



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

# Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019



Report 72

October 2019

Standing Committee on Law and Justice

# **Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

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## Terms of reference

1. That the Standing Committee on Law and Justice inquire into and report on the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

The terms of reference were referred to the committee by the Legislative Council on 6 June 2019.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 6 June 2019, p 197.

## Committee details

### Committee members

<b>The Hon Wes Fang MLC*</b>	The Nationals	<i>Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>The Hon Sam Farroway MLC**</b>	The Nationals	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Rod Roberts MLC</b>	Pauline Hanson's One Nation	
<b>Mr David Shoebridge MLC</b>	The Greens	
<b>The Hon Natalie Ward MLC</b>	Liberal Party	

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\* The Hon Wes Fang MLC replaced the Hon Niall Blair MLC as Chair on 17 October 2019.

\*\* The Hon Sam Farroway replaced the Hon Catherine Cusack MLC on 22 October 2019. Ms Cusack served from 17 October 2019 to 21 October 2019.

## Chair's foreword

The Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 was introduced into Parliament as a direct response to the cancellation of Exploration Licence (EL) 7270 over Doyles Creek. The licence was granted in 2008 and subsequently cancelled in 2014 following findings made by the Independent Commission Against Corruption.

The Bill seeks to provide a mechanism by which people financially affected by the cancellation of EL 7270 can apply to an independent arbiter to have their claims for compensation assessed and determined.

While it is acknowledged that the circumstances surrounding the granting of the licence are inextricably linked with its cancellation, the committee was careful to examine the evidence presented before it and to maintain a focus on the provisions of the proposed legislation and what these mean for all affected stakeholders, including NuCoal Resources and its shareholders.

On balance, the committee is not satisfied that all stakeholders affected by the licence cancellation should be considered in the same light. The committee is of the view that the directors of NuCoal Resources were either aware or should have been aware of the public controversy surrounding the allocation of EL 7270 at the time the company was publicly listed. However, the committee also accepts that there are some innocent shareholders, including mum and dad investors who acquired shares in good faith and without any knowledge of the controversy.

Overall, the committee found that there were a number of significant outstanding issues that could not be resolved, including the powers of the independent arbiter to determine claims and the compensation structure. Questions also remain as to who will be compensated, particularly given the risks shareholders routinely take when investing in the share market.

For these reasons, the committee recommends that the Bill not proceed to be considered by the Legislative Council in its current form. In addition, the committee recommends that the NSW Government address the outstanding matters raised during this inquiry, including the issue of compensation for innocent shareholders.

I thank my fellow committee members for their participation and considered engagement throughout the inquiry. I also acknowledge the Hon Niall Blair, former Chair of the committee, who led this inquiry up until his resignation earlier this month. Thank you also to the committee secretariat for their guidance, hard work and professional support.



The Hon Wes Fang MLC  
**Committee Chair**

## Recommendations

### **Recommendation 1**

**39**

That the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 not proceed in its current form.

### **Recommendation 2**

**39**

That the NSW Government address the outstanding matters raised during this inquiry, where appropriate, including the issue of compensation for innocent shareholders.

## **Conduct of inquiry**

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 6 June 2019.

The committee received 25 submissions and 1 supplementary submission.

The committee held 1 public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.



## Chapter 1 Background

The Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 (the Bill) was introduced into the Legislative Council as a direct response to the cancellation of Exploration Licence (EL) 7270. The licence was granted in 2008 by the then Minister for Mineral Resources, Mr Ian Macdonald, and subsequently cancelled in 2014 following findings made by the Independent Commission Against Corruption in Operation Acacia.

This chapter provides contextual information relevant to the Bill, beginning with a brief timeline of events and an overview of the circumstances surrounding the allocation of EL 7270.

### The allocation of EL 7270

- 1.1 Prior to the allocation of Exploration Licence (EL) 7270, there had long been interest in exploring the land in Doyles Creek for its mining potential. The following section briefly outlines this interest and the events leading up to the allocation of the EL to Doyles Creek Mining (DCM) in 2008.
- 1.2 An exploration licence gives a licence holder exclusive rights to explore for mineral resources, establish its quality and quantity, and investigate the viability of its extraction.<sup>2</sup> It does not permit mining nor guarantee the granting of a mining lease.<sup>3</sup> There are two ways in which ELs can be granted – by ‘direct allocation’ which involves a minister granting an applicant consent to apply for an EL and then granting the EL to the applicant, and by a public tender or expression of interest process where parties compete with each other to obtain the minister’s consent to apply for the EL.<sup>4</sup>
- 1.3 In 2005-2006, a number of companies made requests to the department then responsible for mineral resources that they be invited to apply for an EL over Doyles Creek.<sup>5</sup> The area in question sat alongside a national park and ran adjacent to the small township of Jerry Plains which, like many villages in the Hunter Valley, was surrounded by coal. However, previous exploratory work revealed only limited geological information concerning the area.<sup>6</sup>

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<sup>2</sup> Resources and Geoscience NSW, Exploration licences and regulation, <https://www.resourcesandgeoscience.nsw.gov.au/landholders-and-community/minerals-and-coal/exploration>.

<sup>3</sup> Resources and Geoscience NSW, Exploration licences and regulation, <https://www.resourcesandgeoscience.nsw.gov.au/landholders-and-community/minerals-and-coal/exploration>.

<sup>4</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, pp 12-13.

<sup>5</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

<sup>6</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 11.

- 1.4** The requests to pursue exploratory interests in Doyles Creek were declined, and the companies were placed on a register of interest, to be later informed should the area be released for tender.<sup>7</sup> The department had advised that there were limited unallocated reserves available and had identified the Doyles Creek area as a possible competitive tender area.<sup>8</sup>
- 1.5** In late January/early February 2007, ResCo Services, a company established to acquire mining services and other businesses in the resources sector, also made representations to the then Minister for Mineral Resources, Mr Ian Macdonald, regarding Doyles Creek, including the proposal for an underground training mine.<sup>9</sup> In his capacity as Chair of ResCo Services, Mr John Maitland, wrote to Mr Macdonald requesting consent to apply for an EL over Doyles Creek.<sup>10</sup>
- 1.6** Following Mr Maitland's request, a ministerial briefing was prepared by the Department of Primary Industries and provided to the Minister, noting that several companies had previously expressed an interest in the Doyles Creek area but that these proposals had not progressed due to the sensitive nature of the area. The briefing further noted that the former Mining Safety Council had previously determined that the training mine concept should not be pursued following consideration of a similar proposal made several years earlier.<sup>11</sup>
- 1.7** The ministerial briefing outlined three potential options for the Minister to consider, with the third as the recommended course of action:
- (i) reject the current proposal
  - (ii) seek competitive expressions of interest for the proposed area
  - (iii) refer the proposal to the Mine Safety Advisory Council and seek their advice.<sup>12</sup>
- 1.8** In March 2008, Mr Maitland again wrote to the Minister requesting consent to apply for an EL over Doyles Creek, this time in his capacity as Chair of Doyles Creek Mining (DCM).<sup>13</sup> ResCo Services had changed its name to DCM in mid-2007.<sup>14</sup> Advising that DCM was associated with ResCo, Mr Maitland referred to his previous correspondence from February 2007.<sup>15</sup>

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<sup>7</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

<sup>8</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

<sup>9</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 18; O'Connor Marsden & Associates Pty Ltd, *Probity Review: Granting of an Exploration Licence to Doyles Creek Mining Pty Ltd*, 23 August 2010, p 1.

<sup>10</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 18.

<sup>11</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 18.

<sup>12</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, pp 18-19.

<sup>13</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

<sup>14</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

<sup>15</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

- 1.9 An internal departmental analysis conducted in May 2008 concluded that the Minister consider a competitive allocation process, with a requirement to establish either a training facility or a broader industry training fund. Mr Maitland was subsequently advised that the proposal required further examination and would be referred to the Minister.<sup>16</sup>
- 1.10 It was later reported by the media that, soon after, Mr Macdonald and two of his staff had dinner with Mr Maitland to discuss coal mining.<sup>17</sup>
- 1.11 In late August 2008, Mr Macdonald wrote to Mr Maitland as Chair of DCM, inviting him to apply for an EL subject to a supplementary submission outlining industry and community support for the proposal. Mr Macdonald's letter also noted that any consent given would be made under the relevant departmental guidelines.<sup>18</sup>
- 1.12 The following month, local media made enquiries to the department about the Doyles Creek EL and Mr Macdonald's correspondence. It was only after this enquiry that the department appeared to have been made aware of the correspondence.<sup>19</sup>
- 1.13 DCM submitted a formal application for an EL over Doyles Creek later that month, on 29 September 2008.<sup>20</sup>
- 1.14 On 15 December 2008, the Minister granted EL 7270 to DCM by direct allocation, subject to a number of conditions. These included conditions relating to environmental management, a landholder liaison program, the company's commitment to establish a training mine, and requirements to meet financial contributions to the State. The allocation was made public two weeks later.<sup>21</sup>

## Events following the allocation of EL 7270

- 1.15 The allocation of EL 7270 raised immediate questions about the circumstances under which the licence was granted and whether Mr Macdonald was influenced to grant the EL in favour of DCM because of his relationship with Mr Maitland, a former leader of the Construction, Forestry, Mining and Energy Union (CFMEU).<sup>22</sup> These questions would become the subject of ongoing investigations and proceedings that continue today.

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<sup>16</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

<sup>17</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

<sup>18</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

<sup>19</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, pp 19-20.

<sup>20</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 19.

<sup>21</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 20.

<sup>22</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

**1.16** On 16 April 2013 Mr Glen Lewis, Director of NuCoal Resources, gave evidence to the Independent Commission Against Corruption (ICAC). The transcript reveals the following evidence:

Counsel Assisting: I want to move to a different topic, Mr Lewis. You're aware that from about mid 2009 there was public controversy which you were aware of concerning the circumstances of the grant of the Exploration Licence to Doyles Creek Mining?---

Lewis: Certainly numerous media articles, yes.

Counsel Assisting: And you would have been aware of those at about the time that they were being published and reported upon?

Lewis: Yes.

Counsel Assisting: Given your role in the company?

Lewis: Correct.

Counsel Assisting: To place some of it in time if the witness could be shown volume 19. Sorry, if you could go to page 5922, Mr Lewis?---

Lewis: Yes.

Counsel Assisting: And you'll see there are various media reports including those referred to, in relation to 2E on 20 July 2009 concerning that controversy?

Lewis: Yes.

Counsel Assisting: And there's a whole series of entries, I won't take you through them all but 5931, the two references to ABC Newcastle at about the same date?

Lewis: Yes.

Counsel Assisting: And comments that were being made by Duncan Gay in Parliament?

Lewis: Correct.

Counsel Assisting: And as you say you're aware of these media reports at about this time of July 2009?

Lewis: Yes.<sup>23</sup>

**1.17** During mid to late 2009 a number of changes to directorships of DCM occurred. On 29 June 2009, Mr Lewis became a director of DCM. This was followed by the cessation as a director of Mr Maitland on 10 July 2009. This director was instrumental in the granting of EL 7270.<sup>24</sup>

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<sup>23</sup> Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6550.

<sup>24</sup> Plaintiff's chronology, *NuCoal Resources Ltd v State of New South Wales* (2014) HCA, No. S138 of 2014.

- 1.18** The committee has been assisted in understanding the chronology of events by reference to, amongst other documents, the chronology filed on behalf of the plaintiff, NuCoal, in proceedings brought against the NSW Government relating to the cancellation of EL7270.<sup>25</sup> The chronology forms Appendix 1 to the report.
- 1.19** On 28 July 2009 a meeting occurred between representatives of DCM and members of the Jerry Plains Community. Amongst those to attend the meeting was Mr Glen Lewis. In the report of the ICAC entitled *Operations Jasper and Acacia – Addressing Outstanding Questions*, the Commission noted:
- A Jerrys Plains Community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to 'ICAC' issues.<sup>26</sup>
- 1.20** In or around August 2009 Taurus Resources Fund No. 1 bought shares in DCM.<sup>27</sup> This was followed on 15 October 2009 by the appointment of Mr Gordon Galt and Mr Michael Davies, both directors of Taurus, as directors of DCM. The shares in DCM, held by Taurus Resources Fund No. 1 subsequently exchanged for shares in NuCoal when NuCoal listed on the Australian Stock Exchange.<sup>28</sup>
- 1.21** On 23 November 2009 NuCoal (then known as Supersorb Environmental NL) entered into an option to purchase agreement with DCM. This was followed by the resignation of one of the original directors, Mr Craig Ransley. This then left Mr Andrew Poole as the only continuing director of DCM.
- 1.22** In February 2010, DCM and EL 7270 were formally acquired by NuCoal Resources for \$94 million. Alongside the acquisition, NuCoal was listed on the Australian Stock Exchange (ASX).<sup>29</sup> In time, DCM's original stakeholders, including Mr Maitland, would stand to benefit from large profits on their investment following the listing.<sup>30</sup>
- 1.23** NuCoal's chronology states that following the acquisition by NuCoal of DCM, the directors of both NuCoal and DCM were: Mr Galt, Mr Lewis, Mr Davies, Mr Poole, and Mr Michael Chester.
- 1.24** Mr Lewis was asked about the procedure for listing NuCoal on the stock exchange in his evidence before ICAC on 16 April 2013. The transcript of evidence reveals this:

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<sup>25</sup> Plaintiff's chronology, *NuCoal Resources Ltd v State of New South Wales* (2014) HCA, No. S138 of 2014.

<sup>26</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 16.

<sup>27</sup> Evidence, Mr Michael Davies, Non-Executive Director, NuCoal Resources, 9 August 2019, p 4.

<sup>28</sup> Plaintiff's chronology, *NuCoal Resources Ltd v State of New South Wales* (2014) HCA, No. S138 of 2014.

<sup>29</sup> Submission 15, NuCoal Resources Ltd, p 6.

<sup>30</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

Counsel Assisting: Are you aware as to whether or not one of the reasons for listing in Perth was to try and keep the matter away from the Sydney press?

Lewis: Partially, correct.

Counsel Assisting: And you've dealt with investors since the reverse acquisition?

Lewis: Yes.

Counsel Assisting: And they've also raised with you concerns about the circumstances in which the Exploration was granted before making their investments?

Lewis: People have always asked what John Maitland's involvement was, yes.<sup>31</sup>

- 1.25** Mr Lewis gave a number of other reasons why the listing was conducted in Perth.<sup>32</sup>
- 1.26** Meanwhile, public controversy over the allocation of EL 7270 grew in the year after the licence was granted.<sup>33</sup> By March 2010, the NSW Opposition at the time called for an independent inquiry into the allocation of the exploration licence over Doyles Creek.<sup>34</sup>
- 1.27** In April 2010, Mr Macdonald stated in Parliament that he had received a recommendation from the department that the Doyles Creek training mine proceed.<sup>35</sup> Two months later, Mr Macdonald resigned as minister.<sup>36</sup>
- 1.28** It should be noted that following the listing of NuCoal there were significant share transactions involving a number of the original promoters and investors in DCM. The ICAC, in its report entitled *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others*, observed:

In early 2010, DCM was listed on the Australian Securities Exchange (ASX) through its acquisition by NuCoal Resources NL. That listing valued the EL over the Doyles Creek area at approximately \$100 million. Most of the original shareholders of DCM have since realised much of their investments for very large sums of money. Mr Maitland, for example, outlaid about \$165,000 to acquire his shares. By December 2011, his investment was worth about \$15 million. A table summarising the profits made by the original shareholders of DCM is set out in Appendix 4.<sup>37</sup>

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<sup>31</sup> Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6553.

<sup>32</sup> See Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6555.

<sup>33</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

<sup>34</sup> *Hansard*, Legislative Assembly, 18 March 2010, p 21736.

<sup>35</sup> *Hansard*, Legislative Council, 21 April 2010, p 21938.

<sup>36</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 21.

<sup>37</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.

1.29 The summary of profits of the original DCM Shareholders, as identified by ICAC, are set out in the figure below.

Figure 1 Appendix 4 of ICAC Report – Summary of profits of original DCM shareholders<sup>38</sup>



## Appendix 4: Summary of profits of original DCM shareholders

Summary of financial information				
Shareholder	A Initial Investment	B Net Profit made @ 31/12/11 (from sales of share)	C Market value of unsold shares @ 31/12/2011	D Total Net Profit (B + C)
Jonca Investments P/L (John Maitland)	\$165,623.00	\$5,985,526.26	\$8,924,206.59	\$14,909,732.85
Nera Ransley (wife of Craig Ransley)	\$318,017.28	\$14,887,364.05	\$-	\$14,887,364.05
Pooles Australia (Andrew Poole)	\$364,648.00	\$5,385,366.48	\$13,083,007.95	\$18,468,374.43
Maxine Poole	\$400.00	\$-	\$32,625.86	\$32,625.86
James Stevenson	\$65,964.00	\$3,144,325.95	\$-	\$3,144,325.95
James Stevenson and Elizabeth Pinnock as Trustees for the Stevenson Pinnock super fund	\$56,938.00	\$2,608,442.00	\$-	\$2,608,442.00
Micjud Pty Ltd (Michael Chester)	\$23,339.12	\$435,092.88	\$595,227.42	\$1,030,320.30
Kimberly Chisholm - Lenark Pty Ltd	\$70,019.80	\$6,753,836.15	\$-	\$6,753,836.15
Lawrence Ireland - Climb Super Pty Ltd	\$36,212.00	\$1,353,849.00	\$140,213.00	\$1,494,062.00
Michael Abela	\$25.00	\$1,367.00	\$-	\$1,367.00
Paul Dickson	\$25.00	\$-	\$2,087.00	\$2,087.00
Ricketts Point Investment P/L	\$6,214.00	\$-	\$394,454.00	\$394,454.00
Tuxon Pty Ltd (Robert Hargraves)	\$1,335.00	\$73,839.00	\$-	\$73,839.00
Stacey Noonan	\$16,806.00	\$1,425,698.19	\$-	\$1,425,698.19
Vincent Martin	\$-	\$417,647.00	\$-	\$417,647.00
Valzan Pty Ltd	\$65,344.00	\$2,780,382.00	\$-	\$2,780,382.00
Top Plain Properties P/L (Kenneth Mackinnon)	\$8,333.00	\$213,190.00	\$348,300.00	\$561,490.00
1) Baysoni (Glen Lewis) Shareholding 1	\$100,000.80	\$1,267,310.04	\$2,392,819.11	\$3,660,129.15
2) Baysoni (Glen Lewis) Shareholding 2	\$99,999.36	\$1,267,311.48	\$2,392,734.87	\$3,660,046.35
Jeffrey Roderick Williams	\$93,360.36	\$3,847,315.00	\$1,431,000.00	\$5,278,315.00
Jessica Tsiakis	\$46,680.68	\$3,164,732.00	\$-	\$3,164,732.00
<b>TOTAL</b>	<b>\$1,539,284.40</b>	<b>\$55,012,594.48</b>	<b>\$29,736,675.80</b>	<b>\$84,749,270.28</b>

<sup>38</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, Appendix 4, p 163.

## Investigations into the allocation process for EL 7270

- 1.30** Following the allocation of EL 7270, two government commissioned reports into the granting of the exploration licence over Doyles Creek were released – a probity review conducted by O'Connor Marsden & Associates in August 2010 (O'Connor Marsden report) and a review of the EL allocation process conducted by Clayton Utz in November 2011 (Clayton Utz report).
- 1.31** These reviews were followed by an Independent Commission Against Corruption (ICAC) investigation into the role of the Minister in the allocation of EL 7270, named Operation Acacia.

### O'Connor Marsden report

- 1.32** O'Connor Marsden & Associates were engaged to perform a probity review with the objective of determining whether the process for granting the EL was conducted with 'due regard to probity in accordance with the *Mining Act 1992*'.<sup>39</sup> In particular, the review focused on the probity principles of transparency, accountability and responsibility, confidentiality and conflict of interest, and value for money.<sup>40</sup>
- 1.33** The report found that the 'Minister acted within the powers afforded to him under the legislation in granting the EL to DCMP [Doyles Creek Mining Pty Ltd]', stating that there are 'a number of examples where direct allocations have been previously made by previous Ministers'.<sup>41</sup> The report also noted, however, that there were 'several opportunities' to enhance probity in granting ELs, including increased consultation and communication with key stakeholders.<sup>42</sup>

### Clayton Utz report

- 1.34** After a change of government in 2011, Clayton Utz was commissioned to investigate the efficacy and decision making process engaged in the allocation of the EL over Doyles Creek. In particular, they were tasked with reviewing the documentation relating to the granting of the licence.<sup>43</sup>
- 1.35** The report questioned the EL allocation process for Doyles Creek and concluded that 'there is a circumstantial case of wrongdoing and breach of public trust'.<sup>44</sup> The report provided a number of options for the NSW Government to consider before ultimately recommending that the

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<sup>39</sup> O'Connor Marsden & Associates Pty Ltd, *Probity Review: Granting of an Exploration Licence to Doyles Creek Mining Pty Ltd*, 23 August 2010, p 2.

<sup>40</sup> O'Connor Marsden & Associates Pty Ltd, *Probity Review: Granting of an Exploration Licence to Doyles Creek Mining Pty Ltd*, 23 August 2010, p 2.

<sup>41</sup> O'Connor Marsden & Associates Pty Ltd, *Probity Review: Granting of an Exploration Licence to Doyles Creek Mining Pty Ltd*, 23 August 2010, p 5.

<sup>42</sup> O'Connor Marsden & Associates Pty Ltd, *Probity Review: Granting of an Exploration Licence to Doyles Creek Mining Pty Ltd*, 23 August 2010, p 5.

<sup>43</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 1.

<sup>44</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, p 1.

