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Panel of Experts – Political donations

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Submission: Political donations reform

Thank you for the opportunity to provide input into the process to reform political donations in new South Wales.

The Lock the Gate Alliance is a network of 230 groups and thousands of individuals around Australia united to protect landscapes, water resources and communities from inappropriate and unsafe mining.

In New South Wales, Lock the Gate and our members and supporters have experienced first-hand the disproportionate influence and access wielded by coal and gas mining companies. While we do not believe that this influence and access derives solely from those companies' political donations, we believe that the extensive and irreparable damage they can inflict puts them in company with tobacco companies, gambling companies and property developers, all of whom are now banned from making political donations in New South Wales.

In response to the Expert Panel's specific questions, Lock the Gate supports the introduction of full public funding of election campaigns, but accept that implementing such a system in a way that is fair and not subject to legal challenge will take some time. In the meantime, prohibiting donations from mining companies, their staff and contracted public relations and lobbying firms is a high priority for immediate reform while the move to full public funding is underway.

We are heartened by the government's response to the ICAC's current investigation into illegal and inappropriate political donations in the establishment of the expert panel. However, we feel that some immediate measures are needed, as we are now in the six-month "danger zone" for donations ahead of the state election in March 2015.

The current ICAC inquiry will not report until "before Christmas," and the Panel will report on 31 December, which is only three months before the election. In the meantime, mining companies and their lobbyists and representatives may continue to use current political donations law to inappropriately influence the planning system. The Government can forestall this by immediately prohibiting political donations from resource companies and political lobbying firms, and by implementing, post-election, a shift to publicly funded elections in NSW.

Summary of recommendations

1. Donations from mining companies, their staff and contracted public relations and lobbying firms should be prohibited immediately.

2. Penalties for breaches of donations laws should be dramatically increased so that they function as a greater disincentive to corrupt behaviour.
3. New South Wales needs to implement the outstanding items from the 17 recommendations made by the ICAC in 2010 following an investigation into lobbying in NSW.
4. Steps must be taken immediately to prevent the caps and prohibitions that apply in New South Wales being circumvented by the use of Federal affiliates in the lead up to the 2015 election.
5. Immediate action should be taken to make all donations disclosure more timely and more accessible in user-friendly databases for the public to search for key terms and names, with data able to be downloaded, and viewed across time.
6. Consideration should be given to immediately reducing the cap on political donations to a substantially smaller amount than \$5,000.
7. New South Wales needs to implement outstanding ICAC recommendations for cleaning up the planning approval and coal exploration processes, as a complementary measure to donations and lobbying reform.

ICAC Findings & Investigations

The ICAC findings and investigations over the last two years in NSW have dealt a devastating blow to the credibility of the political class and political culture in NSW. They have almost destroyed confidence in the integrity of the political system amongst many citizens. The vast reams of ICAC transcripts and exhibits, when perused, point to an extraordinary corruption of good governance and public policy on multiple levels and on a grand scale.

They reveal that a combination of three factors have been disastrously at play: inadequate constraints on political donations, weak controls on lobbyists, and very poor planning controls. Together, these three systemic weaknesses have created a perfect storm of influence peddling, purchasing of political favours and corrupt activities.

It is a vast and complex task to reverse the systemic and deeply ingrained culture of political corruption which ICAC has revealed. Most notably, it will take all three causes of the problem to be thoroughly addressed and will also require a substantive shift in political culture. Reforming political donation laws alone will not be sufficient to reign in the pervasive failures of the current system.

Perhaps the most chilling exhibit that has been presented to ICAC is that provided as part of Operation Spicer, encompassing pages 196 to 199 of [exhibit Z98](#). It provides a terrifying insight into how politics is done in NSW. It is an appeal letter from the NSW Liberal Party to a developer and associated company, asking them each to contribute \$150,000 to employ a researcher within the Liberal Party to develop policy and advise Barry O'Farrell, his chief of staff, and Eric Roozendaal. The letter states that "*The researcher will also be available for Washington H. Soul Pattinson & Company and other industry stakeholders to access the research findings and to suggest policies that will be in the interest of the people of NSW*". The Liberal Party was accepting funds for a key policy position and making it abundantly clear that the donors would be in a key position to influence/determine policy as a result. Industry was paying to write public policy. Extraordinary.

