



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M44/2022  
File Title: Awad v. The Queen  
Registry: Melbourne  
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Filing party: Appellant  
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#### Important Information

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B E T W E E N:

**DANNY AWAD**

**Appellant**

**- and -**

**THE QUEEN**

**Respondent**

**APPELLANT'S OUTLINE OF ORAL SUBMISSIONS**

**PART I: SUITABILITY FOR INTERNET PUBLICATION**

The Appellant certifies that this Outline of Oral Submissions is in a form suitable for publication on the internet.

**PART II: OUTLINE OF THE PROPOSITIONS TO BE ADVANCED BY THE APPELLANT IN ORAL ARGUMENT**

1 The relevant provisions of sec 44J of the *Jury Directions Act 2015* (Vic) are unmistakably imperative. They reversed the effect of previous case law. The mischief they addressed was the perception of the effect of a judicial direction on the trial process. They are thus a plain statement of the statutory requirements, in the respects they address, of a criminal trial according to law.

*Appellant's Submissions [27]-[32]; Appellant's Reply [9]*

2 There was a complete failure to comply with the sec 44J prohibition by reason of the direction concerning an accused's evidence. This was a serious departure from the prescribed processes for trial: *Baini v The Queen* (2021) 246 CLR 469 at 479 [26].

*Appellant's Submissions [28],[31]; Appellant's Reply [2]-[6]*

3 Courts ought not effectively hold that deliberate legislative stipulations for the mode of criminal trial are unimportant, let alone optional as to compliance.

*Appellant's Submissions [29]-[31]; Appellant's Reply [11]-[14]*

4 The contravention of sec 44J in this case ought therefore have been judged to be a substantial miscarriage of justice within the meaning of sec 276 of the *Criminal Procedure Act 2009* (Vic). M44/2022

*Appellant's Submissions [31],[32]*

5 Furthermore, the inevitable effect of the proscribed direction is to encourage jury reasoning - depending on which presented alternative is chosen - that is contrary to the interests of the accused (or another accused relying on that evidence, such as this case) and is, by a legislative choice, also contrary to the legally mandatory procedure concerning judicial directions to a jury.

*Appellant's Submissions [33]-[37]; Appellant's Reply [15]-[19]*

6 There is nothing whatever in the rest of the charge to the jury that withdraws, detracts from or otherwise ameliorates this adverse potential for the appellant at his trial.

*Appellant's Submissions [38]-[41]; Appellant's Reply [20]-[25]*



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**BRET WALKER**  
**Counsel for the Appellant**  
Monday 12 September 2022