

## **Conspiracy (other than under the *Criminal Code* (Cth))**

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**The prosecution must prove that on [or between] the date [or dates] alleged in the indictment the defendant entered into an agreement with (person or persons named or referred to in the indictment) to (set out the unlawful purpose pleaded in the indictment).<sup>1</sup>**

**A criminal conspiracy is an agreement between two or more persons to do an unlawful act. In this case it is alleged that there was a common unlawful agreement to (state common unlawful purpose alleged).**

**The essence of the offence of conspiracy is the unlawful agreement.<sup>2</sup> The prosecution must prove that the defendant intended, when he entered into an agreement to play some part in the agreed course of conduct involving<sup>3</sup> (here set out alleged unlawful purpose), even if he intended to participate in only part of the conduct. [It does not matter that the defendant, at some later time withdrew voluntarily from further participation in the agreement].**

**It is not necessary for the prosecution to prove performance of the agreement and it is irrelevant that performance of the (alleged unlawful purpose) is impossible. The agreement need not be in writing. It is not necessary for people to formally agree for there to be an agreement.**

**Parties can join or leave a conspiracy at different times according to their role and level of involvement. It is not necessary that each participant know all of the details of how the scheme was to be implemented. It is not necessary that all parties be in direct communication with each other. They may not even know each other.**

**You will need to examine the evidence and ask yourselves whether it is proved beyond reasonable doubt that that defendant entered into an agreement to (state alleged unlawful purpose) and intended, when he entered into the agreement, to play**

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<sup>1</sup> The unlawful purpose may be to defraud the public or named persons. In prosecutions for conspiracy to defraud under the *Crimes Act* 1914 (Cth), special regard must be had to *Peters v The Queen* ([1998](#)) [192 CLR 493](#) as to the element of conspiracy.

<sup>2</sup> *Ahern v The Queen* ([1988](#)) [165 CLR 87](#) at 93; *R v Thomson* (1965) 50 Cr App R 1. A conspiracy to commit an offence is an inchoate offence in the sense that it is complete without the doing of any act save the act of agreeing to commit the offence: *R v Rogerson* ([1992](#)) [174 CLR 268](#) at 279. Evidence of acts following the agreement may be the only available proof that the agreement was made, but it is the agreement and not the evidence of the acts that constitutes the offence: *R v Gudgeon* ([1995](#)) [133 ALR 379](#) at 389.

<sup>3</sup> *R v Anderson* ([1985](#)) [2 All ER 961](#); *R v Thomson* (1965) 50 Cr App R 11.

**some part in the agreed course of conduct involving the (alleged unlawful purpose).**

**The prosecution seeks to prove these matters by means of circumstantial evidence; that is, by means of inferences to be drawn from other facts. It seeks, by such inferences, to prove the conspiracy to (state alleged unlawful purpose) and the defendant(s) participation in it. Bear in mind the direction I gave you concerning the use of circumstantial evidence. Importantly, the circumstantial evidence relied upon to prove the elements of the offence of conspiracy must be such that any reasonable hypothesis consistent with innocence must be excluded. It is for the prosecution to disprove, beyond reasonable doubt, all hypotheses, raised by the whole of the evidence consistent with innocence.<sup>4</sup> So bear in mind that the overt acts alleged against the (each) defendant when taken with any relevant surrounding circumstances must be incapable of rational explanation, except as manifestations of the conspiracy alleged by the prosecution.<sup>5</sup>**

**Look at all the evidence and decide whether you are satisfied that the (each) defendant has joined in an agreement to carry out the (alleged unlawful purpose). The prosecution relies on the following evidence to prove the agreement (set out summary of the evidence).**

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<sup>4</sup> See *Ahern v The Queen* (1988) 165 CLR 87 at 93.

<sup>5</sup> See *R v Moore* [1988] 1 Qd R 252 at 258.