

HIGH COURT OF AUSTRALIA

KIEFEL CJ,
GAGELER, GORDON, EDELMAN AND JAGOT JJ

CRIME AND CORRUPTION COMMISSION

APPELLANT

AND

PETER DAMIEN CARNE

RESPONDENT

Crime and Corruption Commission v Carne

[2023] HCA 28

Date of Hearing: 6 & 7 June 2023

Date of Judgment: 13 September 2023

B66/2022

ORDER

Appeal dismissed with costs.

On appeal from the Supreme Court of Queensland

Representation

P J Dunning KC with M R Wilkinson and S E D Spottiswood for the appellant (instructed by Crime and Corruption Commission)

J M Horton KC with J P Pemberton for the respondent (instructed by Gilshenan & Luton Legal Practice)

T M Begbie KC with P J Melican and E H I Smith for the Attorney-General of the Commonwealth, intervening (instructed by Australian Government Solicitor)

B W Walker SC with R M O'Gorman KC and C J Tessmann for the Speaker of the Legislative Assembly of Queensland, intervening (instructed by Clerk of the Queensland Parliament)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Crime and Corruption Commission v Carne

State Parliament – Parliamentary privilege – Where Crime and Corruption Commission ("Commission") conducted investigation in response to complaint alleging corrupt conduct and maladministration by Public Trustee of Queensland – Where Commission then composed Report on allegations and investigation – Where Commission sought to use Parliamentary Crime and Corruption Committee ("Committee") to make Report public – Where Commission requested Committee direct under s 69(1)(b) of *Crime and Corruption Act 2001* (Qld) ("CC Act") that Report be given to Speaker of Legislative Assembly to be tabled in Legislative Assembly – Where s 69(1)(b) direction not given prior to or during court proceedings – Where Committee issued certificate under s 55 of *Parliament of Queensland Act 2001* (Qld) ("POQ Act") certifying Report was a document prepared for the purposes of, or incidental to, transacting business of the Committee under s 9(2)(c) of POQ Act – Where s 9 of POQ Act defined "proceedings in the Assembly" to include "all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee" – Where "proceedings in the Assembly" could not be impeached or questioned in any court under s 8 of POQ Act – Whether court precluded by s 8(1) of POQ Act from making declaration concerning Report because preparation and presentation of Report were "proceedings" in Legislative Assembly.

Statutes – Construction – Statutory powers – Where CC Act established Commission and its functions and powers – Where Commission conducted investigation into alleged corrupt conduct – Where only consequent actions Commission took under CC Act were referring information to Attorney-General and making recommendations to Acting Public Trustee – Where s 69 of CC Act applied to report on public hearing, research report or "other report" that Committee directs be given to Speaker of Legislative Assembly – Whether Report was "other report" for purposes of s 69(1)(b) of CC Act.

Words and phrases – "adverse comment", "business of the Assembly or a committee", "corrupt conduct", "corruption functions", "for the purposes of, or incidental to, transacting business", "impeached or questioned in any court", "investigations and reporting", "parliamentary privilege", "proceedings in the Assembly", "reporting powers", "tabling requirements", "unit of public administration".

Crime and Corruption Act 2001 (Qld), ss 49, 64, 69.

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

1 KIEFEL CJ, GAGELER AND JAGOT JJ. The office of the Public Trustee of
Queensland was established under the *Public Trustee Act 1978* (Qld) and the
Public Trustee is appointed under that Act¹. The respondent held that office from
March 2009 until March 2014, and from March 2016 until 31 July 2020, when his
resignation took effect.

2 The Crime and Corruption Commission ("the Commission") was
established under the *Crime and Corruption Act 2001* (Qld) ("the CC Act")². The
Parliamentary Crime and Corruption Committee ("the Committee") was also
established under the CC Act as a committee of the Legislative Assembly of
Queensland³.

3 On 25 June 2018 the Commission received an anonymous complaint
against the respondent alleging that he had been involved in corrupt conduct and
was guilty of maladministration. In September 2018, after further correspondence
was received from the same person, the Commission commenced an investigation
into the allegations.

4 On 28 May 2019 the Commission referred certain information to the
Attorney-General for consideration of whether the respondent had engaged in
"misbehaviour" within the meaning of the *Public Trustee Act*, and whether to take
disciplinary action against the respondent. On 13 June 2019 the Attorney-General
advised the respondent that the Governor-in-Council had approved the suspension
of his appointment as Public Trustee pending the outcome of a "show cause"
process. In November 2019 a show cause letter in respect of a number of
allegations of misbehaviour under the *Public Trustee Act* was issued to the
respondent. The respondent was invited to make submissions.

5 On 23 April 2020 the Commission wrote to the Acting Public Trustee,
making a number of recommendations as to the operation of the Public Trust
Office. The description of the subject matter of the letter contained the words
"referral of recommendations". The topics to which recommendations were
addressed included: ethics, the complaints management system, and the training
of staff in relation thereto; improving relationships between staff and executive
leadership; the use of corporate credit cards; the taking of leave and applications

1 *Public Trustee Act 1978* (Qld), s 9(1).

2 *Crime and Corruption Act 2001* (Qld), s 220.

3 *Crime and Corruption Act 2001* (Qld), s 291.

2.

for leave; the development of policies relating to the taking of external studies; and the development of codes of conduct as to standards of behaviour.

6 Apart from the Commission's earlier referral to the Attorney-General concerning possible disciplinary action, the making of those recommendations was the only action taken by the Commission consequent upon its investigation under the CC Act. On 30 April 2020 the Commission advised the respondent's solicitors that it had concluded its investigation and that at that time it was not proposing that any criminal proceedings be brought against him. On the same day the Commission advised the Attorney-General that it had been determined that no criminal prosecution would be pursued against the respondent and that the Commission had concluded its investigation.

7 Despite the Commission not proposing that any criminal action be taken and the Attorney-General's consideration of disciplinary action against the respondent being terminated by reason of the respondent's resignation, the Commission took steps to compose a report on the allegations and the investigations, which it sought to make available to the public. The course that it took was to seek to have the report tabled in the Legislative Assembly with the assistance of the Committee.

8 In a private meeting held on 19 June 2020, the Chairperson of the Commission advised, in response to an enquiry from the Chairperson of the Committee, that the Commission had not made a final decision on whether to prepare a report in relation to the matter, but he thought the Commission should do so "because it is high profile and it has been in the media". He said that after the show cause process had taken its course, the Commission "probably should articulate some of the concerns that [it] had". On 31 July 2020 the respondent resigned from his position as the Public Trustee. This brought the show cause process to an end.

9 On 4 September 2020 the Commission wrote to the respondent's solicitors enclosing a draft report and advised that the Commission "intends to publish a report on this investigation in accordance with section 69 of the [CC Act], providing an overview of the investigation and the outcomes". The respondent was invited to comment on the draft by 9 September 2020 (before the report was finalised).

10 Section 69 of the CC Act, to which further reference will be made later in these reasons, applies to certain reports of the Commission: a report on a public hearing, a research report or "other report that [the Committee] directs be given to

3.

the Speaker"⁴. The Speaker is obliged to table the report⁵, which, once tabled, is given all the immunities and privileges of a report tabled and published by the Legislative Assembly⁶.

11 On 11 September 2020 the Chairpersons of the Committee and the Commission met again. The Chairperson of the Committee asked whether the Commission would be seeking a direction under s 69 for the tabling of the report, to which the Chairperson of the Commission responded in the affirmative. He added that he did not see "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".

12 On 6 October 2020 the Commission wrote to the respondent's solicitors, attaching a copy of a document entitled "An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report" ("the Report") and advised that the Commission had resolved to seek a direction from the Committee that it be given to the Speaker of the Legislative Assembly. In a letter sent to the Chairperson of the Committee the same day, the Chairperson of the Commission requested that "the Committee, pursuant to s 69(1)(b) of the [CC Act], direct that this report be given to the Speaker of the Legislative Assembly".

