

# SUPREME COURT OF QUEENSLAND

## PRACTICE DIRECTION NO 6 OF 2013

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### CASE MANAGEMENT IN COMPLEX CRIMINAL TRIALS

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#### **1 Application and Objectives**

- 1.1 This Practice Direction applies to criminal trials in the Supreme Court which are expected to take 15 sitting days or longer, and have been allocated to a judge for management, and to any such other criminal trial as the court may direct.
- 1.2 The time limits set out in this Practice Direction may be reduced or extended by the order of a judge.
- 1.3 The objectives of this Practice Direction are:
  - (a) to ensure that, by the date set for the commencement of the trial, the trial is ready to proceed expeditiously; and
  - (b) to enhance the fairness and efficiency of the trial.
- 1.4 This will be facilitated by the active use of section 590AA of the Criminal Code, which provides that directions or rulings as to the conduct of the trial or any pre-trial hearing may be given on the initiative of a judge or on the application of a party. If it has not already done so, the defence should notify the court and the prosecutor of any pre-trial hearings required under s 590AA as soon as the trial has been allocated to a judge for management.

#### **2 Pre-trial hearing**

- 2.1 Unless the judge orders otherwise, an initial pre-trial hearing will take place no later than 8 weeks before the date set down for trial.
- 2.2 The associate of the judge or the criminal list manager will notify the prosecution and each defendant's legal representative of the date of the initial pre-trial hearing.
- 2.3 The prosecutor and counsel for each defendant are required to be present at the pre-trial hearings and review.

#### **3 Exchange of pre-trial memoranda**

Unless the judge orders otherwise, the following steps are required:

- 3.1 At least 21 days before the first pre-trial hearing, the prosecution will email to the associate of the judge managing the trial and serve by email to the legal representative of each defendant a pre-trial memorandum, addressing the following matters:

- (a) The prosecution's estimate of the likely duration of the trial;
- (b) The extent to which disclosure under Chapter 62, Division 3 of the Criminal Code by the prosecution has been completed and any further disclosure by the prosecution required or envisaged;
- (c) Particulars of the charges set out in the indictment;
- (d) A summary of the alleged facts, matters and circumstances upon which the prosecution relies;
- (e) Any facts the prosecution considers are not, or cannot be, properly in dispute;
- (f) Any non-contentious issues in respect of which the prosecution considers the need to call formal evidence should be waived;
- (g) Whether there is any possibility that a trial of the matter will not be necessary and, if so, whether discussions have taken place with the defence;
- (h) Notice of the prosecution's intention to call any:
  - (i) expert evidence;
  - (ii) evidence of a representation under section 93B of the *Evidence Act 1977*;
  - (iii) identification evidence;
  - (iv) evidence of post-incident conduct;
  - (v) propensity evidence (including similar fact evidence);
  - (vi) evidence of an accomplice, a prisoner informer, or an indemnified witness;
- (i) For each proposed witness for the prosecution:
  - (i) the name of the witness and, where helpful, an indication of the correct pronunciation of the witness's name;
  - (ii) an indication of how the evidence of each proposed witness is proposed to be, or could be, given;
  - (iii) an estimate of the availability of the witness to give evidence at the trial, including an indication of whether any witness is interstate or overseas;
- (j) In the case of any expert evidence:
  - (i) the names of any experts who may be called as witnesses by the prosecution and all relevant findings of those experts;
  - (ii) the proposed manner of leading that evidence, whether orally or in writing or partly orally and partly in writing;

