

SUPREME COURT OF QUEENSLAND

CITATION: *Carne v Crime and Corruption Commission* [2022] QCA 141

PARTIES: **PETER DAMIEN CARNE**
(appellant)
v
CRIME AND CORRUPTION COMMISSION
(respondent)

FILE NO/S: Appeal No 11753 of 2021
SC No 10786 of 2020

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane – [2021] QSC 228 (Davis J)

DELIVERED ON: 5 August 2022

DELIVERED AT: Brisbane

HEARING DATE: 7 March 2022; further written submissions received on 30 June 2022

JUDGES: McMurdo and Mullins JJA and Freeburn J

ORDERS: **1. Appeal allowed.**
2. Set aside the order made in the Trial Division on 10 September 2021 dismissing the appellant’s application.
3. Declare that the document made by the respondent entitled “An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report” is not a report for the purposes of s 69(1) of the *Crime and Corruption Act 2001* (Qld).
4. The respondent to pay the appellant’s costs of the appeal.
5. Liberty to apply for such further orders consistent with this judgment by written submissions, not to exceed five pages in length, to be submitted within 21 days of the delivery of this Court’s judgment.

CATCHWORDS: STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – where the respondent investigated allegations of corrupt conduct made against the appellant – where no finding of corrupt conduct was made – where the respondent prepared a report of that investigation purportedly pursuant to s 69 of the *Crime and Corruption Act 2001* (Qld) (“the Act”) – where the purposes of the Act are to combat and reduce the incidence of major crime and to continuously

improve the integrity of, and to reduce the incidence of corruption in, the public sector – where, to achieve those purposes, the Act confers upon the Crime and Corruption Commission (“the Commission”), *inter alia*, prevention and corruption functions – where by s 64 of the Act the Commission is empowered to report in performing its functions – where by s 23 of the Act the Commission’s prevention function is concerned with the prevention of major crime and corruption – where by s 33 of the Act the Commission’s corruption function empowers it to deal with conduct which is corrupt conduct – whether the Commission’s prevention function extends to a broader function of helping to prevent conduct by senior public servants and public officials which might be considered to fall short of a standard to be expected of them where that conduct does not constitute major crime or corruption – whether the Commission’s corruption function empowers it to do whatever it believes would be likely to promote a standard of conduct to be expected of senior public servants and public officials beyond raising those standards above a level at which conduct is corrupt – whether the Commission remains empowered to report under s 64 of the Act after performing its functions – whether s 69 of the Act confers upon the Commission a general power to report – whether the respondent’s report is a “report” for the purposes of s 69(1) of the Act

CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – GENERAL MATTERS – PRIVILEGES – PRIVILEGE OF PARLIAMENTARY DEBATES AND PROCEEDINGS – where the respondent investigated allegations of corrupt conduct made against the appellant – where the respondent prepared a report of that investigation – where the respondent provided the report to the Parliamentary Crime and Corruption Committee (“PCCC”) with the request that the PCCC direct, pursuant to s 69(1)(b) of the *Crime and Corruption Act 2001* (Qld), that the report be given to the Speaker of the Legislative Assembly to be tabled in the Legislative Assembly – where by s 8 of the *Parliament of Queensland Act 2001* (Qld) proceedings in the Assembly are protected by parliamentary privilege and by s 9 of that Act “proceedings in the Assembly” is defined to mean all words spoken, and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee – where the PCCC is a parliamentary committee – whether the preparation of the report was part of the proceedings of the Assembly when the report was not a report for the purposes of s 69(1) – whether parliamentary privilege attached to the preparation of the report

Crime and Corruption Act 2001 (Qld), s 4(1), s 15, s 33, s 34,

s 49, s 64, s 69

Parliament of Queensland Act 2001 (Qld), s 8, s 9, s 55

Ainsworth v Criminal Justice Commission (1992)

175 CLR 564; [1992] HCA 10, cited

Carrigan v Honourable Senator Michaelia Cash [2016]

FCA 1466, cited

Criminal Justice Commission v Parliamentary Criminal Justice

Commissioner [2002] 2 Qd R 8; [2001] QCA 218, cited

Erglis v Buckley & Ors [2005] QSC 25, cited

Erglis v Buckley (No 2) [2006] 2 Qd R 407; [2005] QCA 404, cited

Rowley v O'Chee [2000] 2 Qd R 407; [1997] QCA 401, cited

- COUNSEL: J M Horton QC, with J P Pemberton, for the appellant
 P J Dunning QC, with M R Wilkinson, for the respondent
 R M O’Gorman QC, with C J Tessman, for the Speaker of the
 Legislative Assembly, appearing as *amicus curiae*
- SOLICITORS: Gilshenan & Luton for the appellant
 Crime and Corruption Commission for the respondent
 Clerk of the Parliament for the Speaker of the Legislative
 Assembly, appearing as *amicus curiae*

- [1] **McMURDO AND MULLINS JJA:** The appellant is a former Public Trustee of Queensland, appointed under s 9 of the *Public Trustee Act 1978* (Qld) and holding that office until he resigned with effect from 31 July 2020.
- [2] The respondent, which we will call the Commission, is established under s 220 of the *Crime and Corruption Act 2001* (Qld) (the Act). The main purposes of the Act are expressed to be to “combat and reduce the incidence of major crime”¹ and to “continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.”²
- [3] In June 2018, the Commission received an anonymous complaint which made against the appellant a number of allegations of corrupt conduct, as that term is used in the Act. In September 2018, the Commission commenced an investigation of the allegations which it completed in April 2020.
- [4] By a letter dated 30 April 2020, the Commission advised the appellant’s solicitors that it had concluded its investigation and that the Commission was not proposing that there be any criminal proceedings against the appellant. At the same time, the Commission wrote to the Attorney-General, informing the Attorney that having concluded its investigation, and following a review of the evidence by the Director of Public Prosecutions, it had been determined that no criminal prosecution would be pursued.
- [5] The appellant was then under suspension, as he had been since June 2019, by a decision of the Attorney-General. On 27 November 2019 he was served with a notice from the Attorney-General requiring him to show cause why he should not be

¹ s 4(1)(a) of the Act.

² s 4(1)(b).

dismissed upon the basis of the allegations against him. No written response was provided by him to that notice, before it was ultimately overtaken by his resignation from the office.

- [6] At least once the appellant had resigned, there was no prospect of a disciplinary (or criminal) proceeding against him, and the task of the Commission in dealing with the complaint of corrupt conduct was apparently performed.
- [7] However, on 4 September 2020, the Commission wrote to the appellant's solicitors that the Commission intended to publish a report which would provide "an overview of the investigation and the outcomes". It provided a draft of the report, and invited submissions from the appellant about its contents.
- [8] The statutory basis for this report was said to be s 69(1)(b) of the Act, which provides that certain types of reports of the Commission are to be tabled in the Legislative Assembly. Relevantly here, they include a report that the Parliamentary Crime and Corruption Committee³ (the PCCC) directs be given to the Speaker of the Assembly for the report to be tabled. No such direction by the PCCC had been given; it was the Commission's stated intention to ask the PCCC to give it.
- [9] The appellant's response was to dispute that s 69(1)(b) had any operation in this case, and to challenge the existence of any power to do that which the Commission was proposing.⁴
- [10] On 6 October 2020, the Commission wrote to the Chair of the PCCC attaching a copy of the report, and requesting the PCCC to direct, pursuant to s 69(1)(b), that it be given to the Speaker.
- [11] On 8 October 2020, the appellant commenced this proceeding by an originating application which sought declaratory and injunctive relief. By his amended application, the appellant sought a declaration that the proposed report was not a report for the purposes of s 69(1). He also sought an injunction ordering the Commission to retract its resolution (of 6 October 2020) to seek a direction from the PCCC that the report be given to the Speaker, or alternatively to that order, a declaration that the Commission's resolution was invalid and of no effect.
- [12] On 13 October 2020, the PCCC advised the Commission that it had resolved to defer consideration of the Commission's request for a direction under s 69(1)(b) until the determination of the appellant's application.
- [13] By a judgment delivered on 10 September 2021, the appellant's application was dismissed.⁵ The primary judge (Davis J) concluded that this would be a report which the Commission would have to provide under s 69(1), should the PCCC direct the Commission to do so.⁶ The judge further held that the Commission's preparation of the report and the resolution of the Commission to seek a direction from the PCCC were themselves proceedings of the Parliament which, by reason of s 8 of the *Parliament of Queensland Act 2001* (Qld), could not be impeached or

³ Established under s 291 of the Act.

⁴ Further arguments were made to the Commission which need not be discussed here.

⁵ *Carne v Crime and Corruption Commission* [2021] QSC 228 (Judgment).

⁶ Judgment [178].

questioned.⁷ By this appeal, those conclusions are challenged and orders are sought in the form of the declarations which were sought by the originating application.⁸

[14] It remains the position, pending the determination of this appeal, that there has been no decision by the PCCC to direct that the proposed report be given to the Speaker. Although the Commission has finalised its draft, it has not been published to any person, apart from the members of the PCCC.

[15] For the reasons that follow, the appeal should be allowed and there should be declarations substantially in the terms which are sought. In essence, this is because this is not a report of a kind to which s 69(1)(b) applies, because it is not a report which has been made by the Commission in the performance of any of its statutory functions.⁹ Section 69 is not itself the source of a further power or duty of the Commission to report, and the Commission's relevant function, namely its corruption function, having been performed, the Commission was not empowered or required by any other provision of the Act to make this report. Consequently, this report could not be the subject of parliamentary privilege.

The Commission's functions

[16] By s 7 of the Act, the Commission has the primary responsibility for the achievement of the purposes of the Act which are defined by s 4 as follows:

“4 Act's purposes

- (1) The main purposes of this Act are—
 - (a) to combat and reduce the incidence of major crime; and
 - (b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.
- (2) The Act also has as the purpose to facilitate the commission's involvement in a confiscation related investigation.”

[17] Section 5 describes how those purposes are to be achieved:

- “(1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Corruption Commission.
- (2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate major crime and criminal organisations and their participants.
- (3) Also, the commission is to—

⁷ Judgment [179].

⁸ The notice of appeal also sought a declaration that the Commission had failed to observe the requirements of procedural fairness.

⁹ Act, s 64(1).

- (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
 - (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.
- (4) Further, the commission has particular powers for confiscation related investigations for supporting its role under the Confiscation Act.”¹⁰

[18] By Chapter 2 of the Act, the Commission has the following functions:

- (a) its prevention function which is the function of “helping to prevent major crime and corruption”;¹¹
- (b) its crime function, involving the investigation of major crime which is referred to it and the investigation of incidents threatening public safety involving criminal organisations or their participants;¹²
- (c) its corruption functions;¹³
- (d) its research functions;¹⁴
- (e) its intelligence functions;¹⁵
- (f) its functions conferred under other legislation, including its witness protection function;¹⁶ and
- (g) its civil confiscation function.¹⁷

[19] The Commission’s case, which the primary judge accepted, is that the provision of this report would involve the performance of the Commission’s corruption functions. However before discussing the Commission’s corruption functions, something should be said of the Commission’s prevention function. By s 23, the prevention function is concerned with the prevention of *major crime and corruption*. This is not a broader function of helping to prevent conduct by senior public servants and public officials which might be considered to fall short of a standard to be expected of them, but where that conduct does not constitute major crime or corruption. Section 24 describes some of the ways in which the Commission may perform its prevention function, which include analysing the results of its investigations and the information it gathers in performing its functions, and providing information relevant to its prevention function to the general community.¹⁸ However, the Commission does not contend that in publishing the report, by its being tabled in the Assembly, the Commission would be “helping to prevent major crime and corruption”.¹⁹ And again, each of the powers in s 24 is exercised for the purpose of preventing major crime or corruption.

¹⁰ Defined in Schedule 2 of the Act to mean the *Criminal Proceeds Confiscation Act 2002*.

¹¹ s 23.

¹² s 25.

¹³ s 33.

¹⁴ s 52.

¹⁵ s 53.

¹⁶ Under the *Witness Protection Act 2000*.

¹⁷ Under the *Criminal Proceeds Confiscation Act 2002* (Qld); s 56.

¹⁸ s 24(b), (f).

¹⁹ s 23

Further, the Commission does not contend that the report is necessary in order for the Public Trust Office to be informed or advised in any respect. As the Commission wrote to the Attorney-General in April 2020, by then the Commission had done so.

The Commission's corruption functions

- [20] The word “corruption” is defined²⁰ to mean “corrupt conduct” or “police misconduct”. It was alleged corrupt conduct of the appellant which was involved in this case.
- [21] It is necessary to set out in full the definition of “corrupt conduct”:

“15 Meaning of *corrupt conduct*”

- (1) *Corrupt conduct* means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
 - (i) a unit of public administration; or
 - (ii) a person holding an appointment; and
 - (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—
 - (i) is not honest or is not impartial;
 - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
 - (c) would, if proved, be—
 - (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.
- (2) *Corrupt conduct* also means conduct of a person, regardless of whether the person holds or held an appointment, that—

²⁰ By Schedule 2 to the Act.