13 The Report differed from the earlier draft in that, relevantly, it included a foreword by the Chairperson of the Commission which spoke at some length about standards of conduct on the part of public officials who held positions of trust. Given that the respondent was identified in the Report as the public official whose conduct was the subject of allegations and investigation, the foreword would be understood to be directed to him and to be highly critical of him, although the body of the Report contained no findings of corrupt conduct against him. The conclusion of the foreword contained a statement urging Ministers, senior public sector employees and members of the public to read the Report.

14 The Report referred to the receipt of the anonymous complaint against the respondent and discussed aspects of his professional life. It explained the position he held as Public Trustee, details of the allegations made against him and the fact that the Commission had undertaken an investigation of them. It explained the Commission's decision to issue a public report.

4 *Crime and Corruption Act 2001* (Qld), s 69(1).

5 *Crime and Corruption Act 2001* (Qld), s 69(4).

6 See *Parliament of Queensland Act 2001* (Qld), ss 8-9 and Ch 3 Pt 3.

4.

15 In a section entitled "Referrals to other agencies and outcomes" the Report spoke of the Commission's communication to the Attorney-General concerning possible disciplinary proceedings, the show cause process and the respondent's later resignation. In the following section, "Discussion and recommendations", it talked about the need for supervision of executives (including the Public Trustee), matters arising from the investigation relating to the respondent, and the recommendations the Commission had made to the Public Trust Office. At the conclusion of the document there appears a heading, "Responses", after which was printed:

"To be inserted if necessary (after Procedural Fairness)

Mr Carne".

16 What appears in this incomplete section of the Report may acknowledge that the CC Act⁷ requires that where the Commission proposes to make an adverse comment about a person in a report that will be tabled in the Legislative Assembly, or published to the public, under the Act, it must not do so until the person has an opportunity to make submissions about the proposed adverse comment, and those submissions are required to be fairly stated in the report.

17 The incomplete section and the requirements of the CC Act might suggest that the Report was not in its intended final form. But the Report was sent to the Committee with a request for a direction under s 69 and so must be taken to have been in substantially final form. The proceedings have been conducted on this basis.

18 In October 2020 the respondent brought proceedings in the Supreme Court of Queensland seeking a declaration to the effect that the Report was "not a report for the purposes of s 69(1) of the [CC Act]", an injunction, or, in the alternative to an injunction, a declaration that the Commission's resolution to seek a direction from the Committee to enable the tabling of the Report was invalid. At the request of the Commission, the Committee deferred consideration of the request for the direction under s 69(1)(b) until the proceedings were concluded. That decision remains outstanding.

19 On 20 November 2020 the Chairperson of the Committee, at the request of the Commission, issued a certificate under s 55 of the *Parliament of Queensland Act 2001* (Qld) ("the POQ Act") which, amongst other things, certified that the document titled "An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report" is "a document prepared for the

7 *Crime and Corruption Act 2001* (Qld), s 71A.

5.

purposes of, or incidental to, transacting business of the [Committee] under s 9(2)(c) of the [POQ Act]" and a document "presented or submitted" to the Committee.

20 Section 8(1) of the POQ Act provides that "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" (emphasis added). Section 9(1) gives as the meaning of "proceedings in the Assembly": "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". Section 9(2)(c) includes as "proceedings in the Assembly ... presenting or submitting a document to the Assembly, a committee or an inquiry".

21 The primary judge (Davis J) dismissed the respondent's application for declaratory and other relief⁸. The Court of Appeal by majority (McMurdo and Mullins JJA, Freeburn J dissenting) allowed the appeal and made an order declaring⁹:

"[T]hat the document made by the [Commission] entitled 'An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report' is not a report for the purposes of s 69(1) of [the CC Act]."

The appeal to this Court

22 The Commission's appeal to this Court is on two distinct grounds.

23 The first ground of appeal is to the effect that the Court of Appeal was precluded from making the declaration by the prohibition in s 8(1) of the POQ Act on "proceedings" in the Legislative Assembly being "impeached or questioned" in any court. The Commission argues that its preparation and presentation of the Report were brought within the scope of "proceedings" in the Legislative Assembly by operation of s 9 of the POQ Act.

24 The answer to the first ground of appeal is that the Commission's argument that its preparation and presentation of the Report were brought within the scope of "proceedings" in the Legislative Assembly by operation of s 9 of the POQ Act must be rejected on the facts. Section 9 of the POQ Act was not satisfied because the Report was not prepared for, or presented to, the Committee for purposes of transacting business of the Committee; it was prepared by the Commission and

8 *Carne v Crime and Corruption Commission* [2021] QSC 228.

9 *Carne v Crime and Corruption Commission* (2022) 11 QR 334 at 366 [82].

presented to the Committee for the Commission's own purposes. Whether s 8(1) of the POQ Act would have the preclusive effect for which the Commission contends were s 9 satisfied is a large question which does not properly arise for consideration.

25 The second ground of appeal is to the effect that the conclusion of the Court of Appeal that the Report is not a report for the purposes of s 69(1) of the CC Act is erroneous. Consideration of that ground requires examination of the provisions of the CC Act relating to reporting by the Commission and the identification of those reports comprehended by s 69(1). It also requires characterisation of the Report.

26 The answer to the second ground of appeal is that the conclusion of the Court of Appeal is correct: the Report is not a report to which s 69(1) of the CC Act applies. Indeed, there is no provision of the CC Act which authorises a report of this nature.

27 The correctness of the Court of Appeal's conclusion that the Report is not a report for the purposes of s 69(1) of the CC Act means that it is unnecessary to address an argument of the respondent, raised before the Court of Appeal and renewed in this Court, to the effect that he was denied procedural fairness in the preparation of the Report.

The POQ Act

28 Section 8 of the POQ Act provides:

- "(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."

29 The meaning of "proceedings in the Assembly" is dealt with in s 9, which, in relevant part, provides:

- "(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—

7.

- (a) giving evidence 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

...

- (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."

30 In *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner*¹⁰, McPherson JA observed that Art 9 of the *Bill of Rights 1688*¹¹ has always formed part of the law of Queensland. That is because, unlike some other States, Queensland came into existence as a separate entity in 1859 under a representative form of parliamentary government to which the *Bill of Rights 1688* was capable of being attracted. When that case was decided, s 5 of the *Imperial Acts Application Act 1984* (Qld) relevantly provided that the *Bill of Rights 1688* continued to have the same force and effect as it had in Queensland immediately prior to the commencement of that Act and s 3 of the *Parliamentary Papers Act 1992* (Qld) relevantly defined "proceedings in Parliament" within Art 9 of the *Bill of Rights 1688* as applied to the Queensland Parliament. It did so in terms equivalent to the definition of "proceedings in the Assembly" in s 9(1) and (2) of the POQ Act. The *Parliamentary Papers Act* was repealed on the commencement of the POQ Act¹².

31 There can be no doubt that s 9 of the POQ Act, like s 3 of the *Parliamentary Papers Act* before it, has extended what acts, conduct or things might qualify as

10 [2002] 2 Qd R 8 at 21 [21].

11 Art 9: "That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."

12 The *Parliamentary Papers Act 1992* (Qld) was repealed on 6 June 2002.

"proceedings in the Assembly". The extension commenced with s 3 of the *Parliamentary Papers Act*, which was in terms similar to s 9 of the POQ Act. The Commission relies on s 9(2)(c), (d) and (e) as conferring a privilege because it contends that the Report was prepared for, and presented or submitted to, the Committee. But those facts do not conclude the question of whether s 8 of the POQ Act applies. Section 9 limits whatever is said to amount to "proceedings in the Assembly". Where, as here, what is done does not take place in the course of transacting the business of the Committee, s 9(1) requires that it be done "for the purposes of or incidental to, transacting business of [the Committee]" before the privilege can attach to the Report.

