SUPREME COURT OF QUEENSLAND

CITATION:	*Carne v Crime and Corruption Commission* [2021] QSC 228
PARTIES:	**PETER DAMIEN CARNE** (applicant) **v** **CRIME AND CORRUPTION COMMISSION** (respondent)
FILE NO/S:	BS No 10786 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	10 September 2021
DELIVERED AT:	Brisbane
HEARING DATE:	1 April 2021, further written submissions received on 1 September 2021
JUDGE:	Davis J
ORDERS:	**1. Application dismissed.** **2. The parties will be heard on the question of costs.**
CATCHWORDS:	CONSTITUTIONAL LAW - THE NON-JUDICIAL ORGANS OF GOVERNMENT - THE LEGISLATURE - GENERAL MATTERS - PRIVILEGES - PRIVILEGE OF PARLIAMENTARY DEBATES AND PROCEEDINGS - where the Crime and Corruption Commission undertook an investigation into the applicant - where a report was produced - where the report was presented to the Parliamentary Crime and Corruption Commission - where the Parliamentary Crime and Corruption Commission is a committee of the Legislative Assembly of Queensland - where the applicant challenged aspects of the report - whether the preparation of the report was part of the proceedings of the Legislative Assembly of Queensland - whether parliamentary privilege and immunity attached to the preparation of the report - whether the applicant seeks to question or impeach the proceedings STATUTES - ACTS OF PARLIAMENT - INTERPRETATION - where the Crime and Corruption Commission prepared a report purportedly under s 64 and s 69 of the *Crime and Corruption Act* 2001 - where the report was delivered to the Parliamentary Crime and Corruption Commission - where the Parliamentary Crime and Corruption Commission is a committee of the Legislative Assembly of

Queensland - where the applicant argued that parliamentary privilege did not attach to the report unless it was a "report" for the purposes of s 64 and s 69 of the *Crime and Corruption Act* 2001 - whether on a proper construction of the *Crime and Corruption Act* 2001 the report was a "report" - where a provision of the *Crime and Corruption Act* 2001 bestowed parliamentary privilege on a report in certain circumstances - whether that section impliedly restricted privilege which may otherwise arise

Acts Interpretation Act 1954, s 14A, s 14B
Constitution Act 1867 (Qld), s 40A
Constitution of Queensland Act 2001, s 8
Crime and Corruption Act 2001, s 4, s 5, s 7, s 9, s 10, s 12, s 15, s 22, s 33, s 34, s 35, s 45, s 46, s 46A, s 49, s 64, s 65, s 66, s 69, s 176, s 177, s 220, s 223, s 291, s 292, s 332, s 334
Crime Commission Act 1997 (repealed)
Criminal Code, s 408C
Criminal Justice Act 1989 (repealed), s 2.14
Crime and Misconduct Bill 2001
Judicial Review Act 1991
Parliament of Queensland Act 2001, s 8, s 9, s 55
Parliamentary Papers Act 1840 (UK)
Parliamentary Papers Act 1908 (Cth)
Parliamentary Papers Act 1992 (repealed), s 3, s 9, s 13
Parliamentary Privileges Act 1987 (Cth), s 15, s 16
Public Interest Disclosure Act 2010, s 3, s 11
Public Trustee Act 1978, s 7, s 8, s 9

ACT v SMEC Australia Pty Ltd [2018] ACTSC 252, cited
Ainsworth v Criminal Justice Commission (1992) 175 CLR 564, considered
Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT) (2009) 239 CLR 27, followed
Amann Aviation Pty Ltd v Commonwealth of Australia (1988) 19 FCR 223, followed
Australian Communications and Media Authority v Today FM (Sydney) (2015) 255 CLR 352, cited
Balog v Independent Commission Against Corruption (1990) 169 CLR 625, cited
Carrigan v Honourable Senator Michaelia Cash [2016] FCA 1466, considered
Criminal Justice Commission v Nationwide News Pty Ltd (1994) 74 A Crim R 569, cited
Criminal Justice Commission v Parliamentary Criminal Justice Commissioner [2002] 2 Qd R 8, followed
Egan v Willis (1998) 195 CLR 424, followed
Erglis v Barkley (No 2) [2006] 2 Qd R 407, considered
Federal Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503, followed
Griffith University v Tang (2005) 221 CLR 99, cited

Halden v Marks (1995) 17 WAR 447, cited
Law Society Northern Territory v Legal Practitioners Disciplinary Tribunal (NT) & Anor [2020] NTSC 79, cited
Le Grand v Criminal Justice Commission [2001] QCA 383, followed
Minister for Immigration and Citizenship v Li (2013) 249 CLR 332, cited
OPEL v Networks Pty Ltd (in liq) [2010] NSWSC 142, cited
Project Blue Sky Inc & Ors v Australian Broadcasting Authority (1998) 194 CLR 355, followed
PRS v Crime and Corruption Commission (2019) 280 A Crim R 35, followed
R v Grassby (1991) 55 A Crim R 419, cited
Rivlin v Bilainkin [1953] 1 QB 485, considered
Rowley v Armstrong [2000] QSC 88, cited
Rowley v O'Chee [2000] 1 Qd R 207, considered
Sportsbet Pty Ltd v New South Wales (No 3) (2009) 262 ALR 27, cited
Stockdale v Hansard (1839) 112 ER 1112, cited
SZTAL v Minister for Immigration and Border Protection (2017) 91 ALJR 936, followed
The Queen v A2; The Queen v Magennis; The Queen v Vaziri (2019) 93 ALJR 1106, followed

COUNSEL: JM Horton QC for the applicant
P Dunning QC with MR Wilkinson for the respondent
RC Schulte appearing *amicus curiae* for the Speaker of the Legislative Assembly

SOLICITORS: Gilshenan & Luton for the applicant
Crime and Corruption Commission for the respondent

[1] The applicant, Peter Damien Carne, was the Public Trustee of Queensland. He is mentioned in a report (the report) prepared by the Crime and Corruption Commission (the CCC) into alleged corrupt conduct by him. The CCC has forwarded the report to the Parliamentary Crime and Corruption Committee (PCCC) and has asked the PCCC to direct that the report be given to the Speaker of the Legislative Assembly.[1]

[2] The significance of such a direction is submitted by Mr Carne to be that the report may then be published pursuant to s 69 of the *Crime and Corruption Act* 2001 (the CC Act) and would be cloaked with parliamentary immunity pursuant to s 69(7). However, a real question arises as to whether parliamentary privilege attached to the report in the circumstances of this case at an earlier stage and at the latest when it was received by the CCC.

[3] Mr Carne seeks various relief in relation to the report and the CCC's actions in requesting the PCCC to direct that the report be given to the Speaker.

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1 *Crime and Corruption Act* 2001, s 69.

Background

[4] The position of the Public Trustee and the office of the Public Trust Office are established by ss 7 and 8 of the *Public Trustee Act* 1978 (Public Trustee Act). As its name suggests, the Public Trustee functions as trustee in various capacities and exercises various powers conferred by the *Public Trustee Act*.

[5] Mr Carne was appointed as the Public Trustee pursuant to s 9 of the *Public Trustee Act*. He held that position from March 2009 until March 2014 and then again from March 2016 until 31 July 2020 when his resignation became effective.

[6] The CC Act is an Act of the Queensland Parliament whose objects are:

> "**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. …"

[7] Section 220 of the CC Act establishes the office of the CCC as a body corporate being an amalgamation of the Crime and Justice Commission which was established under the *Criminal Justice Act* 1989 (the CJ Act) and the Queensland Crime Commission which was established under the *Crime Commission Act* 1997. The CCC consists of various persons,[2] including a chairperson.[3] At all times material to the current dispute, Mr Alan MacSporran QC held the position of chairman of the CCC.

[8] Part 3 of the CC Act establishes the PCCC as a committee of the Queensland Parliament.[4] It has various functions[5] and powers,[6] but its primary function is to oversee the CCC and to report to Parliament.[7]

[9] In June 2018, an anonymous person (the informant) claiming to be an employee of the Public Trust Office alleged to the CCC that Mr Carne had been involved in corrupt conduct and was guilty of maladministration. The informant asserted that the delivery of the information to the CCC constituted a "public interest disclosure" for the purposes of the *Public Interest Disclosure Act* 2010 (the PID Act). An informant making a public interest disclosure attracts various protections under the PID Act.[8]

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2 Section 223.
3 Chapter 6, Division 2, subdivision 1.
4 Section 291.
5 Section 292.
6 Chapter 6, Part 3, Division 2.
7 Section 292.
8 *Public Interest Disclosure Act*, Chapter 4.

[10] Further correspondence from the informant was received by the CCC in August 2018 and a corruption investigation[9] was commenced by the CCC in September 2018.

[11] In June 2019, Mr Carne was suspended from his office as the Public Trustee of Queensland after details of the complaint had come to the attention of the Attorney-General.

