



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B66 of 2022

BETWEEN:

CRIME AND CORRUPTION COMMISSION
Appellant

10

and

PETER DAMIEN CARNE
Respondent

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RESPONDENT'S OUTLINE OF ARGUMENT

Filed on behalf of the Respondent by

Date of this document: 10 March 2023

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PART I: PUBLICATION

This submission is suitable for publication on the internet in unredacted form. With the redaction of sub-paragraph 86(b) below, it is suitable for publication.

PART II: CONCISE STATEMENT OF THE ISSUES

1. Is the Appellant's Report of its dealing with a corruption complaint against the Respondent one which the statutory scheme permits to be made public?
2. Is the question whether the Report is one to which s 69(1)(b) of the *Crime and Corruption Act 2001* (Qld) applies capable of curial determination?
3. Did the Appellant deny the Respondent procedural fairness in the preparation of the Report?

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PART III: SECTION 78B NOTICE

4. There is no basis in the Respondent's view for the issue of a notice under s 78B of the *Judiciary Act 1903* (Cth).

PART IV: STATEMENT OF CONTESTED MATERIAL FACTS

5. None of the facts in paragraphs 6 to 21 of the Appellant's Outline (AO) are disputed, but they are materially incomplete in one respect.
6. At AO paragraph 9 it is said (correctly) that a draft report was prepared by the CCC [on 4 September 2020], and that it was provided to Mr Carne who made confidential submissions on it. A further draft of the Report was prepared on or about 6 October 2020 with material changes, but Mr Carne was not provided with a copy and had no opportunity to make submissions about it. (Nor was Mr Carne provided with more than a small portion of the material said to support the findings in it.) These points were the subject of submissions below about a denial of procedural fairness. They are renewed here.

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PART V: STATEMENT OF ARGUMENT

A. Attitude to proposed interventions

7. The Attorney-General of the Commonwealth and the Speaker of the Queensland Legislative Assembly seek leave to intervene, the latter as *amicus curiae* in the alternative. The Respondent accepts that the relevant principles are as stated in *Roadshow Films P/L v iiNet Ltd [No 1]* (2011) 248 CLR 37.

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8. The Respondent resists the granting of leave to the Attorney-General without costs protection. As the Attorney-General seeks to intervene to support the Appellant, leave

should be granted on the condition that the Appellant pay Mr Carne's costs regardless of the outcome. A request has been made to this effect, but the Appellant has not acceded. Mr Carne has no recourse to public funds for his defence of this appeal. The declared purpose of the Attorney-General's request to intervene arises from Commonwealth arrangements which are no concern of Mr Carne. The Attorney's intervention has materially added to the costs of defending this appeal, and the hearing time may, as a result, extend beyond a single day. The Court has power in such circumstances to impose conditions about costs as between all parties as it sees fit: *Roadshow* [3] (The Court).

9. The Respondent resists the granting of leave to the Speaker:

- 10
- a. the Speaker's submissions (in Part A) contain recitations of principle and statements of history that are not (and have never been) in dispute in this matter;
 - b. those submissions (in Part B) expressly endorse what is already submitted by the Appellant, part of which is not the subject of any challenge by Mr Carne: ie that the presentation and submission of the Report to the PCCC is unimpeachable;
 - c. a submission is made (at paragraph 23) that *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 'has no application in determining the current scope of the phrase "proceedings in the Assembly"'. No party has contended otherwise, so the issue does not confront the Court;
 - d. Part C of the Speaker's submissions duplicate what the Appellant and the
- 20
- e. the granting of leave to intervene will further increase the time required for the hearing and costs for Mr Carne.

10. The Court, in these circumstances, cannot be satisfied it 'will be significantly assisted by the submissions of [the Speaker] and that any costs to the parties or any delay consequent on agreeing to hear [the Speaker] is not disproportionate to the expected assistance': *Roadshow* [4].

11. We repeat the submission above about costs and the desirability of conditions that the Appellant pay Mr Carne's costs in any event if leave were granted to the Speaker despite the submissions just made.

B. Summary

12. The case against Mr Carne advanced on this appeal¹ conflates actions and purposes which the statutory scheme treats separately:
- a. the CCC giving information to its Parliamentary oversight body (the PCCC);
 - b. making public a CCC report about dealing with a corruption complaint against an individual.
13. Mr Carne never challenged the first of these. He expressly directed his case to challenge the Report being made public.² The Appellant took no issue with the matter proceeding in this way, and it was determined on that basis. The proceeding was commenced by Originating Application, so there were no pleadings. The parties' submissions defined the issues. Mr Carne's case at no stage sought to impeach the presenting and submitting of the information comprising the report to the PCCC.
14. The distinction is important.
- a. The actions have different legal and practical significance. The latter involves an adjudicative function ordinarily reserved to Courts and Tribunals: making public declarations and findings of wrongdoing. Consistently with well-established principle, the *Crime and Corruption Act* commands that 'reports'³ about complaints of corrupt conduct are to be given to others to decide (s 49), and empowers the CCC to apply to a Tribunal to have them determined (s 219F).
 - b. The actions involve different processes. In the case of the first, presenting or submitting is what attracts privilege, and at that point in time.⁴ The second calls for an actual (or deemed) tabling.⁵ To table (in this setting) is to publish. Parliament has chosen this course for reports, mindful of the difference between the CCC communicating with its oversight body and the *making public* of what the CCC has (perhaps) presented or submitted.

¹ See esp Appellant's 'Summary' (AS [22] and [23])

² Transcript of hearing at first instance (1 April 2021), T1-4 (lines 32-34) RFM195, T1-7 (lines 12-19) RFM198, T1-52 (lines 9-41) RFM243; Supplementary Outline of Submissions at first instance on behalf of Mr Carne RFM187, [7]-[8]; Outline of Submissions on Appeal on behalf of Mr Carne, [18] RFM255; Reply Submissions on Appeal on behalf of Mr Carne, [10] RFM265.

³ Other than ones for reports on public hearings.

