

## Official Corruption: s 87(1)(b)

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### Legislation

#### 87 Official corruption

(1) Any person who—

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(b) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for, any person employed in the public service, or being the holder of any public office, or to, upon, or for, any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed or holding such office;

is guilty of a crime, and is liable to imprisonment for 7 years, and to be fined at the discretion of the court.

(1A) If the offence is committed by or in relation to a Minister of the Crown, as the holder of public office mentioned in subsection (1), the offender is liable to imprisonment for 14 years, and to be fined at the discretion of the court.

(1B) The *Penalties and Sentences Act 1992*, section 161Q also states a circumstance of aggravation for an offence against this section.

(1C) An indictment charging an offence against this section with the circumstance of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q may not be presented without the consent of a Crown Law Officer.

(2) The offender can not be arrested without warrant.

### Commentary

If the charges allege “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.

*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: *R v McCann* [\[1998\] 2 Qd R 56](#).

“Holder of public office” has a narrower meaning than “public officer” defined in s 1: *McCann*.

*Meaning of ‘corruptly’*

Corruption is not to be equated with dishonesty and dishonesty does not necessarily connote corruption: see *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 Hogarth at 455).

### *Aggravation*

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

See also s 87(1)(a) and ss 120 (Judicial corruption) and 121 (Official corruption not judicial but relating to offences).

## **Suggested Direction**

### **The prosecution must prove:**

- 1. That the defendant gave [or conferred, procured or promised] property or a benefit to a holder of public office. [If the charges allege “promises” or “offers to give”, it is not necessary for the prosecution to prove the holder of public office received any property or benefit].**
- 2. The defendant did so corruptly.**
- 3. The defendant did so with the intention that the holder of public office should be corrupted.**
- 4. The defendant did so on account of the holder of public office doing or omitting to do something in the discharge of his/her duties.**

[Where a circumstance of aggravation is charged under s 161Q of the *Penalties and Sentences Act 1992* (serious organised crime circumstance of aggravation), see Part 9D, Division 1 of the *Penalties and Sentences Act 1992* for relevant definitions.]