

## **AUSTRALIAN CRIME COMMISSION v. STODDART & ANOR (B71/2010)**

Court appealed from: Full Court of the Federal Court of Australia  
[2010] FCFCA 89

Date of judgment: 15 July 2010

Date special leave granted: 12 November 2010

The second respondent (“the examiner”) is an examiner of the Australian Crime Commission (“ACC”). The first respondent appeared before the examiner in answer to a summons issued under s 28 of the *Australian Crime Commission Act 2002 (Cth)* (“Act”) in connection with a “special ACC investigation” as defined in s 4 of the Act. Counsel assisting the examiner asked the first respondent questions about alleged activities of her husband. Through her counsel, the first respondent purported to claim the privilege of spousal incrimination and declined to answer the questions. The examiner rejected the claim to spousal privilege, concluding that if spousal privilege exists, the Act abrogates it. The proceeding was adjourned to permit an application to the Federal Court for a declaration that “the common law privilege or immunity against spousal incrimination has not been abrogated by the [Act]”.

Reeves J dismissed the application. His Honour concluded he was bound by the decision of a Full Court of the Federal Court in *S v. Boulton* (2006) 151 FCR 364 (per Black CJ and Jacobson and Greenwood JJ, allowing an appeal from Kiefel J at first instance) that spousal privilege exists at common law. However, Reeves J concluded that the privilege had been abrogated by s 30 of the Act.

The Full Court of the Federal Court by majority allowed the first respondent’s appeal and made the declaration sought (Spender and Logan JJ; Greenwood J dissenting). Logan J wrote the principal judgment for the majority. The majority concluded that the Act did not abrogate the claimed spousal privilege. Spender J noted that the only question arising on the appeal was as to whether the Act abrogated the privilege, as there had been no cross appeal or notice of contention in respect of Reeves’ J’s finding that spousal privilege exists at common law. Greenwood J in dissent observed that only two matters of privilege or immunity have any operation upon the general obligation imposed by the Act to answer questions, those being limited use immunity for answers which might tend to self-incriminate and legal professional privilege, and having regard to the character and purpose of the Act, by necessary implication any spousal immunity at common law has been abrogated.

The grounds of appeal include:

- Whether the common law of Australia recognises a privilege against incriminating one’s spouse; and
- Whether, if spousal privilege exists, the *Australian Crime Commission Act 2002 (Cth)* abrogates the privilege.