There is no doubt that wide and deep reform is required. We urge the Panel to keep this in the forefront of their minds whilst undertaking the review and making recommendations. We understand that the scope of the review is limited, but believe it is appropriate for the Panel to have an eye to the wider issues that interact with donations reform as necessary prerequisites to cleaning up NSW. The very future of our modern democracies is undoubtedly at stake.

Discussion

Donations from property developers, tobacco companies and gambling and liquor companies have been prohibited, and caps on political donations have been brought in to limit the amount any single person or company could give to a party or candidate. But the caps and prohibitions do not apply at the Federal level, so tobacco, liquor, gambling and property development money, and donations above and beyond the cap can be given to political parties in that jurisdiction, and then passed on to New South Wales parties and candidates.

Lock the Gate supports full public funding of elections, though we acknowledge there are a number of difficulties that moving to this model would create. We would not like to see such a move restrict the diversity of independent and minor party candidates, for example, nor see it wound back in court. We agree that broader reform of party governance and culture will be required, as will reform of lobbying culture and accept that it will take time to implement these measures in a way that ensures the system is not circumvented, as the cap and the property developer ban has been.

Nevertheless, we are strongly of the view that donations from mining companies and lobbying firms are of the same ilk as donations from tobacco, gambling, liquor and property development and should be prohibited in New South Wales immediately, as we are now in the “danger zone,” six months ahead of the 2015 election.

It is our observation that reform of corporate lobbying, planning and political donations reform are closely linked. Some efforts have been made in NSW in the last four years to limit the impact of political donations and implement reforms on lobbying, but they have been circumvented and have not been decisive enough to weed-out influence peddling and the sway of private money over public decision-making.

Evidence from the lobbyists’ register and the Electoral Funding Authority reveals that professional lobbying firms that list coal and gas companies or their industry associations as clients made substantial political donations in the lead up to the last state election. Some of these lobbying firms employ former politicians and political advisers, deepening the imbalance between the public interest and the influence and interests of mining companies.

An investigation by *New Matilda* in 2012 revealed that the big unconventional gas drillers — Metgasco, Santos and AGL — had at that time seven separate lobby firms working for them: Hawker Britton, Barton Deakin, MacGregor Public Relations, Australian Public Affairs, Kreab Gavin Anderson and Statecraft.¹ The NSW lobbyist register shows that Santos is currently a client for Kreab Gavin Anderson and Bespoke Approach, and the Australian Petroleum Production and Exploration Association (APPEA) is a client of Crosby-Textor, who boast former Premier Barry O’Farrell’s former Chief of Staff Peter Schmigel among their chief lobbyists.

We have reviewed recent information and found that lobbying firms are considerable political donors. It seems to us a simple matter for mining companies – or anyone else – to circumvent the cap on political donations by paying extra for consulting services to companies that then make political donations.

One example that interests Lock the Gate and our members is gas giant Santos Ltd. Santos has major coal seam gas and LNG projects operating or under construction in Queensland, and owns Beach

¹ 6 February 2012. “Gas drillers bring heavy hitters.” *New Matilda*. <https://newmatilda.com/2012/02/06/gas-drillers-bring-heavy-hitters>

Energy, which is exploring for shale gas in South Australia. Santos also owns the Narrabri Gas Project, proposing 850 coal seam gas wells in the Pilliga in north-west New South Wales. The AEC's annual donation returns for 2012/13 financial year revealed that Santos gave \$80,270 to various branches of the ALP in that year, \$57,228 to branches of the Liberal Party, \$10,030 to the Federal National Party and \$19,843 to the Queensland LNP. This brings the company's direct and disclosed political contributions Federally and in States outside NSW to \$167,371.

