



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

BETWEEN: **CRIME AND CORRUPTION COMMISSION**
Appellant

and

PETER DAMIEN CARNE
Respondent

**INTERVENER'S OUTLINE OF ORAL SUBMISSIONS
(SPEAKER OF THE LEGISLATIVE ASSEMBLY OF QUEENSLAND)**

Part I: Publication

1. This outline of oral submissions is in a form suitable for publication on the internet.

Part II: Argument

2. The question of whether the Report and its preparation are covered by parliamentary privilege is answered by the statutory provisions defining the scope of the privilege. That is, ss 8 and 9 of the *Parliament of Queensland Act 2001 (Qld) (POQ Act)*.

History of the POQ Act

3. Article 9 of the Bill of Rights has always formed part of the law of Queensland.¹ It established a privilege in respect of the 'proceedings in Parliament'.
4. Section 3 of the *Parliamentary Papers Act 1992 (Qld)* expressly defined and thereby widened the scope of the term 'proceedings in Parliament'.² That definition has been

¹ *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8 (*CJC v PCJC*) at 21 [21] (McPherson JA).

² *CJC v PCJC* [2002] 2 Qd R 8 at 21 [21].

substantially replicated in ss 8 and 9 of the POQ Act. (Submissions of the Speaker of the Legislative Assembly (**Submissions**), [9]–[12], [17]–[23]).

5. *Ainsworth v Criminal Justice Commission*,³ decided prior to the enactment of the *Parliamentary Papers Act 1992*, therefore has little relevance to determining whether the Report and its preparation fall within the definition of ‘proceedings in the Assembly’ (Submissions, [13]–[16]).

Primacy of the POQ Act

6. The question of whether each of the Report, and the Report’s preparation, is part of the ‘proceedings in the Assembly’ is sufficiently and entirely answered by s 9 of the POQ Act.
7. The Report is privileged because it is a document which was presented or submitted to the Committee: POQ Act, s 9(2)(d) (Submissions, [24]).
8. The Report’s preparation is privileged because the Report was prepared for the purpose of being submitted to a committee: POQ Act, s 9(2)(e) and (c) (Submissions, [28]–[32]).
9. It is irrelevant that the respondent might, absent the existence of the privilege, succeed in proceedings which allege that the Report is *ultra vires* the *Crime and Corruption Act 2001 (Qld) (CC Act)*, or which allege the requirements of procedural fairness were not observed in the Report’s preparation. Parliamentary privilege is intended to, and does, protect documents and acts of preparation from judicial proceedings which may have succeeded absent the existence of the privilege.
10. Similarly, the availability, absent the existence of privilege, of a declaration that the Report is not an ‘other report’ pursuant to s 69(1) of the CC Act, cannot alter the application of s 9(2) of the POQ Act to this matter.
11. The only inquiry a court can engage in, to determine whether the Report and its preparation are part of the proceedings in the Assembly, is to determine whether, on the uncontested (and certified) facts and matters, the Report and its preparation meet the relevant descriptions in s 9 of the POQ Act. If a court must also determine

³ (1992) 175 CLR 564.

whether the Report and/or its preparation was not unlawful, then the court is thereby questioning or impeaching ‘proceedings in the Assembly’.⁴ That is impermissible.

12. Accordingly, the Court’s inquiry is limited to whether the Report and its preparation meet the descriptions in s 9 of the POQ Act as a matter of characterisation (Submissions, [25] – [27], [38] – [41]).

A handwritten signature in black ink, appearing to read 'Bret Walker', written in a cursive style.

5 June 2023

Bret Walker

⁴ See *CJC v PCJC* [2002] 2 Qd R 8 at 27–28 [47] (Chesterman J).