



Chris Minns fails to address previous injustice on NuCoal



If Chris Minns had been properly briefed, he might have taken the opportunity to distance himself from the injustice that took place under the previous Coalition government. Picture: NCA NewsWire / Nikki Short

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Chris Minns, the NSW Premier, has established himself as Mr Reasonable. That is why his recent appearance on Sydney radio station 2GB was so surprising. Minns must have known that radio host Ben Fordham would be asking him about the unfair treatment of mining company NuCoal Resources. But the selective nature of the Premier's response suggests those who briefed Minns on this affair decided he did not need to know the truth of the matter. Fordham has been championing the cause of NuCoal for weeks and had a better grasp of the facts than Minns. And those facts are shocking. Fordham told his audience: "NuCoal's exploration licence was cancelled because it was originally issued to another company by the former minister Ian Macdonald, who acted corruptly according to ICAC. But it had nothing to do

with NuCoal. NuCoal just bought the licence.

"They bought it two years after Ian Macdonald issued the licence corruptly to another company.

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"Barry O'Farrell overreacted and cancelled NuCoal's licence. Hundreds of mum and dad investors lost their life's savings. Do you believe that was fair?"

If Minns had been properly briefed, he might have taken the opportunity to distance himself from the injustice that took place under the previous Coalition government.

A proper briefing might also have warned Minns not to make the same mistake that forced former premier O'Farrell to apologise to NuCoal directors to settle defamation proceedings.

O'Farrell's apology, which was filed with the Australian Securities Exchange on March 24, 2015, says, in part: "I accept that ICAC did not make adverse comments about those current directors of NuCoal ... I regret my comments and apologise."

Yet on March 22 – nine years after O'Farrell's grovel – Minns portrayed this affair in a manner that came perilously close to that of his Coalition predecessor.

In the decade since these events were considered by ICAC, the justice system has had plenty of time to consider the conduct of everyone involved.

Yes, there was wrongdoing – but the justice system has determined that that wrongdoing took place entirely within the NSW government – not NuCoal.

It's important to be clear about this: Macdonald, the former mineral resources minister, went to prison, but nobody associated with NuCoal – past or present – has a conviction against their name.

Former minister Ian Macdonald. Picture: Jane Dempster

When Fordham pointed out that NuCoal had nothing to do with the issuing of the licence, Minns sounded just like O'Farrell: "I appreciate that but sometimes companies make terrible decisions that can have devastating impacts for shareholders in particular ... I do feel genuinely sorry for the investors of NuCoal and I know that when you put your life savings, or you put your savings into a company and that company makes a terrible decision in the eyes of the ICAC it can wipe out your investment."

This is possibly the most bizarre statement of all. What decision could the Premier be referring to?

Could it be NuCoal's decision to rely on assurances from the NSW government that the licence had been properly issued before paying \$94m to buy the company that was the original licence-holder?

Or could it be the company's decision to again rely upon the government's assurances and spend another \$40m undertaking exploration?

One of the worst gaps in the Minns narrative was this: he made no mention of the fact that when ICAC called for the licence to be cancelled because of the

way it was issued, it also said innocent parties could be compensated. Compensation for the innocent was ignored by O'Farrell and all subsequent NSW governments – including the current Labor administration. That means both sides of politics are happy to see the cost of government corruption transferred to innocent shareholders in a company that has done nothing wrong.

So who did ICAC have in mind when it told O'Farrell's government that innocent parties could be compensated?

A 2015 judgment by the NSW Supreme Court shows that ICAC repeatedly told the court that NuCoal had done nothing wrong.

The court decided against striking down ICAC's recommendation to cancel the licence, but the judgment is clear about ICAC's positive assessment of NuCoal. It says: "The commission [ICAC] also took the view that the plaintiff, as an entity, was involved in no wrongdoing and none of the commission's findings were based on any suggestion of the plaintiff being involved in wrongdoing." It says ICAC "accepted the view" of NuCoal that its conduct was wholly innocent and "ultimately, the commission came to the view that the plaintiff [NuCoal], as an entity, was not involved in any wrongdoing."

The officials who briefed Minns must not have been aware of that judgment. Look it up. The citation is NuCoal v ICAC [2015] NSWSC 1400.

It means Fordham was on solid ground when he told Minns: "ICAC has admitted that NuCoal's directors and investors did nothing wrong."

The final gaps in the Minns narrative concerned his assertion that ICAC declared two NuCoal directors corrupt. That is not the full story. ICAC did make corruption findings against Mike Chester and Andrew Poole, but those findings concerned events that took place years before they became NuCoal directors. After considering those findings, prosecutors decided Poole should not be prosecuted for anything. Chester was left in the worst possible position. ICAC did not even refer Chester to the Director of Public Prosecutions so the commission's assertions of corruption could never be tested in a criminal court or even by the DPP. This does not change the fact that NuCoal is innocent. ICAC says so.

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