- (a) impairs, or could impair, public confidence in public administration; and
- (b) involves, or could involve, any of the following-
 - (i) collusive tendering;
 - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources;
 - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - (v) fraudulently obtaining or retaining an appointment; and
- (c) would, if proved, be—
 - (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.”

[22] Each of sub-sections 15(1) and (2) describes misconduct of a certain level of gravity: it is conduct which is a criminal offence or a disciplinary breach providing a reasonable ground for terminating the person’s services. It is conduct more serious than some conduct which might affect the performance of functions or the exercise of powers of a unit of public administration or a person holding an appointment.

[23] Sub-section 15(2) describes conduct which impairs, or could impair “public confidence in public administration”, but that is but one of the necessary characteristics of conduct for it to be corrupt conduct as defined. In essence, it must still be fraudulent conduct to fall within s 15(2).

[24] The Commission’s corruption functions are defined in s 33 as follows:

“33 Commission’s corruption functions

- (1) The commission has the following functions for corruption (the *corruption functions*)—
 - (a) to raise standards of integrity and conduct in units of public administration;
 - (b) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.
- (2) The commission's *corruption functions* also include—
 - (a) investigating and otherwise dealing with—
 - (i) conduct liable to allow, encourage or cause corrupt conduct; and
 - (ii) conduct connected with corrupt conduct; and
 - (b) investigating whether corrupt conduct or conduct mentioned in paragraph (a)(i) or (ii) may have happened, may be happening or may happen.”

[25] Section 34 sets out the principles to be applied by the Commission in performing its corruption functions, which include the following:

“(d) **Public interest**

- the commission has an overriding responsibility to promote public confidence—
 - in the integrity of units of public administration and
 - if corruption does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—
 - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
 - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration
 - any likely increase in public confidence in having the corruption dealt with by the commission directly.”

[26] It is true, as the argument for the Commission emphasises, that s 33(1)(a) describes the Commission performing a function of raising standards of integrity and conduct

in units of public administration. But that does not mean that the Commission has a wider function to do whatever it believes would be likely to promote a standard of conduct to be expected of senior public servants and public officials, beyond raising those standards above a level at which conduct is corrupt. Section 33(1) commences by describing what follows as “the following functions *for corruption*”.

- [27] Similarly, in paragraph (d) of s 34, the Commission’s responsibility to promote public confidence in the integrity of units of public administration is a principle to be applied when performing its functions *for corruption*.
- [28] Section 35 describes some of the ways in which the Commission may perform its corruption functions. It may refer complaints about corruption within a unit of public administration to a relevant public official to be dealt with by that person.²¹ The Commission may perform a monitoring role, either for police misconduct or corrupt conduct.²² And it may perform its corruption functions by “dealing with” complaints about corrupt conduct, by itself or in cooperation with the relevant unit of public administration.²³
- [29] The Commission may assess the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption²⁴ and it may provide advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.²⁵ However the exercise of those powers is directed to promoting appropriate practices in responding to complaints about corrupt conduct, and they are not powers which would be exercised by making this report.
- [30] The Commission “deals with” a complaint about corruption by one or more of the following actions:²⁶
- (a) investigating the complaint;
 - (b) gathering evidence for a prosecution for an offence or a disciplinary proceeding;
 - (c) referring the complaint to an appropriate authority to start a prosecution or disciplinary proceeding;
 - (d) starting a disciplinary proceeding;
 - (e) taking other action, including managerial action, to address the complaint in an appropriate way.
- [31] Section 46(1) provides that the Commission deals with a complaint by expeditiously assessing the complaint and taking the action the Commission considers most appropriate in the circumstances. Section 46(2) provides that the Commission may take action by itself dealing with the complaint, or referring it to a public official or the Commissioner of Police for that person to deal with it, subject to the Commission’s monitoring role.

²¹ s 35(1)(b).

²² s 35(1)(c) and (d), referring to the monitoring roles prescribed by s 47(1) and s 48(1).

²³ s 35(1)(e).

²⁴ s 35(1)(i).

²⁵ s 35(1)(j).

²⁶ Definition of “deals with” in Schedule 2 to the Act.

[32] Chapter 2, Division 5 of the Act is headed “Action following investigation”. It contains s 49, which relevantly provides as follows:

“49 Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption *and decides that prosecution proceedings or disciplinary action should be considered.*
- (2) The commission may report on the investigation to any of the following as appropriate—
 - (a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;
 - (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.
- (3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.

...

- (5) In this section—

prosecuting authority does not include the director of public prosecutions.”

(Emphasis added.)

[33] Prior to November 2018, s 49(2)(a) provided that the Commission might report on an investigation to “the director of public prosecutions, or other appropriate prosecuting authority”. The explanatory memorandum for the amendment of s 49

to its present terms²⁷ stated that the amendment would not affect the Commission’s powers to provide to the Queensland Police Service evidence gathered by the Commission during the course of its investigation, and for that evidence to be provided to the Director of Public Prosecutions “as part of the usual prosecutorial process”.

- [34] Section 49 indicates the Commission’s role in investigating a complaint of corruption. Its role is to investigate, and not to adjudicate upon the merits of the complaint. Where the Commission sees sufficient substance in a complaint, it may decide that prosecution proceedings or disciplinary action should be considered. But a report to a prosecuting authority, or to any other person to whom the Commission might report under s 49(2), does not require the formulation and expression of an opinion that corrupt conduct has occurred.
- [35] Section 50 applies if the Commission reports to the chief executive officer of a unit of public administration under s 49 that a complaint involves, or may involve, corrupt conduct and there is evidence supporting the start of a disciplinary proceeding for that conduct. In that circumstance, the Commission may apply to the Queensland Civil and Administrative Tribunal under s 219I of the Act, for the Tribunal to determine whether corrupt conduct is proved.²⁸

Reporting by the Commission

- [36] Chapter 2, part 6 of the Act is headed “Reporting”, and applies in relation to the performance of any of the Commission’s functions apart from its crime functions. It contains s 64 which is as follows:

“64 Commission’s reports—general

- (1) The commission may report in performing its functions.
- (2) The commission must include in each of the reports—
 - (a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6; and
 - (b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.
- (3) If the Police Minister decides not to give a direction under the Police Service Administration Act, section 4.6 following a recommendation made under subsection (2)(a), the Police Minister must table in the Legislative Assembly, after giving the reasons—
 - (a) a copy of the recommendation; and

²⁷ Explanatory Note to the *Crime and Corruption and Other Legislation Amendment Bill 2018* (Qld), page 6.

²⁸ Act s 219I(2).

- (b) the Minister’s reasons for not giving the direction.
- (4) The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b).
- (5) In this section—

Police Minister means the Minister administering the Police Service Administration Act.

Police Service Administration Act means the Police Service Administration Act 1990.”

[37] Section 65 applies to a Commission report about the procedures and operations of a State court, or the procedures and practices of the registry or administrative officers of a State court. Section 65(2) provides that such a report may be given only to the head of the relevant jurisdiction.

[38] Section 66 is a provision which enables the Commission to maintain the confidentiality of information in its possession, despite any other provision of the Act about reporting. The Commission need not make a report on matter to which the confidential information is relevant, or if the Commission does report on the matter, it need not disclose the confidential information or refer to it in the report.²⁹

[39] Before going to s 69, it is convenient to discuss the provisions governing the relationship between the Commission and the PCCC.

The PCCC

[40] By s 9 of the Act, the PCCC is a standing committee of the Legislative Assembly with the particular responsibility for monitoring and reviewing the Commission’s performance. The functions of the PCCC, according to s 292, include the following:

- (a) to monitor and review the performance of the Commission’s functions;
- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly’s attention—
 - (i) matters relevant to the commission;
 - (ii) matters relevant to the performance of the commission’s functions or the exercise of the commission’s powers;
- (c) to examine the commission’s annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports.

[41] By s 293, the PCCC may inspect and copy any “non-operational record or thing”, which is defined to exclude a record or thing that relates to an investigation by the Commission that is not finalised.

²⁹ s 66(1) of the Act.

- [42] By s 294(1), the PCCC may direct the Commission to investigate a matter falling within the Commission's corruption functions. The Commission must then investigate the matter stated in that direction, and by s 294(3)(b), it must report the results of that investigation to the PCCC. These provisions do not apply in the present case: the investigation of the appellant's conduct was not made at the direction of the PCCC.
- [43] Section 295 empowers the PCCC to take action if it receives a complaint, or has other concerns, about the conduct or the activities of the Commission or a Commission officer, or if the PCCC is notified by the Chairperson, Deputy Chairperson or the Chief Executive Officer of possible improper conduct by a Commission officer. In such a case, the PCCC may ask the Commission to give a report on the matter to the Committee, or ask the Commission to investigate and give a report. Again, those provisions do not apply to the present case.
- [44] There is no provision by which the PCCC may require the Commission to report upon an investigation by the Commission which was not conducted at the direction of the PCCC. It is far from clear that the PCCC could do so. The point does not arise, however, because the PCCC neither required nor requested that this report be made and submitted to it.

Section 69

- [45] Section 69 is as follows:

“69 Commission reports to be tabled

- (1) This section applies to the following commission reports—
 - (a) a report on a public hearing;
 - (b) a research report or other report that the parliamentary committee directs be given to the Speaker.
- (2) However, this section does not apply to the commission's annual report, or a report under section 49 or 65, or a report to which section 66 applies.
- (3) A commission report, signed by the chairperson, must be given to—
 - (a) the chairperson of the parliamentary committee; and
 - (b) the Speaker; and
 - (c) the Minister.
- (4) The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.
- (5) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the

report and any accompanying document to the clerk of the Parliament.

- (6) The clerk must authorise the report and any accompanying document to be published.
- (7) A report published under subsection (6) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.
- (8) The commission, before giving a report under subsection (1), may—
 - (a) publish or give a copy of the report to the publisher authorised to publish the report; and
 - (b) arrange for the prepublishing by the publisher of copies of the report for this section.”

[46] The first thing to be noted about s 69 is that it is not in terms which confer a power on the PCCC to require that the Commission make a report. Secondly, it is not in terms which confer a power on the Commission to make a report.

[47] Reference should also be made to s 71 and s 71A which provide:

“71 Giving other information to parliamentary committee

The commission may, with the parliamentary committee’s consent, give the parliamentary committee information, orally or in writing, whether or not at the request of the committee, that is not included in a report under section 69.

71A Report containing adverse comment

- (1) This section applies if the commission proposes to make an adverse comment about a person in a report to be tabled in the Legislative Assembly, or published to the public, under this Act.
- (2) The commission must not make the proposed adverse comment unless, before the report is prepared, the commission gives the person an opportunity to make submissions about the proposed adverse comment.
- (3) If the person makes submissions and the commission still proposes to make the adverse comment, the commission must ensure the person’s submissions are fairly stated in the report.”

[48] None of the submissions attributes to s 71 any significance in this case. But this power, like the general power to report which is conferred by s 64(1), it is necessarily confined to the giving of information in the performance of the Commission’s functions. It provides no indication of s 69 empowering the PCCC to require the Commission to make and give a report which the Commission has not

made under a power conferred elsewhere in the Act. Nor is such an interpretation of s 69 indicated by s 71A.

- [49] Section 69 constitutes Division 4 of Chapter 2, Part 6 of the Act. Division 4 is headed “Tabling requirements”, and s 69 is headed “Commission reports to be tabled”. Section 69 empowers the PCCC to require a report to be *tabled*. Certain powers of the PCCC to direct that a report be *made* are conferred by s 294(3)(b) and s 295(2)(a) and (b). Those powers are exercisable only in certain circumstances and with the bipartisan support of the PCCC.
- [50] Section 292(c) does give the PCCC the function of examining reports of the Commission and reporting to the Legislative Assembly on any matter appearing in or arising out of the Commission’s reports. In exercising that function, the PCCC might see fit to give a direction to the Commission under s 69. It is another thing to say that the PCCC has a power under s 69 to require the Commission to make a report.
- [51] In our opinion, s 69 operates where there is a report made by the Commission under a power or a duty, the source of which is found elsewhere in the Act. The question then is whether there is another provision pursuant to which this report was made.