32 Before discussing what those words entail it is necessary to clarify an aspect of the construction of s 9(2)(e) in its reference to sub-s (2)(a), which refers to "giving evidence before ... a committee", and sub-s (2)(c), which refers to "presenting or submitting a document to ... a committee".

33 A literal reading of s 9(2)(e) might suggest that the actions referred to in s 9(2)(a) or (c) themselves constitute the business of the Assembly or a committee. Such a reading is possible because the words "for the purposes of, or incidental to, transacting business" are interposed between "preparing a document" and "mentioned in paragraph (a) or (c)", so that the "business" appears to be that mentioned in those paragraphs. However, that would not be a sensible construction of para (e), and it would not be consistent with s 9(1). Properly construed, para (e) should be read to refer to a document that is prepared for the purposes of, or incidental to, transacting business of the Assembly or a committee.

34 As mentioned earlier, the question which arises with respect to s 9, given the limitation it places on "proceedings in the Assembly", is whether what was done was actually for the purposes of doing the business of the Committee. That is largely a question of fact. In *Rowley v O'Chee*¹³, McPherson JA considered that the expression "purposes", in a provision of the *Parliamentary Privileges Act 1987* (Cth) similar to s 9(2)(e) of the POQ Act¹⁴, might be taken to introduce "an element of subjectivity or intention" which existed at the time the documents were prepared. His Honour, however, went on to apply an "independent basis or reason" in concluding that they were prepared for the requisite purpose¹⁵.

13 [2000] 1 Qd R 207 at 220.

14 See *Parliamentary Privileges Act 1987* (Cth), s 16(2)(c), quoted in *Rowley v O'Chee* [2000] 1 Qd R 207 at 219.

15 *Rowley v O'Chee* [2000] 1 Qd R 207 at 220-221.

35 In argument on this appeal the Speaker of the Legislative Assembly of Queensland, intervening, put that the motivations or purpose of both the person who produces the document and the person who receives it are irrelevant to the question of whether a document is prepared for the purposes of the Assembly or a committee. The Speaker submitted that it is the functional connection, objectively considered, of the document with the Assembly or committee which must be considered.

36 The latter submission should be accepted. In requiring that something be said or done for the purposes of conducting the business of the Assembly or a committee, s 9(1) is clearly concerned with establishing a connection to the work of the Assembly or a committee. The mere preparation of a document for them, or presentation of a document to them, by a third party will not suffice if there is no other connection to their work at the time the document was prepared. As McPherson JA observed in *Rowley v O'Chee*¹⁶, not all mail that is delivered to and received by a member of Parliament attracts privilege.

37 Generally speaking, the intentions of those preparing the document will say nothing about the requisite connection with the work of the Assembly or a committee. But in such a case as this, statements by the Commission of its intention, such as those extracted above¹⁷, may point away from there being a connection with the Committee's work, and instead point to the purpose of the work being that of the Commission itself.

38 The Committee did not authorise, and cannot be taken to have authorised, the preparation of the Report. That may have been the case if the Committee had directed the Commission to investigate the complaint under s 294 of the CC Act. In such a circumstance the Commission is obliged to report to the Committee with respect to such an investigation. That is not this case.

39 Here the Report was prepared and presented to the Committee for the purpose of it being made public (by having it tabled in the Legislative Assembly). That purpose was that of the Commission. It was not that of the Committee. True it is that the Committee was asked to consider giving a direction under s 69(1)(b) of the CC Act, and would no doubt have done so had the proceedings not been commenced. The Committee agreed not to take that action until the conclusion of the proceedings. Had the Committee commenced consideration of such a direction, the Report may have been the subject of its business, but that point was not reached. The requisite connection is not established on the facts of this case. If

16 [2000] 1 Qd R 207 at 221.

17 See [8] and [11].

established, the large question of the preclusive effect of s 8, which does not arise on the facts of this case, would have to be determined.

40 This conclusion is not altered by the certificate issued under s 55 of the POQ Act, by which the Chairperson of the Committee certified that the Report was prepared for and presented to the Committee for its purposes. Section 55(2)(d) provides that a certificate stating that a document was prepared for the purposes in s 9(2)(a) or (c) is evidence of that fact. It does not, however, provide that it is conclusive¹⁸. The s 55 certificate may be rebutted by other evidence. The Commission's statements as to its purpose for preparing the Report do just that.

The Commission's reporting powers – the CC Act

41 The main purposes of the CC Act are, as its name suggests, directed to crime and corruption. They are to combat and reduce the incidence of major crime, as well as to improve the integrity of, and to reduce the incidence of corruption in, the public sector¹⁹. These purposes are said to be achieved by giving the Commission special powers to investigate major crime and cases of corrupt conduct, particularly corruption cases that are more serious, as well as to assist units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so²⁰. It is not necessary to detail the Commission's investigatory powers.

42 A "unit of public administration" is a defined term²¹. There is no dispute that the Public Trust Office comes within it. "Corrupt conduct" is defined broadly and includes conduct which could adversely affect the performance of functions or the exercise of powers of a unit of public administration or a person holding an appointment, and which would, if proved, be a criminal offence or a disciplinary breach which provides grounds for terminating the services of a person²². It also

18 As to examples of legislation so providing, see the provisions discussed in *R (Jackson) v Attorney General* [2006] 1 AC 262 at 288-289 [49]-[51], 305 [110]; *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council* [2016] NSWCA 253 at [14] and the authorities there cited.

19 *Crime and Corruption Act 2001* (Qld), s 4(1).

20 *Crime and Corruption Act 2001* (Qld), s 5.

21 *Crime and Corruption Act 2001* (Qld), s 20.

22 *Crime and Corruption Act 2001* (Qld), s 15(1).

refers to conduct which could impair public confidence in public administration²³. There is no issue arising here in connection with the meaning of corrupt conduct.

43 Chapter 2 of the CC Act is entitled "Commission functions, investigations and reporting". It is divided into six parts, five of which deal with the Commission's functions, with the other dealing with how those functions are to be performed. The two reporting powers here in question are to be found in separate parts of Ch 2. Section 49 ("Reports about complaints dealt with by the commission") appears at the conclusion of Pt 3, which deals with the Commission's corruption functions. Reporting is the main topic dealt with in Pt 6, in particular through s 64. Section 69 in Pt 6 also contains the tabling requirement for Commission reports.

44 Part 1 of Ch 2 identifies a "Prevention function"²⁴. This function is performed by the Commission analysing intelligence and results of investigations, and providing information to units of public administration, among other things. The Commission is required to have regard to this function in performing all of its functions²⁵. Under this function the Commission can report on ways to prevent major crime and corruption²⁶.

45 Part 2 of Ch 2 identifies a "Crime function"²⁷, which is to be performed by the investigations of major crime, by gathering evidence for the prosecution of persons for offences and the recovery of proceeds of major crime or other property liable to forfeiture, and by liaising with other law enforcement agencies and prosecuting authorities²⁸.

46 Part 4 of Ch 2 identifies "Research, intelligence and other functions". The research functions include conducting research to support the performance of the Commission's functions, into the incidence and prevention of criminal activity, and into other matters either referred to it by the Minister or as relevant to its

23 *Crime and Corruption Act 2001* (Qld), s 15(2).

24 *Crime and Corruption Act 2001* (Qld), s 23.

25 *Crime and Corruption Act 2001* (Qld), s 24(g).

26 *Crime and Corruption Act 2001* (Qld), s 24(i).

27 *Crime and Corruption Act 2001* (Qld), s 25.

28 *Crime and Corruption Act 2001* (Qld), s 26.

functions²⁹. Its intelligence functions include undertaking intelligence activities and analysing data collected to support its functions³⁰.

