



HIGH COURT OF AUSTRALIA

15 April 2015

DUNCAN v THE STATE OF NEW SOUTH WALES
NUCOAL RESOURCES LIMITED v STATE OF NEW SOUTH WALES
CASCADE COAL PTY LIMITED & ORS v THE STATE OF NEW SOUTH WALES

[2015] HCA 13

Today the High Court unanimously upheld the validity of certain provisions of Sched 6A to the *Mining Act* 1992 (NSW), which cancelled, without compensation, three specified exploration licences issued under the *Mining Act*.

Schedule 6A was inserted into the *Mining Act* by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act* 2014 (NSW) ("the Amendment Act"), which was enacted following consideration by both Houses of the New South Wales Parliament of reports prepared by the Independent Commission Against Corruption. Those reports contained findings that a number of individuals had engaged in corrupt conduct in relation to the grant of the exploration licences, and that the licences were so tainted by corruption that they should be cancelled.

By special case in three separate proceedings in the original jurisdiction of the High Court, the corporate licensees of two of the cancelled exploration licences and their parent company ("the Cascade proceedings"), a former director of that parent company ("the Duncan proceedings") and the parent company of the corporate licensee of the other cancelled exploration licence ("the NuCoal proceedings"), challenged the validity of Sched 6A as inserted by the Amendment Act. In each proceeding, it was contended that the Amendment Act involved the legislative exercise of judicial power in the nature of, or akin to, a bill of pains and penalties, and that such an exercise of power contravened an implied limitation on State legislative power deriving either from Ch III of the Commonwealth Constitution or an historical limitation on colonial, and subsequently State, legislative power. In the Cascade and Duncan proceedings, it was contended that the Amendment Act is not a law within the meaning of s 5 of the *Constitution Act* 1902 (NSW). In the Cascade and NuCoal proceedings, it was contended that a provision of the Amendment Act, relating to the use and disclosure of information required to be provided by the licensees, is inconsistent with provisions of the *Copyright Act* 1968 (Cth) and was therefore inoperative to the extent of that inconsistency by force of s 109 of the Commonwealth Constitution.

The Court held that the Amendment Act is a law within the competence of the New South Wales Parliament because the grant of legislative power by s 5 of the *Constitution Act* 1902 (NSW) implied no relevant limitation as to the content of an enactment of that Parliament. It also held that the Amendment Act did not involve the exercise of judicial power and did not bear the characteristics of a bill of pains and penalties. The existence and scope of any implied limitation on the ability of a State Parliament to exercise judicial power did not, therefore, arise for consideration. It was unnecessary for the Court to address the contention concerning s 109 of the Commonwealth Constitution because it was not shown by the facts agreed in the special cases to be the subject of real controversy.

- *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.*

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