NSW Government set up a Special Commission of Inquiry into the allocation of the Doyles Creek EL.<sup>45</sup>

### ICAC reports – Operation Acacia

- 1.36** Following the tabling of the Clayton Utz report in the NSW Parliament, both Houses of Parliament referred a number of issues in relation to EL 7270 (as well as other matters) to the Independent Commission Against Corruption (ICAC) for investigation.<sup>46</sup>
- 1.37** ICAC conducted a composite investigation, comprising three segments – Operation Indus, Operation Jasper and Operation Acacia.<sup>47</sup> Operation Acacia focused on the conduct of Mr Macdonald in granting DCM consent to apply for the EL over Doyle's Creek and subsequently granting EL 7270 to DCM.<sup>48</sup> The other investigations are beyond the scope of this report.
- 1.38** In August 2013, ICAC released its report on the investigation into the conduct of Mr Macdonald, Mr Maitland and others. The report was followed by an additional ICAC report to address outstanding questions from Operations Jasper and Acacia, released in December 2013.
- 1.39** ICAC found that Mr Macdonald had engaged in corrupt conduct by ‘acting contrary to his duty as a minister of the Crown in granting DCM consent to apply for the EL in respect of land at Doyles Creek and by granting the EL to DCM, both grants being substantially for the purpose of benefiting Mr Maitland’.<sup>49</sup> The Commission deemed that the former Minister would not have made those grants otherwise.<sup>50</sup>
- 1.40** ICAC also found that Mr Maitland engaged in corrupt conduct by making and publishing false or misleading statements to the department. Other former DCM directors<sup>51</sup> were also found to have engaged in corrupt conduct by facilitating Mr Maitland’s false or misleading statements to the department.<sup>52</sup>

<sup>45</sup> Clayton Utz, *Review of Doyles Creek Exploration Licence Allocation Process: Preliminary Report*, 4 November 2011, pp 13-16 .

<sup>46</sup> *Hansard*, Legislative Assembly, 23 November 2011, p 7733; *Hansard*, Legislative Council, 23 November 2011, p 7608.

<sup>47</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 8.

<sup>48</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 5.

<sup>49</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 8; see also Chapters 36 and 37 of the report.

<sup>50</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 8; see also Chapters 36 and 37 of the report.

<sup>51</sup> The former DCM directors investigated by ICAC in Operation Acacia were Mr Craig Ransley, Mr Andrew Poole and Mr Michael Chester.

<sup>52</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 8; see also Chapters 36 and 37 of the report.



## Chapter 2     **The second ICAC report: addressing outstanding questions**

This chapter focuses on the issues arising out of Operation Acacia, as reported in the Independent Commission Against Corruption's report in December 2013.

### **Observations of ICAC**

**2.1**     On 23 November 2011, both Houses of Parliament referred a series of questions to the Independent Commission Against Corruption (ICAC):

- (1) What were the circumstances surrounding the application for and allocation of Exploration Licence (EL) 7270 to Doyles Creek Mining (DCM)?
- (2) What were the circumstances surrounding the making of profits, if any, by the shareholders of NuCoal Resources NL (the proprietor of DCM)?
- (3) Whether recommendations should be made to the NSW Government with respect to licences or leases under the Mining Act over the Doyles Creek area.
- (4) Whether the NSW Government should commence legal proceedings, or take any other action, against any individual or company in relation to the circumstances surrounding the allocation of EL 7270.
- (5) Whether to recommend that any action be taken by the NSW Government with respect to amending the Mining Act.<sup>53</sup>

**2.2**     In its second report entitled *Operations Jasper and Acacia – Addressing outstanding questions*, ICAC drew the conclusion that, with respect to the allocation of Exploration Licence (EL) 7270, as well as ELs granted over Mount Penny, Glendon Brook and Yarrawa (the subject of Operation Jasper), the granting of those licences were ‘so tainted by corruption that those authorities should be expunged or cancelled and any pending applications regarding them should be refused’.<sup>54</sup>

**2.3**     The Commission, in reaching its conclusions, made a number of specific observations regarding the acquisition of Doyles Creek Mining (DCM) by NuCoal Resources, the knowledge of the individuals involved, and the implications of that knowledge upon the transaction. It is appropriate that those observations be repeated in full in this report:

The views that the Commission so expressed to Counsel Advising largely were based on the following points made by Counsel Assisting, which the Commission accepts. These points are of particular relevance to the position of NuCoal:

<sup>53</sup> Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 5.

<sup>54</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 6.

- a. EL 7270 was obtained by DCM and is still held by it. The EL is not transferrable. The position of NuCoal is not comparable to that of a bona fide purchaser for value and without notice. NuCoal is merely a shareholder of DCM.
- b. Moreover, at the relevant times each of Mr Maitland, Craig Ransley and Andrew Poole were directors of DCM. Their conduct and knowledge are to be attributed to it. In addition, at the time of the acquisition by NuCoal, both Mr Chester and Andrew Poole became directors of NuCoal. They were aware of significant circumstances pertaining to the improper grant.
- c. A change in shareholding in a company should not immunise the company from the consequences of its improper conduct or that of its directors. The consequences of improper transactions entered into by a company cannot be avoided merely because its shares have been subsequently traded.
- d. The prospectus issued for the purposes of the reverse acquisition of DCM by NuCoal was lodged with the Australian Securities and Investments Commission on 2 December 2009. There was notorious public controversy from at least mid-2009 in relation to the circumstances of the granting of EL 7270 – in particular having regard to the relationship between Mr Maitland and Mr Macdonald, which was reflected in media coverage at the time. A Jerrys Plains community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to “ICAC” issues. Those issues were dealt with at the meeting. Thus, before the backdoor listing, there was widespread controversy calling into question the circumstances of the granting of EL 7270, including that it may have been granted by Mr Macdonald to his “mate” Mr Maitland. Indeed, a concerted effort was made to publicly position the company so that it was removed from Mr Maitland in an effort to improve perception issues.
- e. NuCoal acquired DCM with knowledge of the detail of the public controversy referred to in (d) above and the risky nature of the acquisition. For the reasons set out in (d), the investors in NuCoal must have acquired their shares in that company with an awareness of those risks. Those risks must have been reflected in the share price of NuCoal such that the price at which investors purchased their shares took account of the uncertainties.
- f. Mr Lewis agreed that, from mid-2009 on, he dealt constantly with the public controversy concerning the circumstances of the granting of EL 7270, including throughout 2010 and beyond. Mr Lewis agreed that by the time of the reverse acquisition there was widespread public controversy. He dealt with potential investors at the time of the reverse acquisition and they raised questions with him about the controversy concerning the circumstances in which EL 7270 had been granted.
- g. The reverse acquisition prospectus also emphasised the uncertainties associated with investing in NuCoal. It emphasised that the shares offered under the prospectus should be regarded as speculative, that investors should be aware that they may lose some or all of their investment and that prospective investors should make their own assessment of the likely risks. A number of specific risks were outlined, which included that DCM might not be able to acquire or might lose title to EL 7270 if conditions attached to licences were changed or not complied with.

h. The following exchange took place with Mr Lewis at the public inquiry:

*MR SHEARER [junior Counsel Assisting the Commission]: So given what we've just been discussing, Mr Lewis, I take it you'd accept that investment from the time of the reverse acquisition onwards has occurred under the shadow of the controversy concerning the circumstance of the grant of the Exploration Licence?---Correct.*

*THE COMMISSIONER: Sorry, can I just ask one question on that please, Mr Shearer? Mr Lewis, I take the shadow was the risk of something sinister being discovered in the course of this investigation?--- That'd be correct, yes.*

*And the reason why there has been an effect on the share price of NuCoal is that by reason of the, of the Commission's investigation there is a risk of this – there is a risk of corruption being exposed?---By the nature of ICAC yes, I, I agree, yes.*

*I'm not suggesting that corruption occurred I just want to make it clear, I'm suggesting that the shadow involved the risk that the Commission might uncover corruption?--- Correct, it certainly creates uncertainty in the market.*

*And that has occurred since the float?---My best recollection, and I'll be fairly sure it's accurate, is around March 2010.*

...

*Mr Lewis, the questions about the way in which the Exploration Licence was granted to Doyles Creek had already been raised in the press before the float or is that right?--- They, they had, correct. Almost, I'd be fairly confident January 2009 fairly much straight after the announcement of the EL award.*

...

*MR SHEARER: And I've shown you references where that was taking place as from July 2009?---Correct.*

*And you were dealing with the community on the topic in about July 2009 too?--- Correct.*

i. The same is true of any moneys that NuCoal has expended on exploration and other activities associated with Doyles Creek. Those moneys have been expended with eyes wide open to the uncertainties, risks and possibilities.<sup>55</sup>

**2.4** The Commission recommended that the NSW Government 'considers enacting legislation to expunge the authorities for Doyles Creek, Mount Penny and Glendon Brook'. In addition, the Commission stated that the legislation 'could be accompanied by a power to compensate any innocent person affected by the expunging ... to the extent that that was considered appropriate'.<sup>56</sup>

<sup>55</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, pp 16-17.

<sup>56</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 6.

## Committee comment

- 2.5 The committee accepts the observations and conclusions made by the ICAC referred to above. Specifically, the directors of both DCM and NuCoal, prior to the public listing were alive to the public controversy surrounding the granting of EL7270. Additionally, in searching for investors, the directors were the subject of questioning surrounding the grant process.
- 2.6 Additionally, it should be noted that the prospectus made clear that the investment in NuCoal was 'speculative' and that investors risked the possibility of losing all money they invested. The committee accepts that it is not uncommon for a prospectus to contain significant disclaimers.
- 2.7 Whilst some may consider this is sufficient to rule out any consideration of compensation for investors, the committee is mindful that the ICAC did recommend that any expungement of the of EL7270 *could* (emphasis added) be 'accompanied by a power to compensate any innocent persons affected....to the extent considered appropriate'. The following chapters of this report will consider that issue.

## Chapter 3 Events following the second ICAC report

This chapter considers the cancellation of Exploration Licence 7270 and subsequent proceedings, in addition to an overview of the provisions of the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

### The cancellation of EL 7270

- 3.1 Following the ICAC investigation, EL 7270 was cancelled by legislation. This chapter outlines the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* passed to give the cancellation effect. It also briefly discusses the fallout from the licence cancellation, including the impact on NuCoal Resources and criminal proceedings brought against Mr Macdonald and Mr Maitland.

#### Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014

- 3.2 On 30 January 2014, the NSW Parliament passed the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* which cancelled the exploration licences that were the subject of ICAC Operations Jasper and Acacia, including EL 7270 over Doyles Creek.<sup>57</sup>
- 3.3 Stating that ‘the grant of the relevant licences, and the decisions and processes that culminated in the grant of the relevant licences, were tainted by serious corruption’, the Bill was to ‘cancel the relevant licences and ensure that the tainted processes have no continuing impact’.<sup>58</sup>
- 3.4 Among its provisions, the legislation specified that ‘compensation is not payable by or on behalf of the State’,<sup>59</sup> thereby providing no mechanism for compensation to any party involved.

#### NuCoal Resources

- 3.5 Having acquired DCM, and with it the exploration licence over Doyles Creek, in 2010, NuCoal Resources had legal tenure over EL 7270 at the time of its cancellation.
- 3.6 As an ASX listed company, NuCoal had approximately 3,400 shareholders when the licence was cancelled.<sup>60</sup> According to NuCoal, prior to the announcement of the ICAC inquiry, NuCoal’s market capitalisation on the ASX exceeded \$300 million. Immediately after the legislation was passed cancelling the licence, NuCoal’s market capitalisation had fallen to \$16 million.<sup>61</sup>

<sup>57</sup> *Votes and Proceedings*, Legislative Assembly, 30 January 2014 pp 2026-2027; *Minutes*, Legislative Council, 30 January 2014, pp 2305-2306.

<sup>58</sup> *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*, p 3.

<sup>59</sup> *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*, p 6.

<sup>60</sup> Submission 15, NuCoal Resources Ltd, p 13.

<sup>61</sup> Submission 15, NuCoal Resources Ltd, p 9.

- 3.7 Since the cancellation, NuCoal has unsuccessfully pursued a number of legal challenges to seek compensation on behalf of its shareholders. These challenges included a judicial review and an appeal to the High Court. NuCoal have also sought action under the Australia-United States Free Trade Agreement, given a number of shareholders are based in the United States.<sup>62</sup>
- 3.8 As a proponent of the Bill currently before the committee, NuCoal and the impact of the cancellation of EL 7270, will be discussed in greater detail in the next chapter.

### **Criminal proceedings**

- 3.9 Subsequent to the ICAC investigation, in 2017, Mr Macdonald was found guilty in the Supreme Court of two counts of wilful misconduct in public office. Mr Maitland was also found guilty on two charges of being an accessory to the alleged misconduct.<sup>63</sup>
- 3.10 However, in February 2019, the convictions of both Mr Macdonald and Mr Maitland were quashed in the Court of Criminal Appeal, and both are, at the time of writing this report, facing retrials.<sup>64</sup>

### **Overview of the Bill**

- 3.11 On 6 June 2019, Revd the Hon Fred Nile MLC introduced the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 into the Legislative Council. A full copy of the Bill is provided at Appendix 2.
- 3.12 The Bill seeks to amend the *Mining Act 1992* by providing a mechanism by which persons financially affected by the cancellation of EL 7270 over Doyles Creek can 'apply to an independent arbiter for an assessment and determination of compensation for the licence cancellation'.<sup>65</sup>
- 3.13 Revd Nile stated in his second reading speech for the Bill that '[t]he Bill is intended to right a wrong'.<sup>66</sup> He explained:

... [B]ecause of the cancellation Bill, and through no fault of their own, many face the prospect of their investments being worth a tiny fraction of what they originally were.

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<sup>62</sup> Submission 15, NuCoal Resources Ltd, pp 16-17.

<sup>63</sup> *R v Macdonald; R v Maitland* (2017) NSWSC 337; see also Australian Associated Press, 'Former NSW minister Ian Macdonald walks from jail ahead of a retrial', *The Guardian*, 25 February 2019, <https://www.theguardian.com/australia-news/2019/feb/25/former-nsw-minister-ian-macdonald-wins-appeal-over-misconduct-in-public-office>.

<sup>64</sup> *Maitland v R; Macdonald v R* (2019) NSWCCA 32; see also Australian Associated Press, 'Former NSW minister Ian Macdonald walks from jail ahead of a retrial', *The Guardian*, 25 February 2019, <https://www.theguardian.com/australia-news/2019/feb/25/former-nsw-minister-ian-macdonald-wins-appeal-over-misconduct-in-public-office>.

<sup>65</sup> Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019, Explanatory note, Overview of the Bill.

<sup>66</sup> *Hansard*, Legislative Council, 6 June 2019, p 45.

... NuCoal's shareholders were innocent of any wrongdoing and should not have been punished. The Bill sets in train a fair process for fair compensation. It does not seek to set an amount, or select who should be compensated, or under what terms that compensation should be paid. It does not seek to direct a specific outcome. Rather, the Bill establishes a scheme that parties who have been unjustly adversely impacted as a consequence of the ICAC investigations and what followed in their wake may seek recourse to.<sup>67</sup>

### Provisions of the Bill

**3.14** The Bill has a number of provisions, key amongst which are:

- that the Minister appoint an independent arbiter who will preside over the assessment process
- claimants can make a claim for compensation and have their claims considered within a reasonable period of time
- that the independent arbitrator be given discretion to establish the procedures for assessing claims
- that compensation be payable out of 'money to be provided by Parliament or that is otherwise legally available'.<sup>68</sup>

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<sup>67</sup> *Hansard*, Legislative Council, 6 June 2019, p 45.

<sup>68</sup> Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019, pp 3-4.



## Chapter 4      Should the Bill proceed?

The Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 aims to provide the opportunity for individuals affected by the cancellation of Exploration Licence (EL) 7270 to pursue compensation through an independent arbiter.

This chapter considers the evidence presented to the committee in examining whether the Bill should proceed to consideration by the Parliament.

As court proceedings are still on foot with respect to the circumstances surrounding the allocation of EL 7270, the focus of this discussion will not be on whether there was impropriety in the granting of the licence. Rather, this chapter will consider the fallout from the licence cancellation, mainly for NuCoal and its shareholders.

### The call for compensation

- 4.1** As outlined in the previous chapter, Exploration Licence (EL) 7270 over Doyles Creek was cancelled with the passing of the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*, which also prohibited the payment of compensation for losses incurred as a result. At the time of the licence cancellation, EL 7270 was owned by NuCoal Resources, an ASX-listed company whose shareholders comprise of 'mum and dad' investors from New South Wales and a substantial overseas shareholder base, primarily from the United States.<sup>69</sup> For affected stakeholders, including NuCoal and its shareholders, the impact of the legislation was swift and, for some, devastating.
- 4.2** According to NuCoal, not only was the economic value of their investment 'effectively destroyed' with the Act but, without any mechanism for appeal, NuCoal and its shareholders were 'denied natural justice'.<sup>70</sup> This view was shared by other inquiry participants,<sup>71</sup> including NuCoal shareholder Mr Darrell Lantry, who suggested that the legislation had the effect of silencing those impacted by the licence cancellation: '[W]e have had no voice in this and all our rights have been taken from us...'.<sup>72</sup>
- 4.3** With this, NuCoal have maintained that the Act has had a 'disproportionate effect on NuCoal and its shareholders', referring not only to the loss of their asset and the right to due process, but also to the loss of years of exploratory work undertaken by the company, all without access to compensation.<sup>73</sup> These impacts will be examined in detail later in the chapter. Mr Gordon Galt, Non-Executive Director and Chairman of NuCoal Resources, explained:

<sup>69</sup> Submission 15, NuCoal Resources Ltd, p 6.

<sup>70</sup> Submission 15, NuCoal Resources Ltd, p 9.

<sup>71</sup> For example, Submission 10, Mr Greg Nicholls, p 1; Submission 20, Mr Ian Baldwin, p 1; Submission 21, Mr Jake Baldwin, p 1.

<sup>72</sup> Evidence, Mr Darrell Lantry, shareholder, 9 August 2019, p 22.

<sup>73</sup> Submission 15, NuCoal Resources Ltd, pp 8-9; see also Submission 12, Name suppressed, p 1; Submission 16, Mr Glen Lewis, pp 6-7.

The Act cancelled [NuCoal shareholders'] ownership of their only major asset, denied them due process and access to the courts to complain about or litigate the matter and took for itself the results of four years of hard exploration work and technical studies, all without any compensation.<sup>74</sup>

- 4.4** The call for compensation has subsequently built over the years, with stakeholders affected by the cancelled licence seeking redress in various ways.
- 4.5** As noted in the previous chapter, NuCoal undertook legal action following the licence cancellation but has been unsuccessful to date. NuCoal initiated judicial review proceedings against the Independent Commission Against Corruption (ICAC), who made the initial recommendation to legislate the cancellation of EL 7270. NuCoal sought to challenge the process by which ICAC made its findings, however, the review found that ICAC had acted within its power.<sup>75</sup>
- 4.6** A constitutional challenge was also raised, with NuCoal bringing proceedings in the High Court of Australia against the State to question the constitutional validity of the Act. Again, NuCoal did not prevail.<sup>76</sup> NuCoal also continues to pursue action through the Australia-United States Free Trade Agreement (AUSFTA).<sup>77</sup>
- 4.7** Individual stakeholders, both in Australia and the United States, also reported their efforts to the committee. Mr Lantry advised that since EL 7270 was cancelled, 'we have been fighting for justice over the past 5 years', writing letters to the NSW Government to 'seek a response to our questions'.<sup>78</sup> Similarly, Mr Frank Pfeffer, a US-based shareholder, stated that he has spent the last five years also writing letters and meeting with US and Australian trade officials as well as US legislators, 'all in the hope that ... the innocent U.S. shareholders of NCR (and our counterparts in Australia) would get a fair day in Court or Arbitration'.<sup>79</sup>
- 4.8** For many inquiry participants, the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 currently before the committee thus marks a definitive opportunity to right what they claim is a 'serious injustice'.<sup>80</sup> Providing a mechanism by which affected stakeholders can seek compensation through an independent arbiter, the Bill is considered by inquiry participants to offer an opportunity for meaningful recourse.
- 4.9** As NuCoal asserted: '[H]aving now exhausted all domestic legal avenues for redress, the Compensation Bill is considered ... to be the only effective and fair way of providing affected shareholders with the opportunity to plead their case ...'<sup>81</sup> and 'finally be heard in respect of

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<sup>74</sup> Evidence, Mr Gordon Galt, Chairman and Non-Executive Director, NuCoal Resources, 9 August 2019, p 2.

<sup>75</sup> Submission 15, NuCoal Resources, p 17.

<sup>76</sup> Submission 15, NuCoal Resources, p 17.

<sup>77</sup> Submission 15, NuCoal Resources, p 16.

<sup>78</sup> Submission 9, Mr Darrell Lantry, p 1.

<sup>79</sup> Submission 2, Mr Frank Pfeffer, p 2.

<sup>80</sup> Submission 2, Mr Frank Pfeffer, p 2; see also Submission 10, Mr Greg Nicholls, p 1; Submission 15, NuCoal Resources, p 18; Submission 16, Mr Glen Lewis, p 8; Submission 20, Mr Ian Baldwin, p 1; Submission 21, Mr Jake Baldwin, p 1.

<sup>81</sup> Submission 15, NuCoal Resources Ltd, p 17.

their claims for compensation'.<sup>82</sup> This was echoed by Mr Glen Lewis, a Non-Executive Director of NuCoal, who stated:

What we are after is a process. To date [NuCoal's shareholders] have been denied any due process to have their case heard. That is all this bill proposes. Then it is up to an arbiter who can decide whether anything should come as a result of that process. We are not here with a hand out asking for compensation. We are here on behalf of those innocent people asking for their ability to have their day in court, so to speak, because it has been taken away from them for the last five years.<sup>83</sup>

- 4.10** Other inquiry participants expressed a similar view, stating that the Bill, as a mechanism to facilitate the 'fair treatment of innocent victims',<sup>84</sup> finally provides 'a pathway to justice'.<sup>85</sup>
- 4.11** The following sections examine the various arguments presented by inquiry participants in support of the Bill and the opportunity to pursue compensation through an independent arbiter. The arguments correspond with two key themes highlighted by the evidence – the view that affected stakeholders, including NuCoal and its shareholders, are innocent parties to the cancellation of EL 7270, and that the cancelled licence resulted in significant financial loss and impact to stakeholders, including a heightened sovereign risk for international investment.

### 'We are innocent parties'

- 4.12** As outlined in the previous chapter, EL 7270 was cancelled because the granting of the licence was 'so tainted by corruption'.<sup>86</sup> However, stakeholders affected by the cancellation, including NuCoal and its shareholders, have consistently maintained that they are innocent parties – 'true victims', according to Mr Lantry,<sup>87</sup> who have sustained financial loss through no fault of their own<sup>88</sup> and, as Mr Galt put it, 'whose innocence is unchallenged'.<sup>89</sup> As Mr Lewis asserted:

After 5 years, all facts have now been made public and there is NO EVIDENCE TO SAY NuCoal Shareholders are guilty of anything, except investing in an ASX Company that had a vision to create value for all stakeholders in NSW and beyond.<sup>90</sup>

- 4.13** Mr Lewis drew particular attention to the 'mum and dad' investors impacted by the licence cancellation, stating: "There is no doubt that the mum and dad shareholders are innocent in this process. That has never been called into question".<sup>91</sup>

<sup>82</sup> Submission 15, NuCoal Resources Ltd, p 2.

