



# Facts on sentence: Drafting, negotiating and agreeing

Judge John Pickering SC  
*District Court of New South Wales*

Karl Prince  
*Public Defender*

# Sentence facts – common problems

- Unnecessarily complex
- Too much information about an investigation
- The Crown Case Statement is different to Agreed Facts
- Not enough focus on the role of the offender

# Sentence facts – some more problems

- Taking a lesser plea and not changing the facts
- A plea following negotiations where facts don't reveal an offence

# The use of sentence facts in other proceedings

- The Crown calling a person who pleaded guilty to give evidence in a separate trial and cross examining them on sentence facts
- Availability of a sentence discount?

# What should a well drafted set of facts include?

- Plain language, especially as to an offender's role and any victim injuries
- Set out the particular aspects of the Crown case against an offender that s/he accepts, or is prepared to be sentenced for
- Include any concessions by the Crown relevant to sentence proceedings and the offender's role, particularly in relation to hierarchy in criminal organisations

# Practical aspects: drafting, negotiating and agreeing

## *Drafting*

- Agreed facts are a joint document between the parties
- No requirement as to who drafts the facts
- Helpful in plea negotiations to draft the facts

## *Negotiating*

- First version of the facts is not the last
- Seek clarification as to why particular portions pressed
- Potential resolution – client prepared to be sentenced on these facts rather than agreeing every fact

## *Agreeing*

- Can't be forced to agree facts
- Avoid disputes as to facts at sentence hearing

# Sentence proceedings: practical use of agreed facts

- Summarise facts to suit your case in written submissions