[12] On 17 June 2019, a police officer seconded to the CCC sent an email to Mr Carne the effect of which was to:

1. alert Mr Carne to the fact that the CCC was undertaking an investigation into his conduct;
2. inform Mr Carne that some allegations raised the possibility that criminal conduct had occurred;
3. give Mr Carne some limited details of the allegations including that it was alleged that there had been improper use of Public Trustee Office resources to fund personal study by Mr Carne;
4. invite Mr Carne to participate in two interviews with the police, namely:
   (a) "a formal disciplinary interview"; and
   (b) "a separate criminal interview" into the suggestion that the use of Public Trustee Office funds for private study constituted criminal fraud.[10]

[13] Mr Carne instructed Gilshenan & Luton Solicitors to act on his behalf and those solicitors corresponded with the CCC.

[14] On 27 November 2019, Mr Carne was served with a show cause letter under the hand of the Attorney-General. That outlined various allegations against Mr Carne. At the same time, a bundle of documents was provided to Gilshenan & Luton. Included in that bundle were transcripts of interviews conducted with six witnesses, summaries of interviews with a further five witnesses, and the written statement of one other witness. The CCC's final report, however, refers to 42 witnesses having been interviewed in the course of the investigation.

[15] On 28 January 2020, Mr Carne was examined by Dr Josephine Sundin, psychiatrist, who by letter dated 28 January 2019 (which should obviously be 28 January 2020) reported:

> [redacted]

[16] Gilshenan & Luton wrote to the CCC on 13 February 2020, enclosing a copy of Dr Sundin's report and advising that Mr Carne's health prevented him from participating in any interviews with the CCC.

[17] On 30 April 2020, the CCC wrote to Gilshenan & Luton, relevantly, in these terms:

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9 *Crime and Corruption Act* 2001, Chapter 2, Part 3.
10 *Criminal Code*, s 408C.

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

[18] On the same day, the CCC wrote to the Attorney-General advising that the investigation was complete and that no criminal prosecution would be pursued.

[19] On 19 June 2020, Mr MacSporran met with the chairman of the PCCC and a discussion was had. Parliamentary privilege attaches to this communication but privilege has been waived. A transcript of the conversation was provided to the parties and is in evidence before me. The investigation into Mr Carne was raised and this exchange occurred:

> "CHAIR: 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?
>
> Mr MacSporran: 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."

[20] On 31 July 2020, Mr Carne resigned from the position of Public Trustee. That brought an end to the show cause proceedings and, as earlier observed, the CCC had determined that no criminal proceedings would be pursued.

[21] On 4 September 2020, the CCC wrote to Gilshenan & Luton enclosing a copy of a draft investigative report authored by the CCC. Relevantly, the letter was in these terms:

> "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 the outcomes.
>
> The CCC has a statutory duty to act independently, impartially and fairly, in the public interest, having regard to the purposes of the CC Act. The CCC also has a duty to act in accordance with Queensland's *Human Rights Act 2019*.
>
> For the purpose of procedural fairness, I enclose a copy of the draft report for your consideration prior to any publication. Please note that the draft report may still be subject to minor changes and editing, and may also be altered as a result of submissions received as a result of the procedural fairness process.
>
> It is possible that certain content in the report is, or could be viewed as, adverse to you.

> Given the issues raised in this report I want to ensure that you have an opportunity for comment. If you have any comments relating to the content of the report, the CCC will consider those comments prior to determining the final form of the report. Comments are required by close of business on Wednesday 9 September 2020." (emphasis added)

[22] In the letter of 4 September, Mr Carne was given until 9 September 2020 to respond to the draft report. That time was extended until 16 September 2020.

[23] On 11 September 2020, Mr MacSporran again met with the PCCC. Privilege has also been waived in relation to this conversation. Again, the complaint about Mr Carne was raised and this exchange occurred:

> "CHAIR: You will be seeking a direction under section 69 for the tabling of that report?
>
> Mr MacSporran: Yes. That is where that is. In the Public Trustee matter we were in the same position. We were trying to get that to you today, but we have been met with a request to allow until 21 September for further submissions as to why we should not publish a report. Essentially that centres around Mr Carne's alleged ill health. They wanted to have time to gather some expert medical evidence along those lines. We granted an extension until next Wednesday for that purpose and then we will see what develops, but I suspect it is going to be a little bit of a drawn-out process.
>
> I do not immediately see, without having prejudged it, why we should not publicly report in a matter that has so much public interest and is such an important matter in terms of workplace culture, corruption risks and so forth. If it is the case that Mr Carne is suffering ill heath - there is no doubt anyone's reputation would be damaged by what our report is likely to say, and you have seen some of the flavour of it in the media reports about the Public Trustee matter, but at the end of the day he is just one consideration, obviously, in the scheme of things. Having said that, we will have to assess what, if any, medical evidence he produces and the effect of that and see where we will go. I will keep you informed of that as we go, but at this stage it will not be before the middle of next week and it is likely to be a little later than that probably." (emphasis added)

[24] Section 69 of the CC Act, which is referred to in the conversation, provides 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."

[25] On 16 September 2020, Gilshenan & Luton delivered lengthy submissions to the CCC. Relevantly here, they can be summarised as:

1. Section 69 of the CC Act does not provide a basis for the publication of the report by the CCC. It was submitted that where, as here, there had been no public hearings conducted during the investigation, the CCC does not supply the report to the Speaker, but the PCCC may direct that the report be given to the Speaker.[11]

[11] This is the distinction drawn by s 69(1)(a) and 69(1)(b).

2. The allegations against Mr Carne are not determined by the report. They remain unresolved. It is, it was submitted by Gilshenan & Luton, inappropriate to publish a report which consists only of allegations and then have Mr Carne suffer the personal and reputational damage the publication would bring, especially when Mr Carne's ill health has prevented him from answering the allegations.

3. The publication of the report would have serious adverse health ramifications for Mr Carne. Another copy of Dr Sundin's report, together with an updated report, were enclosed, together with a report of Dr Clive Williams who is Mr Carne's treating psychologist. That material supported Gilshenan & Luton's submissions about Mr Carne's health.

4. There is no public interest in publishing the report as the recommendations as to improving public governance contained within it had already been implemented.

[26] On 18 September 2020, the CCC wrote to Gilshenan & Luton who responded on 23 September 2020. Of some significance, this was said in Gilshenan & Luton's letter:

> "It remains the position that Mr Carne's health does not allow him to properly respond to the allegations against him. He endeavoured to do so a number of times during the course of the show cause proceedings, but was unable to. As evidenced by recent medical reports, his position is now worse. As the Commission has been advised, he has not even been able to bring himself to read the draft report. Beyond the many reasons already provided, this constitutes another powerful factor as to why this report should not be published."

[27] On 30 September 2020, Gilshenan & Luton sent two letters on Mr Carne's behalf, one to the CCC and one to the chair of the PCCC. Both letters concern the operation of s 69 of the CC Act. In essence, it was submitted that:

1. the proposed report would be one falling within s 69(1)(b), not s 69(1)(a), of the CC Act; therefore

2. the CCC cannot publish the report under s 69; but

3. it is the function of the PCCC to determine whether the report should be published; and

4. that consists of a determination to direct that the report be given to the Speaker; and

5. the CCC should not be involved in that process whether by requesting the PCCC to direct that the report be given to the Speaker, or otherwise.

[28] On 6 October 2020, the CCC sent correspondence to both Gilshenan & Luton and the PCCC. Both letters enclosed the report and both advised of a resolution made by the CCC to seek a direction of the PCCC that the report be given to the Speaker of the Legislative Assembly. In the letter to the chair of the PCCC this was said:

> "I request the Committee, pursuant to section 69(1)(b) of the *Crime and Corruption Act 2001* (CC Act), direct that this report be given to the Speaker of the Legislative Assembly."

[29] Also in the letter to the PCCC, this was said:

> "I confirm that, in order to ensure procedural fairness, a copy of the draft report has been provided to Mr Carne, through his legal representative. Copies have also been provided to the Acting Public Trustee and the Attorney-General and Minister for Justice."

[30] The final report was different in various respects to the draft which was supplied to Gilshenan & Luton on 4 September 2020. In particular, the draft report referred to it being published by the CCC, and in the final report there was reference to the resolution made by the CCC to seek a direction from the PCCC to deliver the report to the Speaker.

[31] On 8 October 2020, Mr Carne filed the current application and various steps were put in place to maintain the status quo while the application could be heard and determined. The PCCC elected to defer consideration of the CCC's request for a direction pursuant to s 69(1)(b) of the CC Act until the determination of the application to the court.

