



HIGH COURT OF AUSTRALIA

9 September 2015

DUNCAN v INDEPENDENT COMMISSION AGAINST CORRUPTION

[2015] HCA 32

Today the High Court unanimously dismissed an application seeking a declaration that Pt 13 of Sched 4 to the *Independent Commission Against Corruption Act 1988* (NSW) ("the ICAC Act") is invalid.

In July 2013, the respondent published a report containing findings that the applicant had engaged in "corrupt conduct" within the meaning of s 8(2) of the ICAC Act. The applicant commenced proceedings in the Supreme Court of New South Wales challenging the validity of those findings. His claim was dismissed by the primary judge. The applicant appealed to the Court of Appeal against that decision.

On 15 April 2015, prior to the determination of the Court of Appeal proceedings, the High Court delivered its judgment in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14, holding that "corrupt conduct" within the respondent's investigative jurisdiction under the ICAC Act does not encompass conduct which does not adversely affect the probity, even if it adversely affects the efficacy, of the exercise of the functions of a public official. It was common ground that the applicant's conduct the subject of the respondent's findings in the report did not affect the probity of the exercise of the functions of a public official. As a result, the applicant added to the grounds of his appeal the contention that the respondent lacked jurisdiction to make findings of corrupt conduct against him.

On 6 May 2015, the New South Wales Parliament enacted the *Independent Commission Against Corruption Amendment (Validation) Act 2015* (NSW), which added Pt 13 of Sched 4 to the ICAC Act. Pt 13 purports to ensure the validity of the respondent's activities before 15 April 2015, notwithstanding the decision in *Cunneen*. The applicant sought a declaration from the Court of Appeal that Pt 13 is invalid. The applicant's challenge to the validity of Pt 13 was removed to the High Court.

The High Court unanimously dismissed the application. The Court held that cll 34 and 35 of Pt 13 deem those acts done by the respondent before 15 April 2015 to be valid to the extent that they would have been valid if the definition of corrupt conduct in s 8(2) of the ICAC Act encompassed conduct which adversely affected the efficacy, but not the probity, of the exercise of official functions. A majority of the Court held that cll 34 and 35 of Pt 13 operate to effect an alteration in the substantive law as to what constitutes corrupt conduct, and the whole Court held that cll 34 and 35 of Pt 13 retrospectively confer jurisdiction upon the respondent. In doing so, the provisions attach new legal consequences and a new legal status to things done which otherwise would not have had such legal consequences or status.

- *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.*