Section 64

- [52] There is the general power to report which is conferred by s 64(1), which is a power to report in the performance of the Commission’s functions. A critical question is whether this report was made in the performance of the Commission’s corruption functions.
- [53] The reasoning of the primary judge on this question was as follows:

“[154] The PCCC’s functions include monitoring “the performance of the [CCC’s] functions”. One of the functions of the CCC is to investigate suspected corrupt conduct. Where ultimately no finding of corrupt conduct and no finding positively of no corrupt conduct can be made, questions can arise as to the veracity of the investigation. An explanation, as here, as to what witnesses were interviewed and what steps were taken are clearly relevant to the performance of the CCC’s functions under the CC Act and therefore are clearly relevant to the PCCC’s monitoring role.

[155] Mr Carne’s submissions rather assume that a report’s only function is to state whether or not corrupt conduct has occurred. That is not so. For instance, by s 64 of the CC Act, the CCC reports as to the performance of its functions. Its functions include to “raise standards of integrity and conduct in units of administration” and that is achieved by various means, including making recommendations and suggestions. The performance of that function is not dependent upon a positive finding of corrupt conduct being made or a positive finding that there has been no corrupt conduct.”

(Footnotes omitted.)

[54] The Commission’s submissions support that reasoning, and add the following. The Commission’s case relies upon s 33(1)(a), by which the Commission has the function of raising standards or integrity and conduct in units of public administration. It also relies upon s 34(d), by which the Commission has an overriding responsibility in performing its corruption functions to prevent public confidence in the integrity of units of public administration. Reference is also made to s 4(1)(b) and s 5(3)(b) to which we have referred at [16] and [17].

[55] The Commission’s submissions are developed as follows:

“The standards of integrity in the public sector are raised by transparently and publicly reporting on the outcome of the Commission’s investigation and its recommendations, even if a specific finding of “corrupt conduct” is not made. A defining feature of integrity in a system of public administration is the transparent determination of allegations of corruption, whether accepted or rejected, and an explanation of how such a conclusion is reached. The preparation of the report in this case should be seen in this light such that the making of the report falls within the Commission’s corruption function.

This conclusion about the report is reinforced by one of the main purposes of the CC Act which is to “continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector”: s4(1)(b), CC Act. The Commission has primary responsibility for the achievement of the CC Act’s purposes: s7. The Commission is to help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so: s5(3)(b).”³⁰

[56] Those submissions include statements which are expressed at a high level of abstraction, do not correspond with the terms of the Act and cannot be accepted. There is no provision in the Act by which an investigation of a complaint of corruption need involve a “transparent determination” of the allegations and an explanation of how an outcome was reached. As we have discussed, it is not the Commission’s function to adjudicate upon allegations of corruption. Having investigated a complaint of corruption, the task of the Commission is to decide whether prosecution proceedings or disciplinary action should be considered. If it decides that such proceedings or action should be considered, it may report, not publicly, but to a prosecuting authority, a head of jurisdiction or the chief executive officer of the relevant unit of public administration, as the case may be.³¹ Otherwise, there is no provision by which it is to report. An investigation may involve the Commission holding a hearing, but generally the hearing will not be open to the public.³² Further, the complaint being investigated may be one which was made anonymously, as occurred in this case.

[57] The Commission’s reference to s 5(3)(b) has no apparent relevance to the present case, where it is difficult to see how the tabling of the report would assist this unit of

³⁰ Respondent’s supplementary submissions, paragraphs 5 and 6.

³¹ s 49(2).

³² s 177(1).

public administration by increasing its capacity to deal effectively and appropriately with corruption.

- [58] As discussed,³³ the Commission’s corruption functions do not extend to addressing conduct which, whilst falling short of a proper standard of performance, is not corrupt conduct. The Commission’s function of raising standards of integrity and conduct in units of public administration is one of its “functions for corruption”. It is evident that the Commission has a wider view of its charter, by which it would seek to uphold other standards of conduct and performance by public servants and officials. We will not refer to the content of the proposed report, except to what is set out in its foreword by the Commission’s then Chairperson:

“Where senior public servants and public officials who hold positions of trust behave in a way that does not meet the standard expected of them, they should be held accountable for those behaviours. One way to achieve this is to inform the people of Queensland of instances where standards have undoubtedly and repeatedly not been met.”

- [59] The Commission submits that this report would be a step which involves a “dealing with” a complaint about corruption, in that it falls within paragraph (e) of the definition of “deal with”,³⁴ namely it would be “other action, including managerial action, to address the complaint in an appropriate way.” That submission cannot be accepted. By providing this report, the Commission would not be *addressing the complaint*. The Commission has already addressed the complaint: it has completed its investigation and the outcome is that there will be no criminal or disciplinary proceeding.
- [60] This Court, like the primary judge, permitted the Speaker, through counsel, to provide submissions as *amicus curiae*, on the question of whether the proposed report attracts parliamentary privilege. However, the Speaker has provided submissions also on the question of whether the Commission’s powers to deal with this complaint extend to the provision of this report.
- [61] The submissions for the Speaker refer to s 46(1)(b), by which the Commission deals with a complaint about, or information or matter involving, corruption by “taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34”. It is submitted for the Speaker that if the provision of this report is what the Commission considers to be “the most appropriate action”, having regard to the principles set out in s 34, the Commission would be “dealing with” the complaint by this report. That submission cannot be accepted. As we have discussed, the principles stated in s 34 govern the Commission’s performance of its corruption functions: they do not expand those functions.
- [62] The submissions for the Speaker refer to s 33(2) and s 46A, although this is a case involving a complaint of corruption and is therefore governed by s 33(1) and s 46. What we have said in the previous paragraph would apply equally to those provisions.

³³ At [26].

³⁴ In Schedule 2 to the Act.

- [63] Nor, in our respectful opinion, can the reasons of the primary judge, as set out earlier, be accepted. At paragraph [154] of the Judgment, his Honour referred to the monitoring role of the PCCC. However, the PCCC has not required the making of this report (if it is empowered to do so).
- [64] In paragraph [155] of the Judgment, the judge said that the corruption functions of the Commission might be performed by “making recommendations and suggestions”, even absent a finding of corrupt conduct. His Honour saw that as the performance of the function, expressed in s 33(1)(a), of raising standards of integrity and conduct in units of administration. As we have discussed, that provision does not expand the Commission’s corruption function beyond conduct which is, or which might be, corrupt conduct.³⁵

Section 69: conclusions

- [65] Section 69 operates where there is a report made by the Commission under a power or duty conferred or imposed elsewhere in the Act.
- [66] Further, the evident purpose of s 69 is not to facilitate the PCCC’s monitoring of the performance of the Commission’s functions. The evident purpose is to facilitate the availability to the public of certain of the Commission’s reports, by requiring them to be tabled in the Legislative Assembly, with the immunities and privileges of a report so tabled and published.
- [67] The relevant functions of the Commission in this case are the corruption functions. The Commission performed its corruption functions by itself dealing with this complaint.³⁶ It did so by investigating the complaint, deciding that prosecution proceedings or disciplinary action should be considered, and providing the evidence from its investigation to the Director of Public Prosecutions.³⁷ There was no other action to be taken by the Commission to address the complaint.
- [68] It is evident that the Commission has acted upon a different view of its corruption functions. The Commission considers that having dealt with the complaint about corrupt conduct, and thereby having performed its corruption functions, the Commission should expose to the public evidence of what the Commission considers to be conduct falling short of a standard to be expected of a senior public servant or public official. The Commission has misconceived its functions and powers in the course which it has pursued with this report. The report is beyond the Commission’s power to report which is conferred by s 64.

- [69] Consequently, this is not a report to which s 69 applies.

Parliamentary privilege

- [70] Much of the primary judgment was concerned with a question whether parliamentary privilege attached to the report at least by the time that it was sent by the Commission to the Chair of the PCCC. The judge determined that parliamentary privilege did apply to protect the report from question or

³⁵ Or conduct which is related to it in the way described in s 33(2).

³⁶ s 35(1)(e).

³⁷ Evidently, pursuant to s 49.

impeachment in the court.³⁸ The judge referred to s 8 and s 9 of the *Parliament of Queensland Act 2001* (Qld), the former providing that the freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly. He pointed out that “proceedings in the Assembly” was defined to include all words spoken, and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee,³⁹ and that the PCCC is a committee as defined.⁴⁰

[71] Section 9 provides:

“9 Meaning of proceedings in the Assembly

- (1) Proceedings in the Assembly include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.
- (2) Without limiting subsection (1), proceedings in the Assembly include—
 - (a) giving evidence before the Assembly, a committee or an inquiry; and
 - (b) evidence given before the Assembly, a committee or an inquiry; and
 - (c) presenting or submitting a document to the Assembly, a committee or an inquiry; and
 - (d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and
 - (e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c); and
 - (f) preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and
 - (g) a document (including a report) prepared, made or published under the authority of the Assembly or a committee.
- (3) Despite subsection (2)(d), section 8 does not apply to a document mentioned in subsection (2)(d)—
 - (a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, or presented or submitted to, the Assembly or a committee or an inquiry; and

³⁸ Judgment [33].

³⁹ s 9(1).

⁴⁰ *Parliament of Queensland Act 2001* (Qld), Schedule and s 291 of the *Crime and Corruption Act 2001* (Qld).

- (b) if the document has been authorised by the Assembly or the committee to be published.

Example—

A document evidencing fraud in a department tabled at a portfolio committee inquiry can be used in a criminal prosecution for the fraud if the document was not created for the committee's inquiry and the committee has authorised the document to be published.

- (4) If the way in which a document is dealt with has the effect that—
- (a) under an Act; or
- (b) under the rules, orders, directions or practices of the Assembly;
- the document is treated, or accepted, as having been tabled in the Assembly for any purpose, then, for the purposes of this Act, the document is taken to be tabled in the Assembly.
- (5) For this section, it does not matter what the nature of the business transacted by a committee is or whether the business is transacted under this Act or otherwise.”

[72] The primary judge discussed a number of cases, beginning with *Ainsworth v Criminal Justice Commission*,⁴¹ where the High Court upheld a challenge to a report by the then Criminal Justice Commission which had made adverse comments about the appellant, without procedural fairness having been afforded to him. Brennan J considered a question of whether parliamentary privilege would be offended by a court scrutinising the report. The primary judge distinguished *Ainsworth* upon the basis that it was decided before the enactment of the *Parliamentary Papers Act 1992* (Qld), which contained an equivalent provision to s 9 of the *Parliament of Queensland Act 2001* (Qld).⁴²

[73] The judge discussed *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*,⁴³ which was decided after the enactment of the *Parliamentary Papers Act 1992* (Qld). The report there in question was prepared by the respondent Commissioner (holding a similar position under the then *Criminal Justice Act 1999* (Qld) (repealed) to the Parliamentary Crime and Corruption Commissioner under the present Act). The report was provided to the equivalent of the present PCCC. The report was an investigation of the then Criminal Justice Commission, which challenged the report on grounds which included a failure to afford procedural fairness. This Court accepted that the report was not amenable to judicial review of its making or contents. It was held that within the meaning of s 3(3) of the *Parliamentary Papers Act 1992*, a report by the Commissioner to the Parliamentary Criminal Justice Committee pursuant to a request by it was a

⁴¹ (1992) 175 CLR 564.

⁴² Judgment [94].

⁴³ [2002] 2 Qd R 8.

“proceeding in Parliament”. Section 3(3) was in relevantly the same terms as s 9(2) of the *Parliament of Queensland Act 2001* (Qld). In particular, this Court found that the process of preparing the report was part of the “proceedings in Parliament” under the equivalent of s 9(2)(e). The primary judge, correctly, said that this case was distinguishable from the present on at least two bases. The first was that the report in that case was prepared at the request of the equivalent of the PCCC. The second was that the Commissioner was herself an officer of the Parliament.⁴⁴

- [74] His Honour discussed the judgment of this Court in *Rowley v O’Chee*,⁴⁵ which concerned a claim for privilege by a Senator over documents he had received from third parties. Ultimately, his Honour considered that it was difficult to see how the principles in that case applied here.⁴⁶
- [75] He discussed this Court’s judgment in *Erglis v Buckley (No 2)*,⁴⁷ which he saw as a case of a different kind. Defamatory remarks about a nurse were made in a statement by some of her colleagues, which they provided to the Minister for Health after the Minister said that she would read the statement in the Parliament if they prepared it. It was held that s 8 and s 9 of the *Parliament of Queensland Act 2001* (Qld) applied once the Minister undertook to read and table the statement in the Parliament. At that point the document was one which had been prepared for the purposes of transacting business in the Assembly.
- [76] Lastly, the primary judge discussed *Carrigan v Honourable Senator Michaelia Cash*,⁴⁸ which involved a report which resulted from an investigation performed by a retired judge on the appointment of Senator Cash who was then the relevant Minister. The applicant in that case complained that the report was prepared without affording her procedural fairness. It was held that the report was subject to parliamentary privilege, it having been prepared upon the request of the Minister and in circumstances where the report was prepared for the purposes of transacting the business of a House of Parliament.
- [77] His Honour applied these authorities to the present case as follows. He said that the Commission has statutory functions which include the conduct of investigations and, he suggested, a report of its findings.⁴⁹ In that second respect, he referred to s 64 and s 69. He referred to the oversight of the Commission which is the statutory function of the PCCC, and therefore by definition, the business of the Assembly.⁵⁰ Therefore, the judge concluded, “a report prepared by the [Commission] as a result of an investigation pursuant to the powers vested in it by the [Act], where it is intended by the [Commission] to supply the report to the PCCC, is a document prepared for “presenting or submitting a document to the Assembly...for the purposes of or incidental to, transacting business of the [PCCC]”.⁵¹
- [78] Further, the judge held, the PCCC had accepted the report for the purpose of transacting the business of the PCCC.⁵²

⁴⁴ Judgment [99].