The report

[32] As will become apparent, one of the submissions made by the CCC is that the report attracts parliamentary privilege and therefore must not be "impeached or questioned in any court".[12] One answer proffered by Mr Carne in defence of that submission is that the report is not a report for the purposes of s 69 of the CC Act. That is an issue for the court to determine.[13] It is for the court to consider whether parliamentary privilege applies. Therefore, it is necessary to refer to the report.

[33] For reasons which follow, I have determined that parliamentary privilege applies to protect the report from question or impeachment in the court.

[34] Whether the report is published, and therefore comes into the public domain is a matter for the PCCC. It is the PCCC who may deliver the report to the Speaker who must then table it in the Assembly.[14] It is inappropriate for the content of the report to be disclosed in a published judgment of the court.

[35] Paragraphs [36]-[54] of these reasons, where relevant parts of the report are set out will form part of the reasons published to the parties but redacted from the judgment published more widely.

(Paragraphs [36]-[54] are redacted)

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12 *Parliament of Queensland Act* 2001, s 8.
13 *Egan v Willis* (1998) 195 CLR 424 at [5] and [133].
14 *Crime and Corruption Act* 2001, s 69(4).

The application

[36] Leave was given to Mr Carne to amend the application that was filed. In its amended form, the application claimed:

> "1 Declarations pursuant to s 10 of the *Civil Proceedings Act* 2011 (Qld) that:
>
> (a) [deleted];
>
> (b) the document styled '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).
>
> 2 A mandatory injunction, pursuant to s 332 of the *Crime and Corruption Act* 2001 (Qld), that the Respondent:
>
> (a) retract its resolution of 6 October 2020 to approve the seeking of a direction from the Parliamentary Crime and Corruption Committee (PCCC) to enable tabling of the document referred to in 1. above;
>
> (b) advise the PCCC forthwith of such retraction.
>
> 2A Alternatively to 2 above, pursuant to s 10 of the *Civil Proceedings Act* 2011 (Qld), declare invalid and of no effect the Respondent's resolution of 6 October 2020 to approve the seeking of a direction from the PCCC to enable tabling of the document referred to in 1. above."

[37] In the course of argument before me, Mr Horton QC for Mr Carne applied to expand the relief sought to include a declaration in terms of: "that in reporting adversely to the applicant the respondent failed to observe the requirements of natural justice".

[38] Mr Dunning QC, who appeared with Mr Wilkinson for the CCC, took no objection to the amendment of the application to expand the relief sought. I allowed the amendment.

[39] The CCC made various submissions in defence of the application. Significantly, one submission was that the report attracted parliamentary privilege. Mr Schulte, who appeared for the Speaker, made a similar submission. If that submission is made out, then many of Mr Carne's complaints about the report are not justiciable.

Is the report part of the proceedings of the Assembly?

[40] The history of parliamentary privilege can be traced back to 1688 and Article 9 of the Bill of Rights. Article 9's latest incarnation in Queensland is s 8 of the *Parliament of Queensland Act* 2001 (POQ Act). That provides:

> "**8 Assembly proceedings can not be impeached or questioned**
>
> (1) 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.
>
> (2) To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection." (emphasis added)

[41] "Committee" is defined in the POQ Act as:

> "***committee*** means a committee of the Assembly, whether or not a statutory committee."

[42] By s 291 of the CC Act:

> "**291 Establishment of parliamentary committee**
>
> A committee of the Legislative Assembly called the Parliamentary Crime and Corruption Committee is established."

[43] Consequently, proceedings in the PCCC are "proceedings in the Assembly" for the purposes of s 8 of the POQ Act.

[44] Relevantly here, two issues arise. Firstly, is the report part of the "proceedings in the Assembly"? Secondly, if the report is part of the proceedings in the Assembly, does Mr Carne's application or any part of it seek to "impeach" or "question" those proceedings?

[45] Section 9 of the POQ Act provides a non-exhaustive definition of "proceedings in the Assembly":

> "**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

(b) if the document has been authorised by the Assembly or the committee 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." (emphasis added and parliamentary notes omitted)

[46] The history of s 9 is of some significance.

[47] Section 49 of the Commonwealth Constitution vests the Senate and the House of Representatives, and the members and any committee of each House with the powers, privileges and immunities of the House of Commons.

[48] In 1908, the *Parliamentary Papers Act* 1908 (Cth) was enacted. That Act protected the publication of documents published with the authority of the Houses of Parliament. This was probably intended to follow the *Parliamentary Papers Act* 1840 (UK) which was a reaction to *Stockdale v Hansard*,[15] where it was held that

15 (1839) 112 ER 1112.

parliamentary privilege did not extend to those who published the proceedings of parliament.

[49] By that point, the *Constitution Act* 1867 (Qld) had been passed. It provided for a Queensland legislature. Any doubt about whether the privileges and immunities of the House of Commons were enjoyed by the Queensland Legislative Assembly was dispelled by amendment in 1978[16] and the enactment of s 40A:

> "**40A. Powers, privileges and immunities of Legislative Assembly.** The powers, privileges and immunities to be held, enjoyed and exercised by the Legislative Assembly and the members and committees thereof shall be such as are defined by any Act or Acts so far as those powers, privileges and immunities are not inconsistent with this Act or any other Act and until so defined shall be those powers, privileges and immunities held, enjoyed and exercised for the time being by the Commons House of Parliament of the United Kingdom and its members and committees so far as those powers, privileges and immunities are not inconsistent with this Act or any other Act, whether held, possessed or enjoyed by custom, statute or otherwise."

[50] In 1987, the Commonwealth enacted the *Parliamentary Privileges Act* 1987 (Cth). Sections 16 is in similar terms to what is now ss 8 and 9 of the POQ Act. Section 16 was considered by the Court of Appeal in *Rowley v O'Chee* [17] which I consider later. The relevant parts of s 16 are:

> "**16 Parliamentary privilege in court proceedings**
>
> (1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.
>
> (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, ***proceedings in Parliament*** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
>
> (a) the giving of evidence before a House or a committee, and evidence so given;
>
> (b) the presentation or submission of a document to a House or a committee;

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16 *Constitution Act Amendment Act* 1978.

17 [2000] 1 Qd R 207.

> (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
>
> (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
>
> (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
>
> (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
>
> (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
>
> (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament. …"

[51] In 1992, through a private members bill, the *Parliamentary Papers Act* 1992 (Qld) was passed. It contained s 3 which was in terms equivalent to what ultimately became s 9 of the POQ Act. It also contained s 9 which is in similar terms to s 55 of the POQ Act. Section 55 is a provision empowering (relevantly here) the chairperson of a parliamentary committee to issue a certificate about various matters. That certificate then has evidentiary force. I shall return to s 55.

[52] The Explanatory Memorandum to the *Parliamentary Papers Act* 1992 (Qld) described clause 3 (later s 3 of the POQ Act) as:

> "*Clause 3* defines the concept of 'proceedings in Parliament' for the purposes of the application of article 9 of the Bill of Rights to the Queensland Parliament, and for the purposes of the Bill.
>
> Privilege is extended to words spoken or acts done in all aspects of the Parliament's business, including business before the House, a committee or an inquiry.
>
> The privilege covers both evidence and documents, and also acts associated with the preparation of evidence and documents.
>
> Privilege is also extended to any document that is taken to have been laid before the Parliament, for example, by an Act, rule, order or direction that requires the document to be presented to the Speaker when the Parliament is not sitting."

[53] The *Constitution of Queensland Act* 2001 amended the *Constitution Act* 1867, in particular, by repealing s 40A which was then effectively re-enacted as s 8. The

POQ Act repealed the *Parliamentary Papers Act* 1992,[18] but both ss 3 and 9 were substantially re-enacted as ss 9 and 55 respectively.

[54] As already observed, the CC Act has as its purpose to combat major crime and corruption.[19] The purposes of the Act are to be achieved as explained by s 5:

> "**5 How Act's 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—
>
> (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."

[55] Various entities are created by the CC Act including, as already observed, the CCC and the PCCC. The CC Act also creates the position of the Parliamentary Crime and Corruption Commissioner (PCC Commissioner). The respective roles of the various entities are broadly described by way of "overview"[20] as follows:

> "**7 Crime and Corruption Commission**
>
> The Crime and Corruption Commission has primary responsibility for the achievement of the Act's purposes. …
>
> **9 Parliamentary Crime and Corruption Committee**
>
> The Parliamentary Crime and Corruption Committee is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance.
>
> **10 Parliamentary Crime and Corruption Commissioner**
>
> The Parliamentary Crime and Corruption Commissioner is an officer of the Parliament who helps the Parliamentary Crime and Corruption Committee in the performance of its functions."

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18 See s 125.

19 See s 4, set out at paragraph 6 of these reasons.

20 Chapter 1, Part 3.

[56] Given that the purposes of the CC Act are to combat major crime and corruption[21] and given that the CCC has primary responsibility for achievement of the Act's purposes,[22] it is hardly surprising that the CCC has a "crime function"[23] and a "corruption function".[24]

[57] "Corruption" is defined as "means corrupt conduct or police misconduct".[25] Police misconduct is not relevant here.