47 As earlier mentioned, Pt 3 of Ch 2 is entitled "Corruption". Division 1 deals with the Commission's "Corruption functions". Divisions 2, 3 and 4 provide for the making of a complaint about corrupt conduct, who may be responsible for dealing with it, and generally how the Commission may deal with a complaint. It is said generally that the performance of this function is intended to raise standards of integrity in and conduct of units of public administration³¹. The Commission is to ensure that a complaint about a matter involving corruption is dealt with in an appropriate way, having regard to s 34³². Section 34 contains guiding principles for the performance by the Commission of its corruption functions. They include an overriding responsibility to promote public confidence in public administration³³. Specifically, the Commission's functions include investigating and dealing with conduct that is liable to allow, encourage or cause, or that is connected with, corrupt conduct³⁴.

48 The Commission performs its corruption functions by doing one or more of the things listed in s 35. This list includes: expeditiously assessing complaints involving corruption; referring complaints to a relevant public official; dealing with complaints either itself or in co-operation with a unit of public administration; gathering evidence for the prosecution of offences or disciplinary proceedings; and making recommendations to a unit of public administration about dealing with complaints³⁵. Section 36 provides that a person may make a complaint about corruption to the Commission for the purpose of the Commission dealing with the complaint under s 35.

29 *Crime and Corruption Act 2001* (Qld), s 52.

30 *Crime and Corruption Act 2001* (Qld), s 53.

31 *Crime and Corruption Act 2001* (Qld), s 33(1)(a).

32 *Crime and Corruption Act 2001* (Qld), s 33(1)(b).

33 *Crime and Corruption Act 2001* (Qld), s 34(d).

34 *Crime and Corruption Act 2001* (Qld), s 33(2).

35 *Crime and Corruption Act 2001* (Qld), s 35(1).

13.

49 The term to "deal with" a complaint is defined³⁶ to include: investigating a complaint, information or matter; gathering evidence for prosecutions for offences or for disciplinary proceedings; referring the complaint, information or matter to an appropriate authority to commence a prosecution or disciplinary proceeding; starting a disciplinary proceeding; and taking other action, including managerial action, to address the complaint.

50 It is after these comprehensive provisions concerning complaints, and how they are dealt with, that Div 5 ("Action following investigation"), the last division in Pt 3, is addressed. It contains three provisions. The first is s 49, which, as earlier mentioned, is headed "Reports about complaints dealt with by the commission". It provides in relevant part:

- "(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate—
 - (a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;
 - (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action,

36 *Crime and Corruption Act 2001* (Qld), Sch 2.

if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office."

51 It is further provided in sub-s (3) of s 49 that if the Commission decides that prosecution proceedings for a particular offence should be considered, it must report on the investigation to the Attorney-General. Sub-section (4) provides that a report under either sub-s (2) or (3) must include all relevant information known to the Commission that supports a charge, the commencement of proceedings or defences to charges.

52 Section 50 provides the circumstances in which the Commission may prosecute corrupt conduct. It applies if the Commission reports to the chief executive officer of a unit of public administration that corrupt conduct may have occurred, and that there is evidence supporting disciplinary proceedings regarding that conduct. In that circumstance, the Commission may apply to the Queensland Civil and Administrative Tribunal for certain orders under s 219I. Section 51 provides that nothing in Pt 3 limits the action which may be taken by the Commission or a unit of public administration to discipline or otherwise deal with a person for corruption.

53 The subject of "reporting" more generally by the Commission is dealt with in Pt 6 of Ch 2. Section 64 in Pt 6 is headed "Commission's reports—general". It is relied upon by the Commission in these proceedings as the source of the power for the Commission to make the Report. It provides in relevant part:

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

(2) The commission must include in each of the reports—

- (a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6; and
- (b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations."

54 Section 65, also in Pt 6, is headed "Commission reports—court procedures". It applies to a report by the Commission about the procedures and operations of a State court or its registry and administrative offices. The section deals with to whom such a report is to be given.

15.

55 Section 69 of the CC Act also appears in Pt 6. Division 4, in which it is contained, is entitled "Tabling requirements". As the heading of s 69 suggests ("Commission reports to be tabled"), and as has earlier been discussed, the section is concerned with the tabling of reports made by the Commission in the Legislative Assembly. Section 69(1) provides:

"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."

56 But s 69, notably, does not apply to a report made under s 49³⁷.

57 The reports to which s 69 applies are required to be tabled in the Legislative Assembly and their publication attracts parliamentary privilege, as discussed at the outset of these reasons³⁸.

Reporting powers, section 69 and the Report

58 Clearly enough the Report does not concern a public hearing or a matter of research. For s 69 to apply to it, the Report must qualify as an "other report", within the meaning of s 69(1)(b), before the Committee can then direct that it be given to the Speaker. Section 69 does not give the Committee itself the power to authorise a report. Its terms refer to a report which is in existence and which may be tabled in the Legislative Assembly. The power to make such a report must therefore be found in a power given elsewhere in the CC Act.

59 It is not difficult to infer that the reports to which s 69(1) refers are those made under the broad power of s 64, which permits the Commission to report about the performance of its functions. This may be inferred from the nature of the reports to which s 64 refers and their suitability for publication, and from the place of ss 64 and 69 in the scheme of Ch 2.

60 The fact that both ss 64 and 69 are to be found within Pt 6, which is concerned with reporting and the tabling of reports, most clearly identifies s 64 reports as the "reports" to which s 69 refers. The exception of s 49 reports from s 69 tends to confirm this. The subjects of reports under s 64, which arise from the

37 *Crime and Corruption Act 2001* (Qld), s 69(2).

38 See [10].

performance by the Commission of its functions, are those dealt with in the parts of Ch 2 which precede Pt 6.

61 The three types of report specified in s 69(1) are clearly referable to the s 64 power. They may be said to relate to the performance of the Commission's functions. So far as concerns a report on a public hearing, the Commission is authorised to hold hearings "in relation to any matter relevant to the performance of its functions", although a hearing is not generally open to the public³⁹. The research report there specified clearly refers to the performance of the Commission's research functions.

62 Reports made by the Commission under s 64(1) may concern many matters which come to its attention in the course of the performance of its functions, save for that of its crime function⁴⁰. The purpose of such reports is the attainment of the broad statutory objectives of the CC Act, concerning corruption in the public sector. Those objectives are achieved in part by recommendations made and advice given by the Commission to units of public administration as part of its prevention function. The letter from the Commission to the Acting Public Trustee of 23 April 2020 may well qualify as a report under s 64.

63 The subjects of reports made under s 64 are clearly of a kind which might be brought to the attention of the Legislative Assembly or be made public. The recommendations in such reports may well require consideration of a legislative response. Reports made under s 49 are of a distinctly different nature, involving the investigation of the conduct of individuals, and are made for different purposes. This is no doubt why they are excluded from s 69.

64 Section 49 appears in Pt 3, which concerns the Commission's corruption functions. Section 49 deals with only one subject: reports about complaints dealt with by the Commission. It is the only provision in Ch 2 which deals with that subject. The power to report given by s 49 may be exercised only in the limited circumstances there specified: where the Commission has investigated a complaint and decided that prosecution proceedings or disciplinary action should be considered⁴¹. It is exercised by reporting to the person appropriate to take the action

39 *Crime and Corruption Act 2001* (Qld), ss 176-177.

40 *Crime and Corruption Act 2001* (Qld), s 63.

41 *Crime and Corruption Act 2001* (Qld), s 49(1).

17.

proposed⁴². Otherwise, the Commission has no power to do anything further in relation to the investigation of the complaint.

65 The power to report to appropriate persons, so that they can take action against a person who has been investigated for corrupt conduct, is a very different power from that given by s 64. It is a "special power, subject to limitations and qualifications"⁴³. It may be understood to mean that the Commission is not to exercise an unqualified power to report on the investigation of a complaint to a different audience.

