

By [CHRIS MERRITT](#)

Barry O'Farrell duded NuCoal shareholders but Chris Minns can right the wrong



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Since his appointment last year as Attorney-General of England and Wales, one thing has become clear about Lord Richard Hermer KC: nobody could ever describe him as a conservative.

He owes his appointment – and his life peerage – to his friend and fellow human rights lawyer Sir Keir Starmer, who leads Britain's Labour government.

Their relationship dates from when they worked from the same set of barristers' chambers. They are both, according to conservative British newspaper The Telegraph, "lefty lawyers".

And that is exactly why Hermer's remarkable address this week on the rule of law should prove influential in Australia, where Labor is in the ascendant.



His message was unequivocal: there is a clear link between the health of the rule of law and economic success.

And when the rule of law is weak, those who suffer are not just those in business, but families, workers and ordinary people.

Hermer described it as a symbiotic relationship. When the rule of law is strong, business has certainty that contracts will be honoured, that disputes will be resolved fairly and rights will be protected.

But when the rule of law is weak, markets wither, contracts are not enforced, investment dries up, rights are not protected and ordinary people – workers and

families – suffer most.

Hermer's last point – the harm inflicted on workers and families – is frequently glossed over when governments set aside the principles of the rule of law in order to impose arbitrary outcomes.

Chief among those principles is equality before the law – that everyone is subject to the ordinary law and will only be punished for breaches of the law.

Hermer was speaking at London's Old Bailey on Tuesday, 800 years after the 1225 reissue of Magna Carta – the starting point for the principles now known as the rule of law.

His remarks come at a time when thousands of ordinary people in this country are still suffering from the damage inflicted on those principles 11 years ago, when the Liberal and National Parties were in office in NSW.

It might seem like ancient history to some, but innocent people are still suffering – ordinary people with families and mortgages, who had invested in a company that has been shown in court to have done nothing wrong.

On January 30, 2014, Barry O'Farrell's Coalition government in NSW used special legislation to bypass the ordinary law and [strip that company, NuCoal Resources, of an exploration licence](#) – its main asset.

It did so without proof of wrongdoing, without due process of law or compensation.

This is what O'Farrell told parliament: "The government recognises that this bill will abrogate common law rights that would otherwise operate, including common law rights regarding property. In passing this legislation, the parliament will clearly be extinguishing, without compensation, whatever property rights might otherwise subsist in the licences as well as in certain exploration legislation. By immunising the state from liability, the bill will also abrogate other common law rights, including contractual rights."

In the years since this happened, nobody associated with NuCoal has been found to have done anything wrong.

The decision to wipe away legal rights and deprive the company of due process was a direct attack on legal certainty.

This departure from the rule of law – and the refusal to compensate shareholders for their lost asset – is a black mark on the record of the Coalition parties.

It forms a sharp contrast with the way NSW treated Shenhua Watermark, a mining company owned by China's communist dictators.

When NSW decided to take back Shenhua's exploration licence, it paid China's communists \$362m.

As well as hurting thousands of NuCoal shareholders, this affair has also hurt the reputation of NSW – and Australia – as safe destinations for investment.

But there is a solution.

The Labor Party of Premier Chris Minns did not cause this mess. But it does have the capacity to ease the damage that was inflicted by the Coalition.

NuCoal chairman Gordon Galt wrote to Minns last month urging him to engage with the company and agree to adequately compensate shareholders.

[Minns had turned down earlier requests for compensation](#), stating that he empathised with shareholders for their loss but had other demands on state resources.

Galt thanked Minns for his empathy but wrote that “empathy is not a suitable response to the thousands of investors who trusted the state of NSW with their - investments and