

**MINING AND PETROLEUM INDUSTRY POLITICAL DONATIONS LEGISLATION AMENDMENT
(CORRUPTION RISK REDUCTION) BILL 2016**

Page: 1

Bill introduced on motion by Mr Jamie Parker, read a first time and printed.

Second Reading

Mr JAMIE PARKER (Balmain) [10.13 a.m.]: I move:

That this bill be now read a second time.

It is time to restore the integrity of Parliament by extending the donations ban to the mining industry. The Greens objective in introducing this bill is to reduce corruption risk and ensure appropriate decision-making by removing the ability of those who would benefit from decisions of public authorities or public officials to make political donations that could exert influence on or otherwise affect the making of those decisions. This will be done in four ways: by prohibiting political donations from the mining and petroleum industry; by prohibiting the making of environmental planning instruments relating to extractive industries at the request of persons who have made political donations or having regard to submissions made by such persons; by prohibiting the granting of certain planning approvals relating to extractive industries to persons who have made political donations or having regard to submissions by such persons; and by prohibiting the issue of mining authorisations or petroleum titles to persons who have made political donations.

The provisions of this bill have a legitimate purpose: to secure and promote the actual and perceived integrity of the Parliament and other institutions of government in New South Wales by reducing the risk to that integrity that may arise from undue, corrupt or hidden influences over those institutions, their members or their processes. The means adopted to achieve that purpose in this bill—the prohibition of political donations from those who might benefit and the prevention of those who have donated from possibly benefiting—are compatible with the maintenance of the constitutionally prescribed system of representative government. They advance those purposes by rational means that not only do not impede the system of representative government provided for but also enhance it.

These amendments are suitable as they have a rational connection to the purpose of reducing the risk of corruption and undue influence since they reduce corruption risk, ensure appropriate decision-making and minimise any perception of undue influence in the administration of environmental planning and assessment legislation, and mining and petroleum legislation, by preventing those who would benefit from decisions of public authorities or public officials from making political donations that could exert influence on the decision-making process. These amendments are also necessary in the sense that there is no obvious and compelling alternative, reasonably practical means of achieving the same purpose which has a less restrictive effect on the implied freedom of communication on governmental and political matters.

In *McCloy v New South Wales* [2015] HC 34, the High Court upheld the validity of a similar prohibition on property developers making political donations and on politicians accepting donations from property developers, finding that the prohibition did not impermissibly burden the implied freedom of communication on governmental and political matters contrary to the Constitution. The court said of that freedom:

The freedom under the Australian Constitution is a qualified limitation on legislative power implied in order to ensure that the people of the Commonwealth may 'exercise a free and informed choice as electors'. It is not an absolute freedom. It may be subject to legislative restrictions serving a legitimate purpose compatible with the system of representative government for which the Constitution provides, where the extent of the burden can be justified as suitable, necessary and adequate, having regard to the purpose of those restrictions.

I gave notice of this bill last November. Having arrived at the end of the parliamentary year, and there was still no action by the Premier to reduce corruption risk by broadening the ban on political donations, I took the initiative to address the concerns raised by the Independent Commission Against Corruption [ICAC]. The issues raised by the ICAC are matters worthy of consideration by this Parliament. In the commission's October 2013 report titled "Reducing the opportunities and incentives for corruption in the State's management of coal resources", a number of corruption risks were identified as existing throughout the State's administration system to the coalmining industry. The report states:

The corrupt behaviour exposed in operations Jasper and Acacia did not occur as the result of a small loophole that was cleverly exploited. Rather, the perverse incentives and opportunities that are embedded in the existing coal allocation system have the capacity to distort the decision-making process on what and when coal deposit should be released, as well as a pathway that an allocation process will follow.

The report further states, in a manner that addresses the question of why it is overdue for this industry to join the ban donors list of property developers, tobacco and gambling, that:

It is inconceivable that in any other portfolio area of government such value could be corruptly transferred from the state to favoured individuals with relative ease. What, then, is so different about the allocation of rights to state coal assets from the way that the rest of government does business? The corrupt conduct uncovered by the Commission in operations Jasper and Acacia cannot simply be put down to a rogue minister for mineral resources. The state arrangements that relate to coal provided an opportunity not found in other parts of government for individuals to engage in corrupt conduct.

For a government determined to safeguard its economic reputation, the commission's observations are damning:

The limitations of the state's policy and regulatory environment have had negative effects beyond the specific corruption exposed by the Commission and have restricted the return the state has obtained for its assets during the boom period for coal prices. Perceptions of sovereign risk (in the broadest sense of unpredictable policy changes and shifting discretionary decisions) have been heightened and the reputation of the state as a desirable investment destination has been tarnished.

The perception that the state is beholden to mining companies as a result of the additional financial contributions taken from them at the exploration stage has generated community anger about coal mining.

There we have it: the Independent Commission Against Corruption in its report in 2013 not only identified the specific issues around a corruption risk in the mining and extractive industries but also identified very clearly the state of community anger about this issue and the fact that an expose of corruption which ICAC undertook was not about an individual Minister or some loophole but about systemic corruption. The Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Bill 2015 extends to the mining and petroleum industry the current bans on political donations from the tobacco, alcohol, gambling and real estate development industries. Despite an appeal by a cashed-up developer in October 2015, the High Court of Australia found that New South Wales laws which ban specific classes of political donors are constitutionally valid. There is no excuse not to include the mining and petroleum industries in this ban. In fact, as highlighted by the Independent Commission Against Corruption, it is prudent to do so.