66 In *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia*⁴⁴, it was explained that:

"[w]hen the Legislature explicitly gives a power by a particular provision which prescribes the mode in which it shall be exercised and the conditions and restrictions which must be observed, it excludes the operation of general expressions in the same instrument which might otherwise have been relied upon for the same power."

67 The notion which underlies *Anthony Hordern* is "that affirmative words appointing or limiting an order or form of things may also have a negative force and forbid the doing of the thing otherwise"⁴⁵. It has an obvious affinity with the maxim "when there is express mention of certain things, then anything not mentioned is excluded"⁴⁶.

42 *Crime and Corruption Act 2001* (Qld), s 49(2)-(3).

43 *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1 at 7.

44 (1932) 47 CLR 1 at 7. See also more recently *Australian Education Union v Department of Education and Children's Services* (2012) 248 CLR 1 at 15 [31]; *Plaintiff S4/2014 v Minister for Immigration and Border Protection* (2014) 253 CLR 219 at 236-237 [43]-[46]; *Eso Australia Pty Ltd v Australian Workers' Union* (2017) 263 CLR 551 at 579 [47]; *Northern Land Council v Quall* (2020) 271 CLR 394 at 424 [61]-[62]; *Minister for Immigration and Border Protection v Makasa* (2021) 270 CLR 430 at 448 [54]-[55].

45 *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254 at 270.

46 *Minister for Immigration and Multicultural and Indigenous Affairs v Nystrom* (2006) 228 CLR 566 at 586 [54].

Kiefel CJ
Gageler J
Jagot J

18.

68 Even without this principle of construction it might be said that the scheme of the CC Act, and what is to be done under each of ss 49 and 64, point strongly to s 64 having no part to play with respect to reports on investigations as to corrupt conduct. The ultimate conclusion to be drawn from the process of construction is that there is only one power which may be exercised to report on a particular investigation into alleged corrupt conduct on the part of an individual, and that is found in s 49.

69 There may be cases in which the characterisation of a report purportedly made under s 64 as one which is not a report on the investigation of a complaint outside of the exclusive power to do so in s 49 involves evaluative questions. This is not such a case. The Report in this case is a report about the investigation of the complaint about the respondent outside of the exclusive power to do so in s 49. Accordingly, the Report is obviously not one made under s 49, but this is beside the point. To qualify as a report for the purposes of a direction under s 69(1)(b) of the CC Act it must be one for which s 64 provides a power to report. Whilst the Commission can no doubt report more generally about the performance of its corruption functions, s 49 is the sole source of a power to make a report on an investigation of a particular complaint of corrupt conduct. Section 64 does not provide such a power.

Order

70 The appeal should be dismissed with costs.

71 GORDON AND EDELMAN JJ. The appellant, the Commission, is a permanent anti-corruption commission established under s 220 of the *Crime and Corruption Act 2001* (Qld) ("the CC Act"). The Parliamentary Crime and Corruption Committee ("the PCCC") is the Commission's parliamentary oversight body⁴⁷. As a standing committee of the Legislative Assembly of Queensland, the PCCC is a committee for the purposes of the *Parliament of Queensland Act 2001* (Qld) ("the POQ Act")⁴⁸.

72 This appeal concerns a draft document entitled "[a]n investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report", prepared by the Commission in October 2020 ("the October Draft"). The October Draft was prepared six months after the conclusion of an investigation under the CC Act into allegations of corrupt conduct against the respondent, Mr Carne. Mr Carne held the office of Public Trustee of Queensland⁴⁹, relevantly, from March 2016 until 31 July 2020. That investigation did not result in criminal charges. A "show cause" disciplinary process ceased when Mr Carne resigned.

73 On 19 June 2020, some two months after that investigation was completed, the chair of the PCCC and the Commission's chair discussed a proposed report. An initial draft of the report was prepared by the Commission. It was provided to Mr Carne for comment, on the basis that the Commission intended to publish the report in accordance with s 69 of the CC Act. Following receipt of the initial draft report, Mr Carne made confidential submissions and challenged the Commission's power to proceed under s 69 of the CC Act.

74 A further draft of the report was then prepared – the October Draft – which was not provided to Mr Carne. The October Draft might have been substantially complete but it remained in draft form. It contained an attachment for "Responses" which read "[t]o be inserted if necessary (after Procedural Fairness) Mr Carne". It also contained an "Annexure 1", which read "[t]o be removed if not needed" and was otherwise blank. The Commission sent the October Draft to the PCCC's chair and asked the PCCC to direct, pursuant to s 69(1)(b) of the CC Act, that the October Draft be given to the Speaker of the Legislative Assembly. It is unclear whether, and at what stage, the October Draft would have been completed with an opportunity provided to Mr Carne to respond and the insertion of any response and annexures, or the removal of the provision for responses and an annexure.

47 CC Act, ss 9, 291, 292.

48 POQ Act, Schedule, definition of "committee"; CC Act, ss 9 and 291.

49 Under the *Public Trustee Act 1978* (Qld), s 9(1).

75 Mr Carne sought a declaration in the Supreme Court of Queensland that the October Draft was not a report for the purposes of s 69(1) of the CC Act. Mr Carne also claimed that he had been denied procedural fairness in the preparation of the October Draft. At the request of the Commission, the PCCC agreed not to give a direction under s 69(1)(b) of the CC Act while the proceedings were on foot. The chair of the PCCC issued an evidentiary certificate under s 55 of the POQ Act certifying, amongst other things, that the October Draft was "prepared for the purposes of, or incidental to, transacting business of the [PCCC] under s 9(2)(c) of the [POQ Act]" and that it was "presented or submitted" to the PCCC. That certificate was prima facie evidence that the October Draft, in the hands of the PCCC, formed part of proceedings in the Assembly and, accordingly, was the subject of parliamentary privilege and could not be impeached or questioned in any court⁵⁰.

76 The primary judge dismissed Mr Carne's application for declaratory and other relief. The Court of Appeal of the Supreme Court of Queensland (McMurdo and Mullins JJA, Freeburn J dissenting) allowed the appeal and made an order declaring that the October Draft – "the document made by the [Commission] entitled 'An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report'" – "is not a report for the purposes of s 69(1) of the [CC Act]".

77 We agree with the order proposed by Kiefel CJ, Gageler and Jagot JJ, and would express our reasons in the following way. In short, the Court of Appeal was correct to find that the October Draft was not a report for the purposes of s 69(1) of the CC Act. The declaration sought by Mr Carne, and made by the Court of Appeal, should not be set aside.

78 Parliamentary privilege does not present any obstacle to the declaration made by the Court of Appeal. That is because, on the facts, no question of parliamentary privilege arises; no *act* was done in the course of, or for the purposes of or incidental to, transacting business of the PCCC to which parliamentary privilege could attach. In particular, the October Draft was not prepared "for the purposes of or incidental to, transacting business" of the PCCC⁵¹.

79 Mr Carne made a further submission in this Court alleging that he would be denied procedural fairness by publication of the October Draft. That submission was made only as an alternative, in the event that it was concluded that he was not entitled to a declaration. In circumstances in which the declaration by the Court of

50 See POQ Act, ss 8, 9, and Ch 3, Pt 3.

51 See POQ Act, s 9(1).

Appeal was properly made, Mr Carne's complaint that publication of the October Draft would deny him procedural fairness does not need to be determined.

80 This appeal concerns the intersection of two statutes – the CC Act and the POQ Act. It is necessary to construe the two Acts separately. Resolution of the issues turns not only on the facts⁵², but also on the statutory powers of the person or persons doing the relevant acts.