⁴⁵ [2000] 1 Qd R 207.

⁴⁶ Judgment [108].

⁴⁷ [2006] 2 Qd R 407.

⁴⁸ [2016] FCA 1466.

⁴⁹ Judgment [117].

⁵⁰ Judgment [118].

⁵¹ Judgment [120] referring to s 9(1) of the *Parliament of Queensland Act 2001* (Qld).

⁵² Judgment [122].

- [79] Section 55 of the *Parliament of Queensland Act 2001* (Qld) provides for evidentiary certificates which provide evidence of certain matters relevant to the operation of that Act. The judge noted that in this case, acting under s 55, the Chairman of the PCCC had certified the report as a document prepared for the purposes of, or incidental to, transacting business of the PCCC within s 9(2)(c) of the *Parliament of Queensland Act 2001* (Qld), in that it was a document presented or submitted to the PCCC and a document that the PCCC had authorised to be published to the Supreme Court of Queensland and the parties in this proceeding.⁵³
- [80] It is evident that his Honour’s conclusion that this report was subject to parliamentary privilege was dependent upon the report being one which was made by the Commission and delivered by it to the PCCC in the performance of the Commission’s functions. His Honour left open the question of whether the report would be privileged if it was not a report for the purposes of s 69.⁵⁴ The possibility it would still be privileged was discussed by his Honour only saying that the document was “as a matter of fact, prepared with the intention of delivery to the PCCC” and that it was in fact so delivered. The judge referred also to the certificate by the Chairperson of the PCCC.⁵⁵
- [81] However, those facts could not confer parliamentary privilege upon a document made and delivered to the PCCC in purported, but not actual performance of the Commission’s functions. The preparation and delivery of the report, without the operation of s 69, were not acts done in transacting the business of the Assembly or its committee.

Orders

- [82] There should be orders as follows:
1. Appeal allowed.
 2. Set aside the order made in the Trial Division on 10 September 2021 dismissing the appellant’s application.
 3. Declare that the document made by the respondent entitled “An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report” is not a report for the purposes of s 69(1) of the *Crime and Corruption Act 2001* (Qld).
 4. The respondent to pay the appellant’s costs of the appeal.
 5. Liberty to apply for such further orders consistent with this judgment by written submissions, not to exceed five pages in length, to be submitted within 21 days of the delivery of this Court’s judgment.
- [83] **FREEBURN J:**
- [84] The appellant, Mr Carne, was the Public Trustee of Queensland from March 2009 until March 2014 and again from March 2016 until his resignation effective from 31 July 2021. Sometime prior to 6 October 2020, the Crime and Corruption

⁵³ Judgment [123].

⁵⁴ Judgment [142].

⁵⁵ Judgment [141].

Commission (the Commission)⁵⁶ prepared a report on certain allegations against him (the report). On 6 October 2020, the Commission forwarded the report to the Parliamentary Crime and Corruption Committee (the PCCC), a committee of the Queensland Parliament which oversees the Commission and reports to the Parliament. The Commission requested that, under s 69(1)(b) of the *Crime and Corruption Act 2001* (Qld) (the CC Act), the PCCC direct that the report be given to the Speaker of Queensland Parliament.

[85] The appellant was concerned that such a step would lead to the publication of the report and the report would thereby enter the public domain. And so, the appellant applied to the court for:

- (a) a declaration that s 69(1) of the CC Act does not apply to the report;
- (b) a declaration that, in preparing the report, the Commission failed to observe the requirements of natural justice;
- (c) an injunction to the effect that the court should declare as invalid a resolution of the Commission seeking a direction from the PCCC that the report be given to the Speaker of Queensland Parliament; or
- (d) a mandatory injunction requiring the Commission to retract that resolution.

[86] The primary judge found that the preparation of the report was authorised by s 64 of the CC Act which provides that the Commission “*may report in performing its functions*”.⁵⁷ The primary judge also found that parliamentary privilege protected the report from question or impeachment in the court. For those reasons the primary judge refused the application for declarations and an injunction.

[87] There are, therefore, two broad questions –

- (a) What is the status of the report? and
- (b) Does parliamentary privilege apply to protect the report from question or impeachment in the court?

[88] Before considering each of those questions, it is necessary to say something of the factual background and the role of the Commission and the PCCC.

Factual Background

[89] The statement of agreed facts explains how the report came into existence and how the dispute arose:

- (a) On 25 June 2018, the Commission received an anonymous complaint against the appellant.

⁵⁶ The Commission has both a crime function and a corruption function: CC Act, Chapter 2 parts 2 (crime) and 3 (corruption).

⁵⁷ During oral argument Mr Carne’s counsel conceded that the preparation of the report was authorised by s 64 but contended that the delivery of the report to the PCCC, and its publication, was not authorised. In later written submissions, invited by the court, the appellant contended that, whilst the investigation was an exercise of the Commission’s corruption function under s 33(1)(b) and s 33(2) of the CC Act, from the point at which it was decided there was no corrupt conduct, the exercise of the corruption function ceased. See the later discussion of the Commission’s powers and functions.

- (b) That complaint was assessed by the Commission to involve multiple allegations of “corrupt conduct” under s 15 of the CC Act.
- (c) In July 2018, the complaint was referred to the Commission’s Corruption Operations Division for investigation.
- (d) In August 2018, the Commission received further correspondence from the same anonymous source who disclosed some additional information.
- (e) In September 2018, the Commission commenced an investigation of the allegations against the appellant.
- (f) On 13 June 2019, the appellant was advised by the Attorney-General of the allegations against him, and he was immediately suspended from office.
- (g) By an email on 17 June 2019, the Commission notified the appellant of the Commission’s investigation and requested an opportunity to conduct:
 - i. A formal disciplinary interview to allow the appellant to hear the allegations against him and to provide comment; and
 - ii. A separate criminal interview concerning matters related to the use of resources of the Public Trust Office.
- (h) Between June 2019 and January 2020, the Commission and the appellant’s solicitors exchanged correspondence about the subject matter of the investigation, and the process for proposed interviews.
- (i) The appellant did not participate in an interview with the Commission during the period from June 2019 to January 2020 in relation to the Commission’s investigation.
- (j) On 27 November 2019, the Attorney-General served the appellant with a “show cause” letter containing various allegations against him.
- (k) On 28 January 2020, the appellant was examined by a psychiatrist.
- (l) On 13 February 2020, the appellant’s solicitors advised the Commission that the appellant was unable to participate in any interview at that time because of the state of his mental health.
- (m) The appellant has never been interviewed by the Commission in connection with the investigation and has never provided a written response to the Attorney-General’s “show cause” letter.
- (n) The Commission says that it completed the investigation on 3 April 2020 and that no further investigation of the appellant is contemplated by it under the CC Act.
- (o) On 30 April 2020, the Commission advised the appellant’s solicitors that it had concluded its investigation and advised that at the current time it was not proposing any criminal proceedings against the appellant.

- (p) By a separate letter on the same day the Commission advised the Attorney-General that:
- i. it had determined that no criminal prosecution would be pursued against the appellant;
 - ii. the Commission had concluded its investigation into the appellant.

- (q) On 19 June 2020, a private meeting was held between the Chair of the PCCC and the Chair of the Commission during which the PCCC Chair asked:

“Did you say you are proposing to prepare a report in relation to this matter because it seems like, again, a cultural issue, as we have discussed in relation to the earlier matter?”

The Chair of the Commission responded:

“We have not decided finally, but for the reasons you are articulating I think it is one that we should, because it is high profile and it has been in the media. We have not charged him. His show cause will take its course and, after all that has settled, I think we probably should articulate some of the concerns that we had.”

- (r) On 31 July 2020, the appellant resigned as the Public Trustee prior to the “show cause” matter being finalised; the appellant’s resignation brought the “show cause” process to an end.
- (s) On 4 September 2020, the Commission sent a letter to the appellant’s solicitors which:
- i. advised that the Commission “intends to publish a report on this investigation in accordance with section 69 of the [CC Act], providing an overview of the investigation and outcomes”.
 - ii. Enclosed a copy of the draft report for the appellant’s consideration prior to any publication and invited the appellant to provide comments by 9 September 2020.
- (t) On 9 September 2020, the Commission extended the time for the appellant to make a submission until 16 September 2020.
- (u) On 11 September 2020, a private meeting was held between the PCCC and the Commission during which the Commission advised the PCCC that the Commission would be seeking a direction under s 69 of the CC Act.
- (v) On 16 September 2020, the appellant’s solicitors delivered confidential submissions in response to the draft report.
- (w) On 18 September 2020, the Commission wrote to the appellant’s solicitors seeking, among other things, responses to particular issues raised by media publications attributing various comments to the appellant.
- (x) On 23 September 2020, the appellant’s solicitors responded.

- (y) On 30 September 2020, the appellant’s solicitors:
 - i. wrote to the Commission challenging the basis on which the Commission proposed to proceed under s 69 of the CC Act and requested that the Commission reconsider publishing the report to avoid legal proceedings; and
 - ii. wrote to the PCCC enclosing its letter to the Commission.
- (z) On 6 October 2020, the Commission advised the appellant’s solicitors that their submissions had been considered, attached a copy of the report and stated that the Commission had approved the seeking of a direction from the PCCC pursuant to s 69(1)(b) of the CC Act to enable tabling of the report in the Legislative Assembly.
- (aa) On that same day, the Commission sent the report to the PCCC and requested that pursuant to s 69(1)(b) of the CC Act, the PCCC direct that the report be given to the Speaker of the Legislative Assembly. The Commission attached a briefing note and flying minute recording the Commission’s decision to approve the seeking of that direction.
- (bb) On 8 October 2020, the appellant commenced this proceeding seeking declarations and an injunction.
- (cc) By letter dated 8 October 2020, the Commission advised the PCCC of the proceeding and requested that the PCCC refrain from further considering the report and giving a direction under s 69(1)(b) of the Act until the appellant’s proceeding had been heard by the Court.
- (dd) By letter dated 8 October 2020, the Commission advised the appellant’s solicitors that the Commission would not pursue a direction under s 69(1)(b) of the CC Act until the proceedings had been decided by the court.
- (ee) By letter dated 13 October 2020, the PCCC advised the Commission that it had resolved, as per the Commission’s request, to defer consideration of the Commission’s request for a direction to give the final report to the Speaker in accordance with s 69(1)(b) of the CC Act until the appellant’s application had been decided by the court.

[90] As can be seen, on 6 October 2020, the Commission requested that, pursuant to s 69(1)(b) of the CC Act, the PCCC direct that the report be given to the Speaker. Then, when the appellant commenced proceedings, both the Commission and the PCCC agreed to “hold fire” until the court decided the appellant’s application. Even though the primary judge dismissed the application, the “hold fire” situation remains pending this court’s determination of the appeal.

The Roles of the Commission and the PCCC

[91] It is necessary to explain the roles of the Commission and the PCCC.

- [92] The main purposes of the CC Act are to combat and reduce the incidence of major crime and to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.⁵⁸
- [93] It is the Commission which has primary responsibility for the achievement of the Act's purposes.⁵⁹ To enable the Commission to achieve its major crime purposes, it is armed with investigative powers, not ordinarily available to the police service, to effectively investigate major crime and criminal organisations and their participants. To enable the Commission to achieve its corruption purposes the Commission is to:
- (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
 - (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.⁶⁰
- [94] Whilst the Commission has primary responsibility for the achievement of the Act's purposes,⁶¹ the PCCC has responsibility for monitoring and reviewing the Commission's performance.⁶² The PCCC is a standing committee of the Legislative Assembly which means that the PCCC is a parliamentary committee.⁶³ In practical terms that means that the Commission has direct reporting and on-going links to parliament. That is a distinguishing feature of permanent commissions (as opposed to ad hoc inquiries) and is designed to give permanent commissions greater independence from executive government.⁶⁴
- [95] The definition of "*corrupt conduct*" in s 15 of the CC Act has two limbs. The first limb, s 15(1), comprises conduct that:
- (a) adversely affects, or could adversely affect the functions or the exercise of the powers of a unit of public administration or a person holding an appointment; and
 - (b) results, or could result in the performance of functions, or the exercise of the power, in paragraph (a) in a way that is not honest, not impartial, involves a breach of trust, or involves a misuse of information or material acquired in connection with the exercise of those functions or powers; and
 - (c) would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for termination.
- [96] The second limb of the definition, in s 15(2), defines "*corrupt conduct*" as the conduct of a person (whether or not they hold an appointment) that:
- (a) impairs, or could impair, public confidence in public administration;

⁵⁸ Section 4 of the CC Act.

