



New South Wales

# Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to reduce corruption risk, and ensure appropriate decision-making, by removing the ability of those who would benefit from decisions of public authorities or public office-holders to make political donations that could exert influence on, or otherwise affect, the making of those decisions. This is achieved by:

- (a) prohibiting political donations from the mining and petroleum industry, and
- (b) prohibiting the making of environmental planning instruments relating to extractive industries at the request of persons who have made political donations or having regard to submissions made by such persons, and
- (c) prohibiting the granting of certain planning approvals relating to extractive industries to persons who have made political donations or having regard to submissions made by such persons, and
- (d) prohibiting the issue of mining authorisations or petroleum titles to persons who have made political donations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78**

**Schedule 1 [1]** updates the heading to a Division concerning prohibited donations (Division 4A of Part 6), to reflect its extension to the mining and petroleum industries.

**Schedule 1 [2]** makes mining or petroleum industry business entities, and industry bodies representing those entities, prohibited donors. As a result, the making of political donations by those entities, persons or bodies will be prohibited. (Section 96I of the Act makes it an offence for a person to do any act that is unlawful under Division 4A of Part 6 if the person is, at the time of the act, aware of the facts that result in the act being unlawful. Section 96J of the Act provides for the recovery by the Electoral Commission of unlawful political donations.)

**Schedule 1 [3]** specifies that the objects of the section that makes political donations by prohibited donors unlawful include to reduce corruption risk, and ensure appropriate decision-making, by removing the ability of those who would benefit from decisions of public authorities or public office-holders to make political donations that could exert influence on, or otherwise affect, the making of those decisions.

**Schedule 1 [4]** inserts a definition of *mining or petroleum industry business entity* and **Schedule 1 [5]** inserts other definitions consequential on the insertion of that definition.

## **Schedule 2      Amendment of Environmental Planning and Assessment Act 1979 No 203**

**Schedule 2 [1]** makes a consequential amendment to the object of a provision that requires the disclosure of political donations and gifts in relation to any industry making applications or submissions relating to environmental planning or assessment.

**Schedule 2 [2]** inserts definitions used in other proposed amendments.

**Schedule 2 [3]** provides that:

- (a) corporations that have made political donations, or whose close associates have made political donations, in the previous 4 years are ineligible to make certain planning applications or planning submissions in relation to sites proposed to be used for development for the purposes of an extractive industry, or in relation to such development, and
- (b) the Minister and the Secretary must not consider any relevant planning application or planning submission made by a corporation that is ineligible by virtue of the proposed amendments, and
- (c) any environmental planning instrument made or development control plan, declaration, approval, modification or consent considered or granted in breach of that prohibition on the Minister and Secretary is void.

**Schedule 2 [4]** provides that, for the purposes of determining if a political donation has been made in a 4-year period, only political donations made on or after the commencement of the proposed provision making corporations ineligible to donate are to be counted.

## **Schedule 3      Amendment of mining and petroleum legislation**

**Schedule 3** amends mining and petroleum legislation to prohibit corporations that have made political donations, or whose close associates have made political donations, in the previous 4 years from making applications or tenders for, and from being issued with, authorisations relating to exploration or mining of minerals or petroleum.



New South Wales

# Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Bill 2016

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New South Wales

# **Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Bill 2016**

No. , 2016

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## **A Bill for**

An Act to reduce corruption risk by prohibiting political donations from the mining and petroleum industry and by prohibiting the making of planning decisions that favour, and the issue of mining authorisations or petroleum titles to, persons who have made political donations.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