⁴ *Parliament of Queensland Act* s 9(2)(c).

⁵ *Parliament of Queensland Act* s 9(2)(d); *Crime and Corruption Act* s 69.

15. The distinction just discussed is a product of the particular position of the Appellant with respect to Parliament. The CCC is unique in Queensland for its direct relationship with a Committee of the Assembly. It is established by statute and has its functions defined likewise.
16. The PCCC also owes its existence to statute: it is a statutory committee.⁶ The PCCC is unique in Queensland as the only statutory Committee established by other than the *Parliament of Queensland Act 2001* (Qld).⁷ Only in NSW and Tasmania is the comparable committee established by statute other than the various Parliament or Parliamentary Committees Acts.⁸
- 10 17. The way in which Parliamentary Privilege operates with respect to the work of the CCC and its dealings with the PCCC are therefore a product as much of the *Crime and Corruption Act* as of the *Parliament of Queensland Act*.
18. The relationship between the CCC and the PCCC is singular. The CCC is neither part of Parliament, nor a stranger. It operates under the watch of Parliamentary supervision: to have the performance of its functions monitored and reviewed: *Crime and Corruption Act* ss 9, 292(a). Where the relationship is defined in the manner in which the *Crime and Corruption Act* does so, occasion will arise for the Courts to declare the boundaries of it, and what it demands of each.
- 20 19. For these reasons, the *Crime and Corruption Act* demands close attention. It sets the relationship between Parliament and this outlier from longstanding constitutional arrangements. That Act states what can be done when the CCC is reporting about its dealing with a corruption complaint, bearing in mind the need to order the spheres of action of the respective organs: controlling Executive power; maintaining Parliamentary

⁶ *Crime and Corruption Act* s 291 (ie the Committee ‘is established’ by the statute).

⁷ Albeit recognized as being in a class of ‘statutory committees: *Parliament of Queensland Act 2001* (Qld): see Schedule, definition of ‘statutory committee’ and Ch 5.

⁸ In NSW the analogous Committee is ‘appointed’ by s 63 of the *Independent Commission Against Corruption Act 1998* (NSW) and in Tasmania s 23 of the *Integrity Commission Act 2009* (Tas) ‘establishes’ the relevant committee. The other jurisdictions take different approaches to how such committees are to be set up. In Victoria the comparable committee is established by s 5(a) of the *Parliamentary Committees Act 2003* (Vic); in South Australia it is established by s 15M of the *Parliamentary Committees Act 1991* (SA); in Western Australia it is established by the ‘Houses of Parliament’: s 216A of the *Corruption, Crime and Misconduct Act 2003* (WA). The *National Anti-Corruption Commission Act 2022* states that a joint Committee will be ‘appointed according to the practice of the Parliament’: s 172(1). The Parliamentary Joint Committee on the National Anti-Corruption Commission was appointed by resolutions of the House of Representatives of 8 February 2023 and the Senate on 9 February 2023.

oversight; and leaving curial rulings to interpret and declare the statute's allocations of responsibilities and the rights of the governed.

20. The Appellant and intervenors would have this Court treat that question as resolved by parliamentary privilege attaching under ss 8 and 9 of the *Parliament of Queensland Act*. They demote s 69 of the *Crime and Corruption Act* as stating 'processes'.⁹ If s 69 were about process or the internal affairs of Parliament, it would have dealt with them as part of its Standing Orders, and not in statute.
21. The Attorney-General accepts that the *Crime and Corruption Act* is not irrelevant: AG-S [24]. The concession extends only so far: ie, only in relation to determining the subjective purpose for which the CCC has acted, being informed by an objective consideration of the circumstances. Section 69 and related provisions are, however, as much Parliamentary commands as ss 8 and 9 of the *Parliament of Queensland Act*.
22. To suggest the *Parliament of Queensland Act* has some inherent superiority over the *Crime and Corruption Act* amounts to a submission that there is class of statutes to be recognised as long-enduring iconic documents and elevated above others. This doctrine arises occasionally in the United Kingdom,¹⁰ but it has encountered understandable difficulty there, and the existence of a written constitution renders it all the more problematic here.
23. It is submitted that the question, rather than being one of privilege, is whether the statutory regime permits the making public of the Report. Mr Carne's primary point is that the Report, be it privileged or otherwise, is one which the statutory regime precludes being made public.
24. By s 69, Parliament has given very specific attention to what reports can be made public, how Parliament is to be involved in giving its sanction to that happening, and in setting a threshold apt for curial determination for that to occur. The Appellant seeks to frame s 69 as coming *after* the assessment of privilege. Whereas here, it is submitted that one cannot begin to answer whether the Report can be made public without first appreciating the statutory relationship between the CCC and the PCCC and the closely defined functions of the former in particular.

⁹ As the Attorney-General of the Commonwealth submits: AG-S [10].

¹⁰ See, for example, Zenon Bankowski and D Neil MacCormick (1991) 'Statutory Interpretation in the United Kingdom', ch 10, in MacCormick & Summers (eds) *Interpreting Statutes: A Comparative Study*, 398-399.

25. The making public of a report (unlike submitting and presenting material to the PCCC) invokes the rights of interests of the individual the subject of the complaint and risks encroachment upon the preserve of Courts and Tribunals.
26. Parliament has not given the CCC a function of reporting to the public about its investigations of corrupt conduct undertaken privately. This Court has already drawn the principled distinction between the facilitative functions of investigative bodies and institutions having a judicial or quasi-judicial function. Neither the CCC's general reporting power (*Crime and Corruption Act* s 64) nor its prevention function change these fundamentals.