- (iii) the date by which any reports or statements of evidence of any expert, which have not already been provided to the defendant, will be provided;
- (k) Whether any proposed witness may be a vulnerable witness, an affected child, or a protected witness under Division 4, Division 4A or Division 6 of Part 2 of the Evidence Act 1977;
- (l) Any special necessary accommodation if a proposed witness or other person to be involved in the trial has a disability, is from a non-English speaking background, is an Aboriginal person or Torres Strait Islander, or is an adherent of a particular religion or tradition, including:
  - (i) whether there is a need for the provision of interpreters (including sign language interpreters);
  - (ii) whether an alternative oath or affirmation may be required;
  - (iii) whether there is a need for the provision of particular technological aids;
  - (iv) whether any special steps need to be taken to accommodate the presence of support persons or family members;
- (m) If the trial will involve reference to a deceased Aboriginal person or Torres Strait Islander, particulars of the extent to which permission to name and show images of the person has been sought and obtained;
- (n) Any concerns relating to the court venue or access to the proceedings by members of the public and the media;
- (o) Any proposed use of video or audio tapes, video links, jury views or other arrangements which may present logistical issues for the court;
- (p) The number of counsel who will require seating at the bar table;
- (q) Whether it is proposed to conduct the trial as an e-trial and if so what arrangements should be made; and
- (r) Any other issue the prosecution has identified as relevant to, or may require a determination under, section 590AA of the Criminal Code, including in relation to:
  - (i) the joinder or severability of accused or charges;
  - (ii) the admissibility of evidence;
  - (iii) the psychiatric or medical examination of the accused;
  - (iv) the narrowing of the issues and any administrative arrangement to assist the speedy disposition of the trial.

- 3.2 At least 7 days before the first pre-trial hearing, each defendant's legal representative, will email to the associate of the judge managing the trial and serve by email to the prosecutor a response to the prosecution's pre-trial memorandum, addressing the following matters:
- (a) By whom the defendant is represented and whether that representation is for pre-trial matters and the trial itself;
  - (b) Any perceived shortcomings in the particulars provided by the prosecution;
  - (c) Any perceived shortcomings in the prosecution's disclosure and whether any application for a disclosure obligation direction is proposed to be made under section 590G of the Criminal Code;
  - (d) Whether there is any possibility that a trial of the matter will not be necessary and, if so, whether discussions have taken place with the prosecution;
  - (e) The extent to which disclosure under Chapter 62, Division 4 of the Criminal Code by the defendant has been completed and whether any further disclosure by the defendant is required or envisaged;
  - (f) Whether the defendant intends to adduce expert evidence at the trial and if so:
    - (i) the names of any experts who may be called as witnesses by the defendant and all relevant findings or opinions of those experts;
    - (ii) the proposed manner of leading that evidence, whether orally or in writing or partly orally and partly in writing;
    - (iii) the date by which any reports or statements of evidence of any expert will be provided to the court;
  - (g) Whether notice has been, or should be, given of alibi evidence or evidence of a representation under section 93B of the *Evidence Act 1977*;
  - (h) Which issues or facts asserted by the prosecution are not in dispute, including any admissions to:
    - (i) expert evidence or surveillance evidence disclosed by the prosecution;
    - (ii) the accuracy of any transcripts (and their use at the trial) or documentary evidence disclosed by the prosecution;
  - (i) Any admissions made by the defendant, and which witnesses proposed to be called by the prosecution for the sole purpose of proving formal matters may be dispensed with;
  - (j) Whether continuity of exhibits is not in issue and, if it is, how that issue should be dealt with;

- (k) To the extent it may assist in the jury's understanding of the defence case and if the defence so agrees, the general nature of the defence, including:
  - (i) whether a defence of insanity or diminished responsibility or any other question of a psychiatric nature may be raised;
  - (ii) whether any other affirmative defence may be in issue;
- (l) Whether the defendant is a child and, if so, particulars of the steps required under the *Youth Justice Act 1992*;
- (m) An indication of any times during which defence counsel or any witness that may be called by the defendant will be unavailable;
- (n) Any concerns relating to the court venue or access to the proceedings by members of the public and the media;
- (o) Any proposed use of video or audio tapes, video links, views or other arrangements which may present logistical issues for the court;
- (p) The defendant's estimate of the likely length of the trial;
- (q) Any other matter addressed in the prosecution's pre-trial memorandum which the defendant wishes to address;
- (r) Any other issue the defendant has identified which is relevant to, or may require a determination under, section 590AA of the Criminal Code, including in relation to:
  - (i) the joinder or severability of defendants or charges;
  - (ii) the admissibility of evidence;
  - (iii) the psychiatric or medical examination of the accused;
  - (iv) the narrowing of the issues and any administrative arrangement to assist the speedy disposition of the trial.

