

**INQUIRY INTO MINING AMENDMENT
(COMPENSATION FOR CANCELLATION OF
EXPLORATION LICENCE) BILL 2019**

Name: Name suppressed

Date Received: 18 July 2019

Partially
Confidential

18 July 2019

The Hon Niall Blair MLC

Parliament House
Macquarie Street
SYDNEY NSW 2000

Subject: Inquiry into the Mining Amendment (Compensation for Cancellation of Exploration Licence) Bill 2019 ('Compensation Bill')

Dear Niall,

1. There should be no doubt that the actions of the NSW Government under the former premier Barry O'Farrell and the NSW ICAC have directly influenced the NSW Parliament to enact draconian legislation to expropriate assets of NuCoal Resources Ltd ('**NuCoal**'). This has led to the savings of +3,000 local and international investors, being taken through no fault of their own, rather from the (now unproven) duplicity of various government officers and an executive arm of the NSW Premier's Office.
2. The Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014 ('**Amendment Act**') was unprecedented in Australia and completely ignored NuCoal's innocence. The legislation:
 - cancelled the EL without the due process afforded under the *Mining Act 1992*;
 - denied access to any legal right of appeal;
 - **absolved the Government of liability for the conduct of its Ministers and employees; and**
 - required NuCoal to give to the Government – free of charge - all of the confidential exploration data that NuCoal had paid for at a cost of tens of millions of dollars.
3. The unchallenged passing of the Amendment Act, despite ICAC's own documented recommendations to consider compensating innocent parties, has been directly responsible for stealing privately held property and was done so under very dubious and now unsubstantiated circumstances. Your own lack of oversight of NSW ICAC has also lead to the jailing of potentially innocent individuals, Ian MacDonald and John Maitland, in the process via this agency concealing extensive exculpatory evidence.^{1,2,3}
4. The Compensation Bill, provides an independent process to review the facts, provide compensation if deemed appropriate and allow the Rule of Law to be restored in NSW. The NSW Government has compensated many (if not almost all) individuals and mining companies after their assets have been expropriated. In particular I note the recent payouts to Durham Holding (\$27M), Shenhau Watermark (\$262M) and BHP Carooona (\$220M). Do I need to remind you that our own Constitution protects property from such interference?

*Section 51(xxxi) of the Constitution provides that the Commonwealth Parliament may make laws with respect to the **acquisition of property on just terms from any State or person** for any purpose in respect of which the Parliament has power to make laws.*

¹ Selective exculpatory evidence that the NSW Court of Appeal will now surely review during any proposed retrial of Ian MacDonald and John Maitland (if in fact it ever now takes place):

- MacDonald and Maitland didn't know of each other until at least 18 months after the training mine was first proposed: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#docid/HANSARD-1820781676-76263/link/89>
- DPP's key witness had a known criminal background and cognitive impairment at the time, which ICAC knew: <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#docid/HANSARD-1820781676-76836/link/89>

² ICAC denies duty to reveal exculpatory material, <http://wavetheflag.org.au/2016/08/19/icac-denies-duty-to-reveal-exculpatory-material/>

³ 'ICAC should be investigated over mine licence evidence', <http://wavetheflag.org.au/2018/03/16/icac-should-be-investigated-over-mine-licence-evidence/>

5. Private property rights are the most fundamental principal of any democratic society. This is precisely why a group of US investors in NuCoal are still seeking the US Government to take the Commonwealth Government to International Arbitration Court under the AUSFTA for this illegal expropriation act. 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. The inference of the NSW Government acting like a "banana republic" is very disturbing.⁴ I understand US investors will continue to demand that they be allowed to enter arbitration in the International Court of Justice to seek compensation under the existing FTA. Consequently, it is difficult to see how the Commonwealth Government ultimately avoids its responsibility in this case given the estimated compensation bill of at least \$131M to US investors in isolation under international laws.
6. NSW Parliament were clearly misled into enacting legislation to expropriate assets of NuCoal as has been now clearly been exposed by your own whistleblower - Dr Peter Phelps⁵. As such your prior decisions in respect of the Amendment Act continue to unravel in the courts and in the public arena. Surely the repeated and vehement attacks from the likes of Alan Jones and Chris Merritt⁶ on NSW ICAC and Parliament is having a detrimental impact on how society perceives its elected representatives.

Perhaps the

answer as to why this happened lies within Special Reports 18/03 to the NSW Parliament concerning the NuCoal complaint, in which ICAC's Inspector Bruce McClintock SC simply applied the strict definition of maladministration, abuse of power or serious degree of wrong doing under section 57B. According to paragraph 38 of this Special Report, the Inspector's professional view is that "*inattention, a slip or incompetence by the Commission*" shouldn't be considered despite its perverse consequences to all and sundry⁷. A contrary position, however, may be to consider the extent of the exculpatory evidence, released by Dr Phelps under parliamentary privilege, and the intent of concealing it despite their own recommendations to the DPP. It is this lack of procedural fairness that arguably should be tested as to whether it represented "*serious and systemic corrupt conduct*" under the ICAC Act itself. Indeed, unless properly scrutinised such powers could in effect create a parallel judicial system.

7. Finally, the NSW Parliament's mistakes are now a fact of life, however, it's your response to these errors that now counts. The Compensation Bill provides a pathway to justice via an independent review, which makes it difficult to understand why any MP, that knows the truth/facts to this case, would not support such fair treatment of innocent victims. To paraphrase Plato's *The Republic* "*The heaviest penalty for declining to rule (properly) is to be ruled by someone inferior to yourself.*"

Yours sincerely

⁴ Don't act like a banana republic: US business warns Australia, <http://wavetheflag.org.au/2016/04/16/dont-act-like-a-banana-republic-us-business-warns-australia/>

⁵ 'Shame shared by MPs for cost to investors caused by falsehoods', <http://nucoal.com.au/wp-content/uploads/2017/12/Shame-shared-by-MPs-for-cost-to-investors-caused-by-falsehoods.pdf>

⁶ Alan Jones speaks to Chris Merritt on ICAC and Inspector McClintock 2GB, 21 June 2018 - <https://omny.fm/shows/the-alan-jones-breakfast-show/alan-jones-full-show-june-18-17t-55m50s>

⁷ NuCoal complaint - <https://www.oipic.nsw.gov.au/assets/oicac/reports/special-reports/Report-concerning-a-Complaint-by-NuCoal-Resources-Ltd-about-the-conduct-of-the-ICAC-in-Operation-Acacia-1803.pdf>