offence?



- The indictment (charge sheet) is sufficient particularised – what does that mean ?
- The brief of evidence is served on each accused with enough time to obtain legal advice and consider their defence.
- All witness evidence in approved format (e.g. affidavit /statement format)



What does procedural fairness look like for a person brought before a court for a fraud, bribery or other corruption offence?



- Each accused is advised of all potential witnesses.
- Each accused is provided with a list of any other potentially relevant information that is not included in the brief of evidence.



Procedural Fairness



- is to be determined by an objective standard i.e. what a reasonable person would believe was a reasonable opportunity in the circumstances
- is also known as 'Natural Justice' and both terms are often used interchangeably



Bias Rule

A decision-maker, such as a judge, is to be impartial, and free from actual or apparent bias. They should not:

- have a close personal or family relationship with any parties who have an interest in the outcome.
- have a direct or indirect financial or other interest in the outcome of the decision.
- be a person with a closed mind or pre-conceived ideas about the outcome.



Hearing Rule

A person whose interests affected by a proposed decision is to be given a **fair hearing**, including being provided with:

- **reasonable notice** of the case to be met, including sufficient information (e.g. particulars of each charge) about the matter to be decided.
- **reasonable time** to prepare and the opportunity to respond, including calling any relevant evidence in relation to any adverse material that could influence the decision.
- the opportunity **to appeal** the decision that has been made.



Evidence Rule



- All evidence is relevant and logical.
- Findings / decisions are based on evidence that is relevant and logically capable of supporting the findings / decision made.

The role Court Officers play to ensure procedural fairness



- must understand they also have an important obligation to ensure that procedural fairness is afforded to **all** trial participants.
- creates a tension in the reconciliation of the Court's duties because it is not the function of the Court to give legal advice to, or conduct the case on behalf of a party, even if one or both parties are unrepresented.



The role Court Officers play to ensure procedural fairness



- The Trial Judge, the Court Officers and other relevant Court staff are required to put a party in the position of being able to make an **effective and informed choice**.
- What will constitute a reasonable opportunity for a party to present his or her case in a given situation depends upon the **whole of the circumstances**, including the nature of the jurisdiction exercised and the statutory provisions governing its exercise.



Self-represented litigants



Well established that a Court has an obligation to take appropriate steps to ensure that an unrepresented litigant has sufficient information about the practice and procedure of the Court

Think about what your Court offers self-represented litigants and ask yourself whether you think it is **sufficient**.





Papua New Guinea Fraud Track

Assistant Registrar Victoria Belo,
National Court of Papua New Guinea

Fraud Track

- The **Fraud & Corruption Offences Track (FCOT)** is a special Court Track of the National Court Crimes Division, established under the Fraud & Corruption Related Offences Rules 2013
- FCC cases are defined in the Criminal Code, under the Schedule to the Rules which are managed by a Judge Administrator assigned to this tracks.
- Civil proceedings commenced under the *Proceeds of Crime Act (POCA)* and *Mutual Assistance in Criminal Matters Act* also form part of the Judge Administrator's responsibility.



Fraud & Corruption Offence Rules



- Fraud and Corruption procedures were governed by the Criminal Practice Rules 1987
- For the purpose of facilitating a quick, fair and efficient disposition of Fraud and Corruption cases a **Fraud and Corruption Practice Rules 2013** was adopted.



Case Registrations



Registration of Fraud cases in the National Court:

1. Committal from the Committal/District Courts
2. Applications (Special Provisions in Relation to Proceedings under the Proceeds of Crime Act and the Mutual Assistance in Criminal Matters Act.
3. Interlocutory Applications








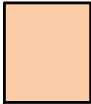

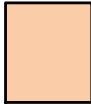









Files & References



1. Register case in Case Docketing System (CDS) and allocate to Tracks and Judges
2. After case number is generated by CDS, create manual file for that case
3. Create File Index
4. Number Committal Court depositions
5. Create case file cover sheet
6. Scan filed documents
7. Vetting of documents
8. Upload scanned documents in CDS
9. Create Court Lists in CDS & Manual

FCC PRE-TRIAL & TRIAL PROCEDURES



PRE-TRIAL							
	COMMITTAL	CALL OVER	MENTION	DIRECTION HEARING	PLEA	NOLLIE	ALLOCATION OF TRIAL
							
	TRIAL RESUMES	EXAMINATION IN CHIEF	CROSS EXAMINATION	RE-EXAMINATION	QUESTIONS ARISING FROM THE COURT	STATE CLOSES ITS CASE	
							
	DEFENCE NO CASE SUBMISION	RE-EXAMINATION BY STATE	DEFENCE CLOSES ITS CASE	TRIAL ENDS	VERDICT IS DELIVERED	SENTENCE IS DELIVERED	
	TRIAL						

Conclusion



Introduction of Fraud and Corruption Practice Rule 2013

- improved the management of fraud and corruption cases

File Indexing

- Assist identify court documents
- Reduced instances of misleading by parties

Case File Cover sheet

- Assist Judges to quickly reference documents



Key Messages



1. Procedural fairness requires that a Court give all parties a **reasonable opportunity** to present evidence and to make submissions in support of his or her case.
2. If required, a Court has an obligation **to explain** any relevant **processes and procedures** to parties.



Key Messages



3. A Court should ensure that information, documents and submissions received from parties is **accurately stored** on the Court file.

4. A Court should develop, where required, forms, practice notes and templates for correspondence with parties to ensure that **information about the Court's process is clear and consistent.**

5. Implement a **process for self-represented litigants.**



Questions



Discussion Questions



You will be placed into a breakout group for 10 minutes to discuss these questions. Please appoint a spokesperson to report back on behalf of the group.

- Consider how your court treats self-represented litigants. How is procedural fairness afforded to them? Does this differ from how a person is treated when they are represented by counsel?
- Consider fraud and corruption cases that may come before your court. What considerations are relevant to ensure procedural fairness is afforded to those charged with such offences?
- Have you been involved in a trial where the judicial officer has recused themselves or been asked to recuse themselves from a case because of bias? What were the circumstances? What was the outcome? Did the judicial officer hear the case?

Action Plan



- Throughout the duration of the Online Course we will be discussing ideas and suggestions that may be of interest to your Court.
- Over the next week, please meet with your colleagues and consider any key procedural steps and document actions that you may wish to consider implementing in your Court.

Next Week: Session 4 - Case Management



- Thursday 10 August 2023
- **12-2pm (GMT+10:00)**
- Use same Zoom link
- Presenters: Shemi Joel, Ingrid Kabua & Tony Lansdell
- Action plan; one key take away
- Post-Course Survey



Due to varying locations, **local time zones for Session 4** are as follows:

Thursday 10 August, 2023	
11:00am	Palau
12:00pm	Australia Papua New Guinea
1:00pm	Federated States of Micronesia Solomon Islands Vanuatu
2:00pm	Fiji Kiribati Nauru Republic of Marshall Islands
3:00pm	Tonga Samoa Tokelau

PJIP



See you next week!