⁵⁹ Section 7 of the CC Act. See also s 5(1).

⁶⁰ Section 5(3) of the CC Act.

⁶¹ Section 7 of the CC Act.

⁶² Section 9 of the CC Act.

⁶³ See sections 9 and 291 of the CC Act which establishes the PCCC as a committee of the Legislative Assembly.

⁶⁴ Prasser, *Royal Commissions and Public Inquiries in Australia* (2nd ed) at [5.9]. Of course, whilst it is interesting to note the common feature of permanent commissions, what is crucial are the terms of this legislation.

- (b) involves collusive tendering, fraud relating to an application for a licence, permit or other authority under an Act (with certain purposes), dishonestly obtaining a benefit from public funds, or evading a state tax, or fraudulently obtaining or retaining an appointment; and
- (c) would, if proved, be a criminal offence or disciplinary breach providing reasonable grounds for termination.

[97] In the Act a reference to “*corruption*” includes, in the context of a complaint or corruption investigation, suspected corruption.⁶⁵

[98] The main purpose of the CC Act, to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector is to be achieved by two separate functions of the Commission – the “corruption functions” and the “prevention function”.⁶⁶

[99] The Commission’s “*corruption functions*” are to:

- (a) raise standards of integrity and conduct in units of public administration;
- (b) ensure that complaints or information involving corruption are dealt with in an appropriate way, having regard to the principles set out in section 34;
- (c) investigate, and otherwise deal with, conduct liable to allow, encourage or cause corrupt conduct and conduct connected with corrupt conduct; and
- (d) investigate whether corrupt conduct or conduct mentioned in paragraph (c) may have happened, may be happening, or may happen.⁶⁷

[100] Without limiting the ways in which the Commission may perform its functions, s 35 of the CC Act specifies that the Commission may perform its corruption functions by doing one or more of 10 specified things. That non-exhaustive list includes:

- (a) expeditiously assessing complaints and information notified to the Commission;
- (b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;
- (c) performing its monitoring role for police misconduct as provided for under s 47(1);
- (d) performing its monitoring role for corrupt conduct as provided for under s 48(1);
- (e) dealing with complaints about corrupt conduct by itself or in cooperation with a unit of public administration;
- (f) investigating and otherwise dealing with, on its own initiative:

⁶⁵ Section 22(2) of the CC Act.

⁶⁶ Because the crime purposes of the Act are not relevant, those purposes have been excluded from this discussion of the CC Act.

⁶⁷ Section 33 of the CC Act.

- (i) the incidence of corruption, or particular cases of corruption, throughout the State; or
- (ii) conduct liable to allow, encourage or cause corrupt conduct, and conduct connected with corrupt conduct;
- (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;
- (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for the prosecution of persons for offences, or disciplinary proceedings against persons;
- (i) assessing the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption; and
- (j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.⁶⁸

[101] The Commission's corruption functions are to be performed having regard to the principles in s 34 of the CC Act. Section 34 is in these terms:

“Principles for performing corruption functions

It is the Parliament's intention that the commission apply the following principles when performing its corruption functions—

(a) Cooperation

- to the greatest extent practicable, the commission and units of public administration should work cooperatively to prevent corruption
- the commission and units of public administration should work cooperatively to deal with corruption

(b) Capacity building

- the commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of corruption effectively and appropriately

(c) Devolution

- subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with corruption in a unit of public administration should generally happen within the unit

⁶⁸ This is a paraphrased version of s 35 of the CC Act. The Speaker's further submissions (at [10]) accurately describe s 35(1) as providing a non-exhaustive list of ways in which the Commission may exercise its "corruption functions".

(d) Public interest

- the commission has an overriding responsibility to promote public confidence—
 - in the integrity of units of public administration and
 - if corruption does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—
 - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
 - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration
 - any likely increase in public confidence in having the corruption dealt with by the commission directly.”

[102] Those principles to be applied by the Commission include some public interest concepts such as cooperation with the units of public administration, “capacity building” and the Commission’s “overriding responsibility” to promote public confidence in the integrity of units of public administration, and public confidence in the way in which corruption is dealt with.

[103] The Commission’s “*prevention function*” is to help to prevent major crime and corruption.⁶⁹ Section 24 of the CC Act provides:

“Without limiting the ways the commission may perform its prevention function, the commission performs the function by—

- (a) analysing the intelligence it gathers in support of its investigations into major crime and corruption; and
- (b) analysing the results of its investigations and the information it gathers in performing its functions; and
- (c) analysing systems used within units of public administration to prevent corruption; and
- (d) using information it gathers from any source in support of its prevention function; and
- (e) providing information to, consulting with, and making recommendations to, units of public administration; and

⁶⁹ Section 23 of the CC Act.

- (f) providing information relevant to its prevention function to the general community; and
- (g) ensuring that in performing all of its functions it has regard to its prevention function; and
- (h) generally increasing the capacity of units of public administration to prevent corruption by providing advice and training to the units and, if asked, to other entities; and
- (i) reporting on ways to prevent major crime and corruption.”

[104] One primary responsibility of the Commission is to deal with complaints about, or information or matter involving, corrupt conduct.⁷⁰ The Commission deals with a complaint about corruption by expeditiously assessing each complaint and taking the action the Commission considers most appropriate in the circumstances having regard to the principles set out in s 34.

[105] The Commission has a discretion as to how it deals with complaints. It may:

- (a) deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with;
- (b) refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the commission, subject to the commission’s monitoring role;
- (c) without limiting paragraph (b), refer a complaint about corrupt conduct of a person holding an appointment in a unit of public administration that may involve criminal activity to the commissioner of police to be dealt with;
- (d) take no action or discontinue action if, for example, the complaint lacks substance or if dealing with the complaint would not be in the public interest or an unjustifiable use of the Commission’s resources.⁷¹

[106] Section 51 of the CC Act provides that nothing in Part 3 of the CC Act⁷² limits the action that may lawfully be taken by the Commission or a unit of public administration to discipline or otherwise deal with a person for corruption.

[107] Thus, the CC Act utilises something of a hierarchy. At the apex are the main purposes of the Act, one of which is to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector. Those main purposes are to be achieved by the establishment of the Commission, which has primary responsibility for the achievement of the Act’s purposes. The Commission is to investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct, and help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.

[108] Then, the Commission is vested with two broad functions - its corruption functions and its prevention function. While there is no limit on how the Commission may

⁷⁰ Section 45(1) of the CC Act. For convenience a complaint about, or information or matter involving, corruption will be compendiously referred to as a complaint.

⁷¹ Section 46 of the CC Act.

⁷² Part 3 of the CC Act is the part of the Act that deals with corruption.

perform its corruption functions, ten ways of performing the Commission's corruption functions are specified in s 35 of the CC Act.⁷³ Further, when performing its corruption functions, the Commission must apply the principles set out in s 34 of the CC Act. The prevention function has a similar but more condensed structure. The Commission also has a primary responsibility of dealing with complaints but has a discretion as to how it deals with them.

- [109] Importantly, s 57 of the CC Act requires that the Commission, at all times, act independently, impartially, and fairly having regard to the purposes of the Act and the importance of protecting the public interest.
- [110] That summary of the relevant provisions of the CC Act exposes two points of significance here. The *first* is that the regime of the Act puts at its forefront wider goals than the prosecution of corruption. Broader public interest objectives such as the raising of standards of integrity are central.⁷⁴ The *second* is that, whether the Commission is exercising its corruption functions, or its prevention function, or its primary responsibility for dealing with complaints, the Commission has a wide discretion as to the actions it may take.⁷⁵
- [111] The Commission's exercise of that discretion must, however, be exercised independently, impartially and fairly having regard to the purposes of the Act and the public interest.⁷⁶
- [112] Those two points of significance are consistent with the fact that the parliament has chosen to establish the Commission as a permanent commission. Such bodies commonly have wide legislatively defined areas of responsibility and considerable discretion as to how they interpret those areas of responsibility.⁷⁷ Thus, permanent commissions like this have considerable independence in determining the topics they investigate because their role is not limited to identifying corruption but also about seeking the prevention and amelioration of corruption.⁷⁸

This Complaint and Investigation

- [113] Here, a complaint was made to the Commission concerning the appellant. As the agreed statement of facts recites, the complaint was assessed by the Commission to involve multiple allegations of "*corrupt conduct*" under s 15 of the CC Act. In July 2018, the Commission commenced investigating the complaint. For that purpose, the complaint was referred to the Commission's Corruption Operations Division for investigation. Thus far, there can be no doubt that the Commission's investigation was within its corruption functions and its power to deal with complaints.⁷⁹
- [114] Then, having investigated and assessed the complaint, the Commission had a discretion to take the action that the Commission considered to be the most appropriate in the circumstances having regard to the principles set out in s 34 of the

⁷³ See paragraph [99] above.

⁷⁴ For example, the Act includes a research function: s 52 of the CC Act.

⁷⁵ See, in particular, ss 35, 24 and 46 of the CC Act.

⁷⁶ See s 57 of the CC Act.

⁷⁷ Prasser, *Royal Commissions and Public Inquiries in Australia* (2nd ed) at [5.20].

⁷⁸ Prasser, *Royal Commissions and Public Inquiries in Australia* (2nd ed) at [5.20]. Again, the crucial issue involves a proper interpretation of this legislation.

⁷⁹ Section 45(1) of the CC Act. But see also ss 5(3), 33, 35 and 46.

CC Act.⁸⁰ As explained, the Commission had a discretion as to how it dealt with the complaint. The choices open to the Commission included referring the complaint to public officials, or to the Commissioner of Police, or dealing with the complaint itself, or taking no action.⁸¹

[115] On 30 April 2020, the Commission advised the appellant’s solicitors that it had concluded its investigation, and, at the current time, it was not proposing any criminal proceedings against the appellant.⁸² Those steps were plainly within the Commission’s discretion.⁸³

[116] It is worth noting that the Commission ended up in what might be described as a neutral stance. It completed its investigation. The Commission did not decide to take action itself, or to refer the complaint to a prosecuting authority. On the other hand, the Commission did not, for example, decide that the complaint lacked substance or even that it should take no action or discontinue action.⁸⁴ To the appellant’s solicitors, the Commission said that:

“The CCC is mindful of ongoing show cause proceedings involving your client, but is able to advise that **at the current time**, the CCC is not proposing any criminal proceedings against your client will result.” [emphasis added]

[117] There is more detail, and a subtle difference, in the Commission’s letter on the same day to the Attorney-General. It reads:

“During the investigation, some allegations and investigation findings were referred to relevant entities (including units of public administration) to be dealt with. Of the matters which remained with the CCC, and after a review of evidence by the Director of Public Prosecutions, **it has been determined that no criminal prosecution will be pursued.**

The CCC has now concluded its investigation into all of these matters and is in a position to advise you of this outcome.

The CCC has been maintaining contact with the Acting CEO of the Public Trust Office, Mr Zhou and has forwarded to him a number of procedural recommendations relating to the areas of [seven categories of complaints are specified]

The CCC is also currently in the process of preparing additional recommendations to send to the Commission Chief Executive of the

⁸⁰ Section 46(1)(b) of the CC Act. As explained above, those principles include an overriding responsibility to promote public confidence in the integrity of units of public administration and the way corruption is dealt with.

⁸¹ Section 46(2) of the CC Act. See also s 51 of the CC Act which says that nothing in this part of the Act limits the action that may be lawfully taken by the Commission to discipline or otherwise deal with a person for corruption. Again, the Speaker’s further submissions (at [12]) accurately describe s 46 as providing a non-exhaustive list of actions which the Commission may take.

⁸² The Commission said something similar to the Attorney-General: see paragraph [89] above.

⁸³ Section 49 of the CC Act was not engaged. That section provides that a report on an investigation may be made to the prosecuting authority, or to the various heads of jurisdiction, but the section only applies where the Commission decides that prosecution proceedings or disciplinary action should be considered.

⁸⁴ See s 46(2)(g) of the CC Act.