<sup>83</sup> Evidence, Mr Glen Lewis, Non-Executive Director, NuCoal Resources, 9 August 2019, p 13.

<sup>84</sup> Submission 12, Name suppressed, p 2.

<sup>85</sup> Submission 12, Name suppressed, p 2; see also Submission 10, Mr Greg Nicholls, p 1; Submission 20, Mr Ian Baldwin, p 1; Submission 21, Mr Jake Baldwin, p 1.

<sup>86</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 6.

<sup>87</sup> Evidence, Mr Lantry, 9 August 2019, p 23.

<sup>88</sup> Submission 18, Rodney Doyle, p 2; Submission 22, Name suppressed p 1; Submission 12, Name suppressed, p 1.

<sup>89</sup> Evidence, Mr Galt, 9 August 2019, p 2.

<sup>90</sup> Submission 16, Mr Glen Lewis, p 8.

<sup>91</sup> Evidence, Mr Lewis, 9 August 2019, p 17.

- 4.14** This section examines this position in detail, considering the exercise of due diligence undertaken by NuCoal, the belief held by shareholders that NuCoal was a sound investment, and the findings made by ICAC with respect to innocent parties affected by the cancellation of EL 7270.

### **The exercise of due diligence**

- 4.15** During the inquiry, the committee received evidence from NuCoal that it had exercised all due diligence prior to its acquisition of Doyles Creek Mining (DCM), who held legal tenure over the exploration licence at the time of purchase and to whom the licence was initially granted. NuCoal emphasised in particular the fact that 'NuCoal did not exist in its current form at the date of the grant of the Licence and was not involved in the NSW Government's grant of the Licence'.<sup>92</sup>
- 4.16** NuCoal advised the committee that prior to acquiring DCM, NuCoal undertook appropriate due diligence by engaging specialist corporate lawyers to perform the relevant checks and prepare a report. NuCoal stated that the report found that 'EL 7270 was granted in accordance with the powers of the Minister under the *Mining Act 1992* (NSW) in a regular manner, and consistently with the contemporaneous grant of other licences'.<sup>93</sup> Accordingly, NuCoal maintained that 'there was nothing in the due diligence report to suggest ... that the acquisition was any riskier than acquiring any other comparable asset'.<sup>94</sup>
- 4.17** Mr Lewis, who was previously a director of DCM before becoming Managing Director of NuCoal when it was publicly listed, explained that as with all companies listed on the Australian Stock Exchange (ASX), NuCoal had to comply with the requirements of both the ASX and the Australian Securities and Investments Commission (ASIC). These requirements included 'independent reviews of legal compliance, financial status and a technical evaluation of the proposed acquisition'.<sup>95</sup> Mr Lewis asserted that '[a]t no stage, did any of the Independent reviews identify a potential issue with the way the Licence was originally granted to DCM in 2008'.<sup>96</sup>
- 4.18** Mr Lewis also noted that a detailed prospectus was prepared by NuCoal outlining the proposed acquisition which was reviewed by both ASIC and the ASX before it was published. He noted that included in the prospectus was a section informing investors of potential risks with investing in NuCoal, which were 'typical generic statements for similar investments'.<sup>97</sup>
- 4.19** Mr Michael Davies, a Non-Executive Director of NuCoal Resources, further highlighted the rigour with which NuCoal exercised due diligence. He said '[i]t has been subjected to due diligence', adding:

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<sup>92</sup> Submission 15, NuCoal Resources, p 6.

<sup>93</sup> Submission 15, NuCoal Resources, p 6.

<sup>94</sup> Submission 15, NuCoal Resources, p 6.

<sup>95</sup> Submission 16, Mr Glen Lewis, p 2.

<sup>96</sup> Submission 16, Mr Glen Lewis, p 2.

<sup>97</sup> Submission 16, Mr Glen Lewis, p 2.

We used Mallesons, the largest law firm in Australia. It was signed off by the Australian Securities and Investment Commission who have to review these prospectuses. It was signed off by the Australian Securities Exchange.<sup>98</sup>

...

We had ASIC, the ASX, Mallesons—all did the due diligence, all approved the prospectus. If this really was something that had been corruptly granted, then that would have come out through that process.<sup>99</sup>

- 4.20** Mr Davies added that the licence was granted by a Minister of the Crown, arguing that '[t]here was no reason to believe and there was nothing on the files' to suggest anything untoward.<sup>100</sup> As such, NuCoal acquired EL 7270 'via an arms-length transaction, for valuable consideration and in good faith'.<sup>101</sup>
- 4.21** NuCoal provided further evidence to suggest that the exploration licence had been appropriately and thoroughly appraised through the involvement of Mitsui Matsushima, an experienced coal mining company that had expressed interest in establishing a joint venture with NuCoal to develop the Doyles Creek mine.<sup>102</sup> Seeking to secure a 'farm-in arrangement', Mitsui, according to Mr Davies, undertook their own due diligence and drew the same conclusions as NuCoal:
- Mitsui Matsushima hired Blake Dawson Waldron, which is now Ashurst—one of the world's largest legal firms—to do the due diligence and it came to exactly the same outcome and exactly the same conclusion that we came to, that Mallesons came to, that the Australian Securities Exchange came to, that the Australian Securities and Investments Commission came to and that each individual shareholder who invested in NuCoal came to, which was that the licence had been validly issued.<sup>103</sup>
- 4.22** NuCoal advised that the joint venture never eventuated because the then Minister 'was not prepared to authorise the title transfer', given the ongoing ICAC investigations at the time.<sup>104</sup>
- 4.23** In addition to these issues, the committee also questioned NuCoal representatives about the veracity of due diligence that was undertaken before its acquisition of DCM and the licence.
- 4.24** For example, questions were raised about the disparity in price between the \$2.04 million DCM paid for the exploration licence and the \$94 million it was valued at when NuCoal acquired it soon after.<sup>105</sup>
- 4.25** NuCoal advised that when EL 7270 was first granted to DCM, only very limited data was available which in turn provided limited methods to produce a valuation. So low was the geological confidence in the area that 'exploration aimed at confirming a potential resource at

<sup>98</sup> Evidence, Mr Michael Davies, Non-Executive Director, NuCoal Resources, 9 August 2019, p 4.

<sup>99</sup> Evidence, Mr Davies, 9 August 2019, p 14.

<sup>100</sup> Evidence, Mr Davies, 9 August 2019, p 4.

<sup>101</sup> Submission 15, NuCoal Resources, p 6.

<sup>102</sup> Submission 15, NuCoal Resources, p 6; Evidence, Mr Davies, 9 August 2019, p 18.

<sup>103</sup> Evidence, Mr Davies, 9 August 2019, p 18.

<sup>104</sup> Submission 15, NuCoal Resources, pp 11-12.

<sup>105</sup> Evidence, Mr Lewis, 9 August 2019, pp 8-9.

Doyles Creek was speculative'.<sup>106</sup> Indeed, NuCoal stated: "The area was far from being a *"sure thing"* and it would have been unsurprising if the area had turned out not to contain any economic coal resources'.<sup>107</sup>

- 4.26** Yet, the value of the licence subsequently increased significantly. NuCoal informed the committee that a number of factors were at play to explain the difference in valuation, including a significant reinvestigation of the underground mining potential at Doyles Creek by DCM. This involved obtaining geological data to verify the viability of a coal extraction program, developing mine layouts and obtaining the necessary resource classifications to calculate and generate the resource, all resulting in the ability to apply different, more sophisticated valuation techniques. The application of these techniques returned higher valuation estimates than previously determined.<sup>108</sup>
- 4.27** Mr Lewis further advised that the increase in valuation was verified by independent reports completed at 'at arms-length by an industry expert',<sup>109</sup> which detailed how the valuations were arrived at and explained the differences in value over the years the licence was granted to when NuCoal acquired it.<sup>110</sup>
- 4.28** Questions were also raised about the timing of changes to NuCoal's directorship and whether NuCoal was aware of any misconduct prior to its purchase of the licence.
- 4.29** Mr Lewis, who explained to the committee that he began with DCM just as a former director was leaving, advised that he had been recruited to replace the former director because of his extensive mining experience.<sup>111</sup> Mr Lewis told the committee that soon after becoming a director, he attended a local community meeting in Jerry Plains where community concerns about the potential mine development were raised with him, including concerns about the circumstances under which the exploration licence was granted.<sup>112</sup> Acknowledging that the meeting was 'fairly heated', Mr Lewis stated that local landholders clearly did not want mining development in that area.<sup>113</sup> However, Mr Lewis insisted: '... I did not walk away from that meeting with the belief I was on notice that this thing was dodgy. Absolutely not'.<sup>114</sup>
- 4.30** Indeed, NuCoal reiterated that it had no prior knowledge of impropriety, stating:

Nu Coal was a bona fide purchaser for value without notice. It did not know of and was not a party to the alleged corrupt conduct of others, which occurred at a time before NuCoal (in its current form) was in existence.<sup>115</sup>

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<sup>106</sup> Submission 15, NuCoal Resources Ltd, p 10.

<sup>107</sup> Submission 15, NuCoal Resources Ltd, p 10.

<sup>108</sup> Answers to questions on notice, Attachment A, NuCoal Resources, 9 September 2019, pp 6-8.

<sup>109</sup> Evidence, Mr Lewis, 9 August 2019, p 10.

<sup>110</sup> Answers to questions on notice, Attachment A, NuCoal Resources, pp 6-7.

<sup>111</sup> Evidence, Mr Lewis, 9 August 2019, p 7.

<sup>112</sup> Evidence, Mr Lewis, 9 August 2019, p 14.

<sup>113</sup> Evidence, Mr Lewis, 9 August 2019, p 16.

<sup>114</sup> Evidence, Mr Lewis, 9 August 2019, p 15.

<sup>115</sup> Submission 15, NuCoal Resources Ltd, p 8.

### A sound investment

- 4.31** From the shareholders' perspective, a number of inquiry participants told the committee that that they had done their own due diligence and believed NuCoal to be a sound investment. As one NuCoal shareholder stated: '... [W]e believed at the time after doing our research and due diligence that we were making a sound investment'.<sup>116</sup>
- 4.32** Mr David Widdicombe advised that he, like other shareholders, purchased shares 'in the knowledge that the tenement was approved and granted by the government'.<sup>117</sup> While acknowledging that there was some risk, Mr Widdicombe never anticipated that 'government interference in the form of cancelling a tenement' would be included in that risk.<sup>118</sup>
- 4.33** Similarly, Mr Pfeffer advised that, as an experienced investor, he thoroughly reviewed the information available to him and weighed the risks, but did not expect the political risk:

In general, I would consider myself to be a very experienced investor ... I clearly understand that Mining investments can be risky. ...I reviewed all the information on NCR's resource, the Mining plan, the financials, the potential off-takers and I studied the mid and long-term outlook for metallurgical coal ...

...

... I probably knew more about my NCR investment than I did on any other investment that I have ever made. I believed I weighed the risks carefully. What I never contemplated was political risk – something that is usually associated with such morally disreputable countries ... but never Australia. This situation has made me question everything I know about investing.<sup>119</sup>

- 4.34** Dr Barry Gordon, also a NuCoal shareholder, stated that he understood that the purchase of DCM and the exploration licence by NuCoal was 'carried out in good faith and no wrongdoings were alleged in this respect'.<sup>120</sup> Even as ICAC began its investigations, Dr Gordon explained that he was confident in his efforts to ensure he had made a relatively safe investment:

I may not be the most judicious investor but was confident in carrying out my due diligence in regard to this investment. I use CommSec to gather my knowledge and am assured in the market intelligence they offer. Throughout the progressions of the ICAC investigation I was naively convinced that these issues would not affect the savings I had invested in NuCoal ...<sup>121</sup>

- 4.35** Expressing confidence that NuCoal was not only a safe investment but had significant potential, Mr and Mrs Lantry expressed their expectations when they invested in the company, stating they believed NuCoal 'was going to be a valuable company that the likes of BHP or someone would make a takeover for'.<sup>122</sup>

<sup>116</sup> Submission 22, Name suppressed, p 1; see also Submission 3, Mr Greg Marshall, p 1.

<sup>117</sup> Submission 25, Mr David Widdicombe, p 1.

<sup>118</sup> Submission 25, Mr David Widdicombe, p 1.

<sup>119</sup> Submission 2, Mr Frank Pfeffer, pp 1-2.

<sup>120</sup> Submission 7, Dr Barry Gordon, p 2.

<sup>121</sup> Submission 7, Dr Barry Gordon, p 1.

<sup>122</sup> Evidence, Mr Lantry, 9 August 2019, p 31.

- 4.36** According to Dr Peter Phelps, lobbyist and former member of the Legislative Council, 'NuCoal's shareholders had every right to believe that their investment was safe and legal, based on reports given to them at the time by their independent probity assessors'.<sup>123</sup>
- 4.37** NuCoal drew particular attention to the NSW Government-commissioned probity review, the O'Connor Marsden report outlined in chapter 1, which confirmed the validity of EL 7270 and found that the Minister acted within his power to grant the licence to DCM by direct allocation.<sup>124</sup>
- 4.38** The report provided a number of examples of direct allocations previously made, which suggested to investors that the exploration licence was secure.<sup>125</sup> Mr Galt, Chairman and Non-Executive Director of NuCoal Resources, asserted that the O'Connor Marsden report thus only reinforced to investors that NuCoal was safe:
- ...[T]he government itself, after giving the licence, subsequently stamped the EL again and confirmed to all of the mums and dads that there was no problem investing in this company. So they did. Then they lost their money.<sup>126</sup>
- 4.39** Beyond the evidence individual shareholders gave of their understanding that NuCoal was a sound investment, NuCoal themselves argued that their compliance with the many licence conditions attached to EL 7270 demonstrated that they were and continue to be a 'good corporate citizen'.<sup>127</sup>
- 4.40** According to Nucoal, they ensured that there was 'no breach of any of the onerous conditions of EL 7270 during the tenure of the Licence', and that they 'diligently and in good faith' carried out the obligations of the licence such that they were noted in two audits by the NSW Government.<sup>128</sup> Non-Executive Director of NuCoal, Mr Davies, asserted that when the licence was under NuCoal's stewardship, '...if you talk to people in the department they will tell you that NuCoal was actually a shining light in terms of licence compliance whereas, in general in the industry, you would find there is some quite significant non-compliance'.<sup>129</sup>

### **ICAC findings**

- 4.41** In support of the argument that affected stakeholders, including NuCoal and its shareholders, are innocent parties to the cancellation of EL 7270, many inquiry participants highlighted the findings made by ICAC in Operation Acacia which acknowledged the 'innocent person'. In particular, inquiry participants drew attention to ICAC's comments on the possibility of compensation for these innocent persons.

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<sup>123</sup> Submission 13, Dr Peter Phelps, p 3.

<sup>124</sup> Submission 15, NuCoal Resources Ltd, p 7.

<sup>125</sup> Submission 15, NuCoal Resources Ltd, p 7.

<sup>126</sup> Evidence, Mr Galt, 9 August 2019, p 18.

<sup>127</sup> Submission 15, NuCoal Resources Ltd, p 12.

<sup>128</sup> Submission 15, NuCoal Resources Ltd, p 12, including footnote 8.

<sup>129</sup> Evidence, Mr Davies, 9 August 2019, p 4.

- 4.42** During the inquiry, NuCoal told the committee that it was 'never named as a party of interest in any part of the Acacia investigations'<sup>130</sup> and 'was not invited to participate meaningfully in the ICAC proceedings'.<sup>131</sup> To NuCoal's understanding, the company, its directors and shareholders were deemed innocent of any wrongdoing.<sup>132</sup>
- 4.43** ICAC was later called to clarify its position with regard to the identities of the innocent parties referred to in its reports, during the judicial review initiated by NuCoal against ICAC. NuCoal advised that ICAC's response to NuCoal's judicial review application indicated that ICAC held the view that 'NuCoal and its shareholders are innocent parties'. NuCoal informed that ICAC's response stated:
- ... ICAC expressly held out the possibility that any innocent party affected by the expunging might be compensated to the extent that was considered appropriate, in its formal recommendation (December report, page 20). Given the attention given to NuCoal in the section of the report on referred question 3, it can be inferred from the face of the report that NuCoal and those of its shareholders not involved in the corrupt conduct were contemplated within 'any innocent party' (indeed, it is not evident who else was meant by 'any innocent party').<sup>133</sup>
- 4.44** In addition, while the Judicial Review Judgement found that ICAC had acted within its powers during its investigations, NuCoal reported that the judgment acknowledged ICAC's position with respect to NuCoal, namely that ICAC held the view that NuCoal was involved 'in no wrongdoing', and that it accepted NuCoal's submission that 'its conduct was wholly innocent'.<sup>134</sup>
- 4.45** With ICAC's findings, Mr Lewis, a Non-Executive Director of NuCoal, asked: 'What more evidence of innocence do NuCoal shareholders need to provide to Government to remedy the injustice that has been inflicted upon them?'.<sup>135</sup>
- 4.46** Indeed, some shareholders told the committee that in pursuing avenues for redress, they had been advised to take legal action against NuCoal and its directors, however, NuCoal's innocence has always been maintained. For example, Mr and Mrs Lantry stated they sought legal advice about pursuing the company but they had no case: 'There is no case because no corruption was found'.<sup>136</sup> Similarly, Dr Gordon remarked: 'The line from the government to date has been to seek damages from the Board of Directors, how is this possible when no wrongdoing was found against the NuCoal directors...'.<sup>137</sup>
- 4.47** Of particular interest to numerous inquiry participants during the inquiry were the final recommendations made by ICAC based on its findings. Seeking to support their claim for compensation, these inquiry participants consistently held the view that ICAC had

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<sup>130</sup> Submission 15, NuCoal Resources Ltd, p 2.

<sup>131</sup> Submission 15, NuCoal Resources Ltd, p 7.

<sup>132</sup> Submission 15, NuCoal Resources Ltd, p 2.

<sup>133</sup> Submission 15, NuCoal Resources Ltd, pp 12-13.

<sup>134</sup> NuCoal Resources Limited v Independent Commission Against Corruption [2015] NSWSC 1400, as cited in Submission 15, NuCoal Resources Ltd, p 13.

<sup>135</sup> Submission 16, Mr Glen Lewis, p 4.

<sup>136</sup> Evidence, Mr Lantry, 9 August 2019, p 22; see also Submission 8, Mrs Michelle Lantry, p 2.

<sup>137</sup> Submission 7, Dr Barry Gordon, p 2.

recommended in its second report (to address outstanding issues from Operations Jasper and Acacia) that innocent parties be compensated.<sup>138</sup>

- 4.48 However, it is noted that ICAC's final recommendation regarding the exploration licences in question was that the NSW Government enact legislation to expunge the licences, and that this legislation '... **could** be accompanied by a power to compensate any innocent person affected by the expunging ... to the extent that that was considered appropriate'.<sup>139</sup> While ICAC recognised that compensation was an option, it did not recommend it directly.

## Financial loss and impact

- 4.49 In addition to maintaining their innocence, affected stakeholders, including NuCoal and its shareholders, emphasised the significant financial loss and consequent psychological and emotional toll sustained by some shareholders, as well as the wider business implications of the cancellation of EL 7270.

- 4.50 NuCoal discussed the 'severe detrimental impacts' of the cancelled licence on the company and its shareholders,<sup>140</sup> stating:

The losses to NuCoal and its shareholders as a result of the Mining Amendment Act are real and substantial. Hundreds of millions of dollars were wiped from NuCoal's market capitalisation as a direct result of the cancellation of EL 7270, and this loss hit the pockets of NuCoal's innocent investors.<sup>141</sup>

- 4.51 As outlined in the previous chapter, the committee were advised by NuCoal that its market capitalisation on the ASX exceeded \$300 million prior to the announcement of the ICAC inquiry, which later fell to \$16 million immediately after the legislation cancelling EL 7270 was passed.<sup>142</sup>

- 4.52 The following figure demonstrates the share price for NuCoal Resources over this period and beyond – from its initial share offering to almost two years after the commencement of the legislation cancelling the licence – with key events during the period identified. The share price climbed to a high of approximately 62 cents in January 2011, then dropped to approximately 35 cents when the ICAC inquiry was announced in October 2011 and again to approximately 7-8 cents when ICAC released its initial report in August 2013. Upon passing of the legislation cancelling the EL 7270 in January 2014, the share price was at approximately 2 cents.

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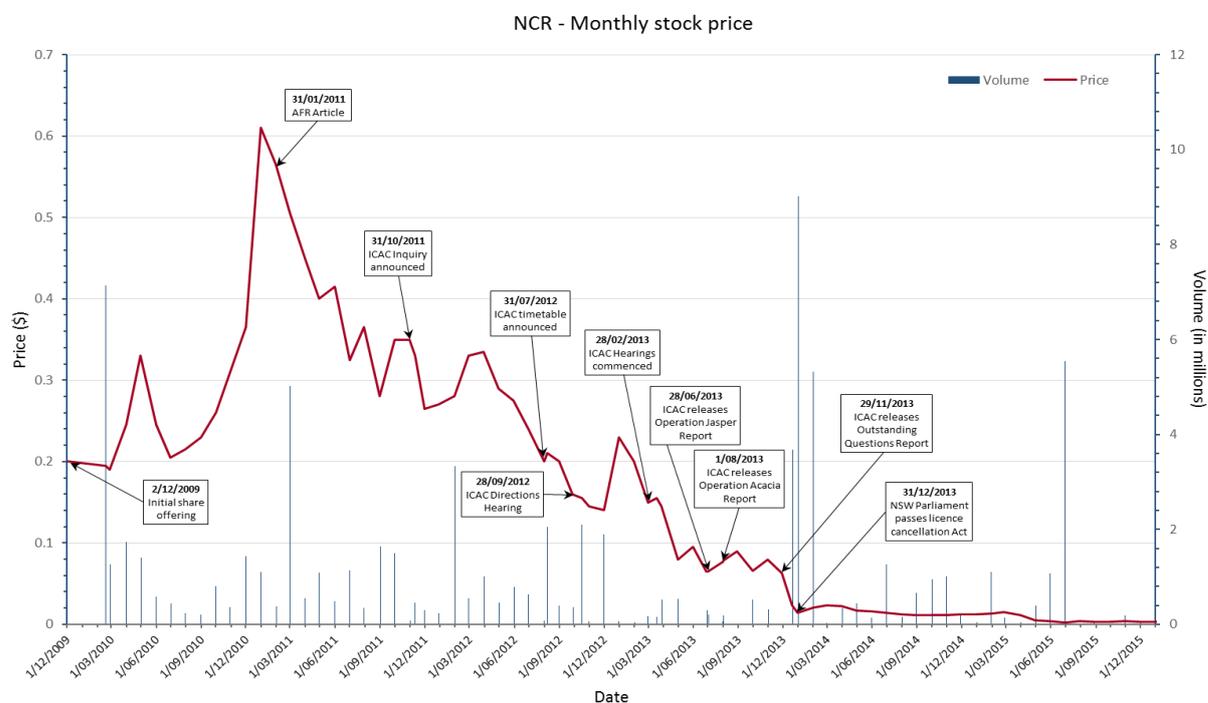
<sup>138</sup> For example Submission 4, Name suppressed, p 1; Submission 7, Dr Barry Gordon, p 2; Submission 9a, Mr Darrell Lantry, p 1; Submission 12, Name suppressed, p 1; Submission 15, NuCoal Resources Ltd, p 2; Submission 16, Mr Glen Lewis, p 4; Submission 25, Mr David Widdicombe, p 1.