Crime and Corruption Act 2001 (Qld)

81 The CC Act, passed in 2001, established the Commission⁵³ and its functions and powers⁵⁴, imposed statutory limitations and conditions on the exercise of functions and powers by the Commission⁵⁵, and established the PCCC and its relationship to the Parliament⁵⁶. The Commission has four categories of functions – "prevention" (Pt 1 of Ch 2); "crime" (Pt 2 of Ch 2); "corruption" (Pt 3 of Ch 2) and "research, intelligence and other functions" (Pt 4 of Ch 2). It is necessary to address the first three categories. The Commission's powers in relation to each are different, particularly in relation to reporting (which is addressed in Pt 6 of Ch 2 of the CC Act).

82 First, the Commission has a *prevention function* of "helping to prevent major crime and corruption"⁵⁷. Section 24 provides that the Commission may perform that function by, among other things, analysing the results of its investigations and the information it gathers in performing its functions⁵⁸; analysing systems used within units of public administration to prevent corruption⁵⁹; providing information to, consulting with, and making

52 The facts are set out in the reasons of the other members of the Court.

53 CC Act, ss 5(1) and 220.

54 CC Act, Chs 2 and 3.

55 CC Act, Chs 2 and 3.

56 CC Act, ss 9 and 291.

57 CC Act, s 23.

58 CC Act, s 24(b).

59 CC Act, s 24(c).

recommendations to, units of public administration⁶⁰; and reporting on ways to prevent major crime and corruption⁶¹.

83 Next, the Commission has a *crime function*, which relevantly includes to investigate major crime referred to it by "the reference committee"⁶². How the Commission may perform its crime function is addressed in s 26. The procedure for referrals is addressed in Div 2 of Pt 2.

84 Third, the Commission has *corruption functions*, which are "to raise standards of integrity and conduct in units of public administration" (s 33(1)(a)) and "to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34" (s 33(1)(b)). Significantly, the Commission's corruption functions also include "investigating and otherwise dealing with ... conduct liable to allow, encourage or cause corrupt conduct; and ... conduct connected with corrupt conduct" (s 33(2)(a)), and investigating whether such conduct, or corrupt conduct itself, "may have happened, may be happening or may happen" (s 33(2)(b)).

85 The Commission applies principles prescribed by s 34 when performing its corruption functions. The principles are listed under four headings – cooperation, capacity building, devolution and public interest. Under the "public interest" heading, a prescribed principle is that the Commission "has an overriding responsibility to promote public confidence ... in the integrity of units of public administration"⁶³.

86 How the Commission performs its corruption functions is addressed in s 35(1) of the CC Act. It provides that, without limiting how the Commission may perform its corruption functions, it performs those functions by, among other things, "expeditiously assessing complaints about, or information or matters (also *complaints*) involving, corruption made or notified to it"⁶⁴; "referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official"⁶⁵; "dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public

60 CC Act, s 24(e).

61 CC Act, s 24(i).

62 CC Act, s 25(a).

63 CC Act, s 34(d).

64 CC Act, s 35(1)(a).

65 CC Act, s 35(1)(b).

administration"⁶⁶; and "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"⁶⁷.

87 In performing its corruption functions in a way mentioned in s 35(1), the Commission "should, whenever possible, liaise with a relevant public official"⁶⁸ and, in performing its corruption function under s 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"⁶⁹.

88 A number of terms are defined. "[C]orrupt conduct" is defined in s 15⁷⁰. There are two definitions, each with three cumulative elements. Under the first definition in s 15(1), there must be 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, relevantly, a unit of public administration;
- (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in para (a) in a way that (i) is not honest or is not impartial; (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- (c) would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Under the second definition in s 15(2), "corrupt conduct" also means conduct of a person that "impairs, or could impair, public confidence in public administration";

66 CC Act, s 35(1)(e).

67 CC Act, s 35(1)(g).

68 CC Act, s 35(2).

69 CC Act, s 35(3).

70 See also definition of "corrupt conduct" in Sch 2. "[C]orruption" is defined in Sch 2 to mean "corrupt conduct or police misconduct".

and involves or could involve, amongst other things, "dishonestly obtaining ... a benefit from the payment or application of public funds ..."; *and* the conduct if proved would satisfy the same condition in s 15(1)(c) above.

89 "[U]nit of public administration" includes the Legislative Assembly, and the Parliamentary Service⁷¹, as well as a noncorporate entity established or maintained under an Act that is funded to any extent with State money⁷². There was no dispute that the Public Trust Office was a unit of public administration.

90 Procedures for making a complaint about corrupt conduct and what the Commission is to do on receiving a complaint are set out in Divs 2-4 of Pt 3 of Ch 2 of the CC Act. Relevantly, s 45(1) provides that the Commission has primary responsibility for dealing with complaints about, or information or matter involving, corrupt conduct. The phrase "*deal with*, a complaint about corruption or information or matter involving corruption" is defined in Sch 2 as relevantly including to "investigate the complaint, information or matter"; "refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding"; "start a disciplinary proceeding"; and "take other action, including managerial action, to address the complaint in an appropriate way".

91 Section 46(1) provides that the Commission deals with a complaint about, or information or matter involving, corrupt conduct by expeditiously assessing each corruption complaint and "taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34". Section 46(2) lists the action the Commission may take. It may:

- "(a) deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with;
- (b) refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the commission, *subject to the commission's monitoring role*;
- ...
- (g) if the commission is satisfied that [the complaint is frivolous etc] take no action or discontinue action." (emphasis added)

71 CC Act, s 20(1)(a).

72 CC Act, s 20(1)(f)(i).

92 Section 46A provides that where there is a matter that falls within s 33(2) – the extended definition of *corruption functions* – the Commission deals with the matter by: assessing it; if the Commission considers it appropriate, investigating the matter; and taking the action the Commission "considers most appropriate in the circumstances having regard to the public interest principle set out in section 34(d)".

93 Other relevant aspects of the CC Act must be noted. Chapter 4 of the CC Act addresses the Commission's hearings. Subject to some limited and presently irrelevant exceptions, the Commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions⁷³. Generally, a hearing is *not* open to the public⁷⁴. Where a person claims, among other things, that a Commission investigation into corrupt conduct (including a matter mentioned in s 33(2)) is being conducted unfairly, that person may apply to a Supreme Court judge for an order in the nature of a mandatory or restrictive injunction – a form of judicial review – during the investigation⁷⁵.

94 If the Commission investigates a complaint about, or information or matter involving, corruption *and decides* that prosecution proceedings or disciplinary action *should be considered*⁷⁶, then s 49(2) provides:

"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;

...

(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." (emphasis added)

In the case of Mr Carne, s 49 was engaged in May 2019 when the Commission reported to the Attorney-General that the Commission had decided that

73 CC Act, s 176(1).

74 CC Act, s 177(1).

75 CC Act, ss 332, 333, 334.

76 CC Act, s 49(1).

"disciplinary action" should be considered. As will be seen, that "report" to the Attorney-General could not be published under s 69 of the CC Act⁷⁷.

95 Section 51 provides that nothing in Pt 3 – the *corruption functions* – "limits the action *that may lawfully* be taken by the commission or a unit of public administration to discipline or otherwise deal with a person for corruption" (emphasis added). The Commission may use information in its possession when performing its functions⁷⁸. In particular, the Commission may give information to any entity the Commission considers appropriate⁷⁹. Section 60(2) (together with s 49(2)(f)) was the power relied upon by the Commission when it wrote to the Attorney-General in May 2019 and s 60(2) was also the power relied upon by the Commission when it disseminated evidence relating to allegations of academic misconduct to the Queensland University of Technology ("QUT") between July and October 2019.

96 Part 6 of Ch 2 of the CC Act is headed "Reporting". Part 6 "does not apply in relation to *the performance of crime functions*"⁸⁰. It does apply to corruption functions. Under s 64(1), the Commission may report in performing its functions (except, of course, its crime functions). The Commission relevantly must include in each of the reports any recommendations⁸¹ and "an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations"⁸².

