

PM urged to deal with Trump on coal investor compensation

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Jun 11, 2025 - 5.18am

Dozens of Australian and American investors have urged Anthony Albanese to offer Donald Trump to broker compensation for shareholders who allegedly lost \$400 million from the cancellation of a corruption-tainted coal mining licence in NSW.

Fifty Australian investors in NuCoal Resources have written to the prime minister, requesting he discuss the issue in his trade negotiations with Trump in Canada on the weekend, as part of efforts to gain an exemption from US tariffs. Albanese will try to unwind a 10 per cent baseline tariff on Australian goods and 50 per cent tariff on aluminium and steel.



NuCoal, a coal exploration and development company, had its exploration licence for mining at Doyle's Creek cancelled by Liberal premier Barry O'Farrell in 2014. **Bloomberg**

The long-running complaint from investors about the NSW government's failure to consider compensation for investors in the Hunter Valley coal mine was raised by US Trade Representative (USTR) Jamieson Greer on a call in March with Trade Minister Don Farrell [<https://www.afr.com/politics/federal/top-trump-official-presses-australia-on-coal-compensation-20250324-p5llym>].

An irritant in the US-Australia trade relationship has been the losses incurred by at least six American university endowment and pension funds that were among US investors which owned 30 per cent of Australian-listed miner NuCoal. It has been repeatedly raised by the US government, including the Biden administration and first Trump administration in the USTR's annual foreign trade barriers report.

NuCoal, a coal exploration and development company, had its exploration licence for mining at Doyle's Creek cancelled by Liberal premier Barry O'Farrell in 2014. He cancelled the licence after the Independent Commission Against Corruption found in 2013 that Labor state mining minister Ian Macdonald acted corruptly in 2008 when he granted the licence to its former owner, Doyle's Creek Mining.

In a letter to Albanese signed by 50 Australian investors, NuCoal chairman Gordon Galt said the cancellation of the licence without compensation was unjust because the company had been recognised as an innocent party by the ICAC and that

Commissioner David Ipp has suggested that innocent shareholders could be compensated.

“While there has been a recent focus on our fellow American investors, who have also experienced devastating losses, it is important that you understand that about two-thirds of the investors in NuCoal are Australian individuals or managed funds representing many more Australian mums and dads,” the letter dated May 19 says.

“The Australian government has both the authority and the obligation to address this injustice, particularly in light of the Australia-US Free Trade Agreement.

“Article 11.7 of AUSFTA explicitly prohibits the expropriation or nationalisation of investments without ‘prompt, adequate, and effective’ compensation.

“We respectfully urge you to address this matter directly in your upcoming discussions with President Trump, demonstrating Australia’s commitment to upholding the rule of law and respecting the rights of both domestic and international investors.”

Albanese’s and Farrell’s offices were contacted for comment.

NuCoal lost a bid in the High Court in 2015 to have NSW be liable for compensation under the free trade agreement. The court found the FTA was a Commonwealth instrument and did not obligate the states.

A NSW government spokesman said it was not establishing a compensation scheme for the mining licence cancellation after the former Liberal state government legislated against compensation.

“Under the former federal Coalition government, it was determined that American investors in NuCoal did not have a right to bring an investment arbitration claim against Australia under Australia-US Free Trade Agreement,” the NSW spokesman said.

NSW Premier Chris Minns said in March that he empathised with NuCoal shareholders who lost their investments but his priority was investing in hospitals, schools and other essential public services that provide benefit to the whole community.

NuCoal paid more than \$94 million for the exploration licence and raised another \$10 million from investors for a feasibility study and exploration. In 2012 Japan's Mitsui Matsushima agreed to invest \$40 million to acquire a 10 per cent stake, implying a project value of about \$400 million.

ICAC commissioner David Ipp said the licence acquired by NuCoal from Doyles Creek Mining was “tainted” [<https://www.afr.com/politics/nucoal-investor-cites-fta-in-bid-to-keep-tainted-licence-20140115-iy9pf>] by the corruption within the former NSW - government and it was in the public interest to cancel it. In his report Ipp said the state government could offer compensation to any “innocent shareholders” but he said “the consequences of improper transactions entered into by a company cannot be avoided merely because its shares have been subsequently traded”.

American investor Noreen Harrington said shareholders wanted fair market value compensation for an investment that was expropriated through no fault their own.

“Leaving this unresolved directly contradicts Australia’s claims to be a trusted trading partner at a time when the US is actively categorising nations as either fair or unfair trade partners,” she said.

“Australia is seeking special treatment and exemptions from the US on tariff measures while simultaneously refusing to honour its treaty obligations to American investors.”

“This contradiction is not going unnoticed in Washington.”

The Biden USTR noted that in October 2019 a NSW parliamentary committee recommended the state government address the issue of compensation for certain investors, including shareholders, in a mining project whose operating license was cancelled in 2014.

“When cancelling the license, the NSW government also passed legislation precluding the payment of compensation relating to such cancellation,” it said.

“To date, the NSW government has not acted on the parliamentary committee’s recommendation to provide shareholders, including US investors, with recourse to seek compensation.”

There is precedent for the NSW government compensating coal companies for cancelled mining licences.

In 2016, NSW paid BHP \$220 million to buy back a coal exploration licence on the Liverpool Plains in the state's north-east that faced huge opposition from local farmers.

The NSW government in 2021 agreed to pay Chinese-state owned company Shenhua \$100 million [<https://www.afr.com/companies/energy/nsw-government-pays-100m-to-shenhua-for-scrapping-coal-mine-20210421-p5712j>] for abandoning approvals to build a coal mine [<https://www.afr.com/politics/nsw-government-renews-shenhua-coal-licence-20180719-h12ws8>] in Liverpool Plains.

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