<sup>139</sup> Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 6 (emphasis added).

<sup>140</sup> Submission 15, NuCoal Resources Ltd, p 2.

<sup>141</sup> Submission 15, NuCoal Resources Ltd, p 12.

<sup>142</sup> Submission 15, NuCoal Resources Ltd, p 9.

**Figure 2 NuCoal Resources share price – December 2009 to December 2015<sup>143</sup>**

- 4.53** NuCoal advised that not only had it invested significant amounts of money directly into the licence – its major and only core asset – but that the licence was 'the cornerstone to the Company's long-term strategic plan', with NuCoal investing funds into acquiring neighbouring tenement areas with the aim of developing a major complex in the area in the future.<sup>144</sup>
- 4.54** Nucoal explained that after acquiring the licence area in Doyles Creek, NuCoal spent 'significant time, effort and funds' to develop the project area through exploration, development studies and land acquisitions.<sup>145</sup> NuCoal informed that the expenditure was worthwhile as it had allowed NuCoal to establish the existence of coal resources, including what NuCoal described as 'one of the most valuable undeveloped coal resources in NSW'.<sup>146</sup>
- 4.55** However, with the licence cancellation, NuCoal was required to provide the government with all its confidential exploration data that it had paid for, further adding to NuCoal's loss.<sup>147</sup>
- 4.56** Beyond the financial impacts suffered by the company more broadly, the committee heard that individual stakeholders experienced significant financial loss which in turn has had adverse psychological and emotional effects. As Mr Lewis stated: 'Shareholders have been severely

<sup>143</sup> Correspondence from Mr Tim Reardon, Secretary, NSW Department of Premier and Cabinet, to Chair, 6 August 2019, Attachment A.

<sup>144</sup> Submission 15, NuCoal Resources Ltd, p 12.

<sup>145</sup> Submission 15, NuCoal Resources Ltd, p 11.

<sup>146</sup> Submission 15, NuCoal Resources Ltd, p 11.

<sup>147</sup> Submission 15, NuCoal Resources Ltd, p 9.

impacted financially, and many are impacted emotionally'.<sup>148</sup> NuCoal in particular pointed out that '[t]housands of innocent mum and dad investors in Australia lost significant amounts'.<sup>149</sup>

**4.57** Indeed, the committee received evidence from several individual shareholders, many of whom are mum and dad investors or individuals at retirement age. For example, one shareholder, a father of two, bought over \$90,000 worth of shares which has now 'been stripped from us...'.<sup>150</sup> R&S Joice Investments purchased 135,000 shares for \$30,000 for their superannuation fund, later selling them in May 2016 for a total of \$226.<sup>151</sup> Similarly, another inquiry participant bought 91,000 shares for \$23,730 for their superannuation fund, which today is valued at \$1638.<sup>152</sup>

**4.58** Mr Gary Sparkes told the committee that, after having invested in NuCoal for his superannuation fund, he lost 30 per cent of the value of his fund. He subsequently had to make a choice between working for the rest of his life or retiring and moving overseas where he could live on his 'limited income'. Mr Sparkes stated: 'I now talk to my children and grandchildren on social media video calls. What a disgrace that I have to do that instead of being there to see them grow up'.<sup>153</sup> Meanwhile, Mr Owen Ravenscroft advised that he and his wife were 'minor shareholders compared to many but now on the doorstep of retirement the loss still hurts'.<sup>154</sup>

**4.59** Others spoke of the emotional and psychological impact of the licence cancellation and consequent financial loss. One shareholder spoke of the 'immeasurable impact' on their family:

... We are not highflyers, we are just basic Mum and Dad investors trying hard to get ahead and provide for our family ... The stress, anxiety and embarrassment that this has caused our family over the years is very difficult to talk about. My wife and I feel helpless and at a loss as to what, if anything, will be done to right the wrong that the Government has done to us, we are the innocent parties paying the price.<sup>155</sup>

**4.60** Another shareholder, Mr Greg Marshall, expressed the 'almost unbearable' toll his loss has taken on his health and family:

I have to say the toll it has taken on me mentally and financially is almost unbearable. I have lost \$15,000 which was my deposit for a house at the time and as a single parent of a child with special needs all I was trying to do was secure my future with a sound investment. I have lost months of sleep and my health has suffered due to this.<sup>156</sup>

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<sup>148</sup> Submission 16, Mr Glen Lewis, p 7.

<sup>149</sup> Submission 15, NuCoal Resources Ltd, p 2.

<sup>150</sup> Submission 22, Name suppressed, p 1.

<sup>151</sup> Submission 11, R & S Joice Investments, p 1.

<sup>152</sup> Submission 4, Name suppressed, p 1.

<sup>153</sup> Submission 17, Mr Gary Sparkes, p 1.

<sup>154</sup> Submission 6, Mr Owen Ravenscroft, p 1.

<sup>155</sup> Submission 22, Name suppressed, p 1.

<sup>156</sup> Submission 3, Mr Greg Marshall, p 1.

- 4.61** Nu-Coal Non-Executive Director, Mr Lewis described his personal experience, as someone who led and promoted the company:

Personally, I have been to hell and back as a direct result of the cancellation of the Licence and subsequent destruction of NuCoal – a Company I helped build from the ground up over many years. I have had to undertake significant psychological medical treatment over a number of years, to get myself back on track, as it is very hard to rationalise how innocent people can be treated this way by a Government and as the Managing Director, I have carried a great burden as a direct result of what has happened.<sup>157</sup>

- 4.62** Acknowledging that the experiences of individual shareholders vary widely, the following case studies provide an insight into some of the financial and emotional impacts sustained by affected stakeholders because of the cancellation of EL 7270.

#### **Case study: Darrell and Michelle Lantry**

Darrell and Michelle are mum and dad investors who live in Newcastle with their five year old son. They invested in NuCoal as they liked the company's story and its head office was close to their home. Michelle and Darrell were devastated by the cancellation of NuCoal's EL and have been fighting for justice ever since. Darrell and Michelle did their research before investing – they looked at broker reports and company information reported to the Australian Stock Exchange and Australian Securities and Investments Commission, and sought financial advice.

While they understood NuCoal's prospectus which raised the risk of losing the EL, the risk was only generic and did not specify any risk about the licence being cancelled by the government. The Lantrys also knew of the O'Connor Marsden report which stated that the granting of the EL was within the Minister's power and that there had been other direct allocations in the past.

When the licence was cancelled, the Lantrys said their lives were 'turned upside down'. They have questioned the fairness of the decision, with Michelle likening the experience to that of coming home to a robbed home. The Lantrys have suffered both financially and emotionally. They had to borrow money from family after falling behind on their loan repayments, and Michelle had to go back to work after four months of maternity leave. The ordeal has also had a deep psychological effect on the couple including depression and anxiety.

The Lantrys believe they should be compensated, although they say that no amount of money can ever make up for the stress and sleepless nights they have had to endure.<sup>158</sup>

<sup>157</sup> Submission 16, Mr Glen Lewis, p 7.

<sup>158</sup> This case study is not taken verbatim from the inquiry participants but is an accurate reflection of how the inquiry participants presented their story to the committee in Submission 8, Mrs Michelle Lantry and Submission 9, Mr Darrell Lantry.

**Case study: Rodney and Pauline Doyle**

Rodney and Pauline manage their own superannuation fund through which they have invested in various mining ventures. The couple chose to invest in NuCoal as they believed that the company had potential to grow with a development that would benefit the local community.

In June 2010, the couple purchased 50,000 NuCoal shares for 22 cents each. Even as investigations began into the granting of the licence, Rodney and Pauline remained convinced that there was no case against NuCoal. By the end of 2013, they had increased their shareholding to 100,000 shares, buying speculatively as they believed the licence was 'appropriately delivered'. Rodney and Pauline still hold these shares and continue to 'hope for justice'.

Rodney and Pauline feel that the legislation cancelling NuCoal's EL and precluding an option for compensation places the shareholders 'at a distinct disadvantage'. While they understand that the government had the right to cancel the EL, they think that 'the grounds for cancellation were not without dispute and that the matter was compounded by rushing in legislation'. Rodney and Pauline believe that the licence should ultimately be reinstated.<sup>159</sup>

**US investors**

- 4.63** During the inquiry, the committee received evidence specific to the US-based shareholders of NuCoal who account for approximately 20 per cent of NuCoal's investors and are 'by far the largest foreign investor into Australia'.<sup>160</sup> Among these investors are the limited partners of Taurus Funds Management, an investments manager that represents over 100,000 retirement plan beneficiaries and retirees.<sup>161</sup>
- 4.64** According to NuCoal, these shareholders 'were, and still are, extremely upset' about the licence cancellation.<sup>162</sup> NuCoal stated that this has 'created a contentious debate about compensation between the Australian Federal and US Governments under the US-Australia Free Trade Agreement'.<sup>163</sup>
- 4.65** NuCoal advised that it has, on behalf of its US investors, continued to pursue action through the Australia-United States Free Trade Agreement (AUSFTA), citing a breach of the agreement.<sup>164</sup> The committee received evidence that discussions have been engaged with the US

<sup>159</sup> This case study is not taken verbatim from the inquiry participant but is an accurate reflection of how the inquiry participant presented their story to the committee in Submission 18, Mr Rod Doyle and Evidence, Mr Rodney Doyle, 9 August 2019.

<sup>160</sup> Submission 15, NuCoal Resources, p 16.

<sup>161</sup> Submission 2, Mr Frank Pfeffer, p 1.

<sup>162</sup> Submission 15, NuCoal Resources, p 2.

<sup>163</sup> Submission 15, NuCoal Resources, p 2.

<sup>164</sup> Submission 15, NuCoal Resources, p 16.

Trade Representative, who has pressed the Australian Department of Foreign Affairs and Trade on the matter, and continues to do so to date.<sup>165</sup>

- 4.66** Some US shareholders reflected on their expectations and experience during the inquiry, including one US investor who argued that the cancellation of licence 7270 by Parliament was 'extraordinary as not only did it specifically deny compensation to innocent parties, it also granted the NSW Government and its officers immunity from liability'.<sup>166</sup> The inquiry participant believed that US shareholders had 'no reasonable expectation' of their loss, stating: 'The U.S. investors in NuCoal had no reasonable expectation that the value of their investment would be wiped out entirely by a state-sponsored expropriation by a close trading partner and ally of the United States.'<sup>167</sup>
- 4.67** Mr Pfeffer expressed a similar view, telling the committee that following the ICAC investigations, he was 'stunned that they recommended expunging the licence but was somewhat comforted that they recommended explicitly compensating the innocent shareholders of NCR'. Mr Pfeffer advised that when the legislation subsequently passed expunging the licence but not providing compensation or recourse, he was 'distressed and in absolute disbelief'.<sup>168</sup>
- 4.68** Indeed, according to Mr Lewis, those in the United States that he has lobbied on behalf of his US shareholders 'struggle to understand how this could have happened in Australia', a country they believed was a mature trading partner.<sup>169</sup>

### **Sovereign risk**

- 4.69** Given the significant US investment in NuCoal, some inquiry participants drew attention to the issue of sovereign risk and foreign perceptions of Australia as a secure investment destination.
- 4.70** NuCoal told the committee that Australia is considered by overseas investors to be a safe jurisdiction for investment as it has not suffered the circumstances that often give rise to concerns about sovereign risk in other countries, such as civil unrest, stifling inflation, despotic rule or economic instability.<sup>170</sup>
- 4.71** However, with the passing of the legislation cancelling EL 7270, NuCoal insisted that this perception has been threatened, as the ability of Australian states, and specifically New South Wales, to confiscate property without compensation or safeguards for recourse was confirmed.<sup>171</sup>

<sup>165</sup> Submission 15, NuCoal Resources, p 16; see also Email from Mr Steven Dyokas, Deputy Economic Counselor, US Embassy Canberra, to Chair, 20 August 2019 – Attachment, Letter from Mr Karl Ehlers, Assistant US Trade Representative for Southeast Asia and the Pacific, Executive Office of the President, Office of the United States Trade Representative to Mr Greg Wilcock, Commonwealth Department of Foreign Affairs and Trade, 30 July 2019.

<sup>166</sup> Submission 14, Name suppressed, p 1.

<sup>167</sup> Submission 14, Name suppressed, p 1.

<sup>168</sup> Submission 2, Mr Frank Pfeffer, p 1.

<sup>169</sup> Submission 16, Mr Glen Lewis, p 7.

<sup>170</sup> Submission 15, NuCoal Resources, p 15.

<sup>171</sup> Submission 15, NuCoal Resources, p 16.

- 4.72** Indeed, Mr Galt, Chairman and Non-Executive Director of NuCoal, contended that the existence of the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014* has had adverse consequences such that it has 'materially contribut[ed] to the worsening of New South Wales sovereign risk rating, especially in the United States, which is Australia's investor base'.<sup>172</sup>
- 4.73** This view was reflected by some other inquiry participants, including one US-based stakeholder, who advised that the US Trade Representative reported concerns about increased risks facing foreign investors in Australia following various instances of foreign investment projects being cancelled by the government.<sup>173</sup>
- 4.74** Another inquiry participant went so far as to say that foreign investors are already turning away from New South Wales, stating: 'Major international investors are on the record vowing to never return to NSW as an investment jurisdiction, given the sovereign risk now associated with it'.<sup>174</sup> The stakeholder reflected on the implications of this, remarking: 'The inference of the NSW Government acting like a "banana republic" is very disturbing'.<sup>175</sup>
- 4.75** NuCoal shared this sentiment, asserting that negative perceptions of Australia's sovereign risk need to be addressed, and argued that the Bill currently before the committee will go some way in doing this:

Increased negative perceptions of sovereign risk should concern not only potential and current investors, but also the Government and the community - especially the regional community. If the Government makes decisions which reinforce negative perceptions about NSW, revenue, exports and regional job opportunities are all at risk of being adversely affected. Australia has always been, and still is, an importer of capital and needs to be, and be seen to be, a low risk investment environment.

The Compensation Bill can help restore foreign and domestic investor's confidence in investing in projects in the State of NSW, since it affords affected shareholders and investors the opportunity to have their claims for compensation heard and determined.<sup>176</sup>

## Precedents for compensation

- 4.76** In support of their call for compensation, some inquiry participants pointed to previous examples of compensation being paid for cancelled exploration licences in New South Wales. In particular, inquiry participants discussed the licences held by Shenhua Watermark and BHP Billiton as relevant precedents.<sup>177</sup> As one inquiry participant asked: 'Other leases that were cancelled received compensation, why not Nucoal's innocent investors?'.<sup>178</sup>

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<sup>172</sup> Evidence, Mr Galt, 9 August 2019, p 2.

<sup>173</sup> Submission 14, Name suppressed, pp 1-2.

<sup>174</sup> Submission 12, Name suppressed, p 2.

<sup>175</sup> Submission 12, Name suppressed, p 2.

<sup>176</sup> Submission 15, NuCoal Resources, p 16.

<sup>177</sup> For example, Submission 3, Mr Greg Marshall, p 1; Submission 9, Mr Darryl Lantry, p 1; Submission 12, Name suppressed, p 1; Submission 15, NuCoal Resources Ltd, p 17.

<sup>178</sup> Submission 25, Mr David Widdicombe, p 1.

**BHP Billiton**

- 4.77** In 2006, the NSW Government issued an EL to BHP Billiton for an underground coal mine in Caroona located in the Liverpool Plains, an area known for its fertile farming land and black soil.<sup>179</sup> BHP reportedly paid \$100 million for the licence.<sup>180</sup>
- 4.78** In August 2016, former Premier Mike Baird and former Deputy Premier Troy Grant announced that the government 'reached a commercial agreement with BHP to buy back the Caroona exploration licence'.<sup>181</sup> Mr Baird stated that the buyback of BHP's licence was in accordance with advice from the NSW Planning Assessment Commission (now known as the Independent Planning Commission) which recommended that the government prohibit mining on black soil plains.<sup>182</sup>
- 4.79** As a result, BHP received approximately \$220 million for the cancellation of their licence.<sup>183</sup>
- 4.80** Limited information was available to the committee about how this figure was determined. According to NuCoal's review of the public record, it is their understanding that the \$220 million payment to BHP reimbursed their 'upfront payment (MC [Minimum Contribution to the Coal Development Fund] + AC [Additional Contribution to the Coal Development Fund]) and for what BHP had paid for work carried out while the EL was in force'.<sup>184</sup>
- 4.81** In a media report, Mr Grant explained that the buyback amount was '...a decision that has calculated what [BHP] have already contributed'. He stated: '...[L]et's not forget they paid \$100 million for this privilege — and the amount we've arrived at is the value of that licence in today's dollars'.<sup>185</sup>
- 4.82** The government's media release also flagged that negotiations with Shenhua Watermark Coal had begun in relation to their EL for a site also located in the Liverpool Plains.<sup>186</sup>

<sup>179</sup> Media release, Hon Mike Baird MP, Premier, Minister for Western Sydney and Hon Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts, Minister for Racing, 'Farming future of the Liverpool plains secured', 11 August 2016.

<sup>180</sup> See for example, ABC News, 'NSW Government to buyback Caroona mine exploration licence from BHP', *ABC News*, 11 August 2016, <https://www.abc.net.au/news/2016-08-11/nsw-government-buyback-caroona-mine-exploration-licence/7721936>; Answers to questions on notice, Attachment A, NuCoal Resources Ltd, p 1.

<sup>181</sup> Media release, Hon Mike Baird MP, Premier, Minister for Western Sydney and Hon Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts, Minister for Racing, 'Farming future of the Liverpool plains secured', 11 August 2016.

<sup>182</sup> Media release, Hon Mike Baird MP, Premier, Minister for Western Sydney and Hon Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts, Minister for Racing, 'Farming future of the Liverpool plains secured', 11 August 2016.

<sup>183</sup> BHP Billiton Annual Report 2016, p 204; BHP Billiton Annual Report 2017, p 164.

<sup>184</sup> Answers to questions on notice, Attachment A, NuCoal Resources Ltd, p 4.

<sup>185</sup> ABC News, 'NSW Government to buyback Caroona mine exploration licence from BHP', *ABC News*, 11 August 2016, <https://www.abc.net.au/news/2016-08-11/nsw-government-buyback-caroona-mine-exploration-licence/7721936>.

<sup>186</sup> Media release, Hon Mike Baird MP, Premier, Minister for Western Sydney and Hon Troy Grant MP, Deputy Premier, Minister for Justice and Police, Minister for the Arts, Minister for Racing, 'Farming future of the Liverpool plains secured', 11 August 2016.

**Shenhua Watermark**

- 4.83** In 2008, the NSW Government granted an EL to Shenhua Watermark, for which the company paid \$300 million to the Department of Primary Industries.<sup>187</sup>
- 4.84** In July 2017, the then Minister for Resources, Hon Don Harwin MLC, and the former Minister for Primary Industries and Regional Water, Hon Niall Blair MLC, announced that the government had reached an agreement with Shenhua Watermark that 51.4 per cent of the company's EL be 'handed back'.<sup>188</sup> The government subsequently 'refunded' Shenhua \$262 million.<sup>189</sup>
- 4.85** According to Shenhua, \$214 million of the refund accounted for the carrying amount<sup>190</sup> of the land bought back by the government. Shenhua also indicated that the government accepted an application under the agreement to extend the exploration licence on the remaining area.<sup>191</sup>
- 4.86** In 2017, GIPA requests were made regarding the government's negotiations with Shenhua, including the buyback. In response, the government made the decision to withhold a number of documents, which was later challenged but upheld by the NSW Civil and Administrative Tribunal.<sup>192</sup>
- 4.87** When questioned about the value of the refund in a media interview, Premier Gladys Berejiklian stated that the government had 'looked at every legal option' but could not 'reduce the amount paid' to Shenhua as the government had consistently impeded their mining attempts.<sup>193</sup>
- 4.88** No further information was available to the committee regarding the nature of the licence buyback/refund of BHP or Shenhua.

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<sup>187</sup> Shenhua Australia Holdings Pty Ltd, Introduction, <http://www.shenhuawatermark.com/shaus/1382705825776/introduction.shtml>.

<sup>188</sup> Media release, Hon Don Harwin MLC, Minister for Resources and Hon Niall Blair MLC, Minister for Primary Industries and Minister for Regional Water, 'Liverpool Plains protected from mining exploration', 12 July 2017.

<sup>189</sup> Media release, Hon Don Harwin MLC, Minister for Resources and Hon Niall Blair MLC, Minister for Primary Industries and Minister for Regional Water, 'Liverpool Plains protected from mining exploration', 12 July 2017.

<sup>190</sup> The 'carrying amount' of an asset refers to the value of the asset as it appears in a company's balance sheet after deducting the depreciation value of the asset. This is different to market value which is the value of an asset as determined by an open market. - <https://corporatefinanceinstitute.com/resources/knowledge/accounting/carrying-amount/>.

<sup>191</sup> Shenhua Watermark Annual Report 2017, p 217.

<sup>192</sup> Environmental Defenders Office New South Wales, NCAT decision on Shenhua coal documents, [https://www.edonsw.org.au/shenhua\\_coal\\_documents](https://www.edonsw.org.au/shenhua_coal_documents). See also, *Lock the Gate Alliance v Department of Planning and Environment & Department of Premier and Cabinet* [2019] NSWCATAD 6.