97 Section 69, in Div 4 of Pt 6, is headed "Tabling requirements". It requires the existence of "a report" within the meaning of the CC Act. It is not a separate reporting power. It applies to a report on a public hearing, a research report or

77 CC Act, s 69(2).

78 CC Act, s 60(1).

79 CC Act, s 60(2).

80 CC Act, s 63 (emphasis added). As explained, "crime functions" are dealt with in Ch 2, Pt 2.

81 CC Act, s 64(2)(a).

82 CC Act, s 64(2)(b).

"other report that the [PCCC] *directs* be given to the Speaker"⁸³. That section does *not* apply to a report under s 49⁸⁴.

98 Two other provisions should be noted. Section 71 provides that the Commission may, *with the PCCC's consent*, give the PCCC information orally or in writing, whether or not at the request of the PCCC, that is *not included in a report under s 69*. It was not suggested that s 71 was engaged. Section 71A(2) provides that if the Commission proposes to make an adverse comment about a person in a report to be published under the CC Act, the Commission must first give the person an opportunity to make submissions about the proposed adverse comment.

Was the October Draft a report for the purposes of s 69(1) of the CC Act?

99 A central issue in this appeal is the status of the October Draft. At the outset, certain facts and matters must be stated. First, it was not a report under s 49 and, even if it was, s 69 did not permit such a report to be given to the Speaker.

100 Next, it was not a report that the PCCC directed be given to the Speaker under s 69. Indeed, the PCCC's letter to the Commission of 13 October 2020 stated:

"Thank you for your correspondence, dated 6 and 8 October 2020, in relation to the [Commission's] request that the [PCCC] give a direction, under section 69 of the [CC Act], to the [Commission] to table its report titled *An investigation into allegations relating to the former Public Trustee of Queensland* (the Investigation Report).

The [PCCC] notes that Mr Peter Carne's legal representatives ... have filed an originating application ... seeking declarations and an order prohibiting the [Commission] from proceeding with the publication of the Investigation Report.

The [PCCC] considered your correspondence at its meeting today. The [PCCC] resolved, as per your request, to defer its consideration of the [Commission's] request for a direction to give the final version of the Investigation Report to the Speaker, in accordance with section 69(1)(b) of the CC Act, until Mr Carne's application has been decided by the Supreme Court." (emphasis added)

83 CC Act, s 69(1) (emphasis added).

84 CC Act, s 69(2).

And, the October Draft was not information or a document that the PCCC requested or consented to receive. The October Draft was not prepared at the direction, or request, of the PCCC; it was not accepted by the PCCC; it was not provided to the PCCC by agreement and it was not adopted by the PCCC.

101 Finally, it was not an "other report" within the meaning of s 69(1)(b). That statement needs explanation. As has been explained, where, as here, the Commission was performing its corruption functions, those functions⁸⁵, as well as the principles to be applied⁸⁶, were prescribed. Those functions and principles included, relevantly, to raise standards of integrity and conduct in units of public administration, a preventative function, and, no less significantly, expeditiously assessing and dealing with complaints about corrupt conduct. Its actions during an investigation were limited⁸⁷.

102 And its actions *following* investigation were also limited⁸⁸. If the Commission decided that prosecution proceedings or disciplinary action should be considered, its avenues for reporting such action were limited⁸⁹. No s 49 report could be tabled⁹⁰. None of those actions were open or available to the Commission in the case of Mr Carne. Put in different terms, once the investigation into Mr Carne was complete, if the Commission decided that there would be no prosecution, or disciplinary action taken, then no actions were authorised by s 49.

103 What then to make of the powers given to the Commission under ss 60 and 64? It may be accepted that the Commission may use any information, document or thing in the Commission's possession in performing its functions⁹¹. So, for example, the Commission was able to, and did⁹², give information about Mr Carne to the Attorney-General and to QUT. And, after the investigation was

85 CC Act, s 33.

86 CC Act, s 34.

87 See [84]-[87] above.

88 See [94] above. See also CC Act, Ch 2, Pt 3, Div 5.

89 See [94] above.

90 CC Act, s 69(2).

91 CC Act, s 60(1).

92 See [95] above.

completed, the Commission was able to⁹³, and did, report to the acting Public Trustee making a number of recommendations as to the operation of the Public Trust Office, including recommendations about ethics; the complaints management system, and the training of staff in relation thereto; improving relationships between staff and executive leadership; the use of corporate credit cards; the taking of leave and applications for leave; the development of policies relating to the taking of external studies; and the development of codes of conduct as to standards of behaviour.

104 But what the Commission cannot do under s 64 is to prepare a report concerning allegations of corrupt conduct which seeks to circumvent the limits on its reporting powers and functions contained in Pt 3 of Ch 2 of the CC Act. Here, the Commission was able to and did report under s 49 to the Attorney-General in relation to disciplinary action that might be taken against Mr Carne⁹⁴. The Commission, consistent with its functions and powers of raising standards of integrity and conduct in units of public administration, also was able to and did report under s 64 to the acting Public Trustee in relation to what might be described as recommendations about the matters that were identified during or as a result of the investigation. The October Draft, in its form and content, was not of that kind. It was, as its title suggests, a document reporting on "[a]n investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report". It was prepared by the Commission in October 2020, six months after the conclusion of the investigation under the CC Act into allegations of corrupt conduct against Mr Carne. It is not clear on what basis the Commission prepared the October Draft. It was not a report under s 49. It was not a disclosure of information under s 60. Put in different terms, to the extent that under s 64 the Commission may prepare a report in performing its functions, it is necessary to identify the relevant function. No relevant function was identified. Section 51(1) does not lead to a different conclusion. It does not limit the actions that may lawfully be taken by the Commission. The October Draft was not a lawful action.

105 For those reasons, as the Court of Appeal declared, the October Draft was not a report for the purposes of s 69(1) of the CC Act. It is necessary, therefore, to turn to consider the POQ Act and whether the October Draft is subject to parliamentary privilege. If the October Draft is subject to parliamentary privilege then a large question arises as to whether the declaration made by the Court of Appeal infringes that privilege.

93 CC Act, s 64(1) and (2).

94 See [94] above.

Parliament of Queensland Act 2001 (Qld)

106 Parliamentary privilege is a "bulwark of representative government"⁹⁵. It has long antecedents⁹⁶. It allows Parliament to perform its functions without obstruction⁹⁷. Parliamentary privilege shields certain areas of legislative activity from judicial or executive review, thereby giving "the legislative branch of government the autonomy it requires to perform its constitutional functions"⁹⁸. Parliamentary privilege operates to ensure that a person who participates in parliamentary proceedings can do so knowing, at the time of that participation, that what they say cannot "later be held against them in the courts", thereby ensuring that such a person is not inhibited in providing information to the Parliament or in otherwise participating in parliamentary proceedings⁹⁹. This is the "basic concept underlying article 9" of the *Bill of Rights 1688*¹⁰⁰.

107 Section 9(1)(a) of the *Constitution of Queensland 2001* (Qld) contemplates that the Assembly will "define" its own privileges. This is what the Assembly has done through the enactment of ss 6, 8 and 9 of the POQ Act¹⁰¹. Section 6 of the POQ Act provides that "[n]othing in this Act derogates from any power, right or immunity of the Assembly or its members or committees".

95 *Rowley v O'Chee* [2000] 1 Qd R 207 at 218, citing *R v Jackson* (1987) 8 NSWLR 116 at 118, 121.

96 See *Bill of Rights 1688*, Art 9; Australia, House of Representatives, *Parliamentary Privileges Bill 1987*, Explanatory Memorandum at 9; *Prebble v Television New Zealand Ltd* [1995] 1 AC 321 at 332.

97 Elder, *House of Representatives Practice*, 7th ed (2018) at 733. See also *Szwarcbord v Gallop* (2002) 167 FLR 262 at 265 [8].