In NSW, records from the EFA reveal political contributions to political parties directly from Santos of over \$39,000 in the four years since January 2010, mostly prior to the introduction of the cap. If we add to that contributions of Eastern Star Gas, the proponent of the Narrabri Gas Project before it was bought by Santos, this contribution rises to over \$67,300. Santos also either employs now, or has previously employed several lobbying firms. Currently, Santos is listed as a client of Kreab Gavin Anderson. Records from the EFA indicate that Kreab Gavin Anderson has made nearly \$50,000 in political contributions since January 2010, most of which has gone to the Liberal and National Parties. Other lobbying firms that have been previously associated with Santos, or who now list the APPEA among their clients have also made substantial political contributions. According to *New Matilda*², Santos formerly employed Australian Public Affairs (donated over \$30,000 in the last four years)³ and Macgregor Public Relations (donated \$12,000 in 2010/11⁴) to lobby on its behalf.

As another example, the lobbying firm Statecraft lists as its clients Cockatoo Coal, KEPCO, POSCO, Hume Coal, Shenhua Watermark. Michael Priebe, former advisor to Mark Vaile and former State Director of the NSW Nationals is a "Managing Partner" of the company and their lobbyist team includes several former political advisers. The company made a \$4,850 donation to the NSW Liberal Party in 2010.⁵

We highlight these examples because we believe that political donations from mining companies and lobbying firms contracted to represent them, particularly when former political figures are involved in those firms, give mining companies undue and unfair influence over decisions that have a profound impact on the lives of our members. We have attached for your information a spreadsheet outlining the scale of political donations made by lobbying firms contracted to mining companies in the lead up to the last state election and just after, as well as donations from miners themselves. The total amounts to \$600,000 in donations from miners and their lobbyists.

In addition to political donations reform, there are a number of complementary reforms that we believe are crucial to the success of donations reform in New South Wales, and these relate chiefly to cleaning up lobbying, and fixing the planning and mine approvals system. Attention to these complementary matters in planning and lobbying reform fall within the terms of reference for the panel as they are matters relevant to political donations, the three matters: donations, planning decisions and lobbying being revealed over the course of the last three years to be intricately interconnected in New South Wales.

Lock the Gate believes New South Wales needs to implement the outstanding items from the 17 recommendations made by the ICAC in 2010 following an investigation into lobbying in NSW. Several have been implemented so far: NSW now has a lobbyists' register and code of conduct and under

² 6 February 2012. "Gas drillers bring heavy hitters." *New Matilda*. <https://newmatilda.com/2012/02/06/gas-drillers-bring-heavy-hitters>

³ NSW Election Funding Authority, 2014. Disclosure database. Accessed 30 April 2014.

⁴ NSW Election Funding Authority, 2014. Disclosure database. Accessed 30 April 2014.

⁵ NSW Election Funding Authority, 2014. Disclosure database. Accessed 30 April 2014.

the former Premier Barry O'Farrell, success fees for lobbyists were banned, and officeholders in political parties have been banned from lobbying government officials. The code of conduct does not, however, prevent gifts and donations being made by lobbyists. The Commission recommended a prohibition on lobbyists and their clients offering, promising or giving any gift or other benefit to a Government representative being or likely to be lobbied. There is evidence of extensive political donations by lobbying firms in the lead up to the last State Election, including many that represent mining companies, and one that has been mentioned at the current corruption inquiry. Furthermore, an ICAC recommendation in 2010 to impose a cooling off period to stop political advisors and Ministers moving straight into lobbying has not been implemented. The Premier's former chief of staff, Stephen Galilee, for example, now leads the NSW Minerals Council and regularly publicly attacks Lock the Gate's members and supporters in public.

The other relevant complementary reform measures are for the planning system. The ICAC made sixteen recommendations to remove incentives for corruption in the planning system. These include the reinstatement of mandatory and objective criteria for decisions, adequate opportunity for competing public interests to be considered in determining State significant development and expanding third party appeal rights. Lock the Gate and our member groups have made numerous submissions to the Government about the extreme bias of the planning system in favour of mining companies and we believe that the ability of these companies to make political donations and employ former politicians and advisers as lobbyists are major factors in their undue influence over Government.

Lastly, ICAC also made recommendations on 'Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources' 2013. They recommended an assessment panel be created to provide a triple bottom line assessment of the environmental, social and economic factors of allocating an Exploration Licence, and that this information be provided to the steering group before decision were made on allocation. However, this recommendation, and others, have not yet been implemented.

We would like to again thank the panel for their attention to these matters, and look forward to participating the process of donations reform.