<sup>193</sup> *The Alan Jones Breakfast Show*, 2GB, 13 July 2017, <http://www.2gb.com/podcast/alan-jones-full-show-july-13th/>.

## Determining claims for compensation

- 4.89** While the committee received evidence in support of the current Bill and its facilitation of compensation for affected stakeholders, the key issue of how compensation claims should be determined by the independent arbiter emerged as a matter requiring further consideration. Should NuCoal seek compensation on behalf of its shareholders or should individual claims be made? Which shareholders should be compensated? At what share price should they be paid and what point in time should determine this price?
- 4.90** While it is acknowledged that it is the Bill's intention to give the independent arbiter discretion to establish the procedures for assessing claims, limited evidence was received during the inquiry to provide some guidance.
- 4.91** NuCoal presented two options for how the assessment process for compensation claims could operate, noting that 'persons' under the Bill includes both natural persons and entities:
- Option 1 – A claim for a gross lump sum made by NuCoal as a single entity on behalf its shareholders
  - Option 2 – Individual claims for compensation made by NuCoal shareholders.<sup>194</sup>
- 4.92** Under option 1, NuCoal suggested that a claim for a gross lump sum could be made by NuCoal, who would then distribute the compensation among the relevant shareholders. NuCoal presented the following considerations that could be made by the independent arbiter in determining the financial loss:
- a gross compensation amount based on a 'top down valuation method' – establishing the reduction in the market capitalisation value of the company as a whole following the cancellation of EL 7270
  - a gross compensation amount based on a 'bottom up valuation method' – establishing the amount of cash expended by the company to progress the Doyles Creek Project by calculating the value of the losses incurred
  - a mix of both the 'top down' and 'bottom up' valuation methods
  - a gross compensation amount based on a third party valuation method – establishing the value of NuCoal's exploration and development activities carried out within the project using Mitsui Matsushima's valuation.<sup>195</sup>

<sup>194</sup> Answers to questions on notice, Attachment C – Comments on compensation, NuCoal Resources Ltd, 9 September 2019, p 1.

<sup>195</sup> Answers to questions on notice, Attachment C, NuCoal Resources Ltd, p 1; please note, Mitsui Matsushima valued EL 7270 at September 2012 in the amount of \$360 million for a minority interest. This is equivalent to approximately \$500 million for a controlling interest at the prevailing rate of a 30 per cent premium and accounting for the funds expended by NuCoal in good faith on the Doyles Creek project, Answers to questions on notice, Attachment C, NuCoal Resources Ltd, p 1.

- 4.93** Alternatively, under option 2, NuCoal suggested that shareholders could make individual claims for compensation, with the individual shareholder's loss determined by calculating the reduction in value of the shareholder's interest in the company.<sup>196</sup>
- 4.94** The reduction in value could be calculated from the highest value of the shareholder's interest prior to the cancellation of EL 7270, versus the value of the shareholder's interest immediately following the cancellation of EL 7270.<sup>197</sup>
- 4.95** As to who should be entitled to make a claim, NuCoal identified three appropriate groups they considered to be entitled to make a claim:
- (i) individuals who held shares after the last capital raising done by NuCoal in April 2012 and who still retain those shares today – according to NuCoal, these shareholders are the 'biggest losers' and account for the majority of NuCoal's shares
  - (ii) individuals who held shares after the last capital raising done by NuCoal in April 2012 and who sold shares after the EL was cancelled
  - (iii) individuals not included in the other two groups who suffered financial loss as a result of the licence cancellation (to be subject to further analysis).<sup>198</sup>
- 4.96** Some other inquiry participants also commented on who they believed should be entitled to make a claim. For example, Mr and Mrs Lantry argued that only shareholders who held shares at the time of the legislation cancelling the licence should be eligible,<sup>199</sup> while Mr Jake Baldwin and Mr Ian Baldwin asserted that 'speculators ... hoping for remuneration from speculating on the stock market' should not be compensated.<sup>200</sup> One inquiry participant argued that compensation should cover 'the initial cost of the shares, including brokerage, as well as the estimated value of the shares and dividends had NuCoal retained the licence'.<sup>201</sup>

## Committee comment

- 4.97** The committee considered the evidence presented by the stakeholders engaged in this inquiry. We acknowledge the range of personal stories shared with us and the more broader insight provided by NuCoal Resources to assist our examination of whether the Mining Amendment (Compensation for Cancellation of Licence) Bill 2014 should proceed to consideration by the Parliament.
- 4.98** Conscious that the inquiry has been conducted against the backdrop of ongoing legal proceedings regarding the allocation of EL 7270, the committee was careful not to be drawn into discussions about impropriety.
- 4.99** While it is acknowledged that the circumstances surrounding the granting of the licence are inextricably linked with its cancellation, the committee maintained a focus on the provisions of

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<sup>196</sup> Answers to questions on notice, Attachment C, NuCoal Resources Ltd, p 1.

<sup>197</sup> Answers to questions on notice, Attachment C, NuCoal Resources Ltd, p 1.

<sup>198</sup> Answers to questions on notice, Attachment C, NuCoal Resources Ltd, p 2.

<sup>199</sup> Evidence, Mr Lantry, 9 August 2019, p 26; Submission 8, Mrs Michelle Lantry, p 3.

<sup>200</sup> Submission 20, Mr Ian Baldwin, p 1; Submission 21, Mr Jake Baldwin, p 1.

<sup>201</sup> Submission 4, Name suppressed, p 1.

the legislation cancelling EL 7270 which removed opportunity for appeal and compensation, and what this has meant for affected stakeholders.

- 4.100** On balance, the committee accepts the arguments that some of the shareholders of NuCoal who participated in the public listing, or subsequently acquired shares, are innocent parties. The committee recognises that any affected innocent stakeholders sustained significant financial loss, with impacts extending to their emotional and psychological well-being and beyond. The committee notes these matters are the subject of ongoing discussions between the US Trade Representative and the Australian Government concerning US investors.
- 4.101** The committee found that the directors of NuCoal were either aware or should have been aware of the public controversy surrounding the granting of the EL 7270 to Doyles Creek Mining at the time the company was publicly listed.
- 4.102** The committee also found that the share price for NuCoal Resources was adversely affected, at numerous stages, by the public controversy over the granting of EL7270 and the ICAC inquiry that followed. The volatility in the share price reflected an appraisal by the market of the relative risk posed by the controversy at critical stages. As noted above, we do not rule out the existence of shareholders who purchased in good faith without any knowledge of the controversy. On the evidence before us, we could not draw a firm conclusion on how to determine any such class of shareholders.
- 4.103** The committee acknowledges that there are a number of significant outstanding issues that it felt it could not determine. The committee notes that the Bill currently before the inquiry provides that the independent arbiter to whom claims of compensation can be made has wide discretion to determine the structure within which claims are assessed. Without further evidence to draw guidance from, however, it is not clear to the committee what this structure looks like and how important questions, such as who will be compensated and at what price, are to be answered.
- 4.104** The committee expresses its concern about any proposal that leaves it to a third party to make important policy decisions on behalf of the Government. Equally, it is inappropriate for the Bill in its current form to proceed without a clear understanding of the extent of the liability this may create for the Government, and the people of New South Wales.
- 4.105** The committee recommends that the Bill not proceed and that any outstanding matters be addressed by the government, where appropriate.

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### **Recommendation 1**

That the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 not proceed in its current form.

### **Recommendation 2**

That the NSW Government address the outstanding matters raised during this inquiry, where appropriate, including the issue of compensation for innocent shareholders.

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- 4.106** Although the focus of this inquiry has been on the cancellation of EL 7270 over Doyles Creek, and the impact of this on NuCoal and its shareholders, the committee acknowledges that other exploration licences have been cancelled. In addressing the outstanding matters raised during this inquiry, the committee encourages the NSW Government to also consider the affected stakeholders of these other cancelled exploration licences.

## Appendix 1 Plaintiff's chronology, *NuCoal Resources Ltd v State of New South Wales*

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

No. S138 of 2014

BETWEEN:

NUCOAL RESOURCES LIMITED  
Plaintiff

and

10

STATE OF NEW SOUTH WALES  
Defendant

### PLAINTIFF'S CHRONOLOGY

#### Part I:

I certify that this chronology is in a form suitable for publication on the internet.

20 **Part II:**

	Date	Description	Reference
1.	15 December 2008	The NSW Minister for Mineral Resources grants Doyles Creek Mining Pty Ltd ( <b>DCM</b> ) Exploration Licence 7270 ( <b>EL 7270</b> ).	Special Case ( <b>SC</b> ), [3]; Special Case Book ( <b>SCB</b> ), pp 61-85.
2.	29 June 2009	Glen Lewis becomes a director of DCM.	SC, [5]; SCB, p 89.
3.	10 July 2009	John Maitland ceases to be a director of DCM.	SC, [6]; SCB, p 90.
4.	In or around August 2009	Taurus Funds Management Pty Ltd ( <b>Taurus</b> ) undertakes due diligence to invest in DCM.	SC, [9]-[10].
5.	15 October 2009	Taurus acquires 20% of the issued shares in DCM. Messrs Galt and Davies (of Taurus) are appointed directors of DCM.	SC, [11]. SC, [11(c)]; SCB, pp 89-90.
6.	23 November 2009	The Plaintiff (by its then name, Supersorb Environmental NL) enters into option to purchase agreement with DCM.	SC, [12]; SCB, pp 108-165.
7.	27 November 2009	Craig Ransley ceases to be a director of DCM.	SC, [14]; SCB, p 90.
8.	2 December	The Plaintiff conducts due diligence for purchase of DCM, and lodges prospectus	SC, [15]-[19]; SCB, pp 166-

Filed on behalf of the Plaintiff by:

Date of this document: 22 October 2014

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	Date	Description	Reference
	2009	with respect to a public offering of shares.	272.
9.	Early 2010	The Plaintiff purchases DCM, and is renamed NuCoal Resources Ltd ( <b>NuCoal</b> ). Shares in NuCoal are offered to the public.  Directors of NuCoal and DCM are Gordon Galt, Glen Lewis, Michael Davies, Andrew Poole, and Michael Chester.	SC, [20], [21]; SCB, pp 89-90, 278-279.
10.	10 February 2010	Michael Davies and Michael Chester cease to be directors of DCM.	SC, [23]; SCB, p 90.
11.	12 February 2010	James Beecher is appointed a director of NuCoal.	SC, [24]; SCB, p 278.
12.	23 November 2011	NSW Parliament refers for investigation, the circumstances of the application for and allocation of EL 7270 to DCM ( <b>Operation Acacia</b> ) to the Independent Commission Against Corruption ( <b>ICAC</b> ).	SC, [37]; SCB, pp 351- 358.
13.	26 April 2012	Andrew Poole ceases to be a director of NuCoal.	SC, [25]; SCB, p 279.
14.	9 August 2012	Andrew Poole ceases to be a director of DCM.	SC, [25]; SCB, pp 89-90.
15.	21 November 2012	DCM applies for a renewal of EL 7270.	SC, [30].
16.	18 March 2013	The ICAC public inquiry into Operation Acacia commences.	SCB, p 375.
17.	1 May 2013	Michael Chester ceases to be a director of NuCoal.	SC, [26]; SCB, p 279.
18.	17 May 2013	The ICAC public inquiry into Operation Acacia concludes.	SCB, p 375.
19.	29 May 2013	NuCoal makes written submissions to ICAC.	SC, [40(b)].
20.	20 June 2013	NuCoal makes written submissions to ICAC.	SC, [40(b)].
21.	30 August 2013	ICAC Report: "Investigation into the conduct of Ian MacDonald, John Maitland and others (Operation Acacia)" ( <b>August Report</b> ).	SC, [42]; SCB, pp 359-531.
22.	10 September 2013	The August Report is laid before the Legislative Assembly and Legislative Council.	SC, [43].

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	Date	Description	Reference
23.	18 December 2013	ICAC Report: "Operations Jasper and Acacia – addressing outstanding questions" ( <b>December Report</b> ).	SC, [44]; SCB, pp 532-584.
24.	19 December 2013	NSW Government invites NuCoal to provide written submissions as to why ICAC's recommendations in respect of EL 7270 should not be implemented.	SC, [50]; SCB, p 610.
25.	15 January 2014	NuCoal makes a submission to the NSW Government.	SC, [51]; SCB, pp 617-652.
26.	20 January 2014	NSW Government announces its intention to cancel EL 7270 by special legislation.	SC, [52]; SCB, p 654.
27.	30 January 2014	The December Report is laid before the Legislative Assembly and Legislative Council. The <i>Mining Amendment (ICAC Operations Jasper and Acacia) Bill 2014 (Mining Amendment Act)</i> passes both Houses of the NSW Parliament.	SC, [45], [53]; SCB, pp 655-674.
28.	31 January 2014	The Mining Amendment Act receives Royal Assent and enters into force.	SC, [55].
29.	21 February 2014	NuCoal submits to the NSW Department of Trade and Investment a document entitled "Final Report for EL7270", a report it was required to submit under s.163C of the <i>Mining Act</i> and cl.57(1) of the <i>Mining Regulation 2010 (NSW)</i> .	SC, [57].
30.	14 May 2014	The <i>Mining and Petroleum Legislation Amendment Act 2014</i> receives Royal Assent.	SC, [60].
31.	August 2014	NuCoal submits core samples and related information in response to a notice issued by the Department under s 248B of the <i>Mining Act 1992</i> .	SC, [57].

Dated 5 November 2014



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# Appendix 2 Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

Introduced by Revd the Hon F J Nile, MLC

First print



New South Wales

## Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Mining Act 1992* to provide that persons financially affected by the cancellation of exploration licence 7270 over certain land at Doyles Creek can apply to an independent arbitrator for an assessment and determination of compensation for the licence cancellation. That exploration licence was cancelled as a result of the ICAC findings in Operation Acacia and Schedule 6A to the Act currently precludes compensation being payable by the State.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Schedule 1** amends the *Mining Act 1992* in the manner described in the above overview.

Introduced by Revd the Hon F J Nile, MLC

First print



New South Wales

# Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

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2 Commencement	2
<b>Schedule 1</b> <b>Amendment of Mining Act 1992 No 29</b>	<b>3</b>

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b2019-032.d08



New South Wales

## **Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

No. , 2019

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### **A Bill for**

An Act to amend the *Mining Act 1992* to make provision with respect to the assessment and determination of compensation for the cancellation of an exploration licence following the ICAC inquiry in Operation Acacia.

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Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 [NSW]

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Mining Amendment (Compensation for Cancellation of Exploration Licence) Act 2019</i> .	3
	4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 [NSW]  
 Schedule 1 Amendment of Mining Act 1992 No 29

<b>Schedule 1</b>	<b>Amendment of Mining Act 1992 No 29</b>	1
<b>[1]</b>	<b>Schedule 6A Cancellation of certain authorities</b>	2
	Insert after clause 3 (2):	3
	(3) This clause is subject to clause 7A.	4
<b>[2]</b>	<b>Schedule 6A, clause 7 (1)</b>	5
	Omit "Compensation".	6
	Insert instead "Except as provided by clause 7A, compensation".	7
<b>[3]</b>	<b>Schedule 6A, clause 7A</b>	8
	Insert after clause 7:	9
<b>7A</b>	<b>Assessment and determination of compensation for losses resulting from cancellation of EL 7270</b>	10
		11
(1)	In enacting this clause, Parliament recognises that persons who have been financially affected by the cancellation of EL 7270 as a consequence of the findings by the ICAC in Operation Acacia should, after having their claims assessed in accordance with this clause, receive fair compensation for the value of the cancelled licence and for the consequences of the cancellation.	12
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		14
		15
		16
(2)	The Minister is, before the end of 2019, to appoint a legally qualified person as the independent arbitrator for the purposes of this clause. A person who has been an employee or officer of the ICAC is not eligible to be appointed as the independent arbitrator.	17
		18
		19
		20
(3)	A person (a <i>claimant</i> ) may make a claim for compensation to the independent arbitrator in accordance with this clause.	21
		22
(4)	A claimant has the right to make submissions and to be heard by the independent arbitrator within a reasonable time of making the claim.	23
		24
(5)	A claim for compensation must be supported by the information determined by the independent arbitrator and published on a publicly accessible website.	25
		26
(6)	The procedure for assessing claims for compensation is to be determined by the independent arbitrator and published on a publicly accessible website within 2 months of the arbitrator's appointment.	27
		28
		29
(7)	The procedure is to include provisions relating to the following:	30
	(a) the manner in which claims are to be made,	31
	(b) the manner in which submissions may be made to the independent arbitrator,	32
		33
	(c) the manner and procedure by which claims are determined,	34
	(d) the manner in which a claimant may exercise a right of appeal in the event of an adverse finding,	35
		36
	(e) the limitation period for the making of claims for compensation,	37
	(f) the requirements of any other law under which the independent arbitrator is to exercise his or her functions or under which the procedure for assessing claims is to be conducted,	38
		39
		40
	(g) any other matter that the independent arbitrator considers relevant.	41
(8)	The independent arbitrator may, in assessing a claim for compensation:	42
	(a) determine whether the claimant is entitled to compensation, and	43

Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 [NSW]  
Schedule 1 Amendment of Mining Act 1992 No 29

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- |      |  |                      |
|------|--|----------------------|
| (b)  | determine the amount of compensation the claimant is entitled to receive, using valuation methods that have been used to determine compensation for the cancellation under this Act of other exploration licences, and           | 1<br>2<br>3<br>4     |
| (c)  | determine any conditions on the payment of compensation.   | 5                    |
| (9)  | A claimant may appoint another person or body to make a claim and to receive compensation on the claimant's behalf.  | 6<br>7               |
| (10) | The independent arbitrator may:  | 8                    |
| (a)  | require claimants to be represented by another person or body, and   | 9                    |
| (b)  | give directions to that representative person or body in relation to the manner in which any compensation for those claimants is to be distributed.  | 10<br>11<br>12       |
| (11) | Parliament recommends that any compensation determined by the independent arbitrator in accordance with this clause is to be paid by the State out of money to be provided by Parliament or that is otherwise legally available. | 13<br>14<br>15<br>16 |
| (12) | This clause has effect despite any other provision of this Schedule.   | 17                   |

## Appendix 3 Submissions

No.	Author
1	Cascade Coal
2	Mr Frank Pfeffer
3	Mr Greg Marshall
4	Name suppressed
5	Name suppressed
6	Mr Owen Ravenscroft
7	Dr Barry Gordon
8	Mrs Michelle Lantry
9	Mr Darrell Lantry
9a	Mr Darrell Lantry
10	Mr Greg Nicholls
11	R and S Joice Investments Pty Ltd Superannuation Fund
12	Name suppressed
13	Dr Peter Phelps
14	Name suppressed
15	NuCoal Resources Ltd
16	Mr Glen Lewis
17	Mr Gary Sparkes
18	Mr Rod Doyle
19	Confidential
20	Mr Ian Baldwin
21	Mr Jake Baldwin
22	Name suppressed
23	Confidential
24	Confidential
25	Mr David Widdicombe

## Appendix 4 Witnesses at hearing

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday, 9 August 2019 Preston-Stanley Room, Parliament House, Sydney</b>	Mr Gordon Galt	Chairman, NuCoal Resources
	Mr Michael Davies	Non-Executive Director, NuCoal Resources
	Mr Glen Lewis	Non-Executive Director, NuCoal Resources
	Mr Darrell Lantry	Shareholder
	Mrs Michelle Lantry	Shareholder
	Mr Rodney Doyle	Shareholder

## Appendix 5 Minutes

### Minutes no. 3

Wednesday 19 June 2019

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney, 10.32 am

#### 1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

#### 2. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 2 be confirmed.

#### 3. Correspondence

##### **Received:**

- 17 June 2019 – Email from Assistant Commissioner Mick Willing, Commander, Terrorism and Special Tactics, NSW Police Force, advising that Detective Chief Inspector Gary Jubelin will be allowed to attend the meeting with family representatives in Bowraville on 24 June 2019.

##### **Sent:**

- 12 June 2019 – Letter from the Chair to Assistant Commissioner Mick Willing, NSW Police Force, requesting the attendance of Detective Chief Inspector Gary Jubelin as a support person at the informal private meeting with family representatives in Bowraville on 24 June 2019, on the request of the families
- 13 June 2019 – Email exchange between secretariat and Mr Mark Follett, Director, Crime Policy, Policy and Reform Branch, Department of Justice, granting extension for the NSW Government submission to the double jeopardy inquiry until 8 July 2019
- 17 June 2019 – Email from secretariat to Assistant Commissioner Mick Willing, Commander, Terrorism and Special Tactics, NSW Police Force, conveying the committee's thanks for allowing Detective Chief Inspector Gary Jubelin to attend the meeting with family representatives in Bowraville on 24 June 2019.

The Committee noted that in the last Parliament and since, it has received several items of correspondence from a member of the public making allegations about the conduct of the Attorney General.

Resolved, on the motion of Mr Shoebridge: That unless a new issue arises, all correspondence received from the member of the public known to the committee remain confidential with no action taken.

#### 4. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

##### 4.1 Informal private briefing with family representatives in Bowraville

The committee noted that the visit to Bowraville to meet with family representatives is confirmed for Monday 24 June 2019. The Chair briefed the committee on the attendance of Detective Chief Inspector Gary Jubelin. The committee further noted the draft itinerary for the day.

The committee discussed that the purpose of the inquiry is not to revisit the matters canvassed in the committee's 2014 inquiry into the family response to the murders in Bowraville, but is limited to examining the legal implications of the proposed amendments in the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019.

Resolved, on the motion of Mr Donnelly: That the secretariat liaise with the Chair to develop then circulate wording advising participants on the purpose of the informal private briefing and the focus of the inquiry, prior to the visit.

Resolved, on the motion of Mr Donnelly: That the secretariat prepare a short report that captures the key messages from families expressed at the informal private meeting, to be considered by the committee, then checked by Jumbunna Institute for Indigenous Education and Research, then published on the inquiry website.

#### **4.2 Public hearing**

The committee noted that the hearing date has been confirmed for Wednesday 24 July 2019.

#### **4.3 Submissions to the Wood review of Section 102 of the *Crimes (Appeal and Review) Act 2001***

Resolved, on the motion of Mrs Ward: That the secretariat ascertain the publication status of submissions to the Wood review of Section 102 of the *Crimes (Appeal and Review) Act 2001* and report back to the committee for its consideration.