Public Service Commission regarding Governor-in-Council and Chief Executive Officer appointments.” [emphasis added]

- [118] Two things can be observed about the letter to the Attorney-General. The *first* is that the letter speaks of a determination that criminal proceedings will not be pursued. That is in contradistinction with the letter to the appellant’s solicitors that merely says that “*at the current time*” the Commission was not proposing any criminal proceedings.⁸⁵ The *second* is that the Commission said it was pursuing a number of procedural recommendations arising out of its investigations. No detail was given but those steps are likely to be within the Commission’s powers.⁸⁶
- [119] The disciplinary actions did not proceed. That was because the appellant’s resignation made those disciplinary actions pointless.

The Report

- [120] As can be seen from the statement of agreed facts, the report of the Commission was first foreshadowed in a conversation between the respective heads of the Commission and the PCCC. The Commission was proposing to articulate some of its concerns. It noted that there was what was described as a “*cultural issue*”.
- [121] A draft of the report first emerged on 4 September 2020. It was described as “*providing an overview of the investigation and the outcomes*”. The report not only identified specific complaints about the appellant. It also identified a number of recommendations, principally to the Office of the Public Trustee.
- [122] There was a further conversation between the respective heads of the Commission and the PCCC on 11 September 2020. The head of the Commission stated that the Commission would be seeking a direction under s 69 of the CC Act. Section 69 applies to reports on a public hearing, research reports, and other reports that the PCCC has directed be given to the Speaker. And so, the Commission and the PCCC had in mind that, once the report was finalised, the PCCC would direct that the Commission’s report be given to the Speaker.
- [123] As is clear from the statement of agreed facts, the Commission’s letter of 6 October 2020 to the PCCC enclosed the final report. The Commission requested that the PCCC direct that the report be given to the Speaker. If these proceedings had not intervened,⁸⁷ the PCCC would then have considered whether to make such a direction. It is unclear whether the PCCC would or would not make such a direction. However, there are specific requirements if the Commission proposes to make an adverse comment about a person in a report to be tabled in the Legislative Assembly or published to the public.⁸⁸

⁸⁵ It may be that there is no practical difference between the two statements. Neither suggests any final or binding position. The issue is discussed below.

⁸⁶ See, for example, ss 23 and 35 of the CC Act.

⁸⁷ More accurately what has intervened has been both the proceedings and the agreement of the Commission and the PCCC to “hold fire”: see paragraph [89] (cc) to (ee) above.

⁸⁸ Section 71A of the CC Act.

- [124] The question, then, is whether the report qualifies as a report under s 64(1) of the CC Act. Section 64(1) merely says: “*The commission may report in performing its functions.*”⁸⁹
- [125] In my opinion, the report does qualify as a report prepared by the Commission in performing its functions. *First*, the report records these things:
- (a) the complaint;
 - (b) the decision to investigate;
 - (c) an outline of the evidence disclosed by the Commission’s investigation (which included interviews of 42 witnesses and a large amount of documentation);
 - (d) a referral of some misbehaviour allegations to the Attorney-General;
 - (e) a consideration of whether a specific category of the allegations could, if proven, amount to a criminal offence;
 - (f) the referral of another category of allegations to a separate institution; and
 - (g) a number of recommendations about, for example, the need for supervision of senior executives of public sector agencies, as well as some specific recommendations regarding systems and practices of the Public Trust Office.⁹⁰
- [126] Those are all matters within the purposes of the Act⁹¹ and properly regarded as performed by the Commission as part of its functions, namely:
- (a) raising the standards of integrity and conduct in units of public administration⁹² by making recommendations to the Public Trust Office in response to the subject matter of the complaints (the recommendations);⁹³
 - (b) ensuring that complaints about corruption are dealt with in an appropriate way having regard to the principles in s 34 of the CC Act,⁹⁴ and assessing the appropriateness of systems and procedures (having regard to the principles in s 34)⁹⁵ by recommending that the Public Trust Office review its ethical framework and its complaints management system;⁹⁶
 - (c) investigating conduct liable to allow or encourage or cause corrupt conduct⁹⁷ by identifying a reluctance in staff to report concerns about the behaviour of the Public Trustee and by identifying a lack of supervision of chief executives of public sector agencies;⁹⁸

⁸⁹ The use of the word “*may*” in s 64(1) suggests that the Commission need not report. It has a discretion to report in the performing of its functions.

⁹⁰ This list is not specific because of the majority view that the report is not an “other report” pursuant to s 69 of the CC Act (and therefore ought not enter the public domain).

⁹¹ Section 7 of the CC Act. See also ss 5(1) and 5(3) of the CC Act.

⁹² Section 33(1)(a) of the CC Act.

⁹³ Part 5 of the report (pages 21 to 25).

⁹⁴ Section 33(1)(b) of the CC Act.

⁹⁵ Section 35(1)(i) of the CC Act.

⁹⁶ Part 5 of the report.

⁹⁷ Section 33(2)(a) of the CC Act.

⁹⁸ Part 5 of the report (pages 21 and 22).

- (d) investigating conduct connected with corrupt conduct and investigating whether that type of conduct may have happened, or may be happening, or may happen⁹⁹ by making the recommendations;
- (e) investigating complaints,¹⁰⁰ and investigating whether corrupt conduct may have happened, or may be happening, or may happen¹⁰¹ by taking no action on those complaints that lacked supporting evidence or could not be substantiated, investigating each of the allegations within five categories, deciding to refer several disciplinary matters to the Attorney-General, deciding to refer a matter to another institution, and deciding not to refer the appellant's conduct to the Director of Public Prosecutions (after consultation with the office of the DPP);¹⁰² and
- (f) helping to prevent corruption (the Commission's "prevention function") by providing information to, consulting with, and making several recommendations to, units of public administration¹⁰³ by means of the recommendations.

[127] The preparation of the report, on the basis that it was to be made public, can also be regarded as providing information relevant to its prevention function to the general community.¹⁰⁴

[128] *Second*, the complaint was assessed by the Commission to involve multiple allegations of "*corrupt conduct*" under s 15 of the CC Act. That is expressly agreed by the parties in their statement of agreed facts.¹⁰⁵ In the ordinary course of the investigation of multiple allegations like these, some allegations may be found to lack a proper basis or to lack supporting evidence. That was the case here. The Commission found that several of the allegations lacked supporting documentation, or could not be substantiated, and so no further action was taken in relation to those allegations.¹⁰⁶

[129] However, the character of the investigations, even in relation to those allegations which were not pursued, remained an investigation into allegations of corrupt conduct. Thus, the investigation falls within the purview of the Commission performing its functions.

[130] *Third*, it is difficult to see how there is some temporal limitation which has the effect that the Commission ceases to perform its functions at the point when the Commission decided not to proceed with criminal charges.¹⁰⁷ As explained above, the CC Act envisages that the Commission has broader functions than the prosecution of corruption. And, as this case illustrates, the concept that there is some temporal limitation has an element of impracticality.

⁹⁹ Section 33(2)(b) of the CC Act.

¹⁰⁰ Section 46 of the CC Act.

¹⁰¹ Section 33(2)(b) of the CC Act.

¹⁰² Part 3 of the report (the investigation) and Part 4 (referrals to other agencies).

¹⁰³ Sections 23 and 24 of the CC Act. See particularly s 24(e) of the CC Act.

¹⁰⁴ Section 24(f) of the CC Act.

¹⁰⁵ Statement of Agreed Facts at [7].

¹⁰⁶ See the final report at [35].

¹⁰⁷ The appellant's argument is that at the point when the Commission decided that there was no corrupt conduct, the exercise of the corruption function ceased (see [3] of the appellant's supplementary submissions). However, the Commission did not actually decide that there was no corrupt conduct. It merely decided not to proceed with a prosecution.

- [131] On 30 April 2020, the Commission advised the Attorney-General that it had finished its investigations into the complaint and that it had determined that no criminal prosecution would be pursued. At that point, the disciplinary proceedings were still “live”, and the Commission told the PCCC that it would probably prepare a report articulating the concerns that had arisen as a result of its investigations. At that point, even the prospect of criminal proceedings could not be completely excluded. New evidence may have been put before the Commission. A new, or previously reluctant, witness may have come forward. Nothing in the Commission’s stance was final and binding.
- [132] Even after the appellant resigned on 31 July 2020, the Commission’s stated intention of preparing a report on the investigation cannot be said to be beyond the functions of the Commission. The Commission was entitled to report in performing its functions. The fact that it chose to report after it had completed its investigations, and after it had decided not to pursue criminal charges, does not take the Commission beyond the performance of its functions. Those functions, as explained above were never limited to a prosecutorial role.
- [133] *Fourth*, the wording of s 64(1) of the CC Act is instructive. The Commission may report in performing its functions. That means that a report on the Commission’s investigations becomes a legitimate part of the performance of its functions. There is no temporal limit which requires the reporting phase to occur whilst the investigations are underway.
- [134] *Fifth*, to interpret s 64(1) as only permitting reports whilst there remains a potential for criminal charges, or for disciplinary action, would be to read down the section too far. It would prevent the Commission from reporting on a matter relevant to the standards of integrity and conduct in units of public administration, or assessing the appropriateness of systems and procedures, or on a matter of public confidence in the integrity of units of public administration, and public confidence in the way in which corruption is dealt with. Reading s 64(1) in that narrow way would mean that the Commission’s only power to so report would be if there were a potential for criminal charges, or for disciplinary action.
- [135] *Sixth*, as stated above, quite apart from reporting on the investigations into the complaint, the report also includes a number of recommendations about, for example, the need for supervision of senior executives of public sector agencies, as well as specific recommendations on the systems and practices of the Public Trust Office. Those are matters in respect of which the Commission may report in performing its functions.
- [136] *Seventh*, a commission such as this one would ordinarily perform much of its work through reports. The CC Act makes that clear. For example, the Commission may perform its preventative function by reporting on ways to prevent major crime and corruption.¹⁰⁸ Adopting a confined view of the broad reporting power in s 64 would

¹⁰⁸ Section 24(i) of the CC Act. See also s 49 – reports about corruption where the Commission decides that prosecution proceedings or disciplinary action should be considered. Section 50 provides for reports to the chief executive officer of a unit of public administration that a complaint involves or may involve corrupt conduct and there is evidence supporting the start of proceedings. Section 64 provides a general power to report. Section 65 provides for reports concerning the procedures and operations of a State court or the procedures and practices of the registry or administrative offices of a State court. And the Commission may, with the parliamentary committee’s consent, give the

restrict the Commission's capacity to report on systemic or public confidence issues.

- [137] *Eighth*, if the intention of the legislature were for reports to be restricted to those cases where the Commission decided that prosecution proceedings or disciplinary action should be considered, then ss 49 and 50 would be sufficient for that purpose. There would be no need for the more broad, general power to report in s 64 of the CC Act.
- [138] For those reasons, in my view, the primary judge was correct to conclude that, in preparing the report, the Commission was performing its functions.
- [139] That being the case, the report was an "*other report*" under s 69(1) and the PCCC could direct that such a report be given to the Speaker. The next question is whether the primary judge was correct that the report is protected by parliamentary privilege. It is convenient to deal with that question by reference to each of the appellant's grounds of appeal.

First Appeal Ground: Appropriative Conduct by Parliament

- [140] The appellant's principal argument is that the primary judge erred in finding that the report had the protection of parliamentary privilege "*despite Parliament having done nothing in connection with it*".
- [141] For the following reasons, that argument must be rejected. The report did attract parliamentary privilege.

Proceedings in the Assembly

- [142] Parliamentary privilege refers to the special rights and powers possessed by parliament and the protections accorded by law to members of parliament and to other participants in parliamentary proceedings.¹⁰⁹ Since 1689, Article 9 of the *Bill of Rights* has made parliamentary proceedings immune from outside examination by other organs of state. That immunity is a fundamental tenet of Westminster-style parliaments, including the United States Congress. It is an immunity which is not lightly interfered with.¹¹⁰ Thus, the courts are keenly aware of the importance of the legislature and judiciary discharging their own constitutional roles and not trespassing inadvertently into the other's province.¹¹¹
- [143] Article 9 of the *Bill of Rights* is now embodied in s 8(1) of the *Parliament of Queensland Act 2001* (the PQ Act) which identifies parliamentary privilege as follows:

parliamentary committee information, orally or in writing, whether or not at the request of the committee, that is not included in a report under s 69.

¹⁰⁹ Enid Campbell, *Parliamentary Privilege* (2003 edition) at page 1.

¹¹⁰ Daniel Morgan, *Parliamentary Privilege in Queensland*, (2008) Australian Institute of Administrative Law Forum no. 59.

¹¹¹ *Wilson v Secretary of State for Trade and Industry* [2004] 1 AC 816 at 54; see also Philip Norton, 'Governing Britain' Chapter 6 at 91.