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This Act is the *Mining and Petroleum Industry Political Donations Legislation Amendment (Corruption Risk Reduction) Act 2016*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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<b>Schedule 1</b>	<b>Amendment of Election Funding, Expenditure and Disclosures Act 1981 No 78</b>	1
		2
<b>[1] Part 6, Division 4A, heading</b>		3
Omit the heading. Insert instead:		4
<b>Division 4A</b>	<b>Prohibition of donations from property developers and tobacco, liquor, gambling, mining and petroleum industries</b>	5
		6
		7
<b>[2] Section 96GAA Meaning of “prohibited donor”</b>		8
Insert at the end of section 96GAA (c):		9
or		10
(d) a mining or petroleum industry business entity,		11
<b>[3] Section 96GA Political donations by prohibited donors unlawful</b>		12
Insert before section 96GA (1):		13
(1A) The objects of this section are:		14
(a) to secure and promote the actual and perceived integrity of the Parliament and other institutions of government in New South Wales, by reducing the risk to that integrity that may arise from undue, corrupt or hidden influences over those institutions, their members or their processes, and		15 16 17 18 19
(b) to reduce corruption risk, and undue influence in the government, and ensure appropriate decision-making, by removing the ability of those who would benefit from decisions of public authorities or public office-holders to make political donations that could exert influence on, or otherwise affect, the making of those decisions, and		20 21 22 23 24
(c) to reduce the danger that office-holders will exercise their powers for the benefit of donors in return for donations or decide issues according to the wishes of those who have made large donations valued by the office-holders and not on their merits, and		25 26 27 28
(d) to reduce the potential to compromise the expectation, fundamental to representative democracy, that public power will be exercised in the public interest.		29 30 31
<b>[4] Section 96GB Interpretation</b>		32
Insert after section 96GB (2B):		33
(2C) Each of the following persons is a <i>mining or petroleum industry business entity</i> :		34 35
(a) a corporation engaged in a business undertaking that is mainly concerned with an extractive industry,		36 37
(b) a corporation that has made more than 1 application for any of the following in any calendar year:		38 39
(i) an authorisation under the <i>Mining Act 1992</i> ,		40
(ii) an exploration permit, retention lease or production licence for petroleum under the <i>Petroleum (Offshore) Act 1982</i> ,		41 42
(iii) a petroleum title under the <i>Petroleum (Onshore) Act 1991</i> ,		43

- (c) a corporation that has made more than 1 relevant planning application in relation to development for the purposes of an extractive industry in any calendar year, 1  
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- (d) a person who is a close associate of a corporation referred to in paragraphs (a)–(c). 4  
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**[5] Section 96GB (3)** 6

Insert in alphabetical order: 7

*development* has the same meaning as in the *Environmental Planning and Assessment Act 1979*. 8  
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*extractive industry* means any industry that mainly involves any of the following: 10  
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- (a) prospecting or mining for minerals (within the meaning of the *Mining Act 1992*), 12  
13
- (b) exploring for or recovering petroleum in the adjacent area (within the meaning of the *Petroleum (Offshore) Act 1982*), 14  
15
- (c) prospecting for or mining petroleum on land (within the meaning of the *Petroleum (Onshore) Act 1991*), 16  
17
- (d) the winning or removal of extractive materials other than minerals or petroleum (including sand, soil, gravel, rock or similar substances) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating. 18  
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<b>Schedule 2</b>	<b>Amendment of Environmental Planning and Assessment Act 1979 No 203</b>	1
		2
<b>[1] Section 147 Prohibition on, and disclosure of, political donations and gifts</b>		3
Insert “, except in relation to extractive industries,” after “application, and” in section 147 (1).		4 5
<b>[2] Section 147 (2)</b>		6
Insert in alphabetical order:		7
<i>close associate</i> means a close associate within the meaning of section 96GB of the <i>Election Funding, Expenditure and Disclosures Act 1981</i> .		8 9
<i>extractive industry</i> means any industry that mainly involves any of the following:		10 11
(a) prospecting or mining for minerals (within the meaning of the <i>Mining Act 1992</i> ),		12 13
(b) exploring for or recovering petroleum in the adjacent area (within the meaning of the <i>Petroleum (Offshore) Act 1982</i> ),		14 15
(c) prospecting for or mining petroleum on land (within the meaning of the <i>Petroleum (Onshore) Act 1991</i> ),		16 17
(d) the winning or removal of extractive materials other than minerals or petroleum (including sand, soil, gravel, rock or similar substances) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating.		18 19 20 21 22
<i>political donation</i> means a political donation within the meaning of Part 6 of the <i>Election Funding, Expenditure and Disclosures Act 1981</i> .		23 24
<b>[3] Section 147 (2A)–(2C)</b>		25
Insert after section 147 (2):		26
(2A) A corporation is not eligible to make a relevant planning application or a planning submission in relation to a site proposed to be used for development for the purposes of an extractive industry, or in relation to development for the purposes of an extractive industry, if the corporation, or a close associate of the corporation, has made a political donation in the 4 years before making the application or submission.		27 28 29 30 31 32
(2B) The Minister and the Secretary must not consider any relevant planning application or planning submission made by a corporation that is ineligible to make it by virtue of this section.		33 34 35
(2C) Any environmental planning instrument made or development control plan, declaration, approval, modification or consent considered or granted in breach of subsection (2B) is void.		36 37 38
<b>[4] Section 147 (14)</b>		39
Insert after section 147 (13):		40
(14) For the purposes of determining if a political donation has been made in a 4-year period, only political donations made on or after the commencement of subsection (2A) are to be counted.		41 42 43

