Inconsistency hits miners, dish lickers

A greyhound racing ban in the Australian state of New South Wales signals a disturbing breakdown in government respect for policy continuity toward invested capital.

John Robertson* | 20 Jul 2016 | 22:19 | Opinion

Greyhounds may be banned in NSW, partly because the government failed to enforce its own regulation

At first blush, any link between the fate of the doomed 'dish lickers' and the fortunes of Australia's miners may appear trivial but repeating signals about how governments make decisions have serious implications for investment risk.

The NSW Liberal Party premier has announced that he will stop all greyhound racing in the state within 12 months.

The blanket ban on dog racing in the nation's most populous state follows a report from a former high court judge. Justice McHugh identified widespread use of live bait to train dogs and exposed the deaths of tens of thousands of animals deemed not speedy enough to compete.

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A backlash against the government's threat to the livelihoods of thousands of people engaged in the industry may yet block the move. Many affected have characterised the ban as inner city elitists selfishly imposing their standards on working people.

The NSW greyhound ban has brought back memories of the same Liberal government's decision in December 2014 to terminate a coal exploration licence held by Nucoal Resources without compensation.

Nucoal had retained the exploration rights to its Doyles Creek property in the Hunter Valley since February 2010 while receiving all the necessary approvals from the government.

A 2013 investigation found that a mines minister in 2009 had used his ministerial discretion to grant a licence to the original applicant but, in doing so, had not got the best possible deal for the state government. It also found that some of the original bidders for the licence were dishonest in the way they had presented their licence application.

> *"The greyhound racing decision also throws up an important lesson for how the mining industry is regulated"*

During the public part of the enquiry into the minister's actions, the investigation leader expressed disbelief that a company could honestly bid for an asset from the government while attempting to raise capital based on a higher valuation. On his naively ill-informed reasoning, bid-offer spreads were a sign of dishonesty despite being the mainstay of BBC TV antiques trading programmes and, for that matter, markets everywhere.

Subsequently, Australia's High Court found that the investigating authority had itself been exceeding its jurisdiction for years. To protect the state's corruption-fighting body, the government passed legislation making actions by individuals, which the High Court decided had been within the law at the time, retrospectively illegal.

Businesses everywhere continuously face the risk of changes to regulations governing their conduct. Governments seeking to attract investments are normally highly circumspect about making changes that affect asset ownership adversely. They jealously guard their sovereign risk reputations.

NSW governments appear to be losing this sense of balance. Disregard for the importance of commercial continuity has also snuck into national policies.

Prior to the July 2 Australian election, the governing Liberal-National Party coalition succumbed to pressure from opponents of the existing personal superannuation laws. Critics of the savings incentive measures claimed they were being rorted by the richest Australians to minimise their tax.

The government moved in its May budget to cut back the benefits arising from even historical savings despite having promised never to make any changes to the superannuation laws.

The superannuation policy backflip has particularly antagonised those among the conservative base of the government parties who believe the proposed new laws are being applied retrospectively and are doubly angry that they can no longer plan their retirement incomes.

Coincidentally, both the new Australian prime minister and his treasurer are members of the same NSW Liberal Party involved in the Nucoal decision and the greyhound racing ban.

Lost investment is one of the damaging consequences of decisions to jettison long-held principles about the continuity of policy frameworks. Investor reticence will grow as accumulating experiences reinforce a sense of being unable to count on known rules for the duration of an investment.

The proposed superannuation changes also have an indirect effect on the funding of the mining industry, which depends heavily on the investment support of individuals. Policies that encourage spending at the expense of voluntary superannuation contributions reduce the potential pool of funds available for investment in mining.

The greyhound racing decision also throws up an important lesson for how the mining industry is regulated.

Greyhound racing had been heavily regulated, at least on paper. Legislation defines acceptable conduct within the industry. Severe sanctions are available to penalise failures to conform. Government authorities oversee the activities of the industry. In some instances, the government itself has owned tracks on which dogs have raced.

Unacceptable conduct has arisen through a combination of unethical practices and lax policing. Practices contrary to the intent of the law became so well tolerated that they were no longer recognised as inappropriate.

Several 'From the Capital' columns have drawn attention to the failure of the mining industry and its professional associations to police the standards defined in the JORC code. Those columns have argued that bad practices, not nipped in the bud, are likely to flourish.

One recent column pointed out that only one out of 10 reports submitted by gold companies over an arbitrary period had complied with JORC Code requirements.

Separately, Mining Journal has reported on research which showed that at least 60% of reports over the past two years may have failed to meet the requirements set down by the code.

Some rule breaches have become so widespread that they are increasingly considered standard practice.

The greyhound racing ban is an extreme case, to be sure, but it shows graphically how careless supervision, no matter how industry friendly in its intent, can eventually end in tears for everyone, not just the most dodgy practitioners.

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