[58] "Corrupt conduct" is defined by s 15 as:

> "**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; or
>
> (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.

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21 Section 4.
22 Section 7.
23 Chapter 2, Part 2.
24 Chapter 2, Part 3.
25 Section 12, Schedule 2.

(2) Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) impairs, or could impair, public confidence in public administration; and

(b) involves, or could involve, any of the following—

(i) …

(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; …

(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."

[59] Section 34 prescribes the principles for performing corruption functions. That provides, relevantly:

"**34 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 …

(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." (emphasis added)

[60] Section 35 prescribes how the CCC will perform its corruption functions. It provides, relevantly:

> "**35 How commission performs its corruption functions**
>
> (1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—
>
> (a) expeditiously assessing complaints about, or information or matters (also ***complaints***) involving, corruption made or notified to it;
>
> (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 section 47(1);
>
> (d) performing its monitoring role for corrupt conduct as provided for under section 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—
>
> (i) the incidence, or particular cases, of corruption throughout the State; or
>
> (ii) the matters mentioned in section 33(2);
>
> (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—
>
> (i) the prosecution of persons for offences; or
>
> (ii) 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;

(j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way. …"

[61] Sections 46 and 46A prescribe how the CCC deals with complaints. Those provisions empower the CCC to investigate the complaint itself, or to refer the complaint to a public official.

[62] Chapter 3 of the CC Act vests extensive powers upon the CCC. Chapter 4 empowers the CCC to hold hearings and also regulates those hearings. Sections 176 and 177 concern the hearings. Section 176 empowers the CCC to conduct hearings. Section 177 prescribes when those hearings may be open to the public.

[63] Chapter 2, Part 6 deals with "reporting". Section 64 provides, relevantly:

"**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[26] 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. …

(4) The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b). …"

[64] Section 69, which is critical to Mr Carne's case, is set out at paragraph [24] of these reasons.

[65] It can be seen that s 69(2) recognises that not all CCC reports are tabled. There are reports prepared pursuant to ss 49, 65, or a report to which s 66 applies. Those provisions are 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),

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[26] The Minister administering the *Police Service Administration Act* 1990.

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.

(4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—

(a) supports a charge that may be brought against any person as a result of the report; or

(b) supports a defence that may be available to any person liable to be charged as a result of the report; or

(c) supports the start of a proceeding under section 219F, 219FA or 219G against any person as a result of the report; or

(d) supports a defence that may be available to any person subject to a proceeding under section 219F, 219FA or 219G as a result of the report.

(5) In this section—

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

65 Commission reports—court procedures

(1) This section applies to a commission report about—

(a) the procedures and operations of a State court; or

(b) the procedures and practices of the registry or administrative offices of a State court.

(2) The report may be given only to—

(a) the Chief Justice, if the report deals with matters relevant to the Supreme Court; or

(b) the Chief Judge of the District Court, if the report deals with matters relevant to the District Court; or

(c) the President of the Childrens Court, if the report deals with matters relevant to the Childrens Court; or

(d) the Chief Magistrate, if the report deals with matters relevant to the Magistrates Courts; or

(e) the judicial officer, or the principal judicial officer if there is more than 1 judicial officer, in the court, or the system of courts, to which the matters dealt with in the report are relevant.

66 Maintaining confidentiality of information

(1) Despite any other provision of this Act about reporting, if the commission considers that confidentiality should be strictly maintained in relation to information in its possession (confidential information)—

(a) the commission need not make a report on the matter to which the information is relevant; or

(b) if the commission makes a report on the matter, it need not disclose the confidential information or refer to it in the report.

(2) If the commission decides not to make a report to which confidential information is relevant or, in a report, decides not to disclose or refer to confidential information, the commission—

(a) may disclose the confidential information in a separate document to be given to—

(i) the Speaker; and

(ii) the Minister; and

(b) must disclose the confidential information in a separate document to be given to the parliamentary committee.

(3) A member of the parliamentary committee or a person appointed, engaged or assigned to help the committee must not disclose confidential information disclosed to the parliamentary committee or person under subsection (2)(b) until the commission advises the committee there is no longer a need to strictly maintain confidentiality in relation to the information.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(4) Despite subsection (2)(b), the commission may refuse to disclose information to the parliamentary committee if—

(a) a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and

(b) the commission gives the committee reasons for the decision in as much detail as possible."

[66] Part 3 of Chapter 6 concerns the PCCC. As already observed, by s 291 the PCCC is a committee of the Legislative Assembly. By s 292, the PCCC's functions are described, relevantly here, as follows:

"**292 Functions**

The parliamentary committee has the following functions—

(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;

(d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly; …

(h) to issue guidelines and give directions to the commission as provided under this Act." (emphasis added)

[67] Various powers are vested upon the PCCC by s 293. Part 3 of Chapter 6 contains various provisions as to how the PCCC should operate, but they are not relevant here.

[68] Before considering the significance of the various provisions upon the question of whether the report ultimately prepared in Mr Carne's case was part of the proceedings of the Assembly, it is necessary to consider some cases where the question of privilege attaching to reports prepared under the CC Act or its predecessors have arisen.

[69] Mr Carne relies on *Ainsworth v Criminal Justice Commission*[27] as authority for the proposition that this court has jurisdiction to entertain a challenge to the report.

[70] By 1990, the Queensland government had determined to introduce poker machines to Queensland. The Executive requested the chairman of the Criminal Justice Commission (the CJC), which is the predecessor to the CCC, to investigate areas of likely difficulty with the introduction of poker machines. Like the CC Act, the CJ Act provided for a parliamentary committee which oversaw the body primarily responsible for the implementation of the Act's purposes. That committee was the Parliamentary Criminal Justice Commission (PCJC). The CJ Act also created the office of Parliamentary Criminal Justice Commissioner (PCJ Commissioner). The CJC was to report to the PCJC on the matter pursuant to s 2.14(2)(c) of the CJ Act and the report would be dealt with pursuant to s 2.18(1) which is broadly equivalent to s 69 of the CC Act and was in these terms:

"**2.18 Commission's reports.** (1) Except as is prescribed or permitted by section 2.19, a report of the Commission, signed by its Chairman, shall be furnished—

(a) to the chairman of the Parliamentary Committee;

(b) to the Speaker of the Legislative Assembly;

and

(c) to the Minister.

(2) The Commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject-matter of the report.

(3) If a report is received by the Speaker when the Legislative Assembly is not sitting, he shall deliver the report and any accompanying document to The Clerk of the Parliament and order that it be printed.

(4) A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order

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27 (1992) 175 CLR 564.

> of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.
>
> (5) A report received by the Speaker, including one printed in accordance with subsection (2), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by him and be ordered by the Legislative Assembly to be printed.·
>
> (6) No person shall publish, furnish or deliver a report of the Commission, otherwise than is prescribed by this section, unless the report has been printed by order of the Legislative Assembly or is deemed to have been so printed. ·
>
> (7) This section does not apply to an annual report of the Commission referred to in section 7.10."

[71] In due course, a report was prepared. It was delivered to the chairman of the PCJC, the Speaker and the Minister pursuant to s 2.18(1) of the CJ Act. Mr Ainsworth and his group of companies were the subject of adverse comment even though they had been given no prior notice of such a prospect. Mr Ainsworth successfully argued that procedural fairness had not been afforded to him and declarations were obtained to that effect.

[72] Mason CJ, Dawson, Toohey and Gaudron JJ in a joint judgment, mentioned s 2.18[28] but did not consider whether the report was protected by parliamentary privilege in the sense of considering whether the processes involved in its preparation could be questioned or impeached.

[73] Brennan J (as his Honour then was) did consider that issue, finding that parliamentary privilege was not available to the CJC. His Honour explained:

> "It is not easy to discover the statutory basis on which the Report was produced and furnished. It was common ground between the parties, however, that the production and furnishing of a report to advise the Government as to areas of likely difficulty in the implementing of a policy to introduce gaming machines was within the scope of the Commission's statutory functions. Whether or not this conventional assumption is warranted, the making of the assumption was an important, if tacit, element in the cases made respectively by the appellants and the respondent. The respondent contended that the Report was validly produced and furnished to the office-holders in conformity with the Act and, on being printed, attracted the immunities and privileges of a report tabled in and printed by order of the Legislative Assembly. (The respondent based some of its argument on the immunities and privileges attaching to a report tabled and printed by order of the Legislative Assembly but the character of the Report in that respect is immaterial to the making of the declaration to which, in my view, the appellants are entitled.) The conventional assumption is also essential to the appellants' case for relief by way of judicial review, for no relief can be granted if the Commission has not purported to

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[28] At 571.