10 **C. Reporting on a corrupt conduct investigation: steps and powers**

27. The CCC conducted an investigation into an anonymous complaint that Mr Carne had engaged in corrupt conduct while he was Public Trustee of Queensland. No public hearings were held. Towards the end of the investigation, the CCC 'reported to':
- a. the Director of Public Prosecutions (**DPP**) under s 49(2)(a) of the *Crime and Corruption Act* 'for the purposes of any prosecution [that Office] consider[ed] warranted'; and
 - b. the Queensland Attorney-General (as Chief Executive of the relevant Department) under s 49(2)(f) for the purpose of taking disciplinary action.
28. The DPP did not consider any prosecution to be warranted. Mr Carne resigned so a 'show cause' disciplinary process came to an end.
29. These are the limits of the CCC's reporting power in its corruption investigation function:¹¹
- a. reporting to other public officials in these specific ways for them to seek adjudication by a Court of any matter considered to warrant it (in the case of the DPP); and
 - b. to take such managerial action as the head of the public service agency considers appropriate.
30. The CCC also had available to it the option of *applying* (not '*reporting*' as such) to the Queensland Civil and Administrative Tribunal (**QCAT**) for it to 'hear and decide' this as

¹¹ As the Majority below held: RJ[67] CB82.

a disciplinary matter: s 219F. This is the other means by which the Act contemplates there being an adjudication of a complaint of corrupt conduct. The CCC made no such application.

10 31. In each of the above cases (the DPP and the Courts, the Agency head and QCAT), the CCC's reporting is acted upon (or not) by independent others: and public determinations of blameworthiness or otherwise are left to judicial and quasi-judicial bodies. Only this allows for the detachment and fairness that a system of justice demands, one which precludes the investigator being a judge in its own cause. No Act gives power to the CCC itself to adjudicate a complaint of corrupt conduct; to report to the public about it (unless on a public hearing); or to make public declarations. Its role is investigative, and legal principle disapproves of a confusion of the two.

32. The other relevant action in connection with the outcome of a corruption investigation is the CCC having its reports examined by the PCCC. Section 292 of the *Crime and Corruption Act* states the functions of the PCCC (not the CCC). Section 292(c) provides that the PCCC may:

... 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;

20 33. It is accepted (and has been from the outset of this matter) that the CCC may give its reports and other information to the PCCC as part of being supervised. This has never been in issue, and the Courts below (quite properly for that reason) have never ruled on it.

34. The Court of Appeal below (by Majority) kept the CCC to its functions in reporting about a corruption investigation. Part of this meant that the Report was not one it was within the function of the CCC to report publicly about.

D. The Grounds of Appeal: points of clarification

35. There are two grounds of appeal. Ground 1 challenges the Majority's finding (RJ[81] CB85) that the Report is not privileged, and Ground 2 challenges what is said to be a finding that the CCC can report under s 64 of its Act only when there is a positive finding of corrupt conduct.

30 36. Both carry misunderstandings about the issues which Mr Carne raised below, and the Majority decision.

37. As to Ground 1, the question below was whether the Report could be made public. There were no pleadings, so it was made express in oral and written argument that Mr Carne never suggested that submitting and presenting the report to the PCCC could be impugned.¹² The Majority finding at RJ[81] CB85 must be read in light of the issues which were before it. The Courts below could not decide what the parties did not put in issue.¹³ Moreover, no part of the relief granted by the Court below mentions privilege, and so the Court of Appeal's observations on that topic (which appear in the Reasons after the Majority Judges had made findings about the scope and operation of s 69) are ancillary.

10 38. Ground 2 mischaracterises what the Majority found in connection with the CCC's reporting function. The issue is considered further below at paragraph 64 and following.

E. The relevance of section 69 to the question of privilege and public reporting

39. Section 69 concerns 'commission reports' and their tabling. To 'table' such reports is to make them public: *Parliament of Queensland Act 2001* (Qld) s 53. Ordinarily, tabling need not mean publishing: s 54. Although 'tabling' can mean the provision of material to Parliament, or laying a document on the Table of the House,¹⁴ the statutory context here shows the intention is to require more than presenting and submitting for a report to be made public. Actual tabling (or deemed tabling, if Parliament is not sitting) is required. Moreover, the report must be one which is within the CCC's functions (ie be a 'commission report').

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40. Section 69 coheres with the *Parliament of Queensland Act*, as well as established Parliamentary procedures:

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.
- 30 (3) A commission report, signed by the chairperson, must be given to—
- (a) the chairperson of the parliamentary committee; and

¹² See footnote 2 above for the numerous ways in which this was made clear by Mr Carne.

¹³ *Coleman v Power* (2004) 220 CLR 1, [79] (McHugh J); *MXAPC v Minister for Immigration and Border Protection* (2021) 95 ALJR 441, [198] (and authorities there mentioned)

¹⁴ Standing Orders, definition of 'table'.

- (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.
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- (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 pre-publishing by the publisher of copies of the report for this section.
41. Reporting of the kind the CCC does to the DPP and the Agency head are expressly excluded (ie reports under s 49) from the possibility of being made public. This is one
- 20 indication that limits attend what publications s 69 is capable of sanctioning; that it is not (as the Commonwealth Attorney-General submits) a section about ‘processes’.
42. Reports on public hearings are ones capable of publication for that reason alone. There are good reasons why, noting that public hearings will be the exception not the rule: *Crime and Corruption Act* s 177.
43. The CCC places ss 8 and 9 of the *Parliament of Queensland Act* at the forefront of the inquiry: AS[35]. The exercise, however, miscarries to the extent it occludes part of the applicable statutory regime: what the *Crime and Corruption Act* says of the relevant activities. It miscarries at the point where the Appellant poses the question as being (AS[36]) whether ‘any legislation modifies or abrogates the privilege in “unmistakable
- 30 language”’. The CCC says s 69 does not abrogate the privilege which the *Parliament of Queensland Act* confers. To proceed in this way is to create a false contest. The statutory scheme as a whole should be examined: one statute cannot be set up against another in this manner, especially ones passed more or less at the same time.
44. The CCC needs to operate within the bounds of its functions and within the scope of s 69 in making a report public. A defence of absolute privilege applies to a publication by the CCC which publication is ‘for the purpose of performing the Commission’s functions’: *Crime and Corruption Act: s 335(6)*. Section 69 is part of making sure that it does, by

having dual components which balance the curial, the Executive and the Parliamentary, as well as the rights of the citizen who may be the subject of a report. Section 69 thus sits over these different spheres of action and delineates responsibilities.

