

Attempt to Pervert the Course of Justice: s 140

Legislation

140 Attempting to pervert justice

- (1) A person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime.

Maximum penalty—7 years imprisonment.

- (2) The [Penalties and Sentences Act 1992, section 161Q](#) states a circumstance of aggravation for an offence against this section.
- (3) 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.

Commentary

Attempt

For notes on the meaning of attempt see **Benchbook No 71 – Attempts**.

The course of justice

An act done before the commencement of judicial proceedings may constitute an offence of intending to pervert the course of justice where it is done with intent to frustrate or deflect the course of judicial proceedings that the defendant contemplates may possibly be instituted (*R v Beckett* [2015] HCA 38). The “course of justice” commences when the jurisdiction of the court is invoked. The “course of justice” is synonymous with the “administration of justice (*R v Rogerson* (1992) 174 CLR 268 at 276 per Mason CJ) but the offence can be committed when no curial proceedings are on foot (*Rogerson* per Mason CJ at 277 (“...action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate or deflect the course of curial or tribunal proceedings which are imminent, probable or even possible”) and Brennan and Toohey JJ at 283-284 (“Although police investigation into possible offences against the criminal law or a disciplinary code do not form part of the course of justice, an act calculated to mislead the police during investigations may amount to an attempt to pervert the course of justice”)). See too *R v Murphy* (1985) 158 CLR 596 at 618.

The suggested direction below is based on the judgment of the High Court in *Meissner v The Queen* (1995) 184 CLR 132 which in turn adopted the statements of principle in *Rogerson* (ibid) 275-276, 279 and 277. In *Rogerson* (280) Brennan and Toohey JJ said: “The course of justice consists in the due exercise by a court or competent judicial authority of its jurisdiction to enforce, adjust or declare the rights

and liabilities of persons subject to the law in accordance with the law and the actual circumstances of the case”: *R v Todd* [1957] SASR 305 at 328.

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

Suggested Direction

The prosecution must prove beyond reasonable doubt that:

- 1. The defendant did the conduct alleged in the indictment;**
- 2. That the conduct alleged in the indictment had the tendency to pervert the course of justice, i.e., turn it aside from its proper course;**

The prosecution does not have to prove that the course of justice was perverted or would have been perverted. It is sufficient that the prosecution established that there was a real risk that injustice might result;

- 3. That the defendant intended to pervert the course of justice by his or her actions.**

[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.]