

## 159. Official Corruption: s 87(1)

---

### 159.1 Legislation

[Last reviewed: March 2025]

*Criminal Code*

[Section 87](#) – Official corruption

### 159.2 Commentary

[Last reviewed: March 2025]

Section 87(1) contains two offences: one covering public officials who receive some benefit under s 87(1)(a), and one covering those who give them under s 87(1)(b). Under s 87(1)(a) the defendant, who must be employed in the public service or being the holder of any public office, must be:

- (1) charged by virtue of such employment or office with the performance of any duty, not being a duty touching on the administration of justice; and have
- (2) corruptly;
- (3) asked for, received, or obtained, or agreed or attempted to receive or obtain;
- (4) any property or benefit of any kind;
- (5) on account of any thing already done or omitted to be done, or to be afterwards done or omitted to be done;
- (6) in the discharge of the duties of the defendant's office.

Under s 87(1)(b), the Defendant must have:

- (1) corruptly;
- (2) given, conferred or procured, or promised or offered to give or confer, or to procure or attempt to procure;
- (3) any property or benefit of any kind;
- (4) to, upon, or for:
  - a. any person employed in the public service or being the holder of any public office; or
  - b. any other person;
- (5) on account of any such act or omission on the part of the person so employed or holding such office.

If the charge alleges 'promises' or 'offers to give', it is not necessary for the prosecution to prove that the holder of public office received any property or benefit.

Several brief notes on the meaning of terms in s 87(1) are included here. More extensive commentary on the offences in s 87(1)(a) and (b) can be found in the [Carter's Criminal Law](#).

*Meaning of 'employed in the public service' and 'holder of public office'*

Whether the Defendant was employed in the public service or was the holder of public office is a question of fact. 'Holder of public office' has a narrower meaning than 'public officer' defined in s 1 (*R v McCann* [\[1998\] 2 Qd R 56](#)).

*Meaning of 'corruptly'*

Corruption is not to be equated with dishonesty and dishonesty does not necessarily connote corruption (*Re Lane* [\(QSC, Ryan J, 9 October 1992, unreported\)](#), which is referred to with approval in *DPP (Cth) v Hogarth* [\(1995\) 93 A Crim R 452](#)). In *Re Lane* at [10], Ryan J stated that in the context of the legislation relevant to the case, corrupt conduct means conduct which is done deliberately and contrary to the duties incumbent on the person by virtue of his or her public office, as a result of which the person sought to gain an advantage for himself or another (see also *Hogarth* at 455).

*Aggravation*

The offence is a prescribed offence under s 161Q of the *Penalties and Sentences Act 1992* (Qld), so a serious organised crime circumstance of aggravation is applicable.

It is also a circumstance of aggravation for the offence to be committed by, or in relation to, a Minister of the Crown as the holder of a public office.

### 159.3 Suggested Directions

[Last reviewed: March 2025]

*Suggested direction for s 87(1)(a)*

**The prosecution must prove beyond reasonable doubt:**

- 1. That the Defendant was employed in the public service [or was the holder of a public office].**
- 2. The Defendant was charged by virtue of such employment [or office] with the performance of any duty that did not touch on the administration of justice.**
- 3. The Defendant [asked for/received/obtained/agreed or attempted to receive or obtain].**

4. **Any property or benefit of any kind.**
5. **For [himself/herself/another person].**
6. **The Defendant did so corruptly. A Defendant acts corruptly by intentionally seeking to gain an advantage for [himself/herself].**
7. **On account of anything already done [or omitted to be done, or to be afterwards done or omitted to be done].**
8. **By the Defendant in the discharge of the duties of the Defendant's office.**

*Suggested direction for s 87(1)(b)*

**The prosecution must prove beyond reasonable doubt:**

1. **That the Defendant gave [or conferred, procured or promised] property or a benefit to a person employed in the public service [or a holder of public office].**
2. **The Defendant did so corruptly.**
3. **The Defendant did so with the intention that the person employed in the public service [or holder of public office] should be corrupted.**
4. **The Defendant did so on account of the person employed in the public service [or holder of public office] doing or omitting to do something in the discharge of [his/her] duties.**