“The freedom of speech and debates or **proceedings in the Assembly** cannot be impeached or questioned in any court or place out of the Assembly.” [emphasis added]

[144] Thus, parliamentary privilege attaches to “*proceedings in the Assembly*”. As the Speaker’s submissions to this court emphasised, the legislation has defined that phrase in an expansive way. Section 9(1) of the PQ Act defines the phrase to “*include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly **or a committee***” [emphasis added].

[145] The words “or a committee” mean that the expression “proceedings in the Assembly” extends to the work of Parliamentary committees. The PCCC comprises such a “committee” of the Assembly (i.e. Queensland Parliament). Therefore, the business of the PCCC qualifies as “proceedings in the Assembly”.¹¹²

[146] Section 9(2) of the PQ Act provides that:

“Without limiting [s 9(1)], **proceedings in the Assembly** include –

- (a) ...
- (c) presenting or submitting a document to the Assembly, a committee or an inquiry; and
- (d) a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry; and
- (e) preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c) ...” [emphasis added]

[147] Thus, the boundary line defining the limits of the business of parliament is drawn in a way that encompasses any acts which are done in the course of, or for the purposes of, or incidental to:

- (a) the presenting or submission of a document to a committee such as the PCCC;
- (b) a document tabled in, or presented or submitted to, the PCCC; and/or
- (c) the preparation of a document for the purposes of, or incidental to, presenting or submitting a document to the PCCC.

[148] It is therefore necessary to examine the context in which the report was produced in order to assess whether the Commission’s report falls within the boundaries of the business of the PCCC – a committee of the Parliament.

Applying Sections 8 and 9 of the PQ Act

[149] The chronology explained in the statement of agreed facts,¹¹³ demonstrates that a final version of the report was sent by the Commission to the PCCC on 6 October 2020. At that point, the Commission’s act in sending the report to the PCCC

¹¹² See s 291 of the CC Act which establishes the PCCC as a committee of the Legislative Assembly. It was common ground that the PCCC constituted a parliamentary committee.

¹¹³ See paragraph [89] above.

comprises the presenting or submission of a document to the PCCC. The report itself comprises a document presented to, or submitted to, the PCCC.

- [150] At earlier points in time, the draft of the report and its transmission to the appellant’s solicitors for procedural fairness purposes, constitute acts which were done in the course of, or for the purposes of, or incidental to submission of the report to the PCCC. It was always contemplated that this was a report that the Commission was to submit to the PCCC.
- [151] Thus, the submission of the report to the PCCC on 6 October 2020 does qualify as “*proceedings in the Assembly*”. Similarly, the Commission’s preparation of the report for the purpose of submission to the PCCC, or even for probable submission to the PCCC, also qualifies as “*proceedings in the Assembly*”. That is because of the broad scope of the words “*acts done in the course of, or for the purposes of or incidental to*” proceedings in the Assembly in s 9 of the PQ Act. In this case, there is also a certificate pursuant to s 55 of the PQ Act (see later discussion).

Is an Appropriative Act Necessary?

- [152] The appellant argued that, for the report to be protected by parliamentary privilege, it is necessary that parliament perform an act somehow appropriating the document as part of the proceedings of the parliament. The appellant relies on a passage from the reasons of Helman J in *Erglis v Buckley & Ors*:

“For the privilege to be attached to a document, a member, or his or her agent, must in some way appropriate the document to proceedings in Parliament by doing some act with respect to the document for purposes of, or incidental to, transacting parliamentary business.”¹¹⁴

That reasoning, the appellant argued, meant that it was necessary for this court to find that the PCCC had done some act with respect to the report so as to appropriate the report.

- [153] The difficulty is that what Helman J considered in *Erglis v Buckley* was an entirely different situation. As his Honour explained, parliamentary privilege is capable of applying to:¹¹⁵
- (a) documents made by or written personally by the Senator or Member; or
 - (b) documents that the Senator or Member arranged to be made or written on his or her behalf;
 - (c) documents in the Senator or Member’s possession consisting of documents received from other persons.

- [154] Helman J confined his consideration to documents sent by a citizen to a member of parliament.¹¹⁶ Not every such document falls within the borders of parliamentary business. If it were otherwise, then, as McPherson JA explained in *Rowley v O’Chee*, even junk mail delivered to a politician would attract parliamentary privilege, and the protection of parliamentary privilege might be secured by the

¹¹⁴ [2005] QSC 25 at [37].

¹¹⁵ [2005] QSC 25 at [36].

¹¹⁶ That was also the situation in *Rowley v O’Chee* [2001] 1 Qd R 207, see especially at 221.

artifice of planting a document on a parliamentarian.¹¹⁷ In that situation, where a citizen sends documents to a member of parliament, those documents only come within the boundaries of the business of parliament if the member requests the document (as in *Erglis v Buckley*),¹¹⁸ or elects to keep the document for the purposes of the business of parliament (as in *Rowley v O’Chee*).¹¹⁹

- [155] Here, as the primary judge explained,¹²⁰ the situation was very different. The report was not a document said to be in the possession of a member of parliament, let alone a document sent to that member of parliament by a citizen. The concern was not whether the privilege applied to a solicited or unsolicited document that was sent by a citizen to a parliamentarian.¹²¹ The situation here involved a report prepared by the Commission, a permanent commission, which is overseen by the PCCC. The report was submitted by the Commission to the PCCC – a committee of the parliament.¹²² Further, as explained, the Commission’s report was always proposed to be addressed to and sent to the PCCC.
- [156] Thus, the situation in *Erglis v Buckley* is not analogous to the situation here.
- [157] In any event, in determining whether a document or particular conduct is protected by parliamentary privilege, it is essential to apply the words of s 8 and s 9 of the PQ Act. As explained above, the application of those sections leads to the conclusion that the preparation and submission of the report of the Commission qualified as “*proceedings in the Assembly*” and the report was therefore subject to parliamentary privilege.
- [158] Sections 8 and 9 of the PQ Act do not require an act of appropriation by parliament. Rather, they require a determination as to whether the relevant act was done in the course of, or for the purposes of or incidental to, transacting the business of parliament. The business of parliament includes, within its scope, the presenting or submission of a document to the PCCC or the submission of a document to the PCCC, or the preparation of a document for the purposes of, or incidental to, the submission of the document to the PCCC. In other words, the business of parliament properly includes, within its parameters, reports of the Commission submitted to the PCCC, and drafts of reports of the Commission intended to be submitted to the PCCC.
- [159] Counsel for the appellant argued that the Commission was not able to unilaterally obtain the benefit of parliamentary privilege for itself.¹²³ That misconceives the nature of parliamentary privilege. The Commission cannot claim the privilege. The privilege is the privilege of the parliament. The purpose of the privilege is to enable parliament and its members to carry out their functions effectively, and to ensure that parliament and its members are not subject to pains or penalties for what is said

¹¹⁷ *Rowley v O’Chee* [2001] 1 Qd R 207 at 221.

¹¹⁸ [2005] QSC 25.

¹¹⁹ [2001] 1 Qd R 207.

¹²⁰ *Carne v Crime and Corruption Commission* [2021] QSC 228 at [116] – [120].

¹²¹ See the reasons of McPherson JA in *Rowley v O’Chee* [2000] 1 Qd R 207 at 221.

¹²² Section 292 of the CC Act provides that the PCCC’s primary function is to oversee the Commission and to report to Parliament.

¹²³ Appellant’s written submissions at [16].

in the course of debates or other proceedings in parliament.¹²⁴ That means that, as the report comprises “*proceedings in the Assembly*”, it is protected by the privilege and the appellant cannot ask the court to, for example, declare that, in preparing the report, the Commission failed to observe the requirements of procedural fairness. Any impeachment or questioning of the report, or the report’s preparation, is a matter for parliament rather than the courts.

- [160] For those reasons, contrary to the appellant’s submissions, nothing in ss 8 or 9 of the PQ Act requires parliament to perform some positive act in connection with the report before the report can be characterised as “*proceedings in the Assembly*”. In fact, the very nature of the report, as a report prepared by the Commission for the purposes of being given to the PCCC, and its submission to the PCCC, justifies the characterisation of the preparation and submission of the report as the business of parliament and therefore as “*proceedings in the Assembly*”.

The Exclusion in Section 9(3)

- [161] Section 9(3) of the PQ Act states that, despite s 9(2)(d), s 8 does not apply to a document tabled in, or presented to, or submitted to the Assembly, a committee or an inquiry:
- (a) in relation to a purpose for which it was brought into existence other than for the purpose of being tabled in, presented to, or submitted to the Assembly or a committee or inquiry; and
 - (b) if the document has been authorised by the Assembly or the committee to be published.

- [162] Thus, the example used in the legislation¹²⁵ is that a document evidencing fraud in a government department which is tabled at an inquiry can be used in a criminal prosecution if the document was not created for the inquiry, and the committee has authorised the document to be published.

- [163] The report here was brought into existence for the purpose of being submitted to the PCCC. It was directly sent by the Commission to the PCCC under cover of a letter addressed to the PCCC which explained that the report had been produced in relation to the investigation of allegations against the appellant, that a draft of the report had been provided to the appellant, and that the Commission requested that, pursuant to s 69(1)(b) of the CC Act, the PCCC direct that the report be given to the Speaker. The report itself contemplates that it will be submitted to the PCCC and so the exclusion in s 9(3) of the PQ Act does not apply.

Appeal Ground 2: Compliance with Section 69

- [164] The appellant’s submissions relied on s 69 of the CC Act. That section provides:

“Commission reports to be tabled

- (1) This section applies to the following commission reports—
 - (a) a report on a public hearing;

¹²⁴ Enid Campbell, *Parliamentary Privilege* (2003 edition) at page 1. See also the reasons of McPherson JA in *Rowley v O’Chee* [2000] 1 Qd R 207 at 218. The broad purpose is to promote the freedom of parliamentary debate.

¹²⁵ Section 14D of the *Acts Interpretation Act 1954* (Qld) governs the use of examples in legislation.

- (b) a research report or other report that the parliamentary committee directs be given to the Speaker.
- (2) However, this section does not apply to the commission's annual report, or a report under section 49 or 65, or a report to which section 66 applies.
 - (3) A commission report, signed by the chairperson, must be given to—
 - (a) the chairperson of the parliamentary committee; and
 - (b) the Speaker; and
 - (c) the Minister.
 - (4) The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.
 - (5) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report and any accompanying document to the clerk of the Parliament.
 - (6) The clerk must authorise the report and any accompanying document to be published.
 - (7) A report published under subsection (6) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.
 - (8) The commission, before giving a report under subsection (1), may—
 - (a) publish or give a copy of the report to the publisher authorised to publish the report; and
 - (b) arrange for the prepublishing by the publisher of copies of the report for this section.”

[165] Thus, s 69 of the CC Act applies to reports of public hearings, and to research and other reports that the PCCC directs be given to the Speaker.¹²⁶ It does not apply to the reports specified in s 69(2).

[166] For present purposes, the effect of the section is that, if the PCCC were to direct that the Commission's report be given to the Speaker, then the report, signed by the chairperson of the Commission, must be given to each of the chairperson of the PCCC, the Speaker and the Minister, and the Speaker must table the report in the Legislative Assembly on the next sitting day. If the Speaker receives such a report at a time when the Parliament is not sitting, then the Speaker must deliver the report to the clerk. In that event, the clerk must authorise the report to be published, in

¹²⁶ It does not matter for the purposes of this appeal but in s 69(1)(b) the words “*that the PCCC directs be given to the Speaker*” would appear to apply to both research reports and to other reports. The explanatory notes to the *Crime and Misconduct Bill 2001* have this explanation: “*Clause 69 – recasts CJA s 26, and provides that reports on public hearings or other reports that the parliamentary committee directs, must be given in accordance with the section...*”.

which case the report is taken to have been tabled and acquires all the immunities and privileges of a report tabled and published in parliament.

