

Sovereign risk is all too real in Australia

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Arguments that a government decision or policy has increased Australia's sovereign risk are usually met with scepticism in government circles – a reasonable reaction perhaps, considering Australia's historically strong reputation as a safe and stable investment destination. But can such scepticism now be considered reasonable?

The past 12 months have witnessed unstable and changing policy positions on taxation and climate change, increasing government interference with mining rights, and a global increase in foreign investment regulation. Australia must now address both the perception and the reality that sovereign risk is a real issue for resource companies operating in Australia.

Sovereign risk includes the business risk that a government will fail to comply with undertakings or agreements, or make arbitrary changes to the rights of business, causing losses without compensation or legal redress. Earlier this year, the International Monetary Fund held a round table on sovereign risk and financial crisis and concluded that "one thing is clear: reducing sovereign risk vulnerabilities has become one of the key priorities for policymakers in the aftermath of the [financial] crisis".

If reducing sovereign risk has been a key priority for Australia, the resources sector has not seen the results.

In the wake of the mining tax, the carbon pricing scheme, and now, changes to coal seam gas regulation, accusations of increasing Australia's sovereign risk have been thrown about from both sides of politics. The policies themselves coupled with the federal government's changing policy positions have attracted significant criticism for threatening Australia's reputation as a safe destination for investment. In May last year, following the government's announcement of the mining tax, Rio Tinto described Australia as its top sovereign risk. This sentiment has continued into this year with Peabody Energy, ANZ, Xstrata and the Australia China Business Council all noting that sovereign risk is now an issue investors must grapple with in Australia.

What has generally escaped broader debate is the sovereign risk posed by state government interference with mining tenures. Recently, there have been several prominent instances of state governments removing or restricting existing mining rights without consultation, and, in some cases, without compensation.

In April this year, the Queensland Parliament passed legislation to phase-out mining on North Stradbroke Island. In an unprecedented move, the government introduced special legislation which terminated various mining leases before their expiry date, prohibited renewal of leases and restricted mining activities under current leases, without compensation. The mining lease renewal dates are now, in effect, expiry dates – which is inconsistent with previous government practice and common industry expectations for over three decades. The consultation process was poor, with the Queensland Resources Council suggesting the affected company was simply informed, rather than meaningfully consulted about the proposed legislation.

These actions have created significant uncertainty for mining operators in Queensland and arguably undermine the fundamental basis of mining tenures in that state.

Most recently, the Queensland government announced a mining exploration ban within two kilometres of towns with a population of more than 1000 people. The exploration ban will render 10 per cent of the state's existing exploration permits null, without compensation and again, without significant prior consultation. Queensland Resources Council deputy chief executive officer Greg Lane stated that the ban is "another disheartening signal to domestic and global exploration industries".

When the North Stradbroke Island mining leases were cancelled, the Queensland Law Society, Queensland Resources Council and the Parliament's own Scrutiny of Legislation Committee expressed concerns the legislation was inconsistent with the principle that property should only be acquired with fair compensation. These concerns were not addressed.

Resource rich and enjoying high demand, if Australia could only win back its long-held reputation as one of the world's safest and most stable investment destinations, we would be uniquely placed to compete in this environment of global uncertainty. However, this will only occur if our governments replace broken promises, policy backflips and non-consultative bans with consistency and accountability when regulating the resource industry.

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