45. Section 69 has two relevant features:

- a. the report must be one the CCC has a function to make (ie it must be of the kind contemplated by s 69(1)(b), a ‘commission report’);
- b. the PCCC must have directed that report to be given to the Speaker.

46. The first of these is amenable to curial determination: it concerns the proper construction of the CCC’s reporting powers. At the core of curial functions is the ability to rule on the proper construction of statutes and upon the scope of powers of functions of statutory bodies. The second has never occurred. Section 69 states the conditions necessary to making a report public.

47. Section 69 itself confers no power to report. The CCC does not seek to contend otherwise, consistent with what the Majority below found.¹⁵ One must look elsewhere in the Act for such a power. Again, the Majority so found¹⁶, and the CCC does not seek to say otherwise.

48. The question what are ‘commission reports’ in s 69 is answered by:

- a. first, understanding the meaning and significance of the term ‘corrupt conduct’;¹⁷
- b. secondly, construing the parameters of the provisions directed specifically to the CCC’s corruption function (Part 3, Division 1 of the *Crime and Corruption Act*).

49. As to the first above, the CCC has two main functions: crime and corruption. The former is defined by the general law. The latter is defined in s 15 as involving misconduct of a certain level of gravity:

‘**Corrupt conduct**’ means conduct of a person, regardless of whether the person holds or held an appointment, that—

(1)(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

¹⁵ RJ[46], [51] CB78.

¹⁶ RJ[46], [51] CB78.

¹⁷ *Crime and Corruption Act*, s 15.

- (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
- 10 (c) would, if proved, be—
- (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.
- (2) ‘**Corrupt conduct**’ also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) impairs, or could impair, public confidence in public administration; and
 - (b) involves, or could involve, any of the following—
- 20 ...
- (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.
- 30

50. Such a threshold directs the CCC’s corruption functions above mere opprobrium, or commentary by reference to a moral standard not set by the statute. The CCC is empowered to refer for consideration to the DPP and to the Agency head only conduct capable of being regarded as meeting this law-defined threshold. The conduct must be, to use the words of the Majority (RJ[22] CB71), more serious than ‘some conduct which might affect the performance of functions or the exercise of powers of a unit of public administration or a person holding an appointment’. It must (if proved) be either an offence, or provide grounds to terminate the person’s services.

40 51. As to the second of the points above (ie looking to other functions which might found the preparation of a ‘commission report’ for the purposes of s 69), the CCC claims its prevention (ss 33-35) and general reporting power (s 64) are enough. Neither assist. The general reporting power is just that:

64 Commission’s reports - general

- (1) The commission may report in performing **its functions**.

[emphasis added]

52. A ‘function’ must still be found. And specific reporting functions in the case of an investigation into a corruption complaint are given particular treatment by the *Crime and Corruption Act*.

53. The CCC points to its ‘prevention’ and standard-raising functions as justifications to prepare a report for publication. One such function (which received treatment below) lies in s 33(1)(a):

The commission has the following functions for corruption (the ‘corruption functions’) —

10 (a) to raise standards of integrity and conduct in units of public administration;

54. Even though generally stated, the function is framed by reference to ‘corrupt conduct’. So the raising of standards operates accordingly. The Majority’s reading of this provision (RJ[26]-[27] CB72) was that it does not confer a:

... wider function to do whatever [the CCC] believes would be likely to promote a standard of conduct’ of senior public servants beyond raising those standards above a level at which conduct is corrupt.

55. Section 34 sets out *principles* for performing the CCC’s corruption function. None confer a reporting function.

20 56. Section 35 speaks to *how* the CCC performs its corruption function:

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;

...

30 (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;

40 (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.

...
 (3) In performing its corruption function under section 33(1)(b), the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.

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57. Dealing with complaints is also the subject of s 46:

Dealing with complaints - Commission

- (1) The commission deals with a complaint about, or information or matter (also a **‘complaint’**) involving, corruption by—
 - (a) expeditiously assessing each complaint about corruption made or notified to it, or otherwise coming to its attention; and
 - (b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.
- (2) The commission may take the following action—
 - (a) deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with;
 - (b) refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the commission, subject to the commission’s monitoring role;
 - (c) without limiting paragraph (b), refer a complaint about corrupt conduct of a person holding an appointment in a unit of public administration that may involve criminal activity to the commissioner of police to be dealt with;

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...

58. The words ‘taking the action the commission considers most appropriate’ (s 46(1)(b)) must be read in light of the provisions already referred to in terms of what possibilities are available to the Commission. A discretion is conferred to choose between stated options.

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59. This provision does not contemplate reporting outside of ‘investigating’ and ‘dealing with’ complaints about corrupt conduct. The definition of ‘deal with’ in the Act’s Dictionary (Schedule 2) confirms this:

‘deal with’, a complaint about corruption or information or matter involving corruption, includes—

- (a) investigate the complaint, information or matter; and
- (b) gather evidence for—
 - (i) prosecutions for offences; or
 - (ii) disciplinary proceedings; and
- (c) refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding; and

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- (d) start a disciplinary proceeding; and
- (e) take other action, including managerial action, to address the complaint in an appropriate way.

60. The provision contemplates all the activities that could be expected of an investigative body or a Government agency to which it has referred-back an investigation: to investigate, gather evidence, refer a complaint to others, start a proceeding [in QCAT] or take managerial action. This latter action is directed to permitting a Government Agency to whom the CCC has *referred* a complaint to deal with matters administratively: ss 43 and 44.
- 10 61. The taking of ‘other action’, coming in the context it does, cannot be taken as empowering reporting outside a referral (and the Appellant does not suggest specifically it does). It, like the other components of (e) of the definition, is directed to the action which an Agency to whom the CCC has referred-back a complaint might take.
62. The CCC has functions other than investigating corruption. So a general reporting function (in s 64) is necessary. For example, s 292 (which concerns *PCCC functions*) presupposes that the CCC will give reports to the PCCC for examination.
63. When it comes to reporting about ‘*complaints dealt with by the commission*’, s 49 gives that topic specific treatment:¹⁸

Reports about complaints dealt with by the commission

- 20 (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate —
- (a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;
 - ...
- 30 (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.