## **Schedule 3      Amendment of mining and petroleum legislation** 1

### **3.1 Mining Act 1992 No 29** 2

#### **Section 380AB** 3

Insert after section 380AA: 4

#### **380AB Prohibition on political donors obtaining authorisations** 5

- (1) The object of this section is to reduce corruption risk, ensure appropriate decision-making and minimise any perception of undue influence in the administration of this Act by: 6
  - (a) preventing those who have made political donations from benefiting from decisions of public authorities or public office-holders under this Act, and 9
  - (b) reducing the danger that office-holders will exercise their powers for the benefit of donors in return for donations or decide issues according to the wishes of those who have made large donations valued by the office-holders and not on their merits. 12
- (2) A corporation is not eligible to make an application or tender for, or be issued with, an authorisation if the corporation, or a close associate of the corporation, has made a political donation in the 4 years before making the application or tender. 16
- (3) Any authorisation issued in contravention of this section after the commencement of this section is void. 20
- (4) For the purposes of determining whether a political donation has been made in the 4-year period prior to the making of an application or tender, only political donations made on or after the commencement of this section are to be counted. 22
- (5) In this section: 26
  - close associate* has the same meaning as in section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*. 27
  - political donation* has the same meaning as in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*. 29

### **3.2 Petroleum (Offshore) Act 1982 No 23** 31

#### **Section 92A** 32

Insert before section 93: 33

#### **92A Prohibition on political donors obtaining permits, leases or licences** 34

- (1) The object of this section is to reduce corruption risk, ensure appropriate decision-making and minimise any perception of undue influence in the administration of this Act by: 35
  - (a) preventing those who have made political donations from benefiting from decisions of public authorities or public office-holders under this Act, and 38
  - (b) reducing the danger that office-holders will exercise their powers for the benefit of donors in return for donations or decide issues according to the wishes of those who have made large donations valued by the office-holders and not on their merits. 41

- (2) A corporation is not eligible to make an application for, or be issued with, an exploration permit, retention lease or production licence if the corporation, or a close associate of the corporation, has made a political donation in the 4 years before making the application. 1  
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- (3) Any exploration permit, retention lease or production licence issued in contravention of this section after the commencement of this section is void. 5  
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- (4) For the purposes of determining whether a political donation has been made in the 4-year period prior to the making of an application, only political donations made on or after the commencement of this section are to be counted. 7  
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- (5) In this section: 10  
*close associate* has the same meaning as in section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*. 11  
12  
*political donation* has the same meaning as in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*. 13  
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### 3.3 Petroleum (Onshore) Act 1991 No 84 15

#### Section 21 16

Insert after section 20: 17

#### 21 Prohibition on political donors obtaining petroleum titles 18

- (1) The object of this section is to reduce corruption risk, ensure appropriate decision-making and minimise any perception of undue influence in the administration of this Act by: 19  
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  - (a) preventing those who have made political donations from benefiting from decisions of public authorities or public office-holders under this Act, and 22  
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  - (b) reducing the danger that office-holders will exercise their powers for the benefit of donors in return for donations or decide issues according to the wishes of those who have made large donations valued by the office-holders and not on their merits. 25  
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- (2) A corporation is not eligible to make an application for, or be issued with, a petroleum title if the corporation, or a close associate of the corporation, has made a political donation in the 4 years before making the application. 29  
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- (3) Any petroleum title issued in contravention of this section after the commencement of this section is void. 32  
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- (4) For the purposes of determining whether a political donation has been made in the 4-year period prior to the making of an application, only political donations made on or after the commencement of this section are to be counted. 34  
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- (5) In this section:
- close associate* has the same meaning as in section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*. 1  
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- political donation* has the same meaning as in Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*. 4  
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