

Official Corruption: s 87(1)(a)

Legislation

87 Official corruption

- (1) Any person who—
- (a) being employed in the public service, or being the holder of any public office, and being charged with the performance of any duty by virtue of such employment or office, not being a duty touching the administration of justice, corruptly asks for, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself, herself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by the person in the discharge of the duties of the person's office; or

...

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

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* [ibid].

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)(b) 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 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 or agreed or attempted to receive or obtain).**
- 4. Any property (or benefit) of any kind.**
- 5. For himself/herself (or any other person).**
- 6. The defendant did so corruptly.**
- 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.**

[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.]