¹⁸ The section as quoted as it stood when the CCC reported to the DPP. It was later amended (on 9 November 2018) so that s 49(2)(a) referred to ‘a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted’ and to state in s 49(5) that ‘*prosecuting authority* does not include the [DPP]’. This remains its current form.

- (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 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 or 219G as a result of the report.
- (5) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information.

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64. The Appellant’s Ground 2 says that finding of the Majority was that the CCC:

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can only report about a corruption investigation under s 64 of the Crime and Corruption Act 2001 (Qld) if there is a positive finding of “corrupt conduct”: QCA Reasons, [56], [64], [67], and [68].

65. The CCC frames this differently in its Outline (AS[68]), namely:

[the] Commission did not have power to “report” under s 64 of the Act about an investigation if conduct, once investigated, is not found to be “corrupt”.

The references have also changed (in AS footnote 104): now they are to RJ[56] CB80 and [68] CB82:

66. Neither is an accurate statement of what was found by the Majority below. The relevant finding is at RJ[34] CB74-75:

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... Where the Commission sees sufficient substance in a complaint, it may decide that prosecution proceedings or disciplinary action should be considered. But a report to a prosecuting authority, or to any other person whom the Commission might report under s 49(2), does not require the formulation and expression of an opinion that corrupt conduct has occurred.

67. Ground 2 is therefore based upon a mis-reading. The finding of the Majority below was that the CCC can report as s 49 provides, and that this does not include making a report public. To do so would be to exercise an adjudicative function. To report publicly about

a complaint is to publish findings¹⁹; because of the effect upon reputation²⁰ if not formal legal rights and interests. For an investigative body to do so offends the principles expounded by this Court in *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625. The Court found unanimously against an investigative body having power to make findings and to give de facto determination of wrongdoing.

68. Just as with the ICAC in New South Wales (the subject of *Balog*), the CCC is an investigative body that facilitates the actions of others in combating corrupt conduct. The scheme of the *Crime and Corruption Act* does not confer upon the CCC judicial or quasi-judicial functions, and nor is there any indication (other than perhaps in the extraordinary case of reporting on a public hearing) that it has a function to make findings against individuals: *Balog* at 636. The approach is consistent with the *Human Rights Act* 2019 (Qld): that the Court should interpret all statutory provisions in a way that is compatible with such rights: s 48. It accords also with what has been described as the ‘enduring significance’ of *Balog*: the common law principle of construction that where two alternatives are open, that which is consonant with the common law is to be preferred.²¹
69. Mr Carne enjoys a right to reputation by reason of s 25 of the *Human Rights Act*. This approach gives effect to the important touchstone of the *Crime and Corruption Act*: and the threshold for intervention it sets in the definition of ‘corrupt conduct’. It explains also why s 69 treats specifically the making public of reports. The statute is attentive to the considerations which attend a public reporting function: its tension with the preserve of the judiciary; the effect upon the reputation (if not legal interests) of the citizen, and the acute risks that accompany an investigative body claiming an adjudicative function. That provision is keenly attentive to this ordering, and to what each branch is best placed to assess.
70. The foundational principle (to which *Balog* gives expression) lends support to the Majority’s observation that to permit the CCC a public reporting function about a

¹⁹ Quelling public controversies and making authoritative rulings about are attributes of Judicial and not Executive power: *Fencott v Muller* (1983) 152 CLR 570 at 608. This is part of the doctrine of Separation of Powers, and of the requirement that judges give reasons for their decisions: see, for eg, *Grollo v Palmer* (1995) 184 CLR 348, 394 (Gummow J); *Wainohu v NSW* (2011) 243 CLR 181, [56] (French CJ and Kiefel J). It is a function also of the constitutional character of Courts, including their independence and their having responsibility for administration of the law.

²⁰ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; *Annetts v McCann* (1990) 170 CLR 596, 608 (Brennan J); *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352, 382 (Gageler J).

²¹ *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352, [69] (Gageler J), citing *Balog* at 635-6.

corruption complaint is to permit it ‘*to adjudicate upon the merits of the complaint*’: RJ[34] CB74, see also RJ[56] CB80. The statutory regime gives the adjudicative role to the Courts and QCAT.

71. What the CCC seeks by this appeal is a function which would permit it to report publicly on a corruption investigation, under the protection of Parliamentary Privilege, but which Parliament has done nothing to confer, and despite the DPP deciding not to take the matter further and the CCC not applying to QCAT.
72. To report in this way is to make a de-facto declaration, and to claim an adjudicative power which the *Crime and Corruption Act* confers upon others. It is to treat the Appellant as if it were Parliament, and to release it from the controls which Parliament itself has set (and made subject to curial determination) as to the circumstances in which a CCC report can be made public. Most importantly, it nullifies Parliament’s control over its own privilege. For if a report can be published on the basis the CCC contends, then the direction which s 69 requires be given by the PCCC to the Speaker to authorise any publication is defeated.

F. The Finding as to Privilege

73. The Appellant, by its Ground 1, seeks to classify the Majority’s finding in RJ[81] CB85 as having ‘impeached’ the Assembly’s ‘determination’ of Parliamentary Privilege attaching to its proceedings. Its Outline of Argument does not repeat the allegation of there having been any such ‘determination’ by the Assembly, and it can be passed over.
74. The relief obtained below made no reference to the existence or otherwise of privilege in connection with the Report. Mr Carne’s primary case is that there is no occasion for this Court to determine that question: the issue is whether the Report can be published or not. The submissions that follow are directed to the question of privilege, but they need to be read in the context just mentioned.

Section 55 evidentiary certificate

75. The Appellant relies upon an evidentiary certificate given by the Chair of the PCCC as founding the submission that ‘[i]n this case the parliament judged the occasion of the

exercise of the privilege'.²² It asserts that the Certificate is not contradicted²³ and that there was no objective evidence contrary to it.²⁴ Both assertions are incorrect.

