



Independent Commission Against Corruption Amendment (Validation) Bill 2015

Independent Commission Against Corruption Amendment (Validation) Bill 2015

Extract from NSW Legislative Council Hansard and Papers Wednesday 6 May 2015.

INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT (VALIDATION) BILL 2015

Page: 157

Second Reading

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [8.03 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

We will not tolerate corruption in this State, end of story.

All previous findings of corruption by ICAC should, and will, stand.

While the High Court's recent decision in *ICAC v Cunneen* raises important questions about the ICAC's jurisdiction for the future, it should not provide those who have done the wrong thing in the past with a loophole.

We need a strong ICAC, and we will have one.

This Government is committed to upholding and promoting integrity in public administration.

A strong ICAC plays a vital role in investigating, exposing and preventing corruption involving or affecting public administration.

Broadly speaking, the ICAC has jurisdiction to investigate and report on allegations or complaints of corrupt conduct by public officials, as well as conduct by any person that could adversely affect the exercise of public official functions.

However, the recent High Court decision in *ICAC v Cunneen* [2015] HCA 14 has determined that the ICAC's jurisdiction is narrower than had previously been understood to be the case, in relation to conduct that could adversely affect the exercise of public official functions.

The majority of the High Court found that, for the conduct to be corrupt conduct, it must "adversely affect" the probity of the exercise of public official functions, rather than simply the

efficacy of the exercise of public official functions.

The High Court decision will potentially affect a large number of past ICAC investigations and findings of corrupt conduct, going all the way back to 1989 when the ICAC was first established.

This Government has no tolerance for corruption, and where someone has been found to have done the wrong thing, they should not be able to get away with it on the basis of a new loophole.

This bill does not reverse the High Court's decision, but it does validate actions and findings of the ICAC before 15 April 2015 where they were based on the previous understanding of the ICAC's jurisdiction.

The bill also validates actions taken by other persons or bodies, and legal proceedings, where they rely on the validity of the ICAC's past actions.

This will mean, for example, that the past prosecution, conviction and sentencing of a person, where it arose following an ICAC investigation, will still stand.

The bill will also validate the obtaining of evidence and information by the ICAC in the past, and will ensure that the ICAC can continue to refer that evidence or information on to other relevant bodies for appropriate action.

This will mean that the information gathered by the ICAC can still be validly used by other investigatory or regulatory bodies, such as the NSW Police Force, and validly used in subsequent proceedings, whether disciplinary, civil or criminal proceedings.

As I announced yesterday, as well as validating past actions through this bill, the Government has decided to commission an independent panel of experts to review the appropriate scope of the ICAC's jurisdiction.

Members will be aware that, following the High Court's decision, the ICAC requested that the Government introduce legislation to broaden the ICAC's jurisdiction relative to what it had previously understood it to be.

In effect, the ICAC recommended that the High Court's decision be reversed not only to validate past findings, but also prospectively.

While the Government appreciates the concerns that have been raised by the ICAC, it is also important to consider the High Court judgement itself, and the issues that it raises about the possible unintended consequences if the ICAC's jurisdiction were to be as broad as it had previously thought.

Further, the Inspector of the ICAC has also cautioned against moving too quickly to change the ICAC's jurisdiction going forward.

Accordingly, the Government proposes that a rigorous review be undertaken to assess the impact of the High Court's decision to make recommendations as to what, if any, legislative action is needed to ensure that the ICAC has the most appropriate jurisdiction and powers going forward to prevent, investigate and expose serious corrupt conduct and/or systemic corrupt conduct involving, or affecting, public authorities and/or public officials.

The independent panel will be chaired by former High Court Chief Justice, the Hon. Murray Gleeson, AC, QC, and will include Mr Bruce McClintock, SC, who conducted a review of the ICAC Act in 2005.

In light of the High Court's decision in *ICAC v Cunneen*, the panel will be asked to consider and

report on:

- the appropriate scope for the ICAC's jurisdiction,
- any legislative measures required to provide the ICAC with the appropriate powers to prevent, investigate and expose serious corrupt conduct and/or systemic corrupt conduct involving, or affecting, public authorities and/or public officials, and
- whether any limits or enhancements should be applied to the exercise of the ICAC's powers.

The panel will be able to consult with relevant stakeholders, and will be specifically requested to consult with the ICAC, the Inspector of the ICAC, the Director of Public Prosecutions, the Solicitor-General, the Crime Commission, the NSW Police Force and the Police Integrity Commission.

The panel will consider a report by the Inspector of ICAC that will include consideration of:

- the conduct of past and current investigations of the ICAC,
- whether the ICAC's powers, and its exercise of its powers, are consistent with principles of justice and fairness,
- the extent to which ICAC investigations give rise to prosecution and conviction, and
- whether any limits or enhancements, substantive or procedural, should be applied to the exercise of the ICAC's powers.

The panel will be asked to report to the Government by 10 July 2015 so that further legislation, if needed, can be introduced later this year.

The bill and the review by the independent panel will ensure that we continue to have a strong and effective ICAC.

Importantly, the bill before the House will validate not only actions taken by the ICAC in respect of past completed investigations, but also actions already taken by the ICAC in respect of its current investigations.

Pending the outcome of the review, it will be a matter for the ICAC to determine whether to finalise and report on those parts of its current investigations that fall within its clear jurisdiction as determined by the High Court, or whether to hold off until the independent panel's review is complete and Parliament has had an opportunity to consider whether any change to the ICAC's jurisdiction should be made.

The Government has taken this action today, and has sought urgent passage of the bill, because of our steadfast resolve to eradicate corruption from this State.

I commend the bill to the House.