#### **4 First review**

- 4.1 At the pre-trial hearing, the judge will review the prosecution's pre-trial memorandum and the defendant's response.
- 4.2 Legal representatives for the prosecution and defendant are to be prepared to discuss the full range of matters that might usefully be addressed under section 590AA of the Criminal Code, including:
  - (a) the matters addressed in the prosecution's pre-trial memorandum and the defendant's response;
  - (b) the delivery of material to the jury in a manner that will assist its consideration of the issues and the evidence; and

- (c) the narrowing of the issues and other administrative arrangements to assist the speedy disposition of the trial.
- 4.3 The judge will make such orders as the judge considers appropriate under section 590AA of the Criminal Code, including orders for any further pre-trial hearings the judge considers are required.
- 4.4 The judge may direct counsel to confer on any of the issues identified in paragraphs 3 and 4 and report as to the fact of the conference and as to any agreement that has or can be reached on any of those issues.

## **5 Final review**

- 5.1 Unless the judge orders otherwise, a final pre-trial review will be take place no later than 4 weeks before the date set for the trial.
- 5.2 Legal representatives for the prosecution and defendant are to be prepared to discuss the following matters:
- (a) The presentation and drafting of written material to be given by the judge to the jury at the commencement of the trial on:
    - (i) the burden and standard of proof;
    - (ii) the role of the judge and jury;
    - (iii) the elements of each offence charged (and each alternative offence);
    - (iv) if disclosed, the elements of each defence;
    - (v) any agreed facts; and
    - (vi) issues known to be in dispute;
  - (b) Instructions to be given to the jury about any admissions that have been made by the defendant, or any waiver by the defendant of the need to call formal evidence on non-contentious issues;
  - (c) Whether the defendant will give an opening statement immediately following the prosecution's opening address to the jury;
  - (d) The use of visual aids to assist the jury and the provision to the jury of any supplementary material, including:
    - (i) a copy of the indictment;
    - (ii) a written summary of relevant legal concepts for the jury;
    - (iii) a transcript of the evidence at the trial;
    - (iv) a copy of the judge's summing up;
    - (v) any schedules, chronologies, charts, diagrams, transcripts, decision-trees or checklists of questions;

- (e) The scheduling, if it is thought to be useful in the circumstances of the case, of a pre-trial conference of prosecution and defence experts to:
  - (i) identify the matters on which they agree;
  - (ii) identify the matters on which they disagree and the reasons why; and
  - (iii) attempt to resolve any disagreement;
- (f) The presentation of expert evidence in a form the jury can understand, including tabulation of the evidence from a number of witnesses; and
- (g) Directions or warnings on specific defences or evidence that will, or may need to be, given to the jury, including directions about:
  - (i) the effect of pre-trial publicity;
  - (ii) evidence that is relevant to one only of multiple defendants;
  - (iii) evidence of a representation under section 93B of the *Evidence Act 1977*;
  - (iv) identification evidence;
  - (v) evidence of post-incident conduct;
  - (vi) propensity evidence (including similar fact evidence);
  - (vii) evidence of an accomplice, a prison informer, or an indemnified witness.

5.3 The judge will make such orders as the judge considers appropriate under section 590AA of the Criminal Code.

5.4 The prosecution and defendant must notify the court, sufficiently in advance of the final mention, of any perceived need for a voir dire or any outstanding issue that might usefully be addressed under section 590AA of the Criminal Code.

5.5 The judge may direct counsel to confer on any of the issues identified in paragraph 5 and report as to the fact of the conference and as to any agreement that has or can be reached on any of those issues.

5.6 The pre-trial memoranda will not form part of the court file until the defendant is convicted or found not guilty. After conviction or acquittal the pre-trial memoranda will be marked for identification and placed on the court file.

## **6 Trial and summing up**

6.1 Before the judge commences to deliver the summing up to the jury, the legal representatives are to be prepared to discuss with the judge in the jury's absence:

- (a) The directions or warnings on specific defences or evidence that the prosecution or a defendant wish to be included in, or left out of, the judge's summing up to the jury;
- (b) The delivery of 'integrated directions' in the judge's summing up that, as far as possible, focus on the questions of fact that the jury must decide in order to reach its verdict;
- (c) The drafting of a written list of questions to be given to the jury as part of the judge's summing up to assist the jury in reaching its verdict; and
- (d) The presentation of the summing up with visual aids, such as PowerPoint.



**Paul de Jersey**  
Chief Justice  
5 April 2013