Mining Journal

Australia slides in global corruption ranking

Nucoal Resources turned up the heat against anti-corruption zealotry just as Transparency International (TI) called for more protections against corrupt Australian officials.

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Some moderation would be welcome in the campaign to tackle corrupt practices

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Australia was ranked 13th among 180 national governments in the latest TI annual survey of perceptions of public-sector corruption.

The creditable result toward the upper end of the rankings was still a decline from Australia's sixth place five years ago.

TI provocatively bracketed Australia with Syria and Yemen in its accompanying commentary as countries for which corruption perceptions had deteriorated since 2012.

TI did not volunteer in its remarks that both war ravaged middle eastern nations were nestled at the bottom of the rankings alongside other failing states like Libya, Sudan, Afghanistan, South Sudan and Somalia.

Nonetheless, since 2012, only seven countries have had a larger drop in their TI index score than Australia.

The policy implications of the TI findings are ambiguous. Whether corruption has become more pervasive or whether survey respondents are simply more sensitive to the quality of official governance practices goes unaddressed.

TI officials blamed Australia's continued ranking deterioration on the refusal by the national government to introduce an anti-corruption watchdog.

The current government points to a plethora of anti-crime, security, intelligence and money-tracking bodies, many new, to target specific wrongdoing, in defending its reluctance.

Experience with the New South Wales Independent Commission Against Corruption (ICAC) - often hailed by anti-corruption advocates as a model for a national body - is another reason for national government reticence to act.

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ICAC probes, conducted through public hearings outside the normal policing and court framework, have forced resignations of two state premiers who were subsequently absolved of wrongdoing.

Australia's High Court has also found ICAC to have acted beyond its legislated powers. Extraordinarily, one High Court decision led the current state government to retrospectively render illegal actions deemed by the court to have been legal at the time they occurred. The high-handed state legislative reaction averted a queue of disgruntled appellants.

Shareholders of Nucoal Resources continue to protest the state government's 2014 decision to expunge the company's Doyles Creek coal exploration licence in the aftermath of an ICAC investigation.

Nucoal acquired the Doyles Creek property after a Labor Party state government minister at the time, Ian Macdonald, granted an exploration licence to a private group led by John Maitland, a former mining union official.

ICAC pursued Macdonald for having a corrupt relationship with Maitland but never identified any benefit, outside a notoriously boozy lunch, received by the minister.

ICAC also eventually conceded the minister did have the legislative authority to grant the Doyles Creek licence.

Along the way, ICAC investigators showed a worrying naïveté about commercial matters. Several witnesses were publicly interrogated by incredulous senior counsel about Maitland's use of a higher valuation to raise capital than the value implied in the earlier licence application.

A bid-offer spread, ubiquitous in all markets, was taken as evidence of Maitland having set out to bilk the government.

Unfortunately for Nucoal Resources, Macdonalds's reputation had already been shredded by his connection to a separate corruption scandal involving more fine dining and, in this instance, gratuitous sex.

Maitland and Macdonald were sentenced to lengthy jail terms in 2017. The court found Macdonald had failed to fulfil his responsibilities by not obtaining the best deal for the state in granting the exploration licence - and not for having acted corruptly. Hubris or a possibly misplaced sense of entitlement rather than dishonesty, the judge speculated, could have been motivating factors.

Nucoal directors remain unhappy at being collateral damage in ICAC's ruthless outing of politicians' bad behaviour.

The validity of the Doyles Creek permit had been confirmed repeatedly by ministers and officials. Due diligence had also been conducted to prepare Nucoal for an ASX listing. Yet, the government legislated for the confiscation of the Doyles Creek exploration permit, without compensation.

Now, a remaining Nucoal institutional shareholder with a US-registered fund is using the provisions of a US-Australia trade agreement in a last ditch effort to extract compensation.

The chairman of Nucoal since 2010, and also a principal of the fund's management group behind the action, is threatening to block future trade deals between the two countries in the absence of a settlement.

The company's stepped up campaign caused a 200% leap in the Nucoal share price on the same day as the TI report was released.

Macdonald's pursuit, designed to show zero tolerance for corruption, has not helped the mining industry. Now, there is a precedent for a seemingly valid decision to be reversed years later if the clamour for change is loud enough and, just as subjectively, a minister could have done a better deal when originally granting commercial rights.

Requirements for obtaining exploration or mining permits are usually set down in legislation or regulations. Having to meet these requirements and receive responses in a timely fashion is one form of investment risk.

Investors also face a second layer of risk as a consequence of potential changes in political leadership including the possibility of those newly in power not recognising the requirements of their predecessors.

Directors of Nucoal had been adamant the company did not face any such jurisdictional risk. Many investors, including those now complaining, turned a conveniently blind eye as wishful thinking overcame analytical rigour.

Nucoal is not alone in having a misplaced confidence in how others will behave. The JORC Code regulatory framework, for example, fails to mention the type of jurisdictional risk that tripped up Nucoal and, through its omission, implicitly encourages its neglect by others.

Impacting corruption perceptions in Australia requires a more nuanced approach than in Syria or Yemen. Nor are ultra-powerful institutions unhindered by due process a panacea.

Companies themselves can play a role in building confidence about official decisions.

In the Nucoal example, a more rigorous framework for assessing investment risk in the first instance would have helped minimise the impact of corrupt or even ill-considered official decisions, lessening the messy consequences that have debilitated the company and damaged the investment standing of Australia's most populous state.

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