

Submission to the Review of the Independent Planning Commission



The Centre for
Public Integrity

Corruption risk

Corruption risk is high in any industry that relies heavily on the provision of permits and licences to do business, particularly when there is a limited number of licences available. International evidence has shown that the mining industry and property development are among the highest risk industries for corruption.

A report by Transparency International in 2017 found that "*natural resources are too often vulnerable to corruption*".¹ The report highlighted corruption risk in mining in Australia was high due to inadequate due diligence, large industry influence and policy capture including through lobbying and political donations in the mining approval process.²

In NSW the risk of policy capture highlighted by Transparency International is great, due to the mining industry engaging in extensive lobbying activities. Analysis of NSW Ministerial diaries shows the mining industry met with members of the executive 188 times over 235 weeks.³ NSW ICAC has uncovered corrupt conduct in the provision of mining licences, including cases involving former Member of Parliament Eddie Obeid, former Resources Minister Ian Macdonald, union official John Maitland, and Cascade Coal.⁴

Property developers in NSW have regularly been investigated for corruption and misconduct. Wollongong, Randwick, Auburn and Canterbury are among a long list of council areas where property developers have been involved in corruption scandals.⁵ The high corruption risk has led to NSW and Queensland banning political donations from property developers. Both major parties have allegedly circumvented these laws in NSW, including a recent ICAC inquiry hearing allegations of a \$100,000 cash donation from Chinese property developer Huang Xiangmo. These donations increase corruption risk, with former NSW

¹ Transparency International, 2017, *Unearthing corruption risk in mining approvals*, Media release 5th December 2017,

https://www.transparency.org/news/feature/unearthing_corruption_risks_in_mining_approvals

² Transparency International Australia, 2017, *Corruption risk: Mining Approvals in Australia*, Mining for Sustainable Development Programme Report, <http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/>

³ Evershed, 2019, *Mining sector met with Ministers almost every week over four years*, The Guardian 22 March 2019, <https://www.theguardian.com/australia-news/2019/mar/22/mining-sector-met-nsw-ministers-almost-every-week-over-four-years>

⁴ Besser, 2013, *Eddie Obeid, Ian Macdonald, Moses Obeid engaged in corrupt practices: ICAC*, Sydney Morning Herald, <https://www.smh.com.au/national/nsw/eddie-obeid-ian-macdonald-moses-obeid-engaged-in-corrupt-practices-icac-20130731-2qyqg.html>

⁵ NSW ICAC, *Past investigations*, accessed 14 November 2019, <https://www.icac.nsw.gov.au/investigations/past-investigations>

Labor General Secretary Jamie Clements telling an ICAC inquiry that Huang Xiangmo had paid political donations in return for political influence and access to senior party figures.⁶

Companies seeking approvals for property developments have been found to hide political donations to major parties during the approval process. Woolworths, Caltex, Origin Energy, AMP and Incitec Pivot and 8 other companies declared sizeable political donations to the Liberal and Labor parties to the Electoral Commission, but failed to declare them when seeking approval to develop property in NSW, including \$100,000 from Woolworths to the major parties.⁷

Integrity Principles

The Centre for Public Integrity has published 10 Principles for protecting the integrity of our accountability institutions. The principles provide the elements required to ensure accountability institutions have the independence, resources and powers necessary to perform their function.

Principles for protecting the integrity of our accountability institutions:⁸

1. Independence from government
2. Freedom from political attacks
 - a. Protection from political retribution
3. Secure and sufficient funding
 - a. Multi-year funding provided
4. Broad jurisdiction and strong powers, including public hearings
5. Secure tenure of senior officials
6. Non-partisan appointments
 - a. Merit based
 - b. Fair and transparent appointment processes
7. Transparency and compliance
 - a. Public access to accountability institutions' advice to government
 - b. Ability for accountability institutions to request progress reports from government on integrity recommendations
8. Stronger recognition of the public benefit of advocacy as a charitable purpose
9. Independent from commercial interests
 - a. Proper funding of public broadcasters
 - b. Diversity in media ownership to break current duopoly
 - c. Close the revolving door between big 4 consultancies and public service, and industry and regulators
10. Mandatory reporting of public sector misconduct to a National Integrity Commission
 - a. Adequate protection of whistle-blowers
 - b. Retribution for failure to report to NIC

⁶ Whitburn, 2019, *Donations 'a price paid for influence', former NSW Labor boss admits at ICAC*, Sydney Morning Herald 11 October 2019, <https://www.smh.com.au/national/nsw/donations-a-price-paid-for-influence-former-nsw-labor-boss-admits-at-icac-20191011-p52zrl.html>

⁷ Knaus, 2019, *Political donations hidden from NSW planning authorities by big corporations*, The Guardian 7 October 2019, <https://www.theguardian.com/australia-news/2019/oct/07/political-donations-hidden-from-nsw-planning-authorities-by-big-corporations>

