CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2014
MINING AND PETROLEUM LEGISLATION AMENDMENT BILL 2014

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Bills introduced on motion by Mr Barry O'Farrell, read a first time and printed.

Second Reading

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney) [5.46 p.m.]: I move:

That these bills be now read a second time.

On 30 January this year the Parliament passed the Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014 to cancel the exploration licences in respect of Doyles Creek, Mount Penny and Glendon Brook. In the second reading speech on that occasion I noted that it did not address all of the matters raised in the final report of the Independent Commission Against Corruption on Operations Jasper and Acacia published on 18 December last year. Today the Government introduces these two further bills to complete the Government's legislative responses to the recommendations of the Independent Commission Against Corruption and other associated issues.

This State was shocked by the revelations of corruption exposed last year by the Independent Commission Against Corruption. In January, we took action to restore public confidence in the allocation of the State's valuable mining resources; to ensure that the tainted processes that led to exploration licences being granted do not infect future processes, such as mining leases; and to ensure that no person may derive any further financial benefit from the tainted processes.

First I will outline the amendments proposed by the Criminal Assets Recovery Amendment Bill 2014. This bill will amend the Criminal Assets Recovery Act 1990 to facilitate the recovery of proceeds of crime where those proceeds were derived by a person who was not the direct perpetrator of criminal activity. This responds to the increasingly common practice of criminals taking steps to ensure that the proceeds of their wrongdoing are placed in the name of a family trust or other associated entities. A new test will be introduced under which the New South Wales Crime Commission will be able to obtain an order against a person if it can establish that the perpetrator intended the person to benefit, or knew or ought to have known that the person would benefit.

The amendments also clarify that the proceeds can include an increase in the value of an interest in property resulting from the crime-related activity. For example, if a person owns shares in a company and the criminal activity results in an increase in the price of the shares in that company, the increase in value will be included in the definition of "proceeds". Existing safeguards under the legislation to protect innocent third parties will remain in place. For proceeds assessment orders there will still be a requirement that the third party "knew or ought reasonably to have known" that the proceeds came from illegal activities. For

unexplained wealth orders there will still be discretion in the Supreme Court to refuse to make the order if by so doing it would be in the public interest.

In relation to all restraining and confiscation orders, property ceases to be "serious crime derived property" or "illegally acquired property" if it is acquired by a third party for sufficient consideration without knowing that it was serious crime derived property or illegally acquired property, and in circumstances that would not arouse a reasonable suspicion.

The amendments to the Criminal Assets Recovery Act 1990 will extend to activities that were engaged in, and to proceeds that were derived or realised, before the commencement of the amendments, and to applications for orders under the Act made, but not yet determined, before the commencement of the amendments. The Government has consulted with the New South Wales Crime Commission, which supports the proposed amendments. The commission has advised that it is reviewing the material concerning the recent Independent Commission Against Corruption proceedings with a view to potentially bringing an action under the Criminal Assets Recovery Act 1990. I should also say that this legislation is also supported by the Independent Commission Against Corruption.

I will now outline the amendments proposed by the Mining and Petroleum Legislation Amendment Bill 2014. This bill will amend the provisions of the Mining Act 1992 and the Petroleum (Onshore) Act 1991 to replace the decision-maker's discretion to refuse to grant or cancel a mining or petroleum authority in "the public interest". A new test will be introduced allowing the decision-maker to cancel or refuse to grant or renew a mining right or petroleum authority if, in the decision-maker's opinion, the applicant is not a "fit and proper person". The test will also enable decisions to refuse to transfer a mining right or petroleum title, to cancel or suspend operations under a mining right or petroleum title and to impose conditions or restrict operations under a mining right or petroleum title.

The bill sets out a non-exhaustive list of factors that the decision-maker may take into account in determining whether a person is a fit and proper person. These include: the person has contravened relevant legislation; the person has held a mining right or petroleum title that has been cancelled, suspended or revoked; whether the person is of good repute, and the person's character, honesty and integrity; a history of bankruptcy or involvement in the management of insolvent companies; and the involvement of other persons who are not fit and proper persons in the management of the mining or petroleum activities. So that the new decision-making powers are not undermined by a decision made under the Environmental Planning and Assessment Act 1979, the bill will modify the relationship between the mining laws and the planning laws.

The bill will also prohibit an application for planning approval for mining that permits coal extraction under the Planning Act unless an authority under the Mining Act is in force. This will close a potential loophole that could be used to circumvent the need to obtain an exploration licence for coal. The bill also amends the Environmental Planning and

Assessment Act 1979 to make it clear that the Minister for Planning and Infrastructure may take into account relevant public interest considerations even if these were not raised specifically in the report by the Department of Planning and Infrastructure's Director General when determining an application under transitional part 3A of the Planning Act.

In addition, the bill will make other amendments to the grounds on which certain administrative decisions affecting mining rights and petroleum titles can be made so that administrative action may be taken based on the decision-maker's state of mind, for example, the decision-maker being satisfied that the grounds for the decision exist. When a decision-maker is taking action that will have a significant impact on a title holder's rights, such as cancelling a title, the decision-maker will have to be satisfied to a high standard of the relevant grounds. Decisions made under the Mining Act that affect titles are reviewable by the Land and Environment Court.

Finally, the Mining Act will be amended so that the Department of Trade and Industry, Regional Infrastructure and Services [DTIRIS] can take certain actions relating to the "preserved conditions" under clause 13 of schedule 6A to the Mining Act, being conditions that continue to apply to the Mount Penny, Glendon Brook and Doyles Creek tenements under the licences cancelled in January. The Independent Commission Against Corruption revelations in Operations Jasper and Acacia have shocked all members of this House. The corrupt actions of the former Minister for Mineral Resources and others named in the Independent Commission Against Corruption's investigations not only have denied the taxpayers of this State of potentially millions if not tens and maybe hundreds of millions of dollars in revenue, but also they have damaged the reputation of the New South Wales Government and the State of New South Wales as a destination for investment, whether national or international.

My Government is determined to clean up the mess left to us by Labor and importantly to ensure that the corrupt activities of the former Government can never occur again. Equally, we are determined to make sure that those who engaged in illegal activity are held accountable for their actions and that those people and their cronies are not able to profit from their wrongdoing. However, as with the Government's decision to introduce the Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014, the amendments proposed in this bill do not rely on the findings or recommendations of the Independent Commission Against Corruption. These amendments are proposed to strengthen the existing criminal assets recovery regime in the face of increasingly sophisticated efforts by criminals to hide the proceeds of crime from the State and to tighten the regulation of mining rights to reduce opportunities for corruption. Although these amendments are clearly relevant to the issues raised in the Independent Commission Against Corruption Operations Jasper and Acacia, they are not specific to them and will have general application.

Again I place on the record my appreciation for the extraordinary job that the Independent Commission Against Corruption has done in relation to Operation Jasper and Operation Acacia. I thank the commission for all its detailed work and recommendations. I thank also

the New South Wales Crime Commission for working with the Government to fashion this bill and legislative package, a package designed to update, modernise and ensure that in relation to not only past activities but also any future activities the taxpayers of this State can be guaranteed that the integrity authorities of New South Wales have the power to claw back those proceeds that rightfully belong to the public. I commend the bills to the House.

Debate adjourned on motion by Mr Richard Amery and set down as an order of the day for a future day.