> perform a statutory function or to exercise a statutory power. The appellant's entitlement to judicial review must nevertheless be determined by reference to the statutory function which the Commission purported to perform.[29] (emphasis added)

[74] It followed that because the preparation of the report was antecedent to the right of the Speaker to table the document, parliamentary privilege did not extend to acts or omissions in preparing the report.[30] Therefore, scrutiny of the report leading to a declaration that procedural fairness was not afforded did not offend parliamentary privilege.

[75] *Ainsworth* was decided before the enactment of the *Parliamentary Papers Act* 1992. The *Parliamentary Privileges Act* 1987 (Cth) had no application to the processes of the Queensland Legislative Assembly. *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*[31] was decided after the enactment of the *Parliamentary Papers Act* 1992.

[76] That case concerned a report prepared by the PCJC Commissioner who held a similar position under the CJ Act to the PCCC Commissioner under the CC Act. The PCJC Commissioner was requested by the PCJC to investigate whether certain information had been improperly disclosed by the CJC. She duly investigated and prepared a report. It was supplied to the PCJC and therefore questions of parliamentary privilege arose. The report was challenged by the CJC on various grounds, including a failure to afford procedural fairness.

[77] The relevant provision of the *Parliamentary Papers Act* 1992 was s 3 which provided, relevantly:

> "**3 Meaning of 'proceedings in Parliament'**
>
> (1) This section applies for the purposes of—
>
> (a) article 9 of the Bill of Rights (1688) as applying to the Queensland Parliament; and
>
> (b) this Act.
>
> (2) All words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the House or a committee are '**proceedings in Parliament**'.
>
> (3) Without limiting subsection (2), '**proceedings in Parliament**' include—
>
> …
>
> (c) presenting or submitting a document to the House, a committee or an inquiry; and

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29 At 586.

30 See the explanation of Helman J in *CJC & Ors v Dick* [2000] QSC 272 at [8], being the first instance decision to *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8.

31 [2002] 2 Qd R 8.

(d) a document laid before, or presented or submitted to, the House, 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 House or a committee; and

(g) a document (including a report) prepared, made or published under the authority of the House or a committee."

[78] As to the question of privilege, it was held:

> "[22] In applying them to the matters here, I accept the submissions of Mr Hugh Fraser Q.C. for the Speaker that the request, from the chairman of the Parliamentary Criminal Justice Committee to Ms Dick as Parliamentary Commissioner, to investigate and report satisfies the general description in s. 3(2); that her report itself is comprehended by s. 3(3)(d); that s. 3(3)(f) describes the process undertaken by her of conducting the investigation with a view to publication of the report she prepared; and that her final report is, within para. (g) of s. 3(3), a report prepared, made or published under the authority of the 'House' or a 'committee', which terms are defined in s. 2 to mean respectively the Legislative Assembly and a committee of it. All these matters have, under s. 3 of the Act of 1992, been certified by Mr Paul Lucas MLA as chairman, and his certificate is declared by s. 3 to be "evidence" of those matters. It follows that, if uncontradicted as they are here, they are to be received as correct unless there is something to suggest the contrary: cf. *Re Stollery* [1926] Ch. 284, 313." (emphasis added)

[79] Section 3(2) of the *Parliamentary Papers Act* is the equivalent of s 9(1) of the POQ Act. Sections 3(3)(d), 3(3)(f) and 3(3)(g) are equivalent to ss 9(2)(d), (f) and (g) respectively. Importantly for present purposes is the Court of Appeal's finding that the process of preparing the report was part of the "proceedings in Parliament". That meant that the preparation of the report attracted privilege and questions of breach of procedural fairness in its preparation were not justiciable.

[80] The case is distinguishable from the present on at least two bases. Firstly, the PCJC requested the PCJC Commissioner to prepare the report, therefore engaging s 3(g) (now s 9(g) of the POQ Act) as a document "prepared … with the authority of the House or a committee". Secondly, the PCJC Commissioner was herself an officer of the Parliament.[32] That is not the case with the members of the CJC or the CCC.

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32 *Criminal Justice Act* 1989, s 118(1).

[81] That raises issues as to the circumstances in which documents prepared by a party outside the Parliament and supplied to the Assembly or a committee attract privilege.

[82] In *Rivlin v Bilainkin*,[33] various communications made by a defendant in defamation proceedings were alleged to be libellous. An injunction issued to prevent repetition of those libellous communications. The defendant then delivered to the House of Commons communications which repeated the alleged libels. The plaintiff sought remedy and in defence the defendant claimed that the communications delivered to the House of Commons attracted parliamentary privilege. The submission was rejected. It was held:

> "It is argued on behalf of the defendant that this court has no jurisdiction to make an order for committal, since the matter complained of, the publication to Colonel Wigg, occurred in the precincts of the House of Commons and was connected with an attempt to obtain parliamentary redress for an alleged grievance.
>
> Having examined the authorities, I am satisfied that no question of privilege arises, for a variety of reasons, and particularly I rely on the fact that the publication was not connected in any way with any proceedings in that House."[34]

[83] Many cases have been decided in Australia which consider the point as to what connection between the preparation of a document by a third party and a particular officer of the Parliament is necessary before parliamentary privilege attaches to the preparation of the document.

[84] In *Rowley v O'Chee*,[35] Senator O'Chee had made comments about Mr Rowley which Mr Rowley regarded as defamatory. He commenced action. He sought disclosure of documents which had been created by Senator O'Chee and other documents which had been received by Senator O'Chee in connection with a politically sensitive issue concerning long line fishing in North Queensland. That fishing technique was thought to have adverse impact upon certain fish species.

[85] The *Parliamentary Privileges Act* 1987 (Cth) applied to the Senator's claims. Section 16(2) was in play. Section 16 is set out at paragraph [69] of these reasons.

[86] The documents prepared by the Senator were held to be privileged. Relevantly to Mr Carne's case is the claim for privilege by Senator O'Chee over documents that he had received from third parties. McPherson JA, with whom Fitzgerald P and Moynihan J agreed on this point, said as follows:

> "*Acts done for purposes*. The other documents in section B present a slightly different question. They consist principally, if not exclusively, of letters sent by or documents received from other persons or sources. It is not, I think, possible for an outsider to manufacture Parliamentary privilege for a document by the artifice

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33 [1953] 1 QB 485.

34 *Rowley v Armstrong* [2000] QSC 88 is another case involving a totally unsolicited communication as is *R v Grassby* (1991) 55 A Crim R 419 and see generally *Law Society Northern Territory v Legal Practitioners Disciplinary Tribunal (NT) & Anor* [2020] NTSC 79.

35 [2000] 1 Qd R 207.

> of planting the document upon a Parliamentarian: see *Rivlin v. Bilainkin* [1953] 1 Q.B. 485; and *Grassby* (1991) 55 A.Crim.R. 419. The privilege is not attracted to a document by s.16(2) until at earliest the Parliamentary member or his or her agent does some act with respect to it for purposes of transacting business in the House. Junk mail does not, merely by its being delivered, attract privilege of Parliament. That being so, the question again is whether it can properly be said that creating, preparing or bringing those documents into existence were 'acts' done for purposes of or incidental to the transacting of Senate business. Although perhaps not all of them would necessarily answer that description, the further expression in para 2(b) of the affidavit 'came into my possession' seems apt to describe an 'act done'. One would expect that a Senator, who was planning to ask a question or speak on a particular topic in the House, would first set about collecting such documentary information as could be obtained in order to inform himself or herself sufficiently on that subject."[36] (emphasis added)

[87] There are various cases where it has been held that if parliamentarians are required to produce documents prepared by third parties, they might be reluctant to collect and collate those documents. In that way, the proceedings of Parliament are "impeached". That was one reason why requiring the disclosure of the third party documents provided to Senator O'Chee breached the privilege. McPherson JA explained:

> "… requiring Senator O'Chee to produce for inspection documents of the kind listed in section B of his affidavit, for which Parliamentary privilege is claimed, has an obvious potential to deter him and other Parliamentarians from preparing or assembling documentary information for future debates and questions in the House. In correspondence with the Committee of Privileges and the President of the Senate, which forms part of the material before us, Senator O'Chee claimed that threats of proceedings being taken against his informants had the effect of discouraging them from providing further information about Mr Rowley's activities, and so of restricting the Senator's ability to pursue the subject in the House."[37]

[88] Similar logic was applied in *OPEL v Networks Pty Ltd (in liq)*[38] where privilege was held to apply to a Question Time briefing provided to the Prime Minister and Cabinet. In *ACT v SMEC Australia Pty Ltd*,[39] briefs to a minister were held to attract a privilege on the same basis.[40]

[89] It is difficult to see how those principles have application here.

