

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

Organisation: Name suppressed

Date Received: 23 July 2019

Partially
Confidential

July 19, 2019

Legislative Council
Parliament of New South Wales
Macquarie Street SYDNEY NSW 2000

Dear Honorable Committee Members:

I am writing this submission as an investor in NuCoal Resources (NCR) and the United States Limited Partnership Taurus Funds Management, who were significant NCR shareholders. I respectfully request your support for the Mining Amendment (Compensation for Cancellation of Exploration License) Bill of 2019.

Innocent investors affected by the cancellation of NuCoal's mining and exploration licenses by the New South Wales (NSW) parliament are long overdue for an open and impartial assessment process. The action by the 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. The impact of this was to virtually eliminate avenues of legal redress for NuCoal and its U.S. shareholders like

who were left with no opportunity to challenge the merits of the corruption allegations. 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.

NuCoal has never been implicated in any wrongdoing whatsoever in the original award of the mining license to Doyles Creek Mining or its subsequent acquisition by NuCoal. For years, the United States Trade Representative as well as the Florida Congressional delegation have been urging the governments of Australia as well as New South Wales to provide a fair and impartial hearing for innocent investors. The matter caused such concern that, citing a "change in circumstances", on October 26, 2017, the U.S. Trade Representative, Ambassador Robert Lighthizer, formally requested consultations with Australia as stipulated in the Australia – U.S. Free Trade Agreement (AUSFTA). In relevant part, the request stated: "While the United States does not take a view on the merits of these [underlying] allegations, the United States believes that the enactment of legislation by the Australian state government cancelling a hydrocarbons exploration license and denying U.S. investors the opportunity to seek compensation in Australia's domestic courts constitutes a change in circumstances affecting the settlement of investment disputes meriting consultations under Article 11.16. Further, the United States is compelled to request consultations with a view towards allowing the U.S. investors to arbitrate their claims due to the longstanding lack of resolution of this matter."

The failure of the governments of Australia and New South Wales to address the matters led USTR in its 2017 National Trade Estimate Report on Foreign Trade Barriers to conclude that, "number of recent instances of Australia's state or territorial governments cancelling existing

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foreign investment projects has prompted some concern about increased risks facing foreign investors in Australia.”

When the ICAC reported their findings, it recommended that the Government compensate innocent parties. I believe the proposed bill, the Mining Amendment (Compensation for Cancellation of Exploration License) Bill of 2019, is consistent with the original recommendations that innocent investors should be held harmless.

We request that you support the bill so that we may finally have a fair hearing. Thank you for the opportunity to make a submission.

Sincerely,