

MINING AMENDMENT (ICAC OPERATIONS JASPER AND ACACIA) BILL 2014

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Bill received from the Legislative Council, introduced and read a first time.**Second Reading**

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney) [2.19 p.m.]: This State has been shocked by the revelations of corruption exposed last year by the Independent Commission Against Corruption [ICAC]. Counsel Assisting described it as being on a scale not witnessed since the days of the Rum Corps. The introduction of the Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014 will draw a line under this appalling episode. It will restore to the people of New South Wales the assets that were taken from them for private gain and without proper regard to the public interest. And, most importantly, it will continue the process of restoring to the people of New South Wales their confidence in the integrity of government and the mining industry in this State.

Clause 4 of this bill will cancel the exploration licences in respect of Doyles Creek, Mount Penny and Glendon Brook. The cancellation of those licences was, of course, recommended by the Independent Commission Against Corruption itself. That recommendation followed the earlier findings by the Independent Commission Against Corruption of corrupt conduct against various individuals, including a former Labor Minister and a number of officers from the companies involved. The Government is aware that some of those findings are now the subject of current or threatened legal challenge. It is also aware that the jurisdiction of the Independent Commission Against Corruption to recommend cancellation of the licences is being challenged.

However, the action proposed in this bill does not stand or fall based on the findings or recommendations of the Independent Commission Against Corruption. Having regard to the information that has been exposed to public scrutiny, the Parliament itself can and should form its own view as to whether these licences should be cancelled. The Government believes they should be. In the course of its investigations and proceedings known as Operations Jasper and Acacia, the Independent Commission Against Corruption brought to light a wealth of information about the course of events that led to exploration licences being granted to three companies: Doyles Creek Mining, Mount Penny Coal and Glendon Brook Coal. Having considered that information, and submissions made by the licence holders and others, the Government considers Parliament will be satisfied that the relevant licences and the processes that led to them being granted are tainted by serious corruption.

The circumstances are exceptional and hopefully unique. The Government is determined to ensure that they are never repeated. The taint of corruption affecting the licences cannot be removed in the manner suggested by Cascade Coal and NuCoal by their simply paying to the State some portion of the profits they otherwise stand to make from these licences. This is not a situation that anyone can simply buy their way out of.

It is the Government's view that the only appropriate way to address the situation is to cancel the licences so as to place the State as nearly as possible in the situation it would have been in had those licences never been granted. For that reason, we propose that the licences will be cancelled and the fees paid for them be repaid. This view is set out in clause 3 of the bill under "Purposes and objects". It sets out four specific objects for this legislation: first, to

cancel the licences and ensure that the tainted processes that led to their being granted do not infect future processes such as mining leases; secondly, to ensure that the State has the opportunity, if considered appropriate in the future, to allocate rights in respect of the land using a proper process that is in the public interest; thirdly, to ensure that no person may derive any further financial benefit from the tainted processes; and fourthly, to protect the State against the potential for further loss or damage.

The decision has been made that no compensation will be payable in respect of the cancellation. The bill also protects the State against any liability whatsoever in respect of the circumstances that led to the granting of the licences. These provisions do not, of course, protect any individuals or private companies who have engaged in deliberate wrongdoing. The decision to cancel these exploration licences without compensation has not been made lightly. The Government recognises that this bill will abrogate common law rights that would otherwise operate, including common law rights regarding property. In passing this legislation, the Parliament will clearly be extinguishing, without compensation, whatever property rights might otherwise subsist in the licences as well as in certain exploration legislation. By immunising the State from liability, the bill will also abrogate other common law rights, including contractual rights.

This is not a decision that has been taken lightly. Before introducing this bill, this Government sought and carefully considered submissions from the licence holders. It has also taken into account numerous submissions that were received from affected shareholders. The report of the Independent Commission Against Corruption suggested that consideration could be given to the provision of *ex gratia* financial compensation to "innocent persons". It is important, however, to be clear about what is meant by "innocent" in this context. Those who purchase shares in a company may be innocent of any conduct involving the company. However, they invest in the company seeking the chance of financial gain. They accept the upside benefits of the corporation's activities, which they fund, and they enjoy the downside protection of limited liability. Shareholders collectively choose the directors and others who guide the business who, if poorly chosen or poorly supervised, may engage in wrongful conduct or actions that otherwise lead to poor outcomes for shareholders.

NuCoal cannot be regarded as a bona fide purchaser for value and without notice. There is evidence of some public notoriety surrounding the circumstances of the Doyles Creek licence at the time NuCoal and its shareholders invested in it. NuCoal was a recently listed shelf company. Although it is a separate legal entity, the reality is that NuCoal was merely the vehicle for the backdoor listing of Doyles Creek Mining. There is also evidence of corruption involving various directors and founders of Doyles Creek Mining, including two who were appointed to the board of NuCoal at the time of the Doyles Creek acquisition. As the Independent Commission Against Corruption stated:

The consequences of improper transactions cannot be avoided merely because its shares have been subsequently traded.

Whilst the Government believes that as a matter of principle the shareholders have no legitimate claim to compensation from the taxpayer, this is not to say that some shareholders should not feel aggrieved by what has happened. Their grievances should be properly directed to those individuals who were involved in, or at the very least had knowledge of, the wrongdoing that took place. The appropriate course of action is against the directors of the company if they can be shown to have breached their duties as directors. It is a matter for

those shareholders, if they wish, to seek legal advice on any remedies that may be provided.

A number of submissions suggested that the cancellation of these licences without compensation may raise concerns about sovereign risk. In response, I say this: The greatest form of sovereign risk, the greatest threat to the stability and certainty needed by business in dealing with governments is the risk of corruption. It is the risk of corrupt public officials and their private sector mates that will distort public processes, manipulate markets and will act for their own private benefit in secret deals at the expense of the public interest. This bill puts an end to that. As stated in clause 3 of the bill, the core purposes of this legislation are: restoring public confidence in the allocation of the State's valuable mining resources; promoting integrity in public administration above all other considerations, including financial considerations; and deterring future corruption. Of course, this bill is about putting the State in as near as possible the same position as it would have been had this corruption never occurred.

The Government has no immediate plans to rerelease the relevant land for prospecting or mining. The bill will allow for that to happen in the future if it is considered appropriate. Importantly, any future processes will be undertaken in the public interest and in accordance with proper probity requirements. These requirements will include the reforms that this Government is implementing in respect of the earlier recommendations of the Independent Commission Against Corruption. I note that this bill does not address all the matters raised in the report of the Independent Commission Against Corruption. The Government proposes to introduce a further bill to deal with those and other associated matters after Parliament resumes at the end of February in the hope that we can seek to claw back some of the profits made by those involved in this sorry saga. However, it is critical that we act expeditiously and decisively to cancel these licences now. Accordingly, I commend the bill to the House.