Corporate donations have a corrosive influence on democracy and undermine confidence in the political system. That is particularly the case in the mining and resource sector where decisions of government determine the success or failure of major resource projects. This legislation will secure and promote the actual and perceived integrity of Parliament and other institutions of government in New South Wales. We know this is certainly overdue; the community is highly sceptical of the integrity of politicians as a whole, after the long line of Labor and Liberal members of Parliament who have

been exposed by ICAC over the past few years. Elections should be about the contest of ideas, not the contest of cash. Whether it is cash in a brown paper bag in the back of a Bentley or buying a table at a fundraising event, the community needs to be sure that politicians are not being bought. The lid was lifted in August 2015 when energy giant AGL announced it had voluntarily ended all political donations. In a written statement, the company said:

While political donations from companies like AGL are not prohibited under legislation, we recognise that the community perception is that they may constitute undue influence from 'big business' on Government.

What an indictment on this Parliament that corporations were recognising before this Parliament did that political donations, even in regard to their perception, is a major issue. This Parliament lags behind not only community perceptions but also the perceptions of large companies such as AGL, which has taken a step that this Parliament has feared to take. The community is right to perceive undue influence. It is public knowledge that AGL's external auditors had previously exposed incomplete and inconsistent disclosure of political donations relating to the very period in which the company was applying to drill more than 100 coal seam gas wells near Gloucester. Fairfax Media reported in August 2014 that AGL gave almost \$100,000 to the New South Wales Labor and Liberal parties while seeking approval to drill 110 coal seam gas wells near Gloucester on the mid North Coast, but only half of those donations were apparently disclosed to the planning department, which recommended the project proceed. It was further reported:

Between the application and its approval by the Planning Assessment Commission on February 22, 2011, AGL donated a further \$39,300. Of that, Labor received two donations of \$13,750 and the bulk of the remainder went to the Liberals, including for several meals with then opposition leader and later premier Barry O'Farrell, who won a landslide victory in the subsequent March 2011 elections.

Commenting on the issue of AGL's political donations disclosure and integrity under the planning system, University of New South Wales constitutional law expert George Williams highlighted the need to overhaul corporate donations. He stated:

There's the larger issue of what [corporations] should be entitled to donate in the first place. Corporate interests don't donate money unless they hope to get something in return.

Putting aside the "areas and omissions" in the AGL's donations disclosures I place on the record the list of donations declared to the New South Wales Electoral Commission in the period 2003-14: Resources companies in general donated \$1 million to three parties—Labor, Liberal and The Nationals parties; lobbyists donated \$1.8 million; the Minerals Council of New South Wales donated \$120,000; AGL donated \$123,000; New South Wales Newcastle Coal Infrastructure Group donated \$106,000; Sydney Gas donated \$71,000; Nathan Tinkler donated \$50,000; Santos donated \$38,000; BHP donated \$26,000; Xtrata donated \$27,000; Centennial Coal donated \$19,000 and Gugarat NRE donated \$24,000. These were all donations made by various entities to political parties.

Since the last Federal election fossil fuel companies have donated almost \$3.7 million to the Labor, Liberal and The Nationals parties and for what purpose? No wonder there is a community perception that big business was splashing cash to ensure undue influence. Of course the Government may say, "Well, the donation limit is now only \$5,000 and that limit does not pose any undue influence on government." If it is such a small amount of cash and the influence is not there, why not just include mining companies in the list of prohibited donors? It is a corruption risk exercise the Government should lead. Companies like AGL have already made such decisions, citing the perception risk around political donations and the corruption issue carried within it. It is a step the Government should take and in light of the tainted history of planning and development decisions in New South Wales it is necessary to restore community confidence in the integrity of the planning system at both State and

local levels.

The community remains disgusted at the alleged rorting of political donations exposed by the Independent Commission Against Corruption [ICAC] in 2013. There is a political ecosystem in New South Wales where vested interests and some politicians are interdependent and often planning decisions have been seen to be compromised in the process. It is disturbing of course that this week we have seen the Minister for Industry, Resources and Energy labelling farmers and others protecting their land and water from coal seam gas as eco-fascists. The Greens condemn any acts that risk life and condemn the draconian new offences that target anti-CSG and coal seam gas protesters. Many of them are so active because of what they have seen as a rotten and influence-ridden political donation system. Many of those taking direct action against coal seam gas projects are farmers who feel they must act to protect the land and water from being poisoned or destroyed.

Recently I read about a 64-year-old farmer who was locked on to the gates of a Santos project out of concern for water resources and his family's farming future. These people are not eco-terrorists, as the Minister would describe them. They are people who care about the country and looking after it. They want to make sure there is no undue influence in the system so they are taking action. This is another reason why the Government should ensure that these political donations are banned, not only because of the perceived interest but also because it will make a statement for what this Government stands; that these donations are not necessary and that the Government stands apart from those who would accept these donations. When one considers that the cap is relatively low, as the Government has argued, why take the money?

Does the Government care more about paying back political donors and doing the bidding of the NSW Minerals Council than caring about farmers and communities in regional New South Wales? We see a pattern of ever more aggressive policing, reducing fines on mining companies where they can and expanding police powers to crack down on protesters and attack our civil liberties. We must make sure that these farmers and communities have the right to protest. They feel they have to go to that extent because there is a clear perception, as demonstrated by ICAC in its report, that there is interdependence between politicians, political donors and these companies. The Government can wipe that slate clean and make sure that in this case these political donations are not accepted.

In conclusion, the bill will reduce the risk of corruption. It will restore integrity to Government decision-making and help to clean up politics in New South Wales. This has been the stated aim of the Premier. Now it is time for him to back up his words with action. It will make a significant difference to the way that this Government is perceived. It will help the Government to make a strong stand against donations of this type and ensure a clean and effective political system without the influence of donations from mineral and petroleum companies.

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