



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.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

### **Schedule 1      Amendment of Independent Commission Against Corruption Act 1988 No 35**

The Schedule amends Schedule 4 to the Act (Savings, transitional and other provisions) to provide for the validation referred to the Overview above.



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New South Wales

# Independent Commission Against Corruption Amendment (Validation) Bill 2015

No. , 2015

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## A Bill for

An Act to amend the *Independent Commission Against Corruption Act 1988* to validate certain previous actions of the Independent Commission Against Corruption.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Independent Commission Against Corruption Amendment (Validation) Act 2015</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

<b>Schedule 1</b>	<b>Amendment of Independent Commission Against Corruption Act 1988 No 35</b>	1 2
<b>Schedule 4</b>	<b>Savings, transitional and other provisions</b>	3
	Insert at the end of the Schedule:	4
<b>Part 13</b>	<b>Validation relating to decision on 15 April 2015 in Independent Commission Against Corruption v Cunneen [2015] HCA 14</b>	5 6 7
<b>34</b>	<b>Interpretation</b>	8
(1)	In this Part: <i>relevant conduct</i> means conduct that would be corrupt conduct for the purposes of this Act if the reference in section 8 (2) to conduct that adversely affects, or could adversely affect, the exercise of official functions included conduct that adversely affects, or could adversely affect, the efficacy (but not the probity) of the exercise of official functions.	9 10 11 12 13 14
(2)	A reference in this Part to anything done or purporting to have been done by the Commission includes a reference to:	15 16
(a)	anything done or purporting to have been done by an officer of the Commission, and	17 18
(b)	any investigation, examination, inquiry, hearing, finding, referral, recommendation or report conducted or made by the Commission or an officer of the Commission, and	19 20 21
(c)	any order, direction, summons, notice or other requirement made or issued by the Commission or an officer of the Commission, and	22 23
(d)	the obtaining or receipt of anything by the Commission or an officer of the Commission.	24 25
(3)	A reference in this Part to evidence given to the Commission includes a reference to:	26 27
(a)	a statement of information, or a document or other thing, produced in response to a notice by the Commission or an officer of the Commission, and	28 29 30
(b)	an answer made, or a document or other thing produced, by a person summoned to attend or appearing before the Commission or an officer of the Commission at a compulsory examination or public inquiry, and	31 32 33
(c)	any information, document or other thing otherwise obtained or received by the Commission or an officer of the Commission.	34 35
<b>35</b>	<b>Validation</b>	36
(1)	Anything done or purporting to have been done by the Commission before 15 April 2015 that would have been validly done if corrupt conduct for the purposes of this Act included relevant conduct is taken to have been, and always to have been, validly done.	37 38 39 40
(2)	The validation under subclause (1) extends to the validation of:	41
(a)	things done or purporting to have been done by any person or body, and	42

- (b) legal proceedings and matters arising in or as a result of those proceedings, 1  
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if their validity relies on the validity of a thing done or purporting to have been done by the Commission. 3  
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- (3) The validation under subclause (1) extends to the validation of things on and from the date they were done or purported to have been done. 5  
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- (4) The Commission is authorised (and is taken always to have been authorised) to exercise functions under this Act on or after 15 April 2015 to refer matters for investigation or other action to other persons or bodies, or to communicate or provide evidence given to the Commission to other persons or bodies, even if the matter arose or the evidence was given to the Commission before 15 April 2015 and its validity relies on the validation under subclause (1). 7  
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- (5) Subclause (4) applies even if any finding of corrupt conduct that relates to the matter or evidence is declared a nullity or otherwise set aside by a court. 13  
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- (6) However, a person is not (and was not) required to comply, on and after 15 April 2015, with any order, direction, summons, notice or other requirement made or issued by the Commission or an officer of the Commission before 15 April 2015 if the validity of the order, direction, summons, notice or other requirement relies on the validation under subclause (1). 15  
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