

The Hon Niall Blair
Chairman
Law and Justice Committee
Parliament House
6 Macquarie Street
Sydney NSW 2000

9/09/2019

**Re: Submission from Shareholders in NuCoal
The Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019**

Dear Sir,

- 1) Firstly, we would like to thank the Committee for inviting my wife and I to give testimony regarding our experience with regard to our NuCoal shareholdings. Mr Blair, we would beg your indulgence to allow us to make a further submission to the Committee with some comments following on from the interview on the 9th August 2019.

Analogies

- 2) It is our opinion that analogies attempting to explain the situation surrounding the removal of EL7270 were at best inappropriate and clearly identify that this is a complex situation to understand. The first and second analogy were presented by the Hon. Mr Trevor Khan and the third by Mr David Shoebridge. These two Honourable Members tended to control much of the discussion on the day, but could not convey simple analogies adequately.
- 3) On Page 2 of the 'Uncorrected Text', Mr Kahn introduces the concept of a Car Wash ... ***"Let us suppose that instead of NuCoal purchasing the shares in the Doyles Creek Mine it purchased the shares in say a car wash."*** Mr Khan goes on to introduce a party that had ***"severely injured themselves"*** at the car wash, but who hadn't laid claim to compensation at that time and that the owner of the car wash was unaware of the incident. While it seems superfluous to state that NuCoal did not buy shares in a Car Wash! The granting of an Exploration Licence is a completely different situation and unrelated to any open market purchase.
- 4) We are at a loss to understand how this analogy actually assists with anyone's understanding of the situation as it relates to NuCoal. What does Mr Khan believe the liability actually is? Did the State reposes the car wash? This analogy raises more questions than it tries to resolves. It does not satisfactorily relate to the granting on an Exploration Licence which is the express responsibility and obligation of a Minister of the State to decide. There was no 'accident', it is our layman's opinion that the granting of the EL was a deliberate and legal act as per the Mining Act, Cl 22(1) 1992 – 29, which could happen again today.
- 5) Mr Khan's analogy gets messier from here changing to a different form where Mr Khan states, ***"you acquire a company, rather than the assets of that company, any liabilities that rest with the company also are acquired."*** We would assume if those liabilities are existent ("that rest with the company") then the due diligence would have discovered them. Again,

we are not certain the analogy helps in the understanding of the granting of EL7270 and the sale/purchase by NuCoal.

- 6) Shortly after this, Mr Shoebridge (on Page 4) in what appears to be an attempt to dig Mr Khan out of his failing Car Wash venture introduces a third analogy in an attempt to assist with the understanding (or perhaps more correctly misunderstanding) of the NuCoal situation. ***“But if you purchase a car and you do your due diligence and you believe the person you are purchasing it from had good title, and you hand over your money and you get the car, but it turns out later that the person who sold you the car did not have good title. It was stolen or somebody else’s property. Then you simply do not own the car.”*** And he goes on. Nevertheless, the analogy presumes that an act of theft has taken place i.e. that someone stole a car - a car thief. Again this presupposes that the Minister did not have the authority to grant the Exploration Licence, which as described above is simply not the case. Let alone the inappropriate comparison between the purchase of a car and the granting of an EL, in the latter, the State and legislation gives the Minister for Mines the right to grant the Licence.
- 7) It strikes us that these analogies have done nothing to clarify the matter, but rather they have muddied the waters.
- 8) Thankfully, the Honourable Mr Rod Roberts had a better grasp of the central issue, when he asked of myself, “Did they (the companies) go down the tube because of Government intervention.” Clearly the Government intervention was the prime reason for the removal of the EL. There was no car wash or buying and selling of cars. This was a decision by a Minister of the State granting a licence which was within their power to do so.
- 9) Later in the proceedings (Page 29) Mr Shoebridge states, ***“I did not say car thief, I said buying and selling cars.”*** While I acknowledge that Mr Shoebridge did not literally say ‘car thief’, his analogy certainly implies that there was a car thief (***“It was stolen”***, Page 4). Also he did not say as he claimed, ***“buying and selling cars”*** which may need to be corrected. As a result of this is it possible that Mr Shoebridge inadvertently misled the gathering. Which supports our view that the analogies did not help clarify the situation for NuCoal and the State of New South Wales.
- 10) On Page 4 of the record Mr David Shoebridge says, ***“There is a legal maxim that starts with “Nemo dat” It is our contention that “Nemo dat quod non habet”, - does not apply because the full chain of granting of the Exploration Licence by the Minister was legal and valid.***

Isaac Plains – Sale and Purchase

- 11) On Page 32, I was asked issues regarding compensation and the value of EL’s etc. I am not sure that this example is necessarily relevant to this case, but I cite it for your background information regarding the value of coal assets.
- 12) Aquila Resources sold its 50% stake in the active open cut Isaac Plains Coal Mine in Queensland for a reported A\$430M in 2012 to the company Sumitomo. Later, the mine was sold to Stanmore Resources just 3 years later in 2015 for \$1 (one dollar), they bought the company and agreed to take the liability of rehabilitation with it. The rehabilitation liability and market value changes certainly accounts for some of the discrepancy in the sale price.

The conclusion that we draw from this is that the assessment of value is often in the eye of the beholder. The reason I cite this case is that any purchaser looking at EL7270 may have considered the conditions set by the Minister; to construct a 'teaching mine' and be forced to have to go underground as opposed to open cut the resource to have a significant impact on the value of the asset (the EL). It is therefore important to consider all facets of any transaction and not to jump to conclusions without a full and appropriate assessment by qualified persons.

- 13) On Page 5, Mr Khan says, "**Two major mining licence transactions netted, over a couple of years, the New South Wales Government \$400 million, or there about. Then we come to the Doyles Creek mine.**" I think the above example regarding Isaac Plains, is one where purchases in an open market, where a willing buying and seller are present, pay different amounts given various circumstances. In the two transactions mentioned by Mr Khan there is no appropriate comparison, no open attempt to tally the value of each situation, no context. Yet we know that EL7270 had significant constraints placed on it by the Minister that any buyer had to seriously consider prior to purchase.

In closing we thank you for your consideration and wish the Committee well in their deliberations.

Youths Faithfully

On behalf of:

Pauline & Rodney Doyle