

Paul J. Favell *B.A. LLB. LLM. A.S.I.A.*

ABN: 34 280 723 929

Telephone: (07) 3236 2583

Facsimile: (07) 3236 3026

Email: favellpj@qldbar.asn.au

*Barristers' Chambers
Tenth Level
Inns of Court
107 North Quay
Brisbane Qld 4000
DX 910*

29 November 2017

By email: pccc@parliament.qld.gov.au

Committee Secretary
Parliamentary Crime and Corruption Committee
Parliament House
George Street
Brisbane QLD 4000

Re: Section 329

Dear Members of the Parliamentary Crime and Corruption Committee,

The Parliamentary Crime and Corruption Committee is conducting a review of the operation of s 329 of the Crime and Corruption Act 2001.

I was invited by the Committee to provide an input and to make a submission.

I thank the committee for the invitation.

I apologise for the lateness of this reply but as a family we have had four weddings and unfortunately a funeral with their attendant demands.

The committee's review intends to focus on s 329 of the Act in relation to:

- the definition of improper conduct
- the operation of the provision with respect to notifications received by the committee and the parliamentary commissioner and
- any other matter the committee considers appropriate.

I was invited to provide an input as a former Parliamentary Crime and Corruption Commissioner.

Section 329 of the Crime and Corruption Act 2001 (the Act) requires the chairperson of the Crime and Corruption Commission, the Deputy Chair Person of the Crime and Corruption Commission and the Chief Executive Officer of the Crime and Corruption Commission as a notifier to notify the Parliamentary Committee and the Parliamentary Commissioner of all conduct of a person mentioned in column two opposite the notifier in column one of s 329 that the notifier suspects, involves or may involve, improper conduct.

Also at Trinity Chambers, 7B Sheridan Street, Cairns, Q. 4870

Improper conduct is defined as meaning:

- (a) 'Disgraceful or improper conduct in an official capacity; or
- (b) Disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or
- (c) conduct that would, if the person were an officer in a unit of public administration be corrupt conduct; or
- (d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an act; or
- (e) failure to ensure –
 - (i) a register kept by the commission under an Act is up to date and complete; or
 - (ii) all required documentation on is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or
- (f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or
- (g) non-compliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or
- (h) exercise of a power conferred on the person under this or another act in a way that is an abuse of the power.'

The Act requires the chairperson to notify the Parliamentary Committee and the Parliamentary Commissioner of all conduct of a commissioner other than the chairperson and Chief Executive Officer that he or she suspects involves or may involve, improper conduct.

The Deputy Chair Person is required to notify the Parliamentary Committee and the Parliamentary Commissioner of all conduct of the chairperson that he or she suspects involves or may involve improper conduct. The Chief Executive Officer must notify the Parliamentary Committee and the Parliamentary Commissioner of any suspicion that may involve improper conduct by a commission officer other than a commissioner or the chief executive officer.

The notifications must be given in way and within the time required by the Parliamentary Committee or Parliamentary Commissioner.

Section 329 as it now stands is a result of amendments made in 2014. Those amendments were made after a significant public enquiry into a failure in administration at the Crime and Corruption Commission (at the time the Crime and Misconduct Commission) which led to a significant issue concerning documents relating to the Fitzgerald enquiry.

After those amendments I noted significant changes in the governance of the Crime and Corruption Commission and regular adherence to the notification and other requirements imposed by s 329.

It is appropriate to view s 329 in the light of other amendments made at the time including the amendments which enlarge the powers of the Parliamentary Commissioner in permitting own motion investigations.

The intention of s 329 was to provide a mechanism for the oversight regime applying to a Crime and Corruption Commission. It is appropriate in the circumstances to question whether the operation of s 329 achieves that with which it was intended to achieve.

The definition of improper conduct in s 329 is extremely broad. It has a much more broader compass than the section had before it was amended. It may well be that the section now captures conduct which could be classified as minor or mere failures to adhere to policy and not necessarily the kind of conduct the amendments to the section were aimed at.

Certainly after the amendments I noted a greater number of notifications, many of which did not require any adverse comment from the Parliamentary Commissioner.

How that affected the operations and administrative functions of the commission is a matter comment by the commission but I would not find it surprising to find that the time spent administering the section and in affect conducting enquiries and assessments to form a suspicion or otherwise has not resulted in the consumption of the commission's time and resources.

From my observations, after the amendments, I draw a perception that the commission has a strong awareness of the obligations of the notifiers under s 329 and the committee would be justified in reaching a conclusion that there was significant and effective administrative oversight.

It could also be said, in my view, that the commission did adhere to the highest standards of administrative practice after the amendments came into force and that the public could be justified in having confidence in the commission.

Yours faithfully

A handwritten signature in blue ink that reads "Paul Favell". The signature is written in a cursive, flowing style.

Paul Favell
Chambers Sent by email 21 May 2018