76. The Certificate says (among other things) that the Report was prepared for the '*purposes of, or incidental to, transacting business of the [PCCC] under s 9(2)(c) of the Parliament of Queensland Act 2001 (Qld)*'.²⁵ It was given neither by Parliament nor the PCCC. It was signed by the then-Chair of the PCCC. The PCCC Chair has no power to decide matters for the PCCC. The PCCC decides only by majority vote: *Crime and Corruption Act* s 302, so something signed by the PCCC Chair is his work alone.²⁶
77. The Certificate was directly contradicted below, both in written submissions at first instance²⁷, and in the Court of Appeal.²⁸
78. The Certificate should not be acted upon (to the extent the issues to be determined by the Court might call for it) because a contrary state of affairs was shown²⁹, and by objective facts:
- a. the PCCC Chair was not to know the matters which he purports to certify: the report was produced by the CCC, not the PCCC. The PCCC did not ask for the Report to be prepared;
 - b. as at 19 June 2020, the CCC and the PCCC were not even sure a report would be prepared. On that date, the Chair of the CCC advised the PCCC Chair that the CCC had '*not decided finally*' when asked whether a report would be produced: Primary RJ[19] CB11;
 - c. as at 4 September 2020, the CCC believed it (itself) could decide to publish the report: Primary RJ[21] CB11. This suggests the Report was, at that point at least, not prepared for the purposes of transacting business with the PCCC. The CCC appeared to believe it did not need Parliament's sanction to publish. (And, as an aside, that is the very outcome the CCC would assert were it to succeed here: its work attracts privilege and can be made public whether or not the PCCC gives

²² AS[40].

²³ In the heading above AS[49].

²⁴ AS[48].

²⁵ RFM94, para 6

²⁶ Albeit something s 55 of the *Parliament of Queensland Act* allows.

²⁷ RFM190 & 191 paras [2] and [8].

²⁸ RFM264 para 9.

²⁹ *CJC v PCJC* [2002] 2 Qd R 8, [22] (McPherson JA).

the direction contemplated by s 69, whether or not the report is within the functions of the CCC and, according to the Commonwealth Attorney-General, whether or not it is invalid);

- d. the transcript of the meeting of 11 September 2020³⁰ between the Chairs of the CCC and PCCC does *not* support the contention that the former informed the PCCC it would be seeking a direction under s 69 of the *Crime and Corruption Act*;
- e. the certificate was not an unprompted act of the PCCC: the CCC was involved in the drafting of the certificate and suggested what it should say.³¹

- 10 79. If the Evidentiary Certificate stands for anything, it is that the provision of the Report to the PCCC is unimpeachable. But that is not in contest.

Privilege by reason of being in the PCCC's possession?

80. The Appellant contends³² that 'the report and its preparation', because the Report is in the PCCC's possession, are 'proceedings in the Assembly' and privileged as a result. The PCCC's 'possession' is mentioned several times³³ as a basis for why the Declaration granted by the Court below 'impeaches the Commission's report'³⁴.

81. This is to misunderstand matters:

- a. the Declaration does not 'impugn' the Report, it simply declares its legal character. Courts are entitled to fulfil their function of declaring the legal character of public acts and their compliance with the law. The Courts' role is to adjudicate, including as to the existence and scope of parliamentary privilege.³⁵ This is simply part of the different organs of the State doing what they are best placed to assess; the task each is best suited to undertake.³⁶ Section 69 is framed to allocate responsibilities of the respective branches to respect each

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³⁰ RFM96.

³¹ RFM180.

³² AS[22].

³³ eg AS[52], [53], [54].

³⁴ AS[52].

³⁵ *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, 162 (Dixon CJ, for the Court); approved in *Egan v Willis* (1998) 195 CLR 424, [27] (Gaudron, Gummow and Hayne JJ).

³⁶ Nicholas Barber, 'Self-defence for Institutions' (2013) 72 CLJ 558-577, 575, 577; Edward Lui 'Piercing the Parliamentary Veil against Judicial Review', (2022) 42 *Oxford Journal of Legal Studies* 918-942 at 932; Nicholas Barber, *The Principles of Constitutionalism* (Oxford University Press, 2018) pp 72-73, 81-82.

other's respective spheres of action and privileges³⁷: the Judiciary to rule on functions of the CCC (the Executive), and Parliament to rule on whether what in law *may* be made public *ought* to be (encapsulated by the giving – or not – of a Direction to its Speaker);

b. any 'impugning' is not of anything that Parliament can be said to have done – the Report was prepared by the CCC on its own initiative. Any criticism of it, or the basis for its preparation, says nothing of Parliament; only the CCC. The Report is the work of the CCC alone;

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c. to be within the PCCC's possession is entirely different from making the Report public. As we submitted at the outset, the activities and purposes of giving information to the PCCC and making a report public about a corruption complaint are legally distinct.

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82. Finally, the Appellant submits³⁸ that the relief granted below 'questions or impeaches a report submitted to the committee and which could, if the PCCC decides, be tabled in the Assembly'. This overlooks of course that Parliament itself set the requirements in the *Crime and Corruption Act* concerning the conditions for reporting publicly and the occasions for privilege to attach. The Court's Declaration below gives effect to what the Parliament itself has stated in s 69 and related provisions: its ordering of the respective 'spheres of action' of the three Branches. To rule as the Court did here (whether or not to do so is to define the occasion and scope of privilege) is a proper function of the Courts.³⁹

83. To the extent the Commonwealth regime is relevant, it only supports the orthodoxy of Mr Carne's approach and the sense of the regime that s 69 sets. Under the heading 'Preparation and publication of documents', *Odgers' Australian Senate Practice* observes:⁴⁰

... the content of a document which has come into existence independently of proceedings in Parliament, for example, a report or letter which is exchanged between two or more parties and is subsequently submitted to a House or a committee, is not protected by

³⁷ See, Lord Simon's explanation of the potential for this in *British Railways Board v Pickin* [1974] UKHL 1; [1974] AC 765, 799D-800.