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36 At 221.
37 [2000] 1 Qd R 207 at 224.
38 [2010] NSWSC 142.
39 [2018] ACTSC 252.
40 See also *Sportsbet Pty Ltd v New South Wales (No 3)* (2009) 262 ALR 27 at [19].

[90] A different type of case is *Erglis v Barkley (No 2)*.[41] That was decided by the Court of Appeal after the enactment of the POQ Act and therefore against the context of s 9.

[91] A nurse had sued her colleagues for defamation. The defamatory remarks were published to the Minister for Health in a statement. The statement was invited by the Minister after a meeting with the defendants. The defendants discussed their concerns about the plaintiff with the Minister and asked the Minister if she would read in Parliament a statement by them if they prepared one. The Minister agreed and the statement came into existence and was published to the Minister. It was then read in Parliament and tabled. McPherson JA[42] held that ss 8 and 9 of the POQ Act applied to protect the preparation and publication of the statement once the Minister undertook to read and table it in the Parliament.[43] The document, therefore, was one that had been prepared for the purposes of transacting business in the Assembly.[44] However, a subsequent publication of the statement by the defendants to persons other than the Minister was not protected by s 8. That was so because that second publication was not one for the purposes of proceedings in the Assembly.

[92] *Carrigan v Honourable Senator Michaelia Cash*[45] concerned a report into the conduct of the Vice President of the FairWork Commission. The report was the result of an investigation performed by the Honourable Peter Heerey AM QC, a retired judge of the Federal Court of Australia. Senator Cash was at that point the Minister for Employment. She defined terms of reference and appointed Mr Heerey to investigate.

[93] Ms Carrigan had made complaint to Senator Cash about the Vice President. She asserted that Mr Heerey's report was prepared without affording her procedural fairness. She sought a determination to that effect and other relief.

[94] An application was successfully made to strike out Ms Carrigan's proceedings on the basis that the preparation of the report was subject to parliamentary privilege. It was held that the report had been "[prepared] for the purposes of or incidental to the transacting of any … business"[46] of the Senate and the relevant business was "the presentation or submission of a document to a House or a committee".[47]

[95] White J identified the scope of the inquiry into the question of parliamentary privilege as follows:

> "44 The question of whether words were spoken, or acts were done, for a specified purpose is a question of fact. Prima facie, it requires an assessment of the subjective purpose of the actor in question: *O'Chee v Rowley* (1997) 150 ALR 199 at 208. However, as with so many areas of the law, the ascertainment of that purpose is informed by an objective consideration of

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41 [2006] 2 Qd R 407.
42 With whom Dutney J agreed and Jerrard JA agreed in substance in a separate judgment.
43 [32].
44 Section 9(2)(e).
45 [2016] FCA 1466.
46 *Parliamentary Privileges Act* 1987 (Cth), s 16(2)(c).
47 Section 16(2)(b).

> the circumstances, that is, by consideration of those matters which stand independently of any statement by the actor of his or her purpose, especially statements made in retrospect. …
>
> 46 As noted, in relation to Mr Heerey, the issue is whether, at the time he prepared his report, he did so for purposes of or incidental to the transacting of the business of either House of Parliament: *O'Chee v Rowley* at 208. It is Mr Heerey's purpose in preparing the report which is to be considered. The Minister's purpose in appointing Mr Heerey to inquire and report may inform the assessment of his purpose but is not conclusive of it as, at least in principle, her purpose may not have been entirely coincident with that of Mr Heerey."

[96] In *Carrigan*, the report had been prepared upon the request of the Minister so no issue arose that the report was unsolicited. White J found that the report was prepared by Mr Heerey, 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. Consequently, privilege attached and the issue of procedural fairness was not justiciable.

[97] Here the report was not prepared by a random member of the public but by a statutory body pursuant to statutory powers.

[98] The CCC has statutory obligations to achieve the purposes of the CC Act[48] which include to reduce the incidence of corruption and improve the integrity of the public sector.[49] The powers of the CCC are to be exercised in a way which promotes public confidence in government.[50] The CCC is to fulfil its functions by various means, including conducting investigations[51] and it may report its findings.[52]

[99] The PCCC is a committee of the Assembly specifically and statutorily formed for the purposes of overseeing the CCC. The business of the PCCC, and therefore by definition the business of the Assembly, includes oversight of the CCC which includes oversight of its investigations.

[100] Section 64 of the CC Act provides that the CCC "may report in performing its functions". For reasons later explained when analysing s 69, that must constitute a conferral of authorisation to report at least to the PCCC which by s 9 of the POQ Act is, for the purposes of privilege, part of the Assembly.

[101] Although the Court of Appeal in *Rowley v O'Chee*[53] held that a document prepared by a party outside Parliament does not attract privilege until some act is done by someone within the Parliament (or a member of a committee), that case was not decided against the context of the CC Act. The CCC has statutory authorisation to prepare a report and provide it to the PCCC[54] who must then decide whether to

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48 *Crime and Corruption Act* 2001, s 7.
49 Section 4(1)(b).
50 Section 34(d).
51 Sections 176 and 177.
52 Sections 64 and 69.
53 [2000] 1 Qd R 207.
54 *Crime and Corruption Act* 2001, ss 64 and 69.

direct that it be delivered to the Speaker. I would conclude that a report prepared by the CCC as a result of an investigation pursuant to the powers vested in it by the CC Act, where it is intended by the CCC to supply the report to the PCCC, is a document prepared for "presenting or submitting a document to the Assembly" (here the PCCC) "for the purposes of or incidental to, transacting business of the [PCCC]".[55]

[102] There is no doubt that the CCC, in preparing the report[56] and delivering it to the PCCC, was acting under the authorisation in s 64 of the CC Act. Mr MacSporran told Gilshenan & Luton that the report, once prepared, would be published.[57] At that point, it might have been thought that it was to be published to the Speaker, the chairperson of the PCCC and the Minister under s 69(3). When the subtleties of s 69(1) were understood, the intention was to produce the report to the PCCC so it could consider requesting the Speaker to table it.[58] Delivery to the PCCC is, relevantly, delivery to the Assembly. Privilege attaches to the report.

[103] Further, the PCCC has, in my view, accepted the report for the purpose of transacting the business of the PCCC. On both 19 June 2020 and 11 September 2020, Mr MacSporran informed the PCCC that a report was being prepared. On 11 September 2020, the chair of the PCCC seemingly accepted that a report was to be delivered and was amenable to considering a direction under s 69(1)(b).

[104] Pursuant to s 55 of the POQ Act, the chairman of the PCCC certified the report as:

> "6. A document, attached as 'Attachment 5', titled 'An investigation into allegations relating to the former Public Trustee of Queensland - Investigation Report' is:
>
> (a) a document prepared for the purposes of, or incidental to, transacting business of the Parliamentary Crime and Corruption Committee under s.9(2)(c) of the *Parliament of Queensland Act 2001* (Old);
>
> (b) a document presented or submitted to the Parliamentary Crime and Corruption Committee; and
>
> (c) a document that the Parliamentary Crime and Corruption Committee has authorised to be published to the Supreme Court and parties in the matter of *Mr Peter Damien Carne v Crime and Corruption Commission* [10786/20)."[59]

[105] The significance of the certification is found in s 55 of the POQ Act which is in these terms, relevantly:

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55 *Parliament of Queensland Act* 2001, s 9(1).

56 Assuming it is a "report"; see ground 1(b) of Mr Carne's application.

57 See paragraph [21] of these reasons.

58 *Crime and Corruption Act* 2001, s 69(1)(b).

59 Attachment 5 of the certificate of the Chairmen of the PCCC, Mr Timothy Nicholls MP.

"**55 Evidentiary certificates**

(1) A certificate purporting to be signed by an authorising person and stating any 1 or more of the matters mentioned in subsection (2) is evidence of those matters.

(2) The matters are—

(a) that evidence was given before the Assembly, a committee or an inquiry; and

(b) that a document was presented or submitted to the Assembly, a committee or an inquiry; and

(c) that a document was tabled in, or presented or submitted to, the Assembly, a committee or inquiry; and

(d) that a document was prepared for the purposes of, or incidental to, transacting business mentioned in section 9(2)(a) or (c); and

(e) that a document (including a report) was prepared, made or published under the authority of the Assembly, a committee or inquiry; and …"

[106] By s 55, the certificate is not absolute proof of the matters certified. It is only evidence of those matters. The other evidence as I have explained it though supports rather than contradicts the certificate, as do the provisions of the CC Act.

[107] Section 69 of the CC Act though is not without difficulty and has been the subject of submissions.

[108] Section 69(1), read with s 69(3), must mean that:

1. a report which falls within s 69(1)(a) must be given to the chairperson of the PCCC, the Speaker and the Minister;

2. although not expressly said, it is clearly contemplated that it is the CCC who produces a s 69(1)(a) report to the PCCC, the Speaker and the Minister.