98 *Chagnon v Syndicat de la fonction publique et parapublique du Québec* [2018] 2 SCR 687 at 698 [1].

99 *Prebble* [1995] 1 AC 321 at 334. See also *Rowley* [2000] 1 Qd R 207 at 224.

100 *Prebble* [1995] 1 AC 321 at 334, 336.

101 See, concerning an earlier statutory provision to the same effect, *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8 at 21.

108 Section 8 provides:

- "(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)

109 Section 9 is important. It relevantly provides:

- "(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
 - ...
- (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.

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

...

- (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 in italics added)

110 As is apparent, s 9(1) defines "proceedings in the Assembly" to relevantly include "all ... acts done in the course of, or for the purposes of or incidental to, transacting business of ... a committee". It is a critical functional limitation. It identifies the need to focus on the purposes of the Assembly or the committee. That focal point is reinforced by s 9(3), which relevantly provides that, where a document is prepared for a purpose other than being presented to a committee, s 8 does not apply to that document in relation to that purpose if the committee authorised the document to be published.

111 The relevant limit – "all words spoken and acts done ... for the purposes of ... a committee" – is an objective inquiry in the sense that it involves the drawing of inferences from objective facts¹⁰². To the extent that some cases may suggest otherwise¹⁰³ they are wrong and should not be followed. As when construing the objective purpose of Parliament in passing legislation, one does not equate the subjective purpose of a given individual with the objective purpose of the institution of which they are a part¹⁰⁴. Nor does one attempt to aggregate subjective purposes of individual members of a committee. Rather, the inferences drawn from objective facts are directed towards the identification of an objective purpose of the committee as a body itself.

112 Further, the relevant purpose or purposes that are the subject of inquiry in determining whether parliamentary privilege exists are those of the Assembly or a committee, such as the PCCC. If it were otherwise, privilege could attach to

102 *Rowley* [2000] 1 Qd R 207 at 220.

103 See, eg, *Carrigan v Cash* [2017] FCAFC 86 at [11]-[20].

104 See, eg, *Nolan v Clifford* (1904) 1 CLR 429 at 447-448; *Arthur Yates & Co Pty Ltd v Vegetable Seeds Committee* (1945) 72 CLR 37 at 68; *Wik Peoples v Queensland* (1996) 187 CLR 1 at 168-169; *Eastman v The Queen* (2000) 203 CLR 1 at 46 [146]-[147]; *APLA Ltd v Legal Services Commissioner (NSW)* (2005) 224 CLR 322 at 462 [423].

documents provided by strangers to Parliament and its committees, based on nothing more than the purposes of those strangers. For example, junk mail received by a committee does not attract parliamentary privilege¹⁰⁵.

Was the October Draft subject to parliamentary privilege?

113 It is for the courts to decide whether a claimed privilege is necessary for the legislature to function. The court has no power to review the rightness or wrongness of a decision made pursuant to the privilege¹⁰⁶. As Dixon CJ said in *R v Richards; Ex parte Fitzpatrick and Browne*, "it is for the courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise"¹⁰⁷. Put differently, the intervention by the courts is only "at the initial jurisdictional level"¹⁰⁸. The court will not interfere with proceedings and procedures of Parliament¹⁰⁹. Thus, once it is accepted that the privilege exists, and that the Parliament has determined the occasion of its exercise, nothing further falls to be determined.

114 It is unnecessary and inappropriate to determine the metes and bounds of parliamentary privilege in this case. In assessing the existence of the privilege in this matter, it cannot be said that the October Draft was brought into existence "in the course of, or for the purposes of or incidental to, transacting business of the [PCCC]". The oral exchanges between the PCCC and the Commission in June and September 2020 did not occur at a meeting of the PCCC¹¹⁰. Until September 2020, the only purpose animating the preparation of the October Draft was the Commission's purpose – it did not raise any business of the PCCC. It is not sufficient that there is a "statutory relationship" between the Commission and the PCCC for the purposes of the Commission to become the purposes of the PCCC –

105 *Rowley* [2000] 1 Qd R 207 at 221.

106 *Egan v Willis* (1998) 195 CLR 424 at 446 [27]; *Re Reid; Ex parte Bienstein* (2001) 182 ALR 473 at 479 [25]. See also *Leyonhjelm v Hanson-Young* (2021) 282 FCR 341 at 437 [363].

107 (1955) 92 CLR 157 at 162, quoted with approval in *Egan* (1998) 195 CLR 424 at 446 [27]. See also *Leyonhjelm* (2021) 282 FCR 341 at 437 [363].

108 *Egan* (1998) 195 CLR 424 at 446 [27], quoting *New Brunswick Broadcasting Co v Nova Scotia* [1993] 1 SCR 319 at 384.

109 *Cormack v Cope* (1974) 131 CLR 432 at 453-454, 465, 467, 472. See also *Osborne v The Commonwealth* (1911) 12 CLR 321 at 336-337, 351-354.

110 See Reasons of Kiefel CJ, Gageler and Jagot JJ at [8] and [11].

even with a "statutory relationship" the purposes of the Commission cannot be attributed to the PCCC. The Commission is not the PCCC's agent.

115 The PCCC did not exercise any of its powers to call for the production of any document or thing. The PCCC had not exercised and was not exercising one or more of its prescribed functions. None of the acts of the PCCC in this case were *in the course of or for the purposes of or incidental to* transacting business of the PCCC. It is not enough that the PCCC had a "particular responsibility for monitoring and reviewing the commission's performance"¹¹¹ and that it had a general supervisory function under s 292(c) of the CC Act¹¹². The PCCC needed, at a minimum, to elect to exercise its powers or statutory functions to create a connection between the October Draft and the transacting of its business¹¹³. The PCCC could not be a post box which insulated all documents received from the Commission with parliamentary privilege. It needed to at least elect to exercise a power or a statutory function in relation to the October Draft¹¹⁴.

116 The current case may be distinguished from one where a parliamentary committee, upon receiving a document unrelated to the business of the parliamentary committee, elects to retain it for the purpose of transacting its business¹¹⁵. In such cases, the application of ss 8 and 9 of the POQ Act would have the result that the document would be privileged. However, on the agreed facts between the parties, the facts do not support a finding that the PCCC elected to keep the October Draft for the purpose of transacting its business¹¹⁶. Indeed, the PCCC's own letter to the Commission rebuts the two facts set out in the s 55 certificate. Put in different terms, that letter is evidence that the October Draft was *not* presented or submitted to the PCCC and that the October Draft was *not* "prepared for the purposes of, or incidental to, transacting business" of the PCCC under s 9(2)(c) of the POQ Act. As the letter records, the October Draft was sent to the PCCC by the Commission with a request that the PCCC give a direction under s 69(1)(b) of the CC Act but the PCCC resolved to "defer its consideration of the [Commission's] request for a direction to give the final version of the

111 CC Act, s 9.

112 That function is "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".

113 *Rowley* [2000] 1 Qd R 207 at 221; *Szwarcbord* (2002) 167 FLR 262 at 267-268 [22].

114 *Rowley* [2000] 1 Qd R 207 at 221; *Szwarcbord* (2002) 167 FLR 262 at 267-268 [22].

115 *Rowley* [2000] 1 Qd R 207 at 221; *Szwarcbord* (2002) 167 FLR 262 at 267-268 [22].

116 This is analogous to the outcome in *Szwarcbord* (2002) 167 FLR 262 at 268 [24].

35.

Investigation Report to the Speaker". Not only was consideration of the Commission's request deferred by the PCCC, but the PCCC recognised that the direction that was being sought concerned "the final version of the Investigation Report", a document which did not then exist.

117 Since the October Draft was not the subject of parliamentary privilege it is unnecessary to consider whether parliamentary privilege would have precluded the declaration sought by Mr Carne and made by the Court of Appeal. That declaration should not be set aside.