³⁸ AS[53] by reference to the reasons of Freeburn J (dissenting below).

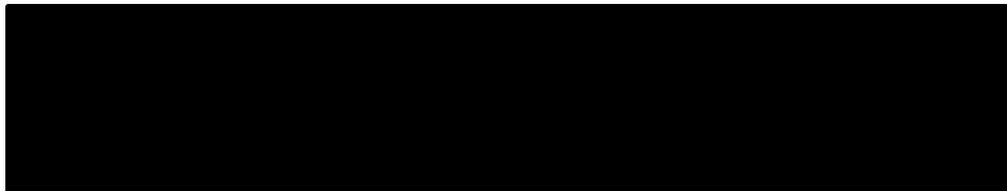
³⁹ *R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, 162 (Dixon CJ, for the Court); approved in *Egan v Willis* (1998) 195 CLR 424, [27] (Gaudron, Gummow and Hayne JJ).

⁴⁰ 2016, 14th edn, 74.

parliamentary privilege: for an application of the principle, see *Szwarcbord v Gallop* (2002) 167 FLR 262 ...

G. Breach of Procedural Fairness & Ainsworth's case

84. There remains undetermined the question (only if what is set out above is incorrect) whether the CCC denied Mr Carne procedural fairness in preparing the report. If the need arises to determine this point here (ie if Mr Carne were to fail in his primary case), a Declaration of the kind made in *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 should follow, regardless of whether the report is privileged.
- 10 85. The CCC's investigation and preparation of the Report was challenged for denying Mr Carne procedural fairness at both the initial hearing and on appeal. The Primary judge found⁴¹ the issue was not justiciable due to the Report's privilege, and the Court of Appeal declined to rule on the merits of the claim because it found in favour of Mr Carne on his primary case. The question of whether Mr Carne was denied procedural fairness remains unresolved.⁴²
86. Mr Carne's contention remains that the CCC denied him procedural fairness because he:
- 20 a. was not provided with all the information upon which the CCC's report was based, as evidenced by Mr Cranny's (unchallenged) affidavit of 17 February 2021.⁴³ He was only given limited information from 14 out of 42 total witnesses interviewed,⁴⁴ compromising his ability fairly to respond to the findings and observations in the report.
- b. was not given any notice of comments that amount to adverse findings against him, made for the first time in the foreword of the Report by the CCC Chair, and never previously provided to him:⁴⁵



⁴¹ Primary RJ[175]-[177] CB57.

⁴² It is not a point which required a Notice of Contention because it is not a basis upon which to uphold the judgement below, and nor, because the point it decided disposed of the appeal 'erroneously' failed to decide the point: High Court Rules r 42.08.5. In any event, it was raised in the course of oral argument as a point that would be raised if special leave were granted so there can be no unfairness: HCA Trans 225 (15 December 2022).

⁴³ RFM245-246.

⁴⁴ RFM246 paras 6, 7.

⁴⁵ RFM151.

87. These failures amount to a denial of procedural fairness, ones that would materialise upon the report being made public. Doing so would also run contrary to s 71A(2) of the *Crime and Corruption Act*, namely:

The [Applicant] shall not make proposed adverse comment unless, before the report is prepared, the [Applicant] gives the person an opportunity to make submissions about the proposed adverse comment.

10 88. Mr Carne was denied procedural fairness. The Court ought declare that: *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564. Doing so does not cut across any privilege that might be found to attach to the Report:

a. the Report and its preparation is the work of the CCC, so to make the Declaration sought is in no way to seek to impeach anything that Parliament has done;

b. Brennan J in *Ainsworth* (at 587) gave consideration to the point and did not consider it an impediment. That remains the case despite the subsequent enactment of ss 8 and 9 of the *Parliament of Queensland Act*. The ‘immateriality’ of the existence of privilege to which his Honour there referred arises from the fact that any such declaration does not impeach or question anything done by Parliament;

20 c. the Speaker, in paragraph 12 of his written submissions at first instance⁴⁶ contended that the Court should ‘avoid breaching any of Parliament’s privileges’. What is permissible, he submitted ‘is the declaration granted in *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564’.

H. Can an invalid report be made public?

30 89. The Commonwealth Attorney-General submits that the fact the Report may be outside (or partly outside) the CCC’s power to prepare (ie invalid) is no impediment to it having the protection of parliamentary privilege: AG-S[7]. The focus remains on ss 8 and 9 of the *Parliament of Queensland Act*, as if the controversy in this case necessarily turns upon privilege and not publication, and without bringing the terms of the *Crime and Corruption Act* to bear. The problems of that partial approach, have been dealt with fully above.

⁴⁶ RFM185.

90. The Attorney-General seems to accept (at least for the sake of argument) that, as the Majority found RJ[68] CB82, making the Report public would be beyond the CCC's statutory function: AG-S[6]. He submits that, despite this, Parliamentary Privilege can attach.
91. On Mr Carne's primary case, this issue does not fall to be decided. Section 69 of the *Crime and Corruption Act* precludes the Report being made public. This is the scope of the relief given below. The consequences for privilege are, on the Respondent's case, secondary. The argument is discussed below because it has been raised by a potential intervenor, and out of deference to the Attorney-General, but noting its peripheral nature to Mr Carne's case.
92. The Majority's reasoning is criticised for interpreting ss 8 and 9 of the *Parliament of Queensland Act* as subject to an 'unexpressed proviso that parliamentary privilege does not extend to acts that are, or are alleged to be, beyond statutory power': AG-S [16].
93. It is wrong to attribute such a finding to the Majority, at least in a way that was necessary to the Court's primary reasoning. At RJ[70] CB82 (and after finding the Report not to be one to which s 69 applies: at RJ[69] CB82), the Majority turned to consider the issue of Parliamentary Privilege, noting '[m]uch of the primary judgment was concerned with a question whether parliamentary privilege attached to the report ...'. (The Primary Judge had found preparation of the Report to be within the CCC's statutory functions.)
94. The Majority noted (at [80] CB85) the Primary Judge's conclusion was dependent upon the Report being one made by the CCC and delivered by it to the PCCC in performance of its functions (ie valid) and also that the Primary Judge had left open the question whether the Report would be privileged if it were not one for the purposes of s 69. The Majority concluded (in the context of saying that the facts as found could not confer parliamentary privilege (RJ[81] CB85) that 'the preparation and delivery of the report, without the operation of s 69, were not acts done in transacting the business of the Assembly or its committee'.
95. That finding is correct, for these reasons:

- a. that which is beyond a statutory function (in a jurisdictional or fundamental sense) is a nullity and cannot have legal consequences;⁴⁷
- b. it is a predicate of s 69 that the report be a ‘commission report’, ie one within the CCC’s statutory functions to prepare and deliver to the PCCC for publication (as distinct from in its function of having its performance monitored and reviewed). To be a commission report is to require of the report that it be of a kind the statute authorises the CCC to prepare and deliver;
- c. it also overlooks the double aspect of s 69 discussed at paragraph 45 above
- d. finally, to find that s 69 can apply to a report which the CCC has no statutory power to prepare or deliver is to deprive the statutory scheme of its force. To go further and find that the PCCC (a body with the task of seeing that the CCC stays within its statutory remit) may direct that a report which it has received which is outside the CCC’s functions be given to the Speaker and be made public is beyond what the statutory scheme can be seen as permitting.
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96. For the Courts to accept what the Attorney-General submits in this regard is to abandon a field which is carved out for curial supervision and which the Courts are best suited to undertake. It should not be removed from curial determination by mere provision to a Parliamentary committee. Just as an administrative decision made by a Minister, later discussed in Parliament, cannot be put beyond the capacity of the Court to review, so too Parliamentary privilege is not ‘a source of protection for the executive from the Courts’.⁴⁸
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- Section 69 assumes the Courts will perform their function, which then leaves to the PCCC the sphere of action in which to apply its privileged discretion in whether to give a Direction. The fact that s 69 carves out the field in which the PCCC may exercise that (privileged) discretion is no basis to find it impinges upon Parliamentary privilege.

⁴⁷ *Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd* (2021) 272 CLR 33, [49], [50] (Kiefel CJ, Bell, Gageler and Keane JJ), citing *NSW v Kable* (2013) 252 CLR 118, [52] (Gageler J) citing Christopher Forsyth, “‘The Metaphysic of Nullity’: Invalidity, Conceptual Reasoning and the Rule of Law”, in Forsyth and Hare (eds) (1998), *The Golden Metwand and the Crooked Cord* 141-160, 147-148; see also 159 (cited by Edelman J in *Oakey* at [95]).

⁴⁸ Enid Campbell, ‘Parliamentary Privilege and Judicial Review of Administrative Action’ (2001) 29 *AIAL Forum* 29, 31; See also Joint Committee on Parliamentary Privilege, United Kingdom Parliament, *Parliamentary Privilege – First Report* (April 1999), para 51.

I. Costs

97. The Respondent has foreshadowed⁴⁹ that he would contend that he ought not pay the costs of this appeal in any event, on the ground that the (now) Appellant seeks to agitate points it contends are of general importance. They are not ones that the Respondent, as a private citizen, would seek to have determined. He has no recourse to public funds in defending this appeal (and responding to each of the possible intervenors). The appeal has a assumed a character likely to involve questions which have significance beyond Mr Carne’s case, for which he ought not be required to be at risk in terms of costs, whatever the ultimate outcome. He ought not to be required to fund, or be at risk of funding, pursuit of what are said to be wider points of principle and matters of significance to the Appellant’s functions and powers, and its claims to parliamentary privilege.

Part VI: Not applicable

Part VII: Estimate of time

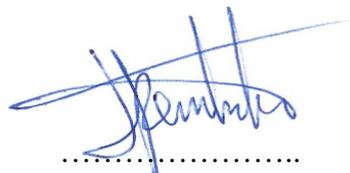
98. It is estimated that 2.5 hours will be required for presentation of the Respondent’s oral argument (if the Intervenor are granted leave) and 2 hours if leave be refused.

Dated: 10 March 2023

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⁴⁹ In his Response to the Application for Special Leave dated 23 September 2022 para 42.

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No B66 of 2022

BETWEEN:

CRIME AND CORRUPTION COMMISSION
Applicant

and

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PETER DAMIEN CARNE
Respondent

ANNEXURE TO THE RESPONDENT'S SUBMISSIONS

Pursuant to Practice Direction No 1 of 2019, the Respondent sets out below a list of the provisions and statutes referred to in these submissions.

No.	Description	Version	Provisions
1.	<i>Corruption, Crime and Misconduct Act 2003 (WA)</i>	Current	s 216A
2.	<i>Crime and Corruption Act 2001 (Qld)</i>	Current	ss 9, 15, 33, 34, 35, 43, 44, 46, 49, 64, 69, 71A, 177, 219F, 219G, 291, 292, 302, 335 Schedule 2
3.	<i>Crime and Corruption Act 2001 (Qld)</i>	Reprint effective date 5 June 2017	s 49
4.	<i>Human Rights Act 2019 (Qld)</i>	Current	ss 25, 48
5.	<i>Independent Commission Against Corruption Act 1998 (NSW)</i>	Current	s 63
6.	<i>Integrity Commission Act 2009 (Tas)</i>	Current	s 23
7.	<i>National Anti-Corruption Commission Act 2022 (Cth)</i>	Current	s 172
8.	<i>Parliamentary Committees Act 1991 (SA)</i>	Current	s 15M
9.	<i>Parliamentary Committees Act 2003 (Vic)</i>	Current	s 5
10.	<i>Parliament of Queensland Act 2001 (Qld)</i>	Reprint effective date 7 September 2020	ss 8, 9, 54, 55, Chapter 5 Schedule

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