[109] Section 69 operates less clearly in relation to a s 69(1)(b) report. Reading s 69(1) with s 69(3) leads to a conclusion that:

1. the CCC does not deliver the report to the Speaker or the Minister; but

2. the PCCC may direct that the report be given to the Minister.

[110] The report though is the report of the CCC. The PCCC must receive the report from the CCC in order to then determine whether it is produced to the Speaker. Section 69 must contemplate the delivery of the report by the CCC to the PCCC.

[111] As previously explained, the PCCC is part of the Assembly for the purposes of ss 8 and 9 of the POQ Act. Therefore as I have already concluded, delivery of the report by the CCC to the PCCC is part of the parliamentary processes of the PCCC, so privilege attaches, by force of ss 8 and 9 of the POQ Act.

[112] Mr Carne though submits that as:

> "s 69(7) provides that the report receives immunity and privilege once tabled, it follows that immunity and privilege do not attach until that point."

[113] It would be a very strange result if a provision such as s 69(7), which is clearly intended to bestow privilege, operated so as to impliedly deny privilege arising from other sources.[60]

[114] Mr Carne's submission proceeds on a misunderstanding of the proper purpose and construction of s 69.

[115] Section 69 is largely silent on the question of parliamentary privilege. Section 69(7) does not operate generally in relation to s 69 reports. Section 69(7) only applies to a report "published under s 69(6)". Section 69(6) only concerns the circumstances identified in s 69(5), namely where the Assembly is not sitting when the Speaker receives the report. In that case, there is a special procedure where the Clerk causes the report to be published and s 69(7) then deems the report to have been tabled so it attracts privilege.

[116] That s 69(7) only applies to the process authorised by s 69(6) in the circumstances of s 69(5), is reinforced by the Explanatory Memorandum to the *Crime and Misconduct Bill* 2001 which was later passed as the CC Act. The Explanatory Memorandum states:

> "Subsection (3) provides a mechanism to enable reports of the commission to be tabled when the Legislative Assembly is 'not sitting'. The section provides that the Speaker shall deliver such a report to the Clerk of the Parliament. The report is deemed to have been tabled in and printed by order of the Legislative Assembly and such a report is granted all the immunities and privileges of a report so tabled and printed (including parliamentary privilege)."

[117] History explains the presence of s 69(7). Ever since *Stockdale v Hansard*,[61] statutory law has been required to protect those who published parliamentary papers. Section 69(7) is in terms similar to s 2.18(4) of the CJ Act.[62] That was enacted in 1989, some three years before the *Parliamentary Papers Act* 1992 and in an environment where the principles in *Stockdale v Hansard* prevailed.

[118] Mr Carne also submits:

> "7. The action of providing the report (without more) does not clothe it with parliamentary privilege. At this point, it is the *presenting* and *submitting* of the report to the PCCC that is protected: *Parliament of Queensland Act* s 9(2)(c). The report cannot be said to have been prepared for the purposes of

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60 Namely ss 8 and 9 of the *Parliament of Queensland Act* 2001; see also *Criminal Justice Commission v Nationwide News Pty Ltd* (1994) 74 A Crim R 569 where at 577 Fitzgerald P seems to accept that privileges are presumed to be unaffected by legislation unless the contrary appears expressly or by necessary implication.

61 (1839) 112 ER 1112.

62 See paragraph [89] of these reasons.

'transacting' business of the kind referred to in s 9(2)(c), because it was a report for the CCC's own purposes and the culmination of what it claimed to be its investigation: cp. *Parliament of Queensland Act* s 9(2)(e).

8. It follows that, *as things presently stand*, for the purpose of section 8 of the *Parliament of Queensland Act* 2001 (Qld), what cannot be 'impeached or questioned' is the submitting or presenting of the report to the PCCC."

[119] That submission should also be rejected. The report is a document which has been prepared "for the purposes of, or incidental to, transacting business",[63] namely, the submission of "a document [the report] to … a committee [the PCCC]". Once the PCCC has received the report, it must decide whether or not to direct that the report be given to the Speaker. That decision is part of the political process and the PCCC will take into account what it sees fit. However, an attack upon the report alleging a lack of procedural fairness is an attempt to impeach or question the report and therefore the proceedings of the PCCC. That is what was held in *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*.[64]

[120] Subject to Mr Carne's submission in support of ground 1(b) of his application, that the report is not a "report" for the purposes of s 69 of the CC Act, it follows that the preparation of the report is part of the "proceedings in the Assembly" for the purposes of s 9 of the POQ Act and therefore attracts parliamentary privilege and immunities under s 8.

[121] If the report is not a "report" for the purposes of s 69 of the CC Act, then that may affect its privileged status. For instance, a document which is not a "report" as contemplated by s 69 may not be a document which was delivered to the PCCC pursuant to the authority of s 64 of the CC Act.

[122] A finding that the report is not a report for the purposes of s 69 does not necessarily mean that privilege does not attach to it. It was, as a matter of fact, prepared with the intention of delivery to the PCCC. It was in fact delivered to the PCCC. The chairperson of the PCCC certified that the report was "prepared for the purposes of, or incidental to, transacting business of the [PCCC]".

[123] As appears below, I have concluded that the report is a report for the purposes of s 69 of the CC Act and there is therefore no utility in considering whether parliamentary privilege would attach to the report if it were not.

Is the report "a report for the purpose of s 69(1) of the *Crime and Corruption Act* 2001?[65]

[124] In paragraph 1(b) of his application, Mr Carne seeks a declaration that the report is not a report for the purposes of s 69(1) of the CC Act. He says this is so for two reasons:

1. the report is not of a character so as to fall within s 69; and

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63 *Parliament of Queensland Act* 2001, s 9(2)(e).

64 [2002] 2 Qd R 8.

65 The relief sought in paragraph 1(b) of the application.

2. the publication of the report is unreasonable and an abuse of the power.

[125] Where the existence of parliamentary privilege arises as an issue in proceedings, the court may determine that question without offending the privilege.[66]

Does the report have the character of a report under s 69 of the Crime and Corruption Act 2001?

[126] The report here is not the result of a public hearing and it is not a "research report'. The agreed position between the parties is that the PCCC has not given any direction that the report be given to the Speaker. It follows that the CCC does not assert that the report is a report for the purposes of s 69(1) and does not assert that privilege attaches to the report by s 69(7). As previously explained, the CCC submits that privilege attaches independently of s 69(7). As there is no dispute, there is no utility in making a declaration in the terms sought.

[127] Mr Carne's real point emerges in his written outline. There:

> "34. A report of an investigation in which no finding of corrupt finding is made and which involved no public hearing, but which damages a person's reputation, is not an 'other report' within the scope of s 69(1)(b). Thus it is an error of law, and contrary to the CC Act for the CCC to seek to publish the report (ie to take any action to bring about its publication, including by seeking a direction from the PCCC)."

[128] The CCC joined issue on that point. Its position is clearly articulated in its written outline:

> "77. The report is not a report for the purposes of s69 of the CC Act only so long as the PCCC does not direct the Commission to give the Report to the Speaker (a process put in abeyance pending the resolution of this proceeding). If that direction is given, the report will be a report for the purposes of s69(1) of the CC Act."

[129] While the relief sought in paragraph 1(b) of the application does not address the complaint actually being made, the parties made extensive submissions about the real point which should be considered.

[130] The extent of the CCC's reporting powers and the question as to whether a report which reveals allegations and evidence gathered but makes no finding of corrupt conduct is a "report" capable of then becoming a "report" for the purposes of s 69 by direction given by the PCCC, is a question of construction.[67] That question must be determined by construing the words of s 69 in the context of the CC Act and in

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66 *Egan v Willis* (1998) 195 CLR 424 at [5] and [133], *Amann Aviation Pty Ltd v Commonwealth of Australia* (1988) 19 FCR 223 at 231-2, *Halden v Marks* (1995) 17 WAR 447 considered by White J in *Carrigan v Honourable Senator Michaelia Cash* [2016] FCR 1466 at [14] and [15].

67 *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625 and *Australian Communications and Media Authority v Today FM (Sydney)* (2015) 255 CLR 352.

the context of any relevant external factors, and having regard to the purposes of the legislation.[68]

[131] I have already examined the legislative scheme of the CC Act.

[132] Any investigation into "suspected corruption"[69] must logically result in one of three outcomes:

1. a finding of corrupt conduct;
2. a positive finding of no corrupt conduct;
3. a determination that no finding can be made.

[133] Usually, arguments are raised that bodies like the CCC have no power to make positive findings of criminal conduct or corruption. That was the point argued in *Balog v Independent Commission Against Corruption*,[70] *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd*[71] and *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*,[72] although the resolution of those cases turned on the construction of the relevant statutes which in the first two cases was not the CC Act or its predecessors.