- [167] Of course, the PCCC may decide not to direct that the report be given to the Speaker. That decision is entirely at the discretion of the PCCC which will, presumably, exercise the discretion after considering whether the report discloses issues of crime or corruption, the content of the report, and the public interest.¹²⁷ Here, the PCCC has not yet decided whether it will direct that the report be given to the Speaker.
- [168] The appellant’s counsel submitted that compliance with s 69 of the CC Act was necessary before parliamentary privilege can attach. The argument was that unless and until, pursuant to s 69(1)(b) of the CC Act, the PCCC directs that the report be given to the Speaker, s 69 does not apply to the report and the privilege given by s 69(7) does not take effect. The contention was that the PCCC’s direction was the “*appropriative act*” that the law required.
- [169] However, in my opinion, s 69 does not have the effect that unless and until the PCCC directs that the Commission report be given to the Speaker, the report is beyond the protection afforded by parliamentary privilege.
- [170] *First*, s 69 contains no words which expressly, or even implicitly, restrict parliamentary privilege in that way.
- [171] *Second*, the question of whether the report is protected by parliamentary privilege is governed by s 8 and 9 of the PQ Act. As explained, pursuant to those sections, the preparation of the report, and its submission to the PCCC on 6 October 2020, qualifies as “*proceedings in the Assembly*”.
- [172] *Third*, as the primary judge pointed out, s 69 of the CC Act is largely silent on the question of parliamentary privilege. Whether an act or document qualifies as “*proceedings in the Assembly*” is to be assessed by reference to s 8 and 9 of the PQ Act. Section 69, and s 69(7) in particular, does not have the effect of restricting or confining the boundaries of the business of parliament marked out by s 8 and 9 of the PQ Act. The effect of s 69(7) is merely to identify a specific instance where the parliamentary privilege will extend to protect a report even though it has not been tabled, or at least has not yet been tabled, in the Legislative Assembly.
- [173] Section 69(7) of the CC Act specifies that a report published under s 69(6), namely a report authorised to be published by the clerk of parliament, is taken to have been tabled in parliament and to attract the immunities and privileges of a report so tabled and published. As the primary judge found, the evident intention is that a report published by the clerk is to attract the same status as a report tabled in and published by order of parliament.

Third Appeal Ground: Finding that the Report was intended to be delivered to the PCCC

The Certificate

¹²⁷ It is not suggested that the PCCC’s exercise of this discretion is subject to review by the courts. The decisions of the PCCC are also likely to qualify as “*proceedings in the Assembly*”.

- [174] Pursuant to s 55 of the PQ Act the chairperson of the PCCC certified that the report was:
- (a) a document prepared for the purposes of, or incidental to, transacting business of the (PCCC) under s 9(2)(c) of the PQ Act; and
 - (b) a document presented or submitted to the (PCCC).

[175] The primary judge found that, whilst the certificate was not absolute proof of the matters certified, the certificate was evidence that the report was a document prepared for the purposes of, or incidental to, transacting business of the PCCC under s 9(2)(c) of the PQ Act, and was a document presented or submitted to the PCCC. The primary judge was entitled to make that finding.

A Factual Error?

- [176] The appellant submits that the certificate is irrelevant as it is merely one component of all the evidence, and the preponderance of the evidence is to the contrary. That is the third ground of appeal. The appellant submits that the primary judge erred in finding that the report:
- (a) was prepared with the intention of being delivered to the PCCC; and
 - (b) for the purposes of, or incidental to, transacting business namely the submission of the report to the PCCC.

[177] As the above chronology makes clear, the report was prepared for the purposes of or incidental to submission to the PCCC. And the report was actually addressed to and submitted to the PCCC. It is true that when the proposed report was first discussed on 19 June 2020 the Commission had not finally decided to prepare a report articulating its concerns regarding the appellant's conduct. However, that decision to prepare a report, and to submit it to the PCCC, was plainly arrived at by 4 September 2020. A final version of the report was in fact delivered to the PCCC on 6 October 2020.

[178] The appellant relies on the Commission's letter of 4 September 2020 as demonstrating that the Commission held the view that it could decide to publish the report without reference to or a direction from the PCCC. It is certainly true that the Commission said that it intended to publish the report. That is clear from the second paragraph of the Commission's letter to the appellant's solicitors:

“The CCC intends to publish a report on this investigation in accordance with section 69 of the *Crime and Corruption Act 2019* (the CC Act), providing an overview of the investigation and outcomes.”

[179] The concept that the report was to be published by the Commission is probably a mistake in the Commission's letter. It is clear that the publication of the report was not intended to be a publication that was detached from the PCCC and from the business of parliament. The letter's reference to the report being published “*in accordance with s 69*” must mean that the Commission recognised that under s 69 the mechanism for publication required the PCCC to direct that the report be given to the Speaker pursuant to s 69(1)(b) and thereby enter the public domain through parliament.

- [180] In the event that the PCCC directs that the report be given to the Speaker, the regime of s 69 is that, *first*, the report is required to be given to the chairperson of the PCCC, the Speaker, and the Minister. *Second*, the Speaker is required to table the report in the Legislative Assembly on the next sitting day. *Third*, if it happens that the Speaker receives the report when the Legislative Assembly is not sitting, then the Speaker is to deliver the report to the clerk of parliament who authorises the report to be published.
- [181] Thus, the Commission intended that the machinery of s 69 be activated. The activation of that machinery required the PCCC to direct that the report be given to the Speaker. The sending of the report to the PCCC was always contemplated.
- [182] On 6 October 2020, the Commission did send the report to the PCCC. The Commission requested that, pursuant to s 69(1)(b) of the CC Act, the PCCC direct that the report be given to the Speaker. That activated the machinery in s 69.¹²⁸
- [183] It follows that there was evidence to support the primary judge’s finding of fact that the report was prepared with the intention of being delivered to the PCCC. In any event, the report was actually submitted to the PCCC. For those two reasons the report was prepared for the purposes of, or incidental to, transacting business of the PCCC, and was a document submitted to the PCCC, and can therefore be regarded as within the parameters of the business of parliament.

Fourth Appeal Ground: The Report was beyond Section 69

- [184] The appellant’s fourth appeal ground requires a focus on section 69(1) of the CC Act. That section identifies the reports to which s 69 applies:
- “This section applies to the following commission reports—
- (a) a report on a public hearing;
- (b) a research report or **other report** that the parliamentary committee directs be given to the Speaker.” [emphasis added]
- [185] There are, therefore, three categories of reports contemplated by s 69(1) as the reports to which s 69 applies – reports on a public hearing, research reports, and other reports. Counsel for the appellant argues that the third category, “*other reports*”, cannot include a report for publication which makes no finding as to corrupt conduct and cannot extend to a report which finds that there is no corrupt conduct, where there was no public hearing, and in circumstances where the document is nothing more than a collection of allegations and assertions which are disparaging of the subject’s reputation.
- [186] There are several reasons why that submission cannot be accepted. *First*, the expression “*other reports*” plainly contemplates reports, other than reports of public hearings and research reports, which are reports prepared by the Commission exercising its functions pursuant to the CC Act. As explained above, the preparation of this report was authorised by s 64(1) of the CC Act which gives the Commission a discretion to prepare a report in performing its functions.

¹²⁸ Of course, the machinery has halted pending this litigation.

- [187] Ordinarily, one would expect that a report by a statutory body such as the Commission would be a report to someone. In the context of this Act, there can be little point in an entirely internal report. An analysis of the CC Act bears that out. Section 64 contemplates that the Commission may prepare a report which includes recommendations. Logically, the recommendations are intended to be recommendations to the relevant entities such as the Police Minister (see s 64), or to the relevant head of a court jurisdiction (see s 65). Indeed, s 65 is instructive. The effect of s 65 is that reports on the procedure and operations of a State court may only be given to the head of the relevant jurisdiction. And so, that narrow category of reports may not be more widely disseminated. Similarly, ss 66, 67, and 68 make provisions regarding confidentiality.
- [188] Those provisions make clear that, whilst ordinarily the dissemination of the Commission's reports may be wide, that is subject to more restricted publication of reports on the procedure and operations of a State court, and subject to the confidentiality provisions. As the Commission submits, the integrity of the public sector will often be best served by transparently and publicly reporting on the outcome of the Commission's investigations and its recommendations.¹²⁹ The Commission performs its "*prevention function*" by providing information to, consulting with, and making recommendations to, units of public administration and by providing information relevant to its prevention function to the general community.¹³⁰
- [189] Further, it might be expected that the reports of the Commission, or at least some of them, would be available to the PCCC. The PCCC's function is to monitor and review the performance of the Commission's functions.¹³¹
- [190] In those ways the objects of the Act, to improve the integrity of the public sector, and to reduce the incidence of corruption in the public sector, may be achieved by reporting on corruption to the relevant entities, to the PCCC or to the wider public.
- [191] *Second*, the expression "*other reports*" is not limited by any express or implied words. There is no reason for reading the expression in a narrow way, or as excluding any particular types of reports, or as excluding reports having particular content.
- [192] *Third*, there is no basis for concluding that the expression "*other reports*" in s 69(1)(b) should be read as excluding reports which make no finding of corrupt conduct. There may be very sound reasons for the Commission to give such a report to a public body so that it is aware of the results of the Commission's investigation, or so that it can consider some recommendations, or so that it may consider information provided for the purposes of the Commission's prevention function. Indeed, a person the subject of a corruption complaint might wish the findings of the Commission to be made public in order to clear that person's name.
- [193] The appellant's counsel argued that s 69(1)(b) ought to be read in a way that is compatible with human rights and, in particular, the appellant's right to privacy and

¹²⁹ It is worth noting that the Commission has an overriding responsibility to promote public confidence in units of public administration, as well as the way in which allegations of corruption are dealt with (s 34(d)). Some of the Commission's hearings are public (s 177) and the meetings of the PCCC are generally to be held in public (s 302A).

¹³⁰ Section 24(e) and (f) of the CC Act.

¹³¹ Section 292(a) of the CC Act.

reputation as protected by s 25 of the *Human Rights Act 2019*. Section 25 of that Act provides:

“A person has the right—

- (a) not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have the person’s reputation unlawfully attacked.”

[194] Section 48 of the *Human Rights Act 2019* provides that statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights.

[195] It is doubtful that issues raised as to the performance by the appellant of his role as the Public Trustee can be protected by principles of privacy. Plus, the protection afforded to reputation is limited to unlawful attacks on reputation. In any event, the words of s 69 are unambiguous. There is no reason why the words “*other reports*” in s 69(1)(b) should be constrained and interpreted so as to exclude those reports where the content of the report makes no finding of corrupt conduct. The purpose of s 69(1)(b) is merely to give the PCCC, a committee of parliament, a discretion to direct that the report be given to the Speaker. The giving of that discretion to the PCCC does not interfere with any human rights. It merely allocates to the PCCC the discretion to direct that the report be given to the Speaker. In any event, it can hardly be assumed that the PCCC will exercise that discretion contrary to human rights.

Fifth Appeal Ground: Procedural Fairness

[196] As the report is protected by parliamentary privilege, the appellant’s claims about procedural fairness are not justiciable. The issues of procedural fairness and the publication of the report are properly within the borders of the business of parliament.

The Declarations and Injunctions

[197] There is a further reason for refusing the relief sought by the appellant. The terms of the declarations and injunctions sought by the appellant are set out above.¹³² In broad terms the appellant seeks:

- (a) declarations that s 69(1) of the CC Act does not apply to the report, that in preparing the report the Commission failed to observe the requirements of natural justice, and that the resolution of the Commission seeking a direction from the PCCC that the report be given to the Speaker was invalid; and
- (b) a mandatory injunction requiring the Commission to retract that resolution.

[198] There are some inherent problems. The *first* is that the report has already been sent by the Commission to the PCCC. That occurred on 6 October 2020.¹³³ That means

¹³² Paragraph [85] above. The relief sought in the notice of appeal is similar but omits the claim for an injunction.

¹³³ Paragraph [89] above.

that the PCCC is entitled to direct that the report be given to the Speaker pursuant to s 69(1)(b) of the CC Act.¹³⁴ The *second* is that the Commission's own resolution to seek a direction from the PCCC is not an act or a step that is authorised by the CC Act. It may be that, as a matter of practice, the Commission requests such a direction from the PCCC. However, the Act gives the PCCC a right to direct that a report be given to the Speaker irrespective of whether the Commission invites such a direction.

- [199] That leads to the *third* problem. At the core of the relief sought by the appellant is a desire to stop the PCCC from directing that the report be given to the Speaker.¹³⁵ That rather starkly exposes the difficulty. In other words, whilst the terms of the declarations and injunction go to some effort to avoid directly impacting the PCCC, in substance what the appellant asks this court to restrain is the PCCC's right to direct that the report be given to the Speaker.
- [200] In my view, orders to that effect would be contrary to the principle that parliamentary proceedings are immune from outside examination by other organs of the state and would be to trespass inadvertently into the legislature's province.
- [201] Finally, there is good reason to be sympathetic to the appellant's plight. If the PCCC does decide to direct that the report be given to the Speaker, then unproven and untested allegations against him will enter the public domain. However, the decision that the PCCC makes about that, and its balancing of the legitimate reputational interests of the appellant as against the public interest as reflected in the CC Act, are a matter for the PCCC – an arm of parliament. It is not this court's role to either enjoin the Commission from submitting the report to the PCCC or to enjoin the PCCC from deciding to direct that the report be given to the Speaker.
- [202] For those reasons, I dissent and in my opinion the appeal should be dismissed.

¹³⁴ At present, of course, the PCCC has agreed to await the court's decision.

¹³⁵ Even if the PCCC did not yet have the report the terms of s 69 still entitle the PCCC to issue a direction.