



# Company Statement

18 November 2024

## Ian MacDonald Appeal Dismissal

The appeal by Ian MacDonald, who was the Minister that awarded EL7270 to Doyles Creek Mining, has now been decided. The Appeal has been dismissed.

This now brings all current legal processes to an end, so what we now have is as follows:

- Ian MacDonald (the **Minister**) is guilty of misconduct in public office
- John Maitland is a successful lobbyist who is not guilty of any allegations made by the State of NSW (Supreme Court decision, December 2023), and
- NuCoal (a mine explorer and developer) (**NCR**) and its shareholders are innocent of any and all possible allegations and inferences (ICAC statements during and following Operation Acacia plus Supreme Court judgment in September 2015).

So, what does this all mean?? Basically, it means that

- 1. the "culpability" in this whole debacle rests fairly and squarely with the NSW Government, because the debacle was caused solely by the actions of one of its own Ministers – and no one else!**
- 2. The NSW Government obviously knew in late 2013 that this problem existed for them, because it has already been established and admitted by the ICAC Inspector that the Premier was having regular conversations with the ICAC Commissioner before the verdict was published**
- 3. So, the NSW Government, which was being advised by serious legally capable people, knew that**
  - **the Minister was in the frame for corruption because of Operation Acacia,**
  - **politically, they would have to cancel EL 7270 as a result**
  - **if they cancelled EL 7270 in accordance with the Mining Act (i.e. the normal legal way), NCR would be able to sue for compensation,**
  - **so they had to "confiscate" it in a way that was not "normal" so they did not have to pay compensation!**

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**ASX:NCR • Share Information**

Issued Shares: 768.6m

**Board of Directors**

Chairman:	G. Galt
Non Executive Director & Company Secretary:	G. Lewis
Non Executive Director:	M. Davies

4. so they purposely “engineered” specific legislation, the so-called Mining Amendment Act, to confiscate/cancel EL 7270 without compensation. In one fell swoop, this MAA confiscated the asset, indemnified the State against the actions of its own Minister and denied compensation for NuCoal – ignoring the advice of even the ICAC Commissioner who said that compensation should be considered!
5. as this legislation was quite unusual and might prove difficult to successfully legislate as it threw out the Rule of Law completely, the Government recalled Parliament during the New Year holidays to urgently pass the one punch legislation, and then blindsided Parliamentarians with the MAA, which was completely unexpected, and gave them only a few hours’ notice to vote. The vast majority of Parliamentarians had not read the proposed law (and probably still haven’t), and it hadn’t been sent to any committees for review - but the law was passed in any case!

Put simply, this was a deliberately engineered strategy by the State Government to avoid its responsibilities by indemnifying itself against corrupt acts by its own officer and not pay compensation. In other words, a huge “stitch-up”.

Despite their blameless positions, which have been confirmed by the NSW Courts, NuCoal and its innocent shareholders were punished by the State by having their asset “expunged” – which really means legally stolen.

Two Parliamentary Committees have already acknowledged these conclusions!

The conclusions relate to the following set of events

- in August 2008, a NSW Minister awarded Exploration Licence (**EL**) 7270 to Doyles Creek Mining (**DCM**). The courts have confirmed this action was within his power to make.
  - To get to this point, the Minister had been lobbied by DCM in 2007 and 2008 – something which is certainly NOT a crime or any sort.
  - The Supreme Court has confirmed in 2023 that there was no guilt attached to this lobbying or to being a successful lobbyist as a person, by deciding that John Maitland (Chairman of DCM) was not guilty of any offence
- the courts have decided that the Minister misconducted himself when he made the EL award. This did not invalidate the EL award, however.
- in February 2010, NCR purchased DCM and raised capital to fund the commitments made in the EL instrument of award.
  - Due diligence on the EL award was done to normal standards, but there was no way that NCR or DCM could know that the Minister had misconducted himself.
- in August 2010, the NSW Government commissioned an independent probity review into the granting of an Exploration Licence to DCM by O’Connor Marsden, which confirmed that the EL award was made within power
- in November 2011, following the election of a new Government in March 2011, the award of the EL was referred to ICAC who (eventually over two years later) found that the EL was corruptly awarded.
  - ICAC declared that NCR and its shareholders were innocent parties and not part of any corruption

- ICAC recommended that the EL be “expunged” and that innocent parties should be considered for compensation
- in January 2014, the NSW Parliament confiscated the EL without due process or compensation and left NCR shareholders with nothing.
  - **the NSW Government knew at the time that the Minister was in the frame for corruption after the ICAC investigation, and**
  - they also knew that in normal circumstances NCR would be able to sue for compensation on this basis, so
  - **the State engineered a deliberate strategy to avoid its responsibilities by indemnifying itself against corrupt acts by its officers rather than pay compensation and deliberately legislated away its legal obligation to pay!**
- between 2014 and 2019, NCR challenged the decision not to award compensation through all legal means
- in 2019, the Law and Justice Committee of the NSW Upper house recommended that the NSW Government award compensation. This was a unanimous, multi partisan conclusion. **This Committee recognised the moral obligation to pay compensation – an obligation that still exists.**
- in 2019, the Treasurer of NSW (Mr Perrottet) told NCR officers that the matter would be resolved by mid-2020. It appeared that he intended to live up to the obvious moral obligation to pay compensation
- in 2022, after COVID, the NSW Government commenced a process of engagement with NCR which was designed to live up to the moral obligation to compensate.
  - This process stopped abruptly in mid-2022.
  - No advice into why this stopped has ever been provided by the NSW Government
- in March 2023, the NSW Government changed again
  - no further word has been heard from the current Administration as to what they intend to do regarding the 2019 Law and Justice Committee recommendation regarding compensation.
  - NCR has written to the NSW Government to ask where this process is up to.

### **The moral obligation to pay compensation clearly remains to this day**

Some further comments

- When a Minister makes a decision, we as investors in NSW, should all be aware that the Minister might be misconducting themselves and that any rights transferred by the decision could be confiscated without compensation
- Any successful lobbyist will need to get confirmation of their assets or rights from someone other than the Minister as well in the future – just in case some future politician doesn’t like the decision.
- This situation is certainly not the basis for getting investors to invest in NSW, especially NOT in the mining industry.
- The State has lost the trust of investors – how can an investor trust a Government that sets out to deliberately “dud” the investor and then use the muscle of the State to avoid its responsibilities.

**This matter can only be fixed by the NSW Government admitting that it was actually the Government itself that caused this mess and by compensating NuCoal!**

For further enquiries please contact:

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