[134] There is nothing in s 69 or elsewhere in the CC Act to suggest that a report which explains what steps were taken to investigate suspected corruption and explains the evidence gathered but does not make a final determination, is not a report for the purposes of s 69. In fact, the CC Act considered as a whole leads clearly to the opposite conclusion.

[135] The PCCC's functions include monitoring "the performance of the [CCC's] functions".[73] One of the functions of the CCC is to investigate suspected corrupt conduct.[74] 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.

[136] 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.[75] Its functions include to "raise standards of integrity and conduct in units of

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68 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at [47], *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at [14] and [35]-[40], *The Queen v A2; The Queen v Magennis; The Queen v Vaziri* (2019) 93 ALJR 1106 at [32], *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 at [78]; *Acts Interpretation Act* 1954, ss 14A and 14B.

69 *Crime and Corruption Act* 2001, s 22.

70 (1990) 169 CLR 625.

71 (2015) 255 CLR 352.

72 [2002] 2 Qd R 8.

73 Section 292(a).

74 Section 33(2).

75 Section 64(1).

administration"[76] 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.

Is the publication of the report unreasonable?

[137] Mr Carne, in further support of the relief sought at paragraph 1(b) of the application, namely that the report is "not a report for the purposes of s 69(1) of the [CC Act]", submitted:

> "36. All administrative action to pursue that end [publishing the report] is also unlawful as being unreasonable.
>
> 37. To publish this report would not further in any way 'whether corrupt conduct or conduct may have happened, may be happening or may happen' (s 32(2)(b)). It does not render a report publishable that, as the CCC Chair told the PCCC Chair, the matter 'has so much public interest and is such an important matter in terms of workplace culture, corruption risks and so forth'. They are not bases for publication within the subject-matter, scope and purposes of the statute.
>
> 38. To publish the report, on a true construction of the statutory publication power, would be an abuse of it. It would constitute legal unreasonableness."[77]

[138] When referring to the CCC seeking to "publish the report", Mr Carne means the action of the CCC in making the request that the PCCC direct the report be given to the Speaker thus causing the report to be tabled.[78]

[139] There are significant difficulties with this alternative submission by Mr Carne.

[140] Firstly, unreasonableness of the resolution is raised in support of ground 1(b). Ground 1(b) seeks a declaration that the report "is not a report for the purposes of s 69(1) …". There is no logical basis upon which the reasonableness or otherwise of a request to the PCCC to direct that the report be delivered to the Speaker could affect whether or not the report is a document which as a matter of law could become a report under s 69(1) if and when the appropriate direction is given by the PCCC.

[141] Secondly, an inquiry into the reasonableness or otherwise of the request to cause the document to be tabled in the Assembly offends parliamentary privilege once it is understood that the report was prepared for the "purposes of or incidental to transacting business of the [PCCC]" as certified by the chairman of the PCCC. The decision whether to request that the report be given to the Speaker is one for the PCCC.

[142] Ground 1(b) fails.

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76 Section 33(1)(a).

77 And framed "unreasonableness" in the term understood in *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332.

78 Mr Carne's written submission, paragraph 34.

Should relief be given the practical effect of which is to nullify the resolution of the Crime and Corruption Commission to seek a declaration that the Parliamentary Crime and Corruption Commission direct that the report be given to the Speaker of the Assembly?[79]

[143] It is convenient to deal with paragraphs 2 and 2A of the application together. They both seek the same aim which is to nullify the CCC's resolution to seek a direction that the PCCC direct that the report be sent to the Speaker. Paragraph 2 of the application seeks to achieve that by way of mandatory injunction requiring the CCC to revoke the resolution. Paragraph 2A seeks to achieve the same aim by declaring the resolution invalid.

[144] Various issues arise.

Does the Crime and Corruption Commission have the power to seek a direction from the Parliamentary Crime and Corruption Committee that the report be given to the Speaker?

[145] The submission by Mr Carne is that there is no statutory authorisation for the request.[80]

[146] It can be accepted that there is no specific statutory power which authorises the request which has been made to the PCCC. It is though a mistake to assume that a statutory body may only take actions which are specifically and expressly authorised by the statute governing them. *Griffith University v Tang*[81] is an example of action taken by a statutory corporation that was no doubt within power, even though the step was not one taken "under an enactment" for the purposes of the *Judicial Review Act* 1991, or in other words, not specifically authorised by the statute.

[147] Here, the report has been prepared pursuant to statutory authority. The CCC operates under a scheme where it's operations are overseen by the PCCC which has its own powers. There is nothing in the CC Act to suggest that the CCC cannot communicate with the PCCC and make suggestions as to how it should exercise its powers.[82] It clearly can.

[148] This limb of ground 2 of the application fails.

Does s 332 of the Crime and Corruption Act 2001 assist Mr Carne?

[149] Mr Carne relies on s 332 as the basis of the court's jurisdiction to make the orders he seeks in ground 2.

[150] Section 332 provides, relevantly:

> "**332 Judicial review of commission's activities in relation to corrupt conduct**
>
> (1) A person who claims—

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79 Paragraphs 2 and 2A of the application.
80 Mr Carne's written outline, paragraph 35.
81 (2005) 221 CLR 99.
82 Section 174 of the *Crime and Corruption Act* 2001 suggests to the contrary.

(a) that a commission investigation into corrupt conduct is being conducted unfairly; or

(b) that the complaint or information on which a commission investigation into corrupt conduct is being, or is about to be, conducted does not warrant an investigation;

may apply to a Supreme Court judge for an order in the nature of a mandatory or restrictive injunction addressed to the commission. …"

[151] Section 334 provides, relevantly:

"**334 Application under s 332**

(1) If the judge who hears an application under section 332 is satisfied as to the matter claimed by the applicant, the judge may, by order—

(a) require the senior executive officer (corruption) to conduct the investigation in question in accordance with guidelines specified in the order; or

(b) direct the senior executive officer (corruption) to stop or not proceed with an investigation on the complaint or information to which the application relates. …"

[152] It is now well-established that the jurisdiction granted under ss 332 and 334 concern the supervision of the CCC's powers of investigation and that the exercise of jurisdiction under those sections is dependent on there being an ongoing investigation.[83] Any investigation, being antecedent to the preparation of the report to be submitted to the PCCC, does not attract parliamentary privilege.

[153] Here, the investigation ended before Mr Carne filed his application seeking relief. Mr Paul Alsbury is the Senior Executive Officer (Corruption) employed by the CCC. He swore an affidavit that the investigation into Mr Carne was closed on 3 April 2020 and no further investigation is contemplated. He was not required for cross-examination and his evidence is therefore uncontested and should be accepted.

[154] Mr Carne submitted:

"50. It is submitted that the investigation is not at an end:

a. for so long as the CCC seeks to give effect to its stated intention to publish the report;

b. for so long as the Applicant has not provided all the material about the investigation which the Applicant

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83 *Le Grand v Criminal Justice Commission* [2001] QCA 383 and *PRS v Crime and Corruption Commission* (2019) 280 A Crim R 35 at [46].

ought have and in order to afford him procedural fairness;

c. for so long as the CCCs statement stands that 'at the current time' criminal action is not proposed;

d. for so long as what ought and can be done in respect of the report's publication remains unresolved, it remains to be completed."

[155] That submission is rejected. It is contrary to authority. No investigative powers have been sought to be exercised. It is the investigative powers of the PCCC which ss 332 and 334 seek to regulate.

The added ground: lack of procedural fairness

[156] Mr Carne relies upon *Ainsworth v Criminal Justice Commission* as authority for the proposition that questions of procedural fairness in the preparation of the report by the CCC is not protected by parliamentary privilege. He submits that he was not provided with all the material the CCC relied upon in preparation of the report.[84] He also complains that, because of his bad health he has been unable to give an answer to the allegations.

[157] As already explained, *Ainsworth* was decided before the *Parliamentary Papers Act* 1992 was enacted. As already explained, the report attracts privilege. Consistently with *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*,[85] an attack upon the report on the basis that it was prepared contrary to the rules of procedural fairness, is to question or impeach the report.[86]

[158] As the report is part of the proceedings of the Assembly, Mr Carne's added ground is not justiciable.

Conclusions

[159] The report of the CCC is a document which is a "report" for the purposes of s 69(1) of the CC Act if the PCCC directs the Commission to give the report to the Speaker.

[160] The preparation of the report and the resolution of the CCC to seek a direction from the PCCC pursuant to s 69 are proceedings of the Parliament. Mr Carne's application seeks to impeach or question those proceedings contrary to s 8 of the *POQ Act*.

[161] The application must be dismissed and the parties heard on the question of costs.

[162] Orders:

1. Application dismissed.

2. The parties will be heard on the question of costs.

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84 See paragraph [14] of these reasons.
85 [2002] 2 Qd R 8.
86 At [23], [33] and [46]-[47].