### **5. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

#### **5.1 Terms of reference**

The committee noted the terms of reference for the inquiry as referred by the House, to inquire and report into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

#### **5.2 Proposed timeline and activities**

Resolved, on the motion of Mr Shoebridge: That the committee adopt the following timeline for the inquiry:

- Submission closing date of 31 July 2019
- One hearing day and one reserve day in August, potentially on 5, 9, 19 or 23 August, to be canvassed by the secretariat.
- Table report by end October.

#### **Advertising**

The committee noted that the inquiry would be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

#### **Stakeholders**

Resolved, on the motion of Mr Shoebridge: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to amend the list or nominate additional stakeholders.

### **6. Adjournment**

The committee adjourned at 10.57 am until 7.15 am Monday 24 June 2019 at Sydney Airport (visit to Bowraville).

Merrin Thompson  
Committee Clerk

#### **Minutes no. 4**

Monday 24 June 2019

Standing Committee on Law and Justice

Pioneer Community Centre, Bowraville at 10.45 am

#### **1. Members**

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam  
Mr Khan  
Mr Roberts  
Mr Shoebridge  
Mrs Ward

**2. Apologies**

Mr Fang

**3. Correspondence**

***Received:***

- 21 June 2019 – Email exchange between secretariat and Assistant Commissioner Mick Willing, Counter Terrorism and Special Tactics Command, NSW Police Force, regarding the attendance of Detective Chief Inspector Gary Jubelin as support person at the meeting with family representatives in Bowraville on 24 June 2019.

**4. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**

**4.1 Private briefing and tour of key sites in Bowraville**

The committee received a private briefing from Detective Chief Inspector Gary Jubelin, NSW Police Force, with Detective Sergeant Gerry Bowden and Ms Bianca Comina, NSW Police Force, also present.

Resolved, on the motion of Mr Donnelly: That Detective Chief Inspector Jubelin, Detective Sergeant Bowden and Ms Comina accompany the committee on a tour of key sites in Bowraville.

**4.2 Informal private briefing with family representatives**

The committee held an informal private briefing with family representatives of Clinton Speedy-Duroux, Evelyn Greenup and Colleen Walker-Craig, in order to explain the inquiry purpose and process. The attendees were:

**Family members**

- Billy Greenup
- Clarice Greenup
- Natasha Greenup
- Rebecca Stadhams
- Robert Dunn
- Michelle Jarret
- Craig Jarrett
- Penny Stadhams
- Thomas Duroux
- Margie Buchanan
- Paula Craig
- Muriel Craig Junior
- Colleen Kelly
- Alison Stanbrook
- Gavin Stanbrook

**Support persons**

- Detective Chief Inspector Gary Jubelin, NSW Police Force
- Mr Craig Longman, Senior Researcher and Head of Legal Strategies, Jumbunna Institute for Indigenous Education and Research
- Associate Professor Pauline Clague, Jumbunna Institute for Indigenous Education and Research
- Ms Alison Whittaker, Research Fellow, Jumbunna Institute for Indigenous Education and Research

**Others**

- Detective Sergeant Gerry Bowden, NSW Police Force
- Ms Bianca Comina NSW Police Force
- Barry Toohey.

**5. Draft minutes**

Resolved, on the motion of Mrs Ward: That draft minutes no. 3 be confirmed.

**6. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019****6.1 Review of section 102 of the *Crimes (Appeal and Review) Act 2001* conducted by Hon James Wood AO QC**

The committee noted that submissions to the Wood review of Section 102 of the *Crimes (Appeal and Review) Act 2001* are not publicly available online.

Resolved, on the motion of Mrs Ward: That the committee write to the District Court and Supreme Court inviting them to provide a copy of their respective submissions to the Wood review and any additional comments they wish to make in relation the committee's inquiry.

**7. 2019 Review of the Dust Diseases Scheme****7.1 Terms of reference**

Resolved, on the motion of Mr Shoebridge: That the 2019 Review of the Dust Diseases Scheme focus on the response to silicosis in the manufactured stone industry in New South Wales.

Resolved, on the motion of Mr Khan: That the Chair write to Minister Dominello, further to previous correspondence, to advise that the committee has now resolved that the focus of the 2019 review of the dust diseases scheme be on the response to silicosis in the manufactured stone industry in New South Wales.

**8. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

The committee discussed access to the report and evidence from Operation Acacia and other related documents.

Resolved, on the motion of Mr Khan: That the Chair write to ICAC to request a copy of:

- the Operation Acacia report
- \*\*\*
- transcripts of public hearings in Operation Acacia
- a list of exhibits in Operation Acacia
- minutes/other obtainable documents related to the Jerry Plains community meeting of 28 July 2009, referenced in the Operation Acacia report.

Consideration of whether the secretariat should prepare a briefing paper was deferred until the next meeting.

**9. Adjournment**

The committee adjourned at 3.20 pm until Wednesday 24 July 2019 (public hearing for inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019).

Merrin Thompson  
Committee Clerk

**Minutes no. 5**

Wednesday 24 July 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 8.55 am

**1. Members**Mr Blair, *Chair*Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Roberts

Mr Shoebridge

Mrs Ward (until approximately 12.30 pm)

**2. Apologies**

Mr Khan

**3. Previous minutes**

Resolved on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 28 June 2019 – Letter from the Hon John Ajaka MLC, President and Procedure Committee Chair, to Chair, regarding an inquiry into the broadcast of proceedings resolution
- 1 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, responding to the committee's request for documents related to the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019
- 3 July 2019 – Letter from Hon Lynda Voltz MP – correspondence sent on behalf of Ms Lillian Ikoro regarding a motor vehicle accident in Parramatta
- 4 July 2019 – Letter from Justice D Price AM, President, The Dust Diseases Tribunal of New South Wales – notifying the committee that the Tribunal does not wish to make a submission to the dust diseases review
- 5 July 2019 – Letter from the Hon Dominic Perrottet MP, Treasurer, to the Clerk of the Parliaments, enclosing the NSW Government response to the 2018 review of the Dust Diseases scheme and 2018 review of the Lifetime Care and Support Scheme
- 9 July 2019 – Letter from Hon TF Bathurst SC, Chief Justice of New South Wales, indicating that he will not be providing input into the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the *Crimes (Appeal and Review) Act 2001 (NSW)*
- 11 July 2019 – Email from Mr Craig Longman, Head of Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, regarding the report on key messages from the committee's meeting with family members in Bowraville on 24 June 2019
- 16 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee
- 18 July 2019 – Letter from Justice D Price AM, Chief Judge of the District Court of NSW, to Chair, regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the *Crimes (Appeal and Review) Act 2001 (NSW)*.

Resolved on the motion of Mrs Ward: That the letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee, dated 16 July 2019, be kept confidential at this stage.

Resolved on the motion of Mr Donnelly:

- That the letter from Justice D Price AM, Chief Judge of the District Court of NSW, to Chair, regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and attaching a letter to Hon James Wood AO QC's review of Section 102 of the Crimes (Appeal and Review) Act 2001 (NSW), be kept confidential
- That the secretariat inform the Attorney General's Office of having received the letter from Judge Price AM regarding the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019, and its status as confidential.

***Sent:***

- 7 June 2019 – Letter from Chair to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting an earlier response to the committee's recommendations in the 2018 review of the Dust Diseases scheme
- 7 June 2019 – Letter from Chair to Mr John Nagle, CEO and Managing Director, icare, requesting an update on the establishment of a dust diseases register
- 27 June 2019 – Letter from Chair to Acting Chief Commissioner, Independent Commission Against Corruption, requesting documents related to Operation Acacia for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019
- 27 June 2019 – Letter from Chair to the Honourable Justice D M Price AM, District Court of NSW, relating to the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019
- 27 June 2019 – Letter from Chair to the Chief Justice of the Supreme Court of NSW, relating to the inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019
- 27 June 2019 – Letter from Chair to the Hon Victor Dominello MP, Minister for Customer Service, regarding the focus of the 2019 review of the dust diseases scheme being on the response to silicosis in the manufactured stone industry
- 2 July 2019 – Letter from Chair to Assistant Commissioner Mick Willing, NSW Police Force, thanking him for facilitating attendance of Detective Chief Inspector Gary Jubelin and others at the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Mr Gavin Stanbrook, thanking him and family members for attending the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Mr Thomas Duroux, thanking him and family members for attending the meeting in Bowraville on 24 June 2019
- 2 July 2019 – Letter from Chair to Ms Michelle Jarrett, thanking her and family members for attending the meeting in Bowraville on 24 June 2019.

The committee noted its resolution adopted on 19 June 2019: That unless a new issue arises, all correspondence received from a member of the public known to the committee remain confidential with no action taken.

## **5. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

### **5.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 3, 6, 7, 10 and 11.

### **5.2 Partially confidential submissions**

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 4 and 5.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission nos. 4 and 5.

Resolved, on the motion of Mr Shoebridge:

- That the committee authorise the publication of submission nos. 2, 8 and 9, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.
- That the committee authorise the publication of submission no. 1, with the exception of sensitive information which is to remain confidential, as per the request of the author.

### **5.3 ICAC documents related to Operation Acacia**

The committee noted that ICAC has provided documents related to Operation Acacia and provided some clarification as to the status of those documents in their recent letter.

Resolved, on the motion of Mr Fang: That:

- all of the documents received from ICAC relating to Operation Acacia be kept confidential
- the Chair write to the Office of the Director of Public Prosecutions to clarify whether it has any concerns about potential publication of documents related to Operation Acacia, and that this letter be kept confidential.

### **5.4 Hearing date**

The committee noted that the hearing will take place on 9 August.

## **6. 2019 Review of the Dust Diseases Scheme**

### **6.1 Submissions**

The committee noted that submissions opened at the beginning of July and close on 12 August 2019.

### **6.2 Hearing dates**

The committee noted that two hearing dates, 16 and 20 September 2019, were confirmed via email.

### **6.3 Pre-hearing questions for SIRA and icare**

Resolved, on the motion of Mr Shoebridge: That as with previous reviews, the committee request the State Insurance Regulatory Authority and icare respond in writing to pre-hearing questions before the hearing date.

## **7. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**

### **7.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-6, 9, 12-16, 21, 23, 24 and 25.

### **7.2 Partially confidential submissions**

The following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 7, 8, 10, 11, 17, 18, 20 and 22.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 7, 8, 10, 11, 17, 18, 20 and 22.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 19, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author.

### **7.3 Answers to questions on notice**

The committee noted that as the inquiry report is to be tabled on 30 August 2019, the due date for answers to questions on notice needs to be much shorter than the standard 21 days.

Resolved, on the motion of Mr D'Adam: That witnesses be requested to return answers to questions on notice and supplementary questions within seven days of the date on which the questions are forwarded to the witness.

#### **7.4 Public hearing**

The committee noted that it resolved via email:

- to accept the Chair's proposed list of witnesses
- that representatives of the Jumbunna Institute for Indigenous Education and Research be invited to give evidence at both the start and end of the hearing day.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Distinguished Professor Larissa Behrendt, Professor of Law, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney
- Mr Craig Longman, Head, Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kathrina Lo, Deputy Secretary, Law Reform and Legal Services Division, Department of Justice
- Ms Larisa Michalko, Director, Criminal Law Specialist, Law Reform and Legal Services Division, Department of Justice
- Mr Mark Follett, Director, Law Enforcement and Crime Team, Law Reform and Legal Services Division, Department of Justice
- Acting Assistant Commissioner Stuart Smith, Commander, State Crime Command, NSW Police Force.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter McGrath SC, Acting Director of Public Prosecutions, Office of the Director of Public Prosecutions
- Ms Johanna Pheils, Deputy Solicitor for Public Prosecutions (Legal), Office of the Director of Public Prosecutions.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Gabrielle Bashir SC, Junior Vice President and Co-Chair, Criminal Law Committee, NSW Bar Association
- Mr Michael McHugh SC, Senior Vice President, NSW Bar Association.

The evidence concluded and the witnesses withdrew.

Mrs Ward left the meeting.

The following witness was sworn and examined:

- Professor David Hamer, Sydney Law School, University of Sydney.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders and Legal Aid NSW.

The evidence concluded and the witness withdrew.

The following witnesses were re-examined on their former oaths:

- Distinguished Professor Larissa Behrendt, Professor of Law, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney
- Mr Craig Longman, Head, Legal Strategies and Senior Researcher, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

The Chair made a closing statement about the conduct of the hearing, in which he noted the uniqueness and complexity of the issues being examined in the inquiry. In keeping with the committee's role to examine in detail the implications of the bill, the Chair noted that the committee challenged all witnesses on their own views and those of other stakeholders, and that no line of questioning from any member should be taken to indicate the conclusions of the committee.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.07 pm.

The media and the public withdrew.

#### **7.5 Report of key messages from family members at the meeting in Bowraville, 24 June 2019**

The committee noted that it resolved via email to publish the report on key messages from family members at the meeting in Bowraville on 24 June 2019.

#### **7.6 Approach to draft report**

The committee discussed its approach to the inquiry report.

Resolved, on the motion of Mr Fang: That the secretariat make a confidential audio recording of the discussion, for the purposes of preparing the inquiry report.

Resolved, on the motion of Mr Roberts: That when forwarding questions on notice to Acting Assistant Commissioner Smith, NSW Police Force, the secretariat request that he confirm that the 470 unsolved cases referred to in his evidence are all homicide cases, and provide information on the numbers of serious child sexual assault and other life sentence cases where a conviction has not been obtained.

Resolved, on the motion of Mr Donnelly: That the Chair write to the Judicial Commission of NSW to seek information on recent updates to its Bench Books and other initiatives to improve cultural sensitivity to Indigenous people within the court system.

#### **7.7 Public submission**

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission no. 27.

#### **7.8 Partially confidential submissions**

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of submission nos. 26, 28 and 29, with the exception of identifying and/or sensitive information which is to remain confidential, as per the recommendation of the secretariat.

### **8. Adjournment**

The committee adjourned at 4.58 pm until 9 August 2019 (public hearing for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019).

Merrin Thompson  
**Committee Clerk**

**Minutes no. 6**

Thursday 8 August 2019

Standing Committee on Law and Justice

Room 1254, Parliament House, Sydney at 2.00 pm

**1. Members**

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

**2. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

\*\*\*

**3. Adjournment**

The committee adjourned at 2.15 pm until 9 August 2019 (public hearing for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019).

Tina Higgins

**Committee Clerk**

**Minutes no. 7**

Friday 9 August 2019

Standing Committee on Law and Justice

Preston-Stanley Room, Parliament House, Sydney at 9.50 am

**1. Members**

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Farlow (substituting for Mrs Ward)

Mr Khan

Mr Roberts

Mr Shoebridge

**2. Apologies**

Mrs Ward

**3. Draft minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 5 and 6 be confirmed.

**4. Correspondence**

The committee noted the following correspondence:

**Received:**

- 31 July 2019 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to Chair, advising that the Hon Scott Farlow MLC will be substituting for the Hon Natalie Ward MLC at the meeting on 9 August 2019
- 31 July 2019 - Email from Mr Adam Raskall, Head of Engagement, icare, to secretariat, inviting the committee to visit the new medical centre that provides testing for silicosis
- 30 July 2019 – Letter from Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to Chair, offering to provide a briefing to the committee on its regulatory role
- 1 August 2019 – Letter from Mr Peter McGrath SC, Acting Director of the Office of Public Prosecutions, to the Chair, regarding the potential publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper
- \*\*\*
- 1 August 2019 – Email from Mr Andrew Poole to the secretariat, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 1 August 2019 – Email from Mr Craig Ransley to the secretariat, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 3 August 2019 – Email from Dr Barry Gordon, NuCoal shareholder, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019
- 5 August 2019 – Email from the Hon Mark Buttigieg MLC, Opposition Whip, to secretariat, advising that the Hon Daniel Mookhey will be a participating member on the committee's 2019 review of the dust diseases scheme for the duration of the inquiry
- 6 August 2019 – Email from Mr Rod Doyle, NuCoal shareholder, advising that his wife Pauline declines the invitation to appear as a witness at the hearing on 9 August 2019
- 6 August 2019 – Letter from Mr Tim Reardon, Secretary, Department of Premier and Cabinet, to the Chair, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019, and attaching graphs on NuCoal's share prices
- \*\*\*

Resolved, on the motion of Mr Khan: That the letter from Mr Peter McGrath SC, Acting Director of the Office of Public Prosecutions, to the Chair, regarding the potential publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper, be kept confidential.

**Sent:**

- \*\*\*
- 1 August 2019 – Letter from Chair to Mr Craig Ransley, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Andrew Poole, regarding an invitation to give evidence at the hearing
- \*\*\*
- 1 August 2019 – Letter from Chair to Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, regarding an invitation to give evidence at the hearing
- 1 August 2019 – Letter from Chair to Mr Jim Betts, Secretary, Department of Planning, Industry and Environment, regarding an invitation to give evidence at the hearing
- 30 July 2019 - Letter from Chair to Mr Ernest Schmatt AO PSM, Chief Executive, Judicial Commission of NSW, seeking information on the Commission's initiatives to improve cultural sensitivity towards Indigenous people
- Letter from secretariat to Mr Peter McGrath SC, Acting Director of Public Prosecutions, seeking publication status of documents provided by ICAC in relation to Operation Acacia.

## 5. 2019 Review of the Dust Diseases Scheme

### 5.1 Provision of documents to participating member

Resolved, on the motion of Mr Donnelly: That the Hon Daniel Mookhey MLC, who has advised the committee that he intends to participate for the duration of the inquiry into 2019 Review of the Dust Diseases Scheme, be provided with copies of inquiry related documents.

### 5.2 Invitation to visit new silicosis testing centre

Resolved, on the motion of Mr Fang: That the committee visit icare's new silicosis testing centre in Sydney, on a date to be canvassed by the secretariat.

## 6. Oversight reviews and role of SIRA

Resolved, on the motion of Mr Fang: That the committee have an informal briefing with SIRA about its regulatory role and the independent review of the nominal insurer currently being undertaken, on a date to be canvassed by the secretariat.

## 7. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

### 7.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 13, 16-21 and 25.

### 7.2 Partially confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of:

- submission nos. 9a and 14, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat
- submission nos. 15 and 22, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author or identified by the secretariat.
- submission no. 12, with the exception of the section with potential adverse mention, as recommended by the secretariat.

### 7.3 Confidential submissions

Resolved, on the motion of Mr Fang: That the committee keep

- submission no. 23 confidential, as per the request of the author.
- submission nos. 19 and 24 confidential, as per the recommendation of the secretariat.

### 7.4 Attachments to submissions

The committee noted that various attachments had been distributed.

### 7.5 ICAC documents related to Operation Acacia

Resolved, on the motion of Mr Khan: That the committee keep confidential all material provided by the Independent Commission Against Corruption.

\*\*\*

### 7.6 Approach to questioning

In light of the correspondence received from the Office of the Director of Public Prosecutions, the Chair discussed the committee's approach to questioning witnesses.

### 7.7 Briefing paper

Resolved, on the motion of Mr Shoebridge: That the committee keep the briefing paper confidential, as per the recommendation of the secretariat, as it contains sensitive information.

## 8. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

### 8.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 21a and 25a.

### 8.2 Answers to questions on notice and supplementary questions

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Department of Justice, received 5 August 2019
- Jumbunna Institute for Indigenous Education and Research, received 5 August 2019
- Professor David Hamer, received 5 August 2019
- NSW Bar Association, received 5 August 2019
- Office of Public Prosecutions, received 7 August 2019
- NSW Police Force, received 6 August 2019.

Resolved, on the motion of Mr Shoebridge: That the secretariat request further clarification in relation to the data provided by the Office of Public Prosecutions.

### 8.3 Correspondence from Judge Price

Resolved, on the motion of Mr Shoebridge: That the correspondence from Judge Price be kept confidential and not provided to the Attorney General.

### 8.4 Approach to draft report

The committee discussed its approach to the double jeopardy bill inquiry report.

## 9. Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

### 9.1 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witnesses were sworn and examined:

- Mr Gordon Galt, Chairman, NuCoal Resources
- Mr Michael Davies, Non-Executive Director, NuCoal Resources
- Mr Glen Lewis, Non-Executive Director, NuCoal Resources.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Darrell Lantry, shareholder
- Mrs Michelle Lantry, shareholder
- Mr Rodney Doyle, shareholder.

The evidence concluded and the witnesses withdrew.

The media and the public withdrew.

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following document tendered during the public hearing:

- Mr Doyle Shareholder profile – tendered by Mr Rodney Doyle
- RBS Morgans Report – NuCoal – 12 May 2012, tendered by Mr Darrell Lantry.

**9.2 Further activity**

The committee discussed meeting in the future to consider further activity related to this inquiry.

Resolved, on the motion of Mr Roberts: That the Chair write to the Department of Foreign Affairs and Trade to request copies of recent correspondence provided to them from the US Trade Representative Ambassador Robert Lighthizer in relation to this matter.

**10. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019****10.1 Informing Bowraville family members of report tabling**

Resolved, on the motion of Mr Fang: That the Bowraville family members and representatives from Jumbunna be invited to meet with the committee the day the report is tabled.

**11. Next meeting**

Monday 16 September 2019 (2019 Review of the Dust Diseases Scheme public hearing)

Tina Higgins

**Committee Clerk**

**Minutes no. 8**

Wednesday 28 August 2019

Standing Committee on Law and Justice

McKell Room, Parliament House, Sydney, 9.05 am

**1. Members present**

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam (*from 9.15 am*)

Mr Fang

Mr Roberts

Mr Shoebridge

Mrs Ward

**2. Draft minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

**3. Correspondence**

The committee noted the following item of correspondence:

***Received:***

- 31 July 2019 – Letter from individual to Chair, regarding the 2019 review of the dust diseases scheme
- 20 August 2019 – Email from Mr Steven Dyokas, Deputy Economic Counselor, US Embassy Canberra, to Chair, regarding US investor concerns related to the cancellation of exploration licence 7270, attaching letter from Karl Ehlers, Assistant US Trade Representative for Southeast Asia and the Pacific, Executive Office of the President, Office of the United States Trade Representative to Greg Wilcock, Department of Foreign Affairs and Trade
- 9 August 2019 – Letter from Mr Ernest Schmitt AO PSM, Chief Executive, Judicial Commission of New South Wales, to Chair, responding to committee's request for information on the Commission's initiatives to improve cultural sensitivity towards Indigenous people.

