



HIGH COURT OF AUSTRALIA

Public Information Officer

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LEIGH WILLIAM DALTON v NSW CRIME COMMISSION, COMMONWEALTH ATTORNEY-GENERAL AND NEW SOUTH WALES ATTORNEY-GENERAL

The ability of a State or Territory to serve, in other parts of Australia under Commonwealth law, a summons to appear before a tribunal, was upheld by the High Court of Australia today.

Section 76 of the Commonwealth *Service and Execution of Process Act* empowers Supreme Courts of States and Territories to grant leave to serve subpoenas outside the relevant State or Territory to compel a person to appear before a tribunal or to produce documents or other items to a tribunal. The Crime Commission, which investigates illegal drug trafficking, organised crime and other criminal activity, met the SEP Act's definition of tribunal. In November 2003 it began a drug operation codenamed "Gynea IV". On 12 March 2004, the Commission issued a summons for Mr Dalton to appear before it on 5 April 2004 to give evidence. The summons was a subpoena relating to an investigative function as required by the Act. The NSW Supreme Court granted leave to serve the subpoena on Mr Dalton whose address was in St Kilda East in Melbourne. Service took place in Melbourne on 22 March 2004. In the Supreme Court Mr Dalton challenged the subpoena on the ground that section 76 of the SEP Act is unconstitutional. Proceedings were referred to the Court of Appeal which, by majority, rejected the challenge. Mr Dalton then appealed to the High Court.

The Court unanimously dismissed the appeal. It held that Mr Dalton failed to demonstrate the invalidity of section 76, therefore service was effective in accordance with federal law. Section 76 is a law supported by section 51(xxiv) of the Constitution which provides that Parliament can make laws with respect to the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States.

Mr Dalton had argued that the summons did not answer the description "the civil and criminal process" because this was said to refer only to the process of bodies which determine disputes between persons or the enforcement of the criminal law by prosecution and trial. He said the laying of criminal charges preceded by an investigation does not render the investigative process of a body such as the Commission part of the criminal process. The Court held that "civil and criminal" in section 51(xxiv) of the Constitution were not words of limitation or qualification, but words of universal description embracing all that might be described as a "process". The Court also rejected Mr Dalton's argument that a subpoena served under section 76 of the SEP Act was one issued in relation to an investigative function, rather than an adjudicative function, so did not fall within section 51(xxiv). Mr Dalton submitted that because courts do not have investigative functions there could be no extension by analogy to tribunals. However, the Court held that Australian courts have always had a range of investigative functions and Mr Dalton's argument failed.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*