

## ICAC corruption findings 'to be overturned'

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The group of men appealing the corruption findings in the NSW Court of Appeal are former Felix resources boss Travers Duncan (pictured), and fellow investors and former directors in Cascade Coal John McGuigan, Richard Poole and John Atkinson. Picture John Feder *Source: News Corp Australia*  
**The NSW anti-corruption watchdog has surrendered to a group of prominent businessmen fighting to have corruption findings against them overturned in a decision which effectively clears the group, including coal magnate Travers Duncan, of corruption.**

In the most significant legal decision following [Margaret Cunneen's successful High Court appeal](#) against the NSW Independent Commission Against Corruption, the NSW Crown Solicitors have written to the lawyers of the four men informing them that the ICAC will consent to having their corruption findings overturned in NSW Court of Appeal.

The group of men appealing their corruption in the NSW Court of Appeal are former Felix Resources boss Travers Duncan, and fellow investors and former directors in Cascade Coal John McGuigan, Richard Poole and John Atkinson.

The ICAC was also appealing a previous finding against former RAMS Home Loans boss John Kinghorn, who had previously successfully appealed his corruption finding in the NSW Supreme Court.

The men were found corrupt by the ICAC over their involvement in Cascade Coal; a company in which former Labor powerbroker Eddie Obeid had an interest and also held a coal exploration licence over the Obeid family farm at the Bylong Valley in northern NSW.

In the copy of the letter obtained by *The Australian* the NSW Crown Solicitor says it is the opinion of the ICAC the case against the four men was not viable because the commission was acting beyond their power.

"Based on the law as it currently stands, the Commission's position is that the following findings made by it in its report Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and other, dated July 2013, were beyond power" in relation to "Mr Travers Duncan ... Mr John Kinghorn ... Mr John McGuigan ... Mr Richard Poole ... and Mr John Atkinson."

The Crown Solicitor, acting on the advice of the ICAC, has now decided to agree to an order from the NSW Court of Appeal which would see the four men have their corruption findings overturned, as well as drop an appeal against an earlier court decision which overturned Mr Kinghorn's corruption findings.

"Based on the law as it currently stands, the Commission would consent to orders granting leave to appeal in the Duncan, McGuigan and Atkinson proceedings, allowing the appeals, setting aside the primary judge's orders in those proceedings and, in place of those orders, declaring the corrupt findings against Messrs Duncan, McGuigan, Poole and Atkinson invalid ... dismissing the summons seeking leave to appeal in the Kinghorn proceedings, with costs," the letter states

The letter from senior solicitor from the Crown Solicitor's office Arron Baril says that the Cunneen decision will not affect the Court's decision in relation to findings against Cascade Coal who had their coal exploration licence removed by special laws introduced by the NSW Parliament following ICAC findings the licence was corruptly obtained. Cascade Coal recently lost a High Court appeal to have the laws declared invalid.

"The Cascade Coal proceedings are in a different category. The Commission's position is that Cunneen has no relevant impact on the validity of the recommendations, and any alleged findings, made in its report Operations Jasper and Acacia — addressing outstanding questions, dated December 2013 (which are the subject of the Cascade Coal proceedings). The Commission continues to oppose the orders sought in those proceedings," the letter states.

John McGuigan told *The Australian* that he would be seeking to have the Court of Appeal to meet as soon as possible in order to ratify the Crown Solicitor advice.

"ICAC today has made it clear that the findings against the Cascade directors were made without legal foundation and were beyond the power of ICAC.

"We will be seeking to have the matter listed before the Court of Appeal as priority so that court can declare the corrupt findings invalid and make the appropriate," Mr McGuigan said.

In a 4-1 decision, the High Court ruled last week that ICAC had no power to investigate allegations that Ms Cunneen and her son Stephen Wyllie advised his girlfriend, Sophia Tilley, to "pretend to have chest pains" at the scene of an accident with the intention of perverting the course of justice. The ruling affects the corruption body's ability to investigate anyone who is not a public official, and who might have misled a public body.

In response to the ruling, ICAC has delayed two inquiries into Australian Water Holdings, which brought down former premier Barry O'Farrell after he misled the commission about receiving a bottle of wine, and one into political donations from property developers, which caused the resignation of 10 MPs.

The ICAC has called on the NSW Premier Mike Baird to introduce retrospective legislation that would effectively overturn the Cunneen decision and restore powers it claims to have had.

Mr Baird is yet to make a decision on the matter but Labor opposition leader Luke Foley has backed ICAC's call.