



New South Wales

Independent Commission Against Corruption Amendment (Validation) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988* to validate certain previous actions of the Independent Commission Against Corruption (ICAC) following the decision of the High Court in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14.

On 15 April 2015, the High Court decided in that case that the jurisdiction of ICAC in relation to corrupt conduct did not extend to specified criminal conduct of private persons or public officials (such as perverting the course of justice, fraud and election funding offences) that adversely affected the exercise of official functions by public officials unless there was some lack of probity in the exercise of official functions by public officials (that is, some lack of honesty or impartiality on the part of public officials in the exercise of their official functions)—it was not sufficient that the criminal conduct merely adversely affected the efficacy of the exercise of official functions (that is, it merely prevented public officials from properly exercising their official functions).

The Bill does not reverse the High Court decision, but validates action taken by ICAC before 15 April 2015 on the previous understanding that corrupt conduct extended to relevant criminal conduct that adversely affected in any way the exercise of official functions (and accordingly validates action taken by others in reliance on the action taken by ICAC). The Bill does not authorise the continuation of investigations or inquiries by ICAC that have been held by the High Court to exceed its jurisdiction, but enables ICAC to refer any such matter to other investigative or prosecuting authorities and to provide them with any evidence or information obtained by ICAC before 15 April 2015.