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Compo for communists while Aussies go begging



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On one level, this is a tale of two mining companies – one owned by Chinese communists and the other owned by Australians and Americans.

But on another level, it is a warning: what happened to these companies is proof that equality before the law – one of the hallmarks of free societies – is in trouble in modern Australia.

If governments can get away with excluding just one of us from the equal application of the normal law, it threatens all of us. If governments can single us out for punishment, and deny us due process of law, then none of us is safe.

Consider what happened to these companies. They both held licences to explore for coal, they both complied with the licence conditions and they both adhered to the law.

The government of NSW then decided it wanted those licences back despite the fact that both companies had already spent millions of dollars on their separate projects.

One company, Shenhua, is owned by the Communist Party dictators who control China.

When NSW took Shenhua's licence it paid a total of \$362m in compensation – \$262m was handed over in 2017 and another \$100m was paid in 2021.

The other company, NuCoal Resources, is owned by thousands of Australians as well as American institutions. It received nothing thanks to special legislation pushed through state parliament by the then Coalition government.

This had the effect of stripping a listed Australian company of its main asset without due process after it had spent \$94m buying the original licence-holder, Doyles Creek Mining, and another \$40m on exploration, development studies and land acquisitions.

This injustice happened 10 years ago this month after the then Coalition government of premier Barry O'Farrell made a mistake.

O'Farrell persuaded parliament to rely on untested accusations of corruption against Doyles Creek Mining that had been made at a sensational show trial conducted by the Independent Commission Against Corruption.

Those who went along with this must have forgotten that the courts, not government commissions, have the job of making conclusive findings about whether wrongdoing has actually taken place.

But ICAC's show trial had already "educated" the public, the media and the political class. So the NSW parliament denied NuCoal compensation in the belief that its subsidiary, DCM, had obtained its licence corruptly from former minister for mineral resources Ian Macdonald.

Everything changed in December, 2022, when the NSW Supreme Court handed down its judgment in a retrial of Macdonald and John Maitland, who was the chairman of DCM when the licence was issued.

Justice Hamant Dhanji found Macdonald was guilty of misconduct in public office and sent him back to prison.

But the real significance of that decision is that Maitland was acquitted of any wrongdoing over the way he gained that exploration licence for DCM.

Maitland had spent almost two years in prison for a crime he did not commit. He did not aid, abet, counsel or procure Macdonald's criminal conduct as minister.

This should make every member of the NSW parliament wince.

Maitland's actions were lawful. That means the corruption associated with this affair took place entirely within the NSW government, not DCM and definitely not NuCoal, which was not even accused of wrongdoing by ICAC.

But it does not end there.

The last decade has given the justice system plenty of time to get to the bottom of all the smears that emerged at ICAC's show trial.

The result: none of the directors of DCM and NuCoal has a conviction for wrongdoing against their name.

That means these companies and everyone associated with them conducted themselves lawfully only to suffer an outrageous injustice at the hands of politicians who succumbed to an ICAC-driven narrative that has now fallen apart.

The corruption associated with this affair was confined to Macdonald. But every NSW government in the past decade, Coalition and Labor, has been content to allow the losses from government corruption to be transferred to innocent people in the private sector.

The lesson for politicians is this: show trials conducted by anti-corruption commissions lack the rigour of real courts. These performances can ruin reputations and generate a media frenzy, but conclusive rulings on misconduct in public office are the exclusive domain of the justice system.

This affair cannot be relegated to the past. The Coalition and Labor need to reconsider their position in light of Dhanji's ruling.

Yes, this is a complicated business. And yes there was corruption. But it was ministerial corruption, not corporate corruption.

If it is good enough to compensate communists, why can't NSW compensate shareholders in an Australian company that did nothing wrong?

Labor's Chris Minns is now Premier. He might care to consider the plight of about 3500 NuCoal shareholders, including Peter and Jane Harvey who live in Newcastle.

The Harveys had invested \$110,000 in NuCoal with the aim of securing the future for their disabled daughter, Eliza, when they are no longer around.

Eliza has Angelman's syndrome, an extremely rare genetic disorder that leaves people with developmental delays, intellectual disabilities and limited mobility.

On December 2, they wrote to Labor's Yasmin Catley in her capacity as Minister for the Hunter.

They included details about Eliza and a copy of past correspondence.

"I ask you to read the attachments to understand the circumstances that families like mine have endured for nearly ten years," the Harveys wrote.

They are awaiting a reply.

After a decade of injustice, they deserve some good news.

Chris Merritt is vice-president of the Rule of Law Institute of Australia

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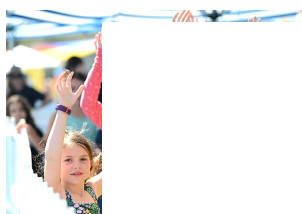
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