⁸ The Centre for Public Integrity, 2019, *Protecting the integrity of our accountability institutions*, Project report, <https://publicintegrity.org.au/wp-content/uploads/2019/10/Report-Protecting-the-integrity-of-accountability-institutions.pdf>

Independent Planning Commission

The Independent Planning Commission (IPC) is a crucial institution within our accountability framework. A 2010 report by the Independent Commission Against Corruption (ICAC) found that *"expanding the decision-making role of the PAC [IPC] would provide an important safeguard against potential corrupt conduct"* and *"referral to the PAC is seen as a safeguard because of its independence. In addition, the opportunity for a person to approach PAC members corruptly is comparatively limited..."*⁹

The IPC's role was expanded in 2011 on recommendation from ICAC after ongoing investigations uncovered serious and systemic corruption within the planning approval process. IPC was given the ultimate approval decision for state significant projects that were deemed political or controversial, as defined by council or public opposition, or political donations. ICAC also recommended improving transparency by giving the IPC quasi-judicial status, appointing IPC members via a public process, and appointing members on a full time basis.¹⁰ These additional recommendations were not implemented.

The corruption risk within planning is exacerbated in NSW for projects of state significance. The state significant project status withdraws the normal approval processes in regards to water use, pollution control, heritage protection, fire risk and biodiversity. Currently the Independent Planning Commission determines approvals for project of state significance is there has been political donations, or council or public opposition. All other approval decisions are made by the Minister. This means the Independent Planning Commission is the only independent agency involved in the approval process.¹¹

The absence of the IPC will leave all major project approval decisions to the discretion of the Minister. Former ICAC Commissioner David Ipp AO QC has said that *"returning to ministerial discretion on mining licences is a recipe for corruption."*¹²

Requiring the IPC to follow the advice of departmental Assessment Reports also increases corruption risk. The Department of Planning, Industry and Environment works under executive power, providing no independence. The Department of Planning does not meet the Integrity Principles set out above, and is therefore not able to fulfil the role of an accountability institution. It is not independent from government and executive, it does not provide for non-partisan and merit-based appointments, it does not hold public hearings or make its advice publicly available, and it is not sufficiently skilled, resourced, or structured to perform an accountability function.

The review of the Independent Planning Commission has come after extensive pressure from the NSW Minerals Council.¹³ The review itself constitutes an unacceptable attack on two important accountability institutions, undermining both the IPC and NSW ICAC.

⁹ ICAC, 2010, *The exercise of discretion under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Projects) 2005*.

¹⁰ ICAC, 2010, *The exercise of discretion under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Projects) 2005*.

¹¹ NSW Planning, *Major Projects – SSD Process, Determine DA*, accessed 14th November 2019, <https://www.planningportal.nsw.gov.au/major-projects/assessment/state-significant-development/ssd-process/determine-da>

¹² Whitburn, 2019, *Government caving in to industry pressure over planning commission review, say former ICAC bosses*, Sydney Morning Herald 21 October 2019, <https://www.smh.com.au/national/nsw/government-caving-in-to-industry-pressure-over-planning-commission-review-say-former-icac-bosses-20191021-p5320m.html>

¹³ Knaus, 2019, *NSW Minerals Council pressured 'publicly and privately' for review of planning body*, The Guardian 21 October 2019, <https://www.theguardian.com/australia-news/2019/oct/21/nsw-minerals-council-pressured-publicly-and-privately-for-review-of-planning-body>

Recommendations

The Independent Planning Commission should be strengthened in-line with ICAC recommendations and The Centre for Public Integrity's Integrity Principles:

- Implement recommendations from ICAC made in 2010 regarding quasi-judicial status, public scrutiny of appointments, and appointments made on full-time basis;
- Ensure that any member of the public can attend and address public hearings of the IPC;
- Maintain the independent secretariat of the IPC;
- Additional resourcing, including full time staff, and access to scientific expertise;
- Protection through multi-year funding;
- Independence from executive government and Department of Planning, including in making decisions that differ from departmental Assessment Reports.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia.

Public trust is at an all-time low, and private interests are seeking to influence important public policy decisions. Wide reform of our integrity system is needed to restore public interest to the heart of our democracy. The Centre for Public Integrity facilitates collaboration of former judges and corruption experts to research corruption risk and develop reform proposals to promote integrity.

The Centre's Integrity Reform Agenda outlines the necessary reforms to restore public trust:

- Preventing corruption through a National Integrity Commission
- Protecting the integrity of our accountability institutions
- Eliminating the undue influence of money in politics

Current Board members are The Hon Tony Fitzgerald AC QC, The Hon Stephen Charles AO QC, The Hon David Ipp AO QC, The Hon Anthony Whealy QC (Chair), Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC.



The Board of The Centre for Public Integrity from left: Geoffrey Watson SC, Anthony Whealy QC (Chair), Hannah Aulby (Executive Director), Tony Fitzgerald AM QC, Stephen Charles AO QC and George Williams AO.