**Sent:**

- 19 August 2019 – Letter from the Chair to Ms Patricia Holmes, Assistant Secretary, Department of Foreign Affairs and Trade, regarding representations made by the US Trade Representative Ambassador relevant to the cancellation of exploration licence 7270
- \*\*\*

The Committee noted that it previously resolved via email that the Letter from Mr Ernest Schmatt AO PSM, Judicial Commission, to the Chair, received 9 August 2019, be published.

**4. 2019 Review of the Dust Diseases Scheme****4.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2-10.

**4.2 Confidential submission**

Resolved on the motion of Mr Fang: That the committee keep submission no. 1 confidential, as per the request of the author.

**4.3 Visit to icare's silicosis testing centre**

Resolved on the motion of Ms Ward: That the committee visit icare's new silicosis testing centre on 16 September 2019.

**5. Oversight role****5.1 Informal briefing**

Resolved, on the motion of Mr Shoebridge: That the committee defer consideration of icare's invitation to provide an informal briefing on its role until after the budget estimates hearings.

**6. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019****6.1 Answers to questions on notice**

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Office of the Director of Public Prosecutions, received 12 August 2019
- Additional information, NSW Police Force, received 13 August 2019
- Addendum, NSW Bar Association, received 14 August 2019.

**6.2 Consideration of Chair's draft report**

The Chair submitted his draft report entitled '*Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019*' which, having been previously circulated, was taken as being read.

Mr D'Adam joined the meeting.

Resolved, on the motion of Mr Shoebridge:

- that paragraph 1.33 be amended by inserting 'from those primarily legal stakeholders that he consulted with', after 'strong opposition'.
- that the following new paragraph be inserted after the quote following paragraph 1.33:

'This review is timely given the recent legal proceedings.'

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 2.13 be amended by omitting 'The legal fraternity's perspective' and inserting instead 'Concerns about the Bill from legal agencies and organisations'.

Mr Shoebridge moved: That paragraph 2.13 be amended by omitting the first sentence:

'Members of the legal fraternity were of one voice in their opposition to the Bill.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That the first sentence in paragraph 2.13 be amended by inserting at the start, 'The overwhelming majority of'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.13 be amended by inserting 'Jumbunna and Professor David Hamer supported the direction of the reform.' after 'unchanged'.

Mr Shoebridge moved: That the heading above paragraph 2.83 and the first sentence in 2.83 be amended by omitting 'Other hurdles' and inserting instead 'checks and balances'.

Question put and negated.

Resolved, on the motion of Mr Shoebridge: That the final sentence in paragraph 2.100 be omitted:

'While the legal fraternity were of one voice in opposing the Bill on the most fundamental of principles, even those participants who supported the objectives of the Bill and the principles underpinning it had concerns about its detail.'

And the following sentence inserted instead:

'While there was opposition to the Bill among many in the legal community, there were also those who supported the objectives and principles in it, but had alternative proposals for the detail of how these might be achieved.'

Resolved, on the motion of Mr Shoebridge: That the last sentence in paragraph 2.102 be amended by omitting '— and we are disappointed that we have not been able to find a resolution for them' after 'fighting spirit' and inserting instead ', despite all the challenges.'

Mr Shoebridge moved: That the second sentence of paragraph 2.106 be amended by omitting 'widespread' after 'there was'.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.106 be amended by inserting at the end:

'Indeed the initial 2006 reforms in New South Wales were supported in the Parliament, based in some significant part, on the Bowraville cases. This is a matter to be considered in responding to the Bill and other potential law reforms, but it is not determinative of the matter.'

Mr Shoebridge moved: That the first sentence of paragraph 2.107 be amended by omitting 'This dilemma could potentially be overcome if', and inserting instead 'We also note the evidence to the committee that'.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That the last sentence in paragraph 2.108 be amended by omitting 'highly' before 'probable that this group exists'.

Resolved, on the motion of Mr Shoebridge: That a new paragraph be inserted after paragraph 2.109:

'On balance, while the committee does not believe the Bill as drafted should proceed, we will consider the potential other options later in this report.'

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.42 be amended by omitting 'Other legal perspectives' and inserting instead 'Alternative approaches to finality'.

Resolved, on the motion of Mr Shoebridge: That the first sentence in paragraph 3.42 be amended by omitting 'legal fraternity's concerns' after 'responded to' and inserting instead 'concerns from the legal fraternity'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.59 be amended by omitting 'The legal fraternity's perspectives' and inserting instead 'Concerns about retrospectivity'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.66 be amended by omitting 'Other legal perspectives' and inserting instead 'Arguments for retrospective laws'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.80 be amended by omitting 'The legal fraternity's perspectives' and inserting instead 'Applying proposed changes to convictions'.

Resolved, on the motion of Mr Shoebridge: That the heading above paragraph 3.84 be amended by omitting 'Other legal perspectives' and inserting instead 'Distinguishing conviction and acquittal appeals'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.117:

'In the course of reviewing the Bill referred to this committee an alternative reform was proposed to achieve the same stated goals as the Bill, but through an alternative form of wording. This proposal, which has the support of the NSW Police Force amongst others, was brought by Jumbunna.'

Mr Shoebridge moved: That the following new paragraphs be inserted after the new paragraph following 3.117:

While there was a great deal of evidence from certain stakeholders that any change to the laws of double jeopardy would cause a significant erosion to the principle of finality, this position was contested by evidence of both Professor Hamer and Jumbunna and the submissions from the Bowraville families. It is true that any opening of the exception to double jeopardy would provide a further avenue to review an acquittal and this would have the effect of reducing finality in a very limited number of cases.

In this regard the committee notes the large number of checks and balances that would remain in the system even if Jumbunna's proposed reforms were implemented. They include:

- [list all the elements in the CARA including the consent of the Attorney General or DPP, the interests of justice, compelling and fresh etc.]

We also note that the question of finality is only one of a number of, sometimes competing, values or principles in the criminal justice system. Other principles that must be considered include the need to provide justice, not just to alleged perpetrators of crimes, but also to victims and survivors of crimes, the ability to correct errors, as well as the need to maintain community confidence in the system.

These considerations can, on occasion, compete with the principle of finality. Indeed they have led in the past to significant legal reforms that have eroded the principle of finality through an array of appeal and review provisions in the criminal justice system, none of which have brought the system into disrepute.'

Mr D'Adam moved: That the motion of Mr Shoebridge be amended by omitting the last two paragraphs.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mrs Ward.

Noes: Mr Shoebridge, Mr Roberts.

Question resolved in the affirmative.

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- omitting from the first sentence of the first paragraph 'certain stakeholders' after 'a great deal of evidence from' and inserting instead 'the overwhelming majority of the legal fraternity'
- omitting from the first sentence of the second paragraph 'checks and balances' after 'a large number of' and inserting instead 'hurdles'.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That the following new paragraphs be inserted after the new paragraphs following paragraph 3.117:

'We are not persuaded by the evidence of opponents to reform that the changes proposed by Jumbunna would lead to a flood of applications, nor would they significantly alter the fundamentals of the criminal justice system. The proposed reforms are modest, considered and carefully drafted. As numerous submissions pointed out, the 2006 reforms to the law on double jeopardy have not been successfully used on a single occasion. Indeed the Bowraville case of XX remains the only time that they have been considered by the NSW Court of Criminal Appeal.

We are strengthened in our conclusion that the changes would not open floodgates by the experience in the United Kingdom. Despite the UK provisions applying to a significantly broader class of offences, having less checks and balances, a broader definition of what evidence can found an application and applying to a significantly larger population, there have been less than 20 applications made. Further, no witness was able to identify a case that had produced a result that could be cogently criticised as being unjust or inappropriate.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- omitting from the first sentence of the first paragraph 'by the evidence of opponents to reform' after 'persuaded'
- omitting from the first paragraph 'nor would they significantly alter the fundamentals of the criminal justice system. The proposed reforms are modest, considered and carefully drafted.'
- omitting the first sentence of the second paragraph 'We are strengthened in our conclusion that the changes would not open floodgates by the experience in the United Kingdom.' And inserting instead 'The United Kingdom has demonstrated that these changes have not produced a flood of cases.'
- Omitting the final sentence of the second paragraph 'Further, no witness was able to identify a case that had produced a result that could be cogently criticised as being unjust or inappropriate.'

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That the following new paragraph be inserted after the new paragraphs following paragraph 3.117:

'Given the above, the committee believes it is appropriate for the NSW Government to consider the alternative reform model proposed by Jumbunna. This will necessarily include consideration of its impact beyond the Bowraville case, and will need to address the merits of broadening the exception to double jeopardy, against considerations such as finality and certainty. While any consideration must extend beyond the Bowraville case, given the effluxion of time in the Bowraville matter, and that community's legitimate demand for a prompt response from both the NSW Parliament and the NSW Government, we would urge the Government to respond to this matter with a sense of urgency. If possible, we would be seeking that considered response be delivered in less than the six months usually provided for a Government response to a Committee report.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting all words after 'finality and certainty.'

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Shoebridge moved: That a new recommendation be inserted following the new paragraphs after 3.117:

'That the NSW Government consider the alternative reform model proposed by the Jumbunna Institute of Indigenous Education and Research and provide any potential legislative response as soon as practically possible.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by omitting 'and provide any potential legislative response as soon as practically possible'.

The committee divided.

Ayes: Mr Blair, Mr Donnelly, Mr D'Adam, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

Original question, as amended, put and passed.

Mr Roberts moved: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat by 10.00 am Thursday 29 August 2019;
- h) That the report be tabled on Friday 30 August 2019.

### **6.3 Meeting with Bowraville families on 30 August 2019**

Mr Shoebridge moved: That representatives of Jumbunna Institute for Indigenous Education and Research, Mr Gary Jubelin and a representative of the Attorney General be invited to attend the committee's meeting with Bowraville families after the report is tabled on 30 August 2019.

**7. Adjournment**

The committee adjourned at 10.30 am until 1.00 pm Friday 30 August 2019 (meeting with Bowraville families).

Merrin Thompson  
Committee Clerk

**Minutes no. 10**

Monday 16 September 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 10.00 am

**1. Members**

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan (*from 11:30am until 2.45pm*)

Mr Mookhey (*participating member for the 2019 review of the dust diseases scheme, until 2.45pm*)

Mr Roberts

Mr Shoebridge

Mrs Ward (*from 11:30am until 3.20pm*)

Mr Ben Franklin (*substituting for Mrs Ward from 3:20pm until 3:45pm*)

**2. Apologies**

Mr Blair, *Chair*

**3. Chair**

The committee noted that Mr Donnelly was Chair in Mr Blair's absence.

**4. 2019 Review of the Dust Diseases Scheme****4.1 Site visit**

The committee visited icare's new silicosis testing centre at 115 Pitt Street, Sydney, from 10.15 am to 11 am. The committee met with representatives of icare for a short presentation regarding the screening service.

**4.2 Public hearing**

The hearing commenced at 11.30 am.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Martin Jennings, Fellow, Australian Institute of Occupational Hygienists
- Mr Andrew Orfanos, President Elect, Australian Institute of Occupational Hygienists

Mr Andrew Orfanos tendered the following documents:

- Du Pont Material Safety Data Sheet, regarding Zodiac Quartz Surfaces, dated 13 Aug 2010
- Article entitled 'Silica Hazards from Engineered Stone Countertops', authored by Karen Worthington, dated 11 Mar 2014

- Fact Sheet – Respiratory Protective Equipment (RPE): Facial Hair and Face Masks.
- Factsheet - Essentials for Stonemasons – Controlling Exposures to prevent occupational lung disease in the construction industry
- Factsheet - Managers Toolkit – Silica Dust- Working with Engineered Stone.
- Factsheet – Worker Health Protection for Construction.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Susan Miles, Lung Foundation Australia and Thoracic Society of Australian and New Zealand

The evidence concluded and the witness withdrew.

The public and media withdrew.

The committee had a short adjournment.

## 5. Draft minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 8 and 9 be confirmed.

## 6. Correspondence

The committee noted the following correspondence:

### *Received:*

- 29 August 2019 – Letter from Mr Paul Schofield, Acting Assistant Secretary, Trade and Investment Law Branch, Department of Foreign Affairs and Trade, to Chair, responding to a letter of the committee relating to the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration) Licence Bill 2019.
- 31 July 2019 – Letter from individual to committee, regarding the 2019 review of the Dust Diseases scheme, his confidential submission and correspondence to the committee in the last review of the scheme.
- 31 July 2019 – Letter from Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice, to Chair, advising that the department will not be making a submission to the 2019 Review of the Dust Diseases Scheme.
- 16 September 2019 – Email from Mr Adam Raskall, Head of Engagement, icare, to secretariat, enclosing presentation titled 'Our journey so far – September 2019'
- 16 September 2019 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip, to Director, advising that the Hon Ben Franklin MLC will be substituting for the Hon Trevor Khan MLC for part of the hearing on 16 September 2019.

Resolved on the motion of Mr Shoebridge: That the icare presentation entitled 'Our journey so far – September 2019' be published.

### *Sent:*

- 3 September 2019 – Email from secretariat to Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme
- 3 September 2019 – Email from secretariat to Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme.
- 5 September 2019 – Email from secretariat to Mr Andrew Gavrialetos, Executive Director, Safework NSW enclosing pre-hearing questions from the committee for the 2019 review of the Dust Diseases scheme.

## 7. 2019 Review of the Dust Diseases Scheme

### 7.1 Public submissions

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 11 and 12.

### 7.2 Public hearing - continued

The hearing commenced again at 1.15pm.

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Rita Mallia, President, Construction, Forestry, Maritime, Mining and Energy Union
- Mr Ben Kruse, Legal & Industrial Officer, Construction, Forestry, Maritime, Mining and Energy Union.

Mrs Ward left the meeting.

Ms Rita Mallia tendered the following document:

- ABC News article entitled 'Silicosis death of Anthony White sparks calls for action to address nationwide epidemic', dated 13 March 2019.

Mr Ben Kruse tendered the following document:

- Extract from an icare report titled 'icare Medical Assessment Panel', undated.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Graeme Edwards, Royal Australasian College of Physicians
- Dr Deborah Yates, Consultant Thoracic Physician and Conjoint Associate Professor at University of New South Wales.

The evidence concluded and the witnesses withdrew.

Mr Khan and Mr Mookhey left the meeting.

Mr Franklin joined the meeting.

The following witnesses were sworn and examined:

- Mr Jonathan Walsh, Principal, Maurice Blackburn Lawyers
- Mr Timothy McGinley, Associate, Maurice Blackburn Lawyers
- Ms Joanne Wade, NSW Committee, Australian Lawyers Alliance.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.45 pm.

The public and media withdrew.

### 7.3 Publication of tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Du Pont Material Safety Data Sheet, regarding Zodiaq Quartz Surfaces, dated 13 Aug 2010

- Article entitled 'Silica Hazards from Engineered Stone Countertops', authored by Karen Worthington, dated 11 Mar 2014, tendered by Mr Andrew Orfanos
- Fact Sheet – Respiratory Protective Equipment (RPE): Facial Hair and Face Masks, , tendered by Mr Andrew Orfanos
- Factsheet - Essentials for Stonemasons – Controlling Exposures to prevent occupational lung disease in the construction industry, tendered by Mr Andrew Orfanos
- Factsheet - Managers Toolkit – Silica Dust- Working with Engineered Stone, tendered by Mr Andrew Orfanos
- Factsheet – Worker Health Protection for Construction, tendered by Mr Andrew Orfanos.

Mr Shoebridge tendered the following document:

- Final Report – Silica Dust, Safework NSW, Recommendation 1: First Review into the Dust Diseases Scheme, Manufactured Stone Industry Taskforce, dated July 2019.

## 8. Next meeting

Friday 20 September 2019 (public hearing for the 2019 review of the dust diseases scheme).

Tina Higgins

**Committee Clerk**

## Minutes no. 11

Friday 20 September 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 10.15 am

### 1. Members:

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang (*from 10.30am until 11:25am*)

Mr Khan (*from 10.30am until 12.15pm*)

Mr Roberts

Mr Shoebridge (*from 2.30pm*)

Mrs Ward (*from 2.30pm*)

Mr Ben Franklin (*substituting for Mrs Ward from 10:30am until 12:15pm*)

### 2. Apologies

Mr Shoebridge (*from 10.30am until 12.15pm*)

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 4 September 2019 – Letter from Mr John McGuigan, Director, Cascade Coal, to Chair, attaching a Federal Court judgment in relation to an appeal case involving the Australian Competition and Consumer Commission and Cascade Coal
- 20 September 2019 – Email from Natasha Maclaren-Jones MLC, Government Whip, to Director legislative Council Standing Committee on Law and Justice advising that the Hon Ben Franklin MLC will be substituting for the Hon Natalie Ward MLC for the 2019 review of the Dust Disease scheme hearing on the 20 September 2019 from 10.30am to 12.15pm.

#### 4. **Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

##### 4.1 **Answers to questions on notice and additional information**

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Answers to questions on notice (Attachment A) and additional comments (Attachment C) from NuCoal, received 6 and 9 September 2019
- Additional information from Mr Rodney Doyle, received 9 September 2019.

##### 4.2 **Answers to questions on notice – partially confidential**

Resolved on the motion of Mr Fang: That the committee authorise the publication of answers to questions on notice and the attachment from Mr Darrell and Mrs Michelle Lantry, with the exception of identifying and sensitive information which are to remain confidential, as per the request of the author.

#### 5. **Publication of Manufactured Stone Industry Taskforce Report**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of the Manufactured Stone Industry Taskforce report tendered by Mr Shoebridge on 16 September 2019

#### 6. **2019 Review of the Dust Diseases Scheme**

##### 6.1 **Public hearing**

The hearing commenced at 10.30 am.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Michael Shearer, President, The Mine Ventilation Society of Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Glover, Director Construction, Master Builders Association
- Mr David Solomon, Executive Officer - Safety and Risk, Master Builders Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Nagle, Chief Executive Officer and Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare
- Dr Chris Colquhoun, Chief Medical Officer, icare
- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority
- Mr Darren Parker, Executive Director, State Insurance Regulatory Authority
- Dr Petrina Casey, Director Health Strategy, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.05 pm.

The public and media withdrew.

## 6.2 Further hearings

Resolved, on the motion of Mr Shoebridge: That:

- the secretariat, in consultation with the Chair, canvas the availability of members for a further hearing date
- representatives from the NSW Department of Health be invited to appear at the next hearing
- the Chair write to SafeWork NSW, asking them to reconsider the invitation of the committee to attend a public hearing to give evidence, noting that the committee may consider issuing a summons.

Tina Higgins

**Clerk to the Committee**

### Draft minutes no. 13

Monday 21 October 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 2.06 pm

#### 1. Members present

Mr Fang, *Chair*

Ms Cusack

Mr D'Adam

Mr Khan

Mr Moselmane (substituting for Mr Donnelly)

Mr Roberts

Mr Shoebridge (until 4.10 pm)

Ms Ward

#### 2. Apologies

#### 3. Committee membership

The committee noted that the Hon Wes Fang MLC replaced the Hon Niall Blair MLC as Chair from 17 October 2019.

The Committee noted that the Hon Catherine Cusack MLC replaced the Hon Niall Blair MLC as a member of the committee on 17 October 2019.

#### 4. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 12 be confirmed.

#### 5. Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 18 October 2019 – Email from Mr Daniel Noll, Managing Solicitor, Appellate Litigation and Legal Resources 2, Office of the Director of Public Prosecutions, to the secretariat, providing further advice about the status of material from ICAC.
- 11 October 2019 – Email from Ms Kate Scott-Murphy, Manager, Advocacy and Media, Faculties of Clinical Radiology and Radiation Oncology, The Royal Australian and New Zealand College of Radiologists, to committee, regarding its position statement on the imaging of occupational lung diseases including silicosis.
- 8 October 2019 – Letter from Mr Andrew Gavrielatos, Executive Director Specialist Services, SafeWork NSW, to Chair, regarding the different versions of the Manufactured Stone Industry Taskforce report.

- 7 August 2019 – Letter from Mr Jim Betts, Secretary, Department of Planning, Industry & Environment, to the Chair, declining the committee's invitation to appear as a witness at the hearing on 9 August 2019.

#### ***Sent***

- 9 October 2019 – Letter from Chair to the Australian Industry Stone Group, inviting them to make a submission to the 2019 review of the dust diseases scheme (*attached*)
- 9 October 2019 – Letter from Chair to Mr Mark Norman, General Manager, Quantum Quartz, inviting them to make a submission to the 2019 review of the dust diseases scheme
- 9 October 2019 – Letter from Chair to Mr Bruce Rayment, Chief Executive Officer HVG, inviting Smartstone to make a submission to the 2019 review of the dust diseases scheme
- 9 October 2019 – Letter from Chair to Mr David Cullen, Caesarstone, inviting them to make a submission to the 2019 review of the dust diseases scheme
- 2 October 2019 – Letter from Chair to Mr Andrew Gavrielatos, Executive Director Specialist Services, SafeWork NSW, requesting clarification on the different versions of the Manufactured Stone Industry Taskforce report
- 10 July 2019 – Letter from Chair to Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, seeking clarification on the publication status of documents relating to Operation Acacia for the inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

Resolved on the motion of Mr Shoebridge: That the committee keep confidential the following correspondence:

- 18 October 2019 – Email from Mr Daniel Noll, Managing Solicitor, Appellate Litigation and Legal Resources 2, Office of the Director of Public Prosecutions, to the secretariat, providing further advice about the publication of material from ICAC.
- 16 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, relating to the status of Operation Acacia documents provided to the committee.
- 1 July 2019 – Letter from Mr Stephen Rushton SC, Acting Chief Commissioner, Independent Commission Against Corruption, to Chair, responding to the committee's request for documents related to the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019.

## **6. 2019 review of the dust diseases scheme**

### **6.1 Manufacturer contribution to inquiry**

The secretariat briefed the committee on the involvement of manufacturers in the inquiry to date.

### **6.2 Answers to questions on notice**

Resolved, on the motion of Mr Shoebridge: That the committee publish the following answers to questions on notice and supplementary questions from:

- Mr Ben Kruse, CFMEU, received 14 October 2019
- Mr Michael Shearer, Mine Ventilation Society of Australia, received 14 October 2019, including the additional document entitled 'Respirable Crystalline Silica and Occupational Health Issues, Australian Institute of Occupational Hygienists
- Mr Jonathan Walsh, Maurice Blackburn Lawyers, received 14 October 2019
- Mr David Solomon, Certified Management System Specialist, Executive Officer Safety and Risk, Master Builders Association, received 16 October 2019
- icare, received 16 October 2019.

### **6.3 Reporting date**

Resolved, on the motion of Mr Shoebridge: That the report for the 2019 review of the dust diseases scheme be tabled by 18 December 2019.

## 7. Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019

### 7.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Khan: That a new heading, 'Events following Allocation of EL 7270', be inserted before paragraph 1.15.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'On 16 April 2013 Mr Glen Lewis, Director of NuCoal, gave evidence to ICAC. The transcript reveals the following evidence:

Counsel Assisting: I want to move to a different topic, Mr Lewis. You're aware that from about mid 2009 there was public controversy which you were aware of concerning the circumstances of the grant of the Exploration Licence to Doyles Creek Mining?---

Lewis: Certainly numerous media articles, yes.

Counsel Assisting: And you would have been aware of those at about the time that they were being published and reported upon?

Lewis: Yes.

Counsel Assisting: Given your role in the company?

Lewis: Correct.

Counsel Assisting: To place some of it in time if the witness could be shown volume 19. Sorry, if you could go to page 5922, Mr Lewis?---

Lewis: Yes.

Counsel Assisting: And you'll see there are various media reports including those referred to, in relation to 2E on 20 July 2009 concerning that controversy?

Lewis: Yes.

Counsel Assisting: And there's a whole series of entries, I won't take you through them all but 5931, the two references to ABC Newcastle at about the same date?

Lewis: Yes.

Counsel Assisting: And comments that were being made by Duncan Gay in Parliament?

Lewis: Correct.

Counsel Assisting: And as you say you're aware of these media reports at about this time of July 2009?

Lewis: Yes.'

[FOOTNOTE: Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6550.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'During mid to late 2009 a number of changes of directorships of DCM occurred. On 29 June 2009 Glen Lewis became a director of DCM. This was followed by the cessation as a director of John Maitland on 10 July 2009. This director was instrumental in the granting of EL 7270.' [FOOTNOTE: High Court of Australia, NuCoal Resources Ltd v State of New South Wales, No. S138 of 2014, Plaintiff's chronology, 22 October 2014.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'The committee has been assisted in understanding the chronology of events by reference to, amongst other documents, the Chronology filed on behalf of the plaintiffs NuCoal in proceedings brought against the NSW Government relating to the cancellation of EL7270. The chronology forms Appendix 1 to the report.'

Mr Khan moved: That the following new paragraph be inserted after paragraph 1.15:

'On 28 July 2009 a meeting occurred between representatives of DCM and members of the Jerry Plains Community. Amongst those to attend the meeting was Mr Glen Lewis. In the Report of the ICAC entitled "Operations Jasper and Acacia – Addressing Outstanding Questions" the Commission noted:

A Jerrys Plains Community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to "ICAC" issues.'

[FOOTNOTE: Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, p 16.]

Question put.

The committee divided.

Ayes: Ms Cusack, Mr D'Adam, Mr Fang, Mr Moselmann, Mr Shoebridge, Mrs Ward.

Noes: Mr Roberts.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

'In or around August 2009 Taurus Resources Fund No. 1 shares in DCM. This was followed on 15 October 2009 by the appointment of Gordon Galt and Michael Davies, both directors of Taurus, as directors of DCM. The shares in DCM, held by Taurus Resources Fund No. 1 subsequently exchanged for shares in NuCoal when NuCoal listed on the Australian Stock Exchange.'

[FOOTNOTE: Evidence, 9 August 2019, p 4; High Court of Australia, *NuCoal Resources Ltd v State of New South Wales*, No. S138 of 2014, Plaintiff's chronology, 22 October 2014.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.15:

' On 23 November 2009 NuCoal (then known as Supersorb Environmental NL) entered into an option to purchase agreement with DCM. This was followed by the resignation of one of the original directors, Craig Ransley. This then left Andrew Poole as the only continuing director of DCM.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.16:

'NuCoal's Chronology states that following the acquisition by NuCoal of DCM the directors of both NuCoal and DCM then being: Gordon Galt, Glen Lewis, Michael Davies, Andrew Poole, and Michael Chester.'

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.16:

'Mr Glen Lewis was asked about the procedure for listing of NuCoal on the stock exchange in his evidence before ICAC on 16 April 2013. The transcript of evidence reveals this:

Counsel Assisting: Are you aware as to whether or not one of the reasons for listing in Perth was to try and keep the matter away from the Sydney press?

Lewis: Partially, correct.

Counsel Assisting: And you've dealt with investors since the reverse acquisition?

Lewis: Yes.

Counsel Assisting: And they've also raised with you concerns about the circumstances in which the Exploration was granted before making their investments?

Lewis: People have always asked what John Maitland's involvement was, yes.'

[FOOTNOTE: Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6553.]

Mr Lewis gave a number of other reasons why the listing was conducted in Perth.

[FOOTNOTE: see Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, p 6555.]

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 1.18:

'It should be noted that following the listing of NuCoal there were significant share transactions involving a number of the original promoters and investors in DCM. The ICAC in its report entitled "Operation Acacia" observed:

In early 2010, DCM was listed on the Australian Securities Exchange (ASX) through its acquisition by NuCoal Resources NL. That listing valued the EL over the Doyles Creek area at approximately \$100 million. Most of the original shareholders of DCM have since realised much of their investments for very large sums of money. Mr Maitland, for example, outlaid about \$165,000 to acquire his shares. By December 2011, his investment was worth about \$15 million. A table summarising the profits made by the original shareholders of DCM is set out in Appendix 4.'

[FOOTNOTE: Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 12.]

Resolved, on the motion of Mr Khan: That the following new paragraph and figure be inserted after paragraph 1.18:

'The summary of profits of the original DCM Shareholders, as identified by ICAC, are set out in the table below.'



#### Appendix 4: Summary of profits of original DCM shareholders

Summary of financial information				
Shareholder	A Initial Investment	B Net Profit made @ 31/12/11 (from sales of shares)	C Market value of unsold shares @ 31/12/2011	D Total Net Profit (D + C)
Jonca Investments P/L (John Maitland)	\$165,623.00	\$5,985,526.26	\$8,924,206.59	\$14,909,732.85
Nera Ransley (wife of Craig Ransley)	\$318,017.28	\$14,887,364.05	\$-	\$14,887,364.05
Pooles Australia (Andrew Poole)	\$364,648.00	\$5,385,366.48	\$13,083,007.95	\$18,468,374.43
Maxine Poole	\$400.00	\$-	\$32,625.86	\$32,625.86
James Stevenson	\$65,964.00	\$3,144,325.95	\$-	\$3,144,325.95
James Stevenson and Elizabeth Pinnock as Trustees for the Stevenson Pinnock super fund	\$56,938.00	\$2,608,442.00	\$-	\$2,608,442.00
Miclad Pty Ltd (Michael Chester)	\$23,339.12	\$435,092.88	\$595,227.42	\$1,030,320.30
Kimberly Chisholm - Lenark Pty Ltd	\$70,019.80	\$6,753,836.15	\$-	\$6,753,836.15
Lawrence Ireland - Climb Super Pty Ltd	\$36,212.00	\$1,353,849.00	\$140,213.00	\$1,494,062.00
Michael Abela	\$25.00	\$1,367.00	\$-	\$1,367.00
Paul Dickson	\$25.00	\$-	\$2,087.00	\$2,087.00
Ricketts Point Investment P/L	\$6,214.00	\$-	\$394,454.00	\$394,454.00
Tuxon Pty Ltd (Robert Hargraves)	\$1,335.00	\$73,839.00	\$-	\$73,839.00
Stacey Noonan	\$16,806.00	\$1,425,698.19	\$-	\$1,425,698.19
Vincent Martin	\$-	\$417,647.00	\$-	\$417,647.00
Váizan Pty Ltd	\$65,344.00	\$2,780,382.00	\$-	\$2,780,382.00
Top Plain Properties P/L (Kenneth Macdonald)	\$8,333.00	\$213,190.00	\$348,300.00	\$561,490.00
1) Baysoni (Glen Lewis) Shareholding 1	\$100,000.80	\$1,267,310.04	\$2,392,819.11	\$3,660,129.15
2) Baysoni (Glen Lewis) Shareholding 2	\$99,999.36	\$1,267,311.48	\$2,392,734.87	\$3,660,046.35
Jeffrey Roderick Williams	\$93,360.36	\$3,847,315.00	\$1,431,000.00	\$5,278,315.00
Jessica Tsialis	\$46,680.68	\$3,164,732.00	\$-	\$3,164,732.00
<b>TOTAL</b>	<b>\$1,539,284.40</b>	<b>\$55,012,594.48</b>	<b>\$29,736,675.80</b>	<b>\$84,749,270.28</b>

Resolved, on the motion of Mr Khan: That a new chapter, 'The Second ICAC Report: Addressing Outstanding Questions', be inserted after paragraph 1.29.

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.29:

'On 23 November 2011, both Houses of Parliament referred a series of questions to the Commission.

- (1) What were the circumstances surrounding the application for and allocation of EL 7270 to DCM?
- (2) What were the circumstances surrounding the making of profits, if any, by the shareholders of NuCoal Resources NL (the proprietor of DCM)?
- (3) Whether recommendations should be made to the NSW Government with respect to licences or leases under the Mining Act over the Doyles Creek area.
- (4) Whether the NSW Government should commence legal proceedings, or take any other action, against any individual or company in relation to the circumstances surrounding the allocation of EL 7270.
- (5) Whether to recommend that any action be taken by the NSW Government with respect to amending the Mining Act.'

[FOOTNOTE: Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013, p 5.]

Resolved, on the motion of Mr Khan: That the following new paragraphs be inserted after paragraph 1.30:

'The Commission, in reaching its conclusions, made a number of specific observations regarding the acquisition of DCM by NuCoal, the knowledge of the individuals involved, and the implications of that knowledge upon the transaction. It is appropriate that those observations be repeated in full in this report.

The views that the Commission so expressed to Counsel Advising largely were based on the following points made by Counsel Assisting, which the Commission accepts. These points are of particular relevance to the position of NuCoal:

- a. EL 7270 was obtained by DCM and is still held by it. The EL is not transferrable. The position of NuCoal is not comparable to that of a bona fide purchaser for value and without notice. NuCoal is merely a shareholder of DCM.
- b. Moreover, at the relevant times each of Mr Maitland, Craig Ransley and Andrew Poole were directors of DCM. Their conduct and knowledge are to be attributed to it. In addition, at the time of the acquisition by NuCoal, both Mr Chester and Andrew Poole became directors of NuCoal. They were aware of significant circumstances pertaining to the improper grant.
- c. A change in shareholding in a company should not immunise the company from the consequences of its improper conduct or that of its directors. The consequences of improper transactions entered into by a company cannot be avoided merely because its shares have been subsequently traded.
- d. The prospectus issued for the purposes of the reverse acquisition of DCM by NuCoal was lodged with the Australian Securities and Investments Commission on 2 December 2009. There was notorious public controversy from at least mid-2009 in relation to the circumstances of the granting of EL 7270 – in particular having regard to the relationship between Mr Maitland and Mr Macdonald, which was reflected in media coverage at the time. A Jerrys Plains community meeting was also held on 28 July 2009, for which DCM prepared sample questions and responses for delivery by Glen Lewis (the NuCoal managing director) and others in NuCoal. The document containing this sample included reference to “ICAC” issues. Those issues were dealt with at the meeting. Thus, before the backdoor listing, there was widespread controversy calling into question the circumstances of the granting of EL 7270, including that it may have been granted by Mr Macdonald to his “mate” Mr Maitland. Indeed, a concerted effort was made to publicly

position the company so that it was removed from Mr Maitland in an effort to improve perception issues.

e. NuCoal acquired DCM with knowledge of the detail of the public controversy referred to in (d) above and the risky nature of the acquisition. For the reasons set out in (d), the investors in NuCoal must have acquired their shares in that company with an awareness of those risks. Those risks must have been reflected in the share price of NuCoal such that the price at which investors purchased their shares took account of the uncertainties.

f. Mr Lewis agreed that, from mid-2009 on, he dealt constantly with the public controversy concerning the circumstances of the granting of EL 7270, including throughout 2010 and beyond. Mr Lewis agreed that by the time of the reverse acquisition there was widespread public controversy. He dealt with potential investors at the time of the reverse acquisition and they raised questions with him about the controversy concerning the circumstances in which EL 7270 had been granted.

g. The reverse acquisition prospectus also emphasised the uncertainties associated with investing in NuCoal. It emphasised that the shares offered under the prospectus should be regarded as speculative, that investors should be aware that they may lose some or all of their investment and that prospective investors should make their own assessment of the likely risks. A number of specific risks were outlined, which included that DCM might not be able to acquire or might lose title to EL 7270 if conditions attached to licences were changed or not complied with.

h. The following exchange took place with Mr Lewis at the public inquiry:

*MR SHEARER [junior Counsel Assisting the Commission]: So given what we've just been discussing, Mr Lewis, I take it you'd accept that investment from the time of the reverse acquisition onwards has occurred under the shadow of the controversy concerning the circumstance of the grant of the Exploration Licence?---Correct.*

*THE COMMISSIONER: Sorry, can I just ask one question on that please, Mr Shearer? Mr Lewis, I take the shadow was the risk of something sinister being discovered in the course of this investigation?-- That'd be correct, yes.*

*And the reason why there has been an effect on the share price of NuCoal is that by reason of the, of the Commission's investigation there is a risk of this -- there is a risk of corruption being exposed?---By the nature of ICAC yes, I, I agree, yes.*

*I'm not suggesting that corruption occurred I just want to make it clear, I'm suggesting that the shadow involved the risk that the Commission might uncover corruption?--- Correct, it certainly creates uncertainty in the market.*

*And that has occurred since the float?---My best recollection, and I'll be fairly sure it's accurate, is around March 2010.*

...

*Mr Lewis, the questions about the way in which the Exploration Licence was granted to Doyles Creek had already been raised in the press before the float or is that right?--- They, they had, correct. Almost, I'd be fairly confident January 2009 fairly much straight after the announcement of the EL award.*

...

*MR SHEARER: And I've shown you references where that was taking place as from July 2009?--- Correct.*

*And you were dealing with the community on the topic in about July 2009 too?--- Correct.*

i. The same is true of any moneys that NuCoal has expended on exploration and other activities associated with Doyles Creek. Those moneys have been expended with eyes wide open to the uncertainties, risks and possibilities.

[FOOTNOTE: Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013, pp 16-17.]

Resolved, on the motion of Mr Khan: That the following new committee comment be inserted after paragraph 1.31:

**'Committee comment**

The Committee accepts the observations and conclusions made by the ICAC referred to above. Specifically, the directors of both DCM and NuCoal, prior to the public listing were alive to the public controversy surrounding the granting of EL7270. Additionally, in searching for investors, the directors were the subject of questioning surrounding the grant process.

Additionally, it should be noted that the prospectus made clear that the investment in NuCoal as "speculative" and that investors risked the possibility of losing all money they invested. The committee accepts that it is not uncommon for a prospectus to contain significant disclaimers.

Whilst some may consider this is sufficient to rule out any consideration of compensation for investors, the committee is mindful that the ICAC did recommend that any expungement of the of EL7270 *could* (emphasis added) be "accompanied by a power to compensate any innocent persons affected....to the extent considered appropriate". The following chapters of this report will consider that issue.'

Resolved, on the motion of Mr Khan: That a new chapter, 'Events Following the Second ICAC Report', be inserted before paragraph 1.32.

Resolved on the motion of Mr Khan: That paragraph 1.32 be amended by omitting 'This section' and inserting instead 'This chapter'.

Mr D'Adam moved: That paragraph 2.100 be omitted: 'On balance, the committee found compelling the arguments that NuCoal and its shareholders are innocent parties. NuCoal and its shareholders were not party to the negotiations engaged when EL 7270 was granted to Doyles Creek Mining, nor did NuCoal exist as an entity when the licence was allocated.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 2.100 be amended by:

- omitting 'the committee found compelling the arguments that NuCoal and its shareholders are innocent parties' and inserting instead 'the committee accepts the arguments that some of the shareholders of NuCoal who participated in the public listing, or subsequently acquired shares, are innocent parties.'
- omitting 'NuCoal and its shareholders were not party to the negotiations engaged when EL 7270 was granted to Doyles Creek Mining, nor did NuCoal exist as an entity when the licence was allocated.'

Resolved, on the motion of Mr D'Adam: That paragraph 2.100 be amended by inserting at the end: 'The committee found that the directors of NuCoal were either aware or should have been aware of the public controversy surrounding the granting of the EL 7270 to Doyles Creek Mining at the time the company was publicly listed.'

Resolved, on the motion of Mr Khan: That paragraph 2.101 be amended by omitting 'that affected stakeholders' and inserting instead 'that any affected innocent stakeholders'.

Mr D'Adam moved: That paragraph 2.101 be amended by omitting 'The committee notes in particular the effect this licence cancellation has had on overseas investors and on perceptions of Australia as a secure investment environment.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.101 be amended by omitting 'The committee notes in particular the effect this licence cancellation has had on overseas investors and on perceptions of Australia as a secure investment environment.' and inserting instead ' The committee notes these matters are the subject of ongoing discussions between the US Trade Representative and the Australian Government concerning US investors.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr D'Adam, Mr Fang, Mr Khan, Mr Moselmane, Mr Shoebridge, Mrs Ward.

Noes: Mr Roberts.

Question resolved in the affirmative.

Mr D'Adam moved: That paragraph 2.102 be omitted: 'To this end, the committee is supportive of some form of compensation to affected stakeholders, including NuCoal and its shareholders.', and the following paragraph be inserted instead:

'The committee found that the share price for NuCoal Resources was adversely affected, at numerous stages, by the public controversy over the granting of EL7270 and the ICAC inquiry that followed. The volatility in the share price reflected an appraisal by the market of the relative risk posed by the controversy at critical stages. The committee notes that all investment in shares carries some level of risk and that NuCoal investors were alerted to this risk in the company's prospectus.'

Mr Shoebridge moved: That the motion of Mr D'Adam be amended by inserting at the end: 'As noted above, we do not rule out the existence of shareholders who purchased in good faith without any knowledge of the controversy. On the evidence before us, we could not draw a firm conclusion on how to determine any such class of shareholders.'

Amendment of Mr Shoebridge put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mr Shoebridge, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Amendment of Mr Shoebridge resolved in the affirmative.

Mr Khan moved: That the motion of Mr D'Adam be further amended by omitting 'The committee notes that all investment in shares carries some level of risk and that NuCoal investors were alerted to this risk in the company's prospectus.'

Amendment of Mr Khan put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane, Mr Shoebridge.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr D'Adam, as amended, put and passed.

Resolved, on the motion of Mr D'Adam: That paragraph 2.103 be omitted: 'However, the committee must equally acknowledge that there are some significant outstanding issues which the committee could not determine.' and the following new paragraph be inserted instead:

'The committee acknowledges that there are a number of significant outstanding issues that it felt it could not determine.'

Resolved, on the motion of Mr Khan: That the following new paragraph be inserted after paragraph 2.104:

'The Committee expresses its concern about any proposal that leaves it to a third party to make important policy decisions on behalf of the Government. Equally, it is inappropriate for the Bill in its current form to proceed without a clear understanding of the extent of the liability this may create for the Government, and the people of New South Wales.'

Resolved, on the motion of Mr D'Adam: That:

- paragraph 2.105 be omitted: 'That aside, the committee recommends that the Bill proceed, and that these outstanding matters be addressed by the government, where appropriate.' and the following paragraph be inserted instead:

'The committee recommends that the Bill not proceed and that any outstanding matters be addressed by the government, where appropriate.'

- Recommendation 1 be omitted: 'That the Bill proceed to be considered by the Legislative Council, subject to the NSW Government addressing outstanding matters raised during this inquiry, where appropriate.' and the following new recommendation be inserted instead:

'That the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 not proceed in its current form'.

Mr Shoebridge left the meeting.

Mr D'Adam moved: That the following new recommendation be inserted after Recommendation 1:

**'Recommendation 2**

That the NSW Government address the outstanding matters raised during this inquiry, where appropriate.'

Mr Khan moved: That the motion of Mr D'Adam be amended by inserting ', including the issue of compensation for innocent shareholders' after ' where appropriate'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mr D'Adam, as amended, put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Original question of Mr D'Adam, as amended, resolved in the affirmative.

Mr D'Adam moved: That paragraph 2.106 be omitted: 'Although the focus of this inquiry has been on the cancellation of EL 7270 over Doyles Creek, and the impact of this on NuCoal and its shareholders, the committee acknowledges that other exploration licences have been cancelled under similar circumstances. In particular, we note the cancellation of licences over Mount Penny and Glendon Brook, and acknowledge that Cascade Coal and its shareholders may be similarly affected by these cancellations. In addressing the

outstanding matters raised during this inquiry, the committee encourages the NSW Government to also consider the affected stakeholders of these cancelled exploration licences.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Moselmane.

Noes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Khan moved: That paragraph 2.106 be amended by:

- omitting 'under similar circumstances. In particular, we note the cancellation of licences over Mount Penny and Glendon Brook, and acknowledge that Cascade Coal and its shareholders may be similarly affected by these cancellations.
- Inserting 'other' before 'cancelled exploration licences.'

Question put.

The committee divided.

Ayes: Ms Cusack, Mr Fang, Mr Khan, Mr Roberts, Mrs Ward.

Noes: Mr D'Adam, Mr Moselmane.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential, unless otherwise published by the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

That the report be tabled on Wednesday 30 October 2019.

## **7.2 Material used in the final report**

The committee noted the most recent correspondence received from the Office of Public Prosecutions regarding the publication of material that may be adverse to any accused persons in trials arising from Operations Acacia and Jasper.

Resolved, on the motion of Mr Khan: That the committee publish the following material for use in the final report:

- Independent Commission Against Corruption, *Operation Acacia, Investigation into the Conduct of Ian Macdonald, John Maitland and Others – ICAC Report*, August 2013 – chapters 1 and 2, and Appendix 4.
- Independent Commission Against Corruption, *Operations Jasper and Acacia – Addressing outstanding questions – ICAC Report*, December 2013 – chapter 1 and pages 16-17.
- Independent Commission Against Corruption, Public Hearing – Operation Indus, Jasper and Acacia, Transcript of proceedings, 16 April 2013, pages 6550, 6553 and 6555.
- High Court of Australia, *NuCoal Resources Ltd v State of New South Wales*, Plaintiff's chronology, 22 October 2014.

**8. Adjournment**

The committee adjourned at 4.20 pm, *sine die*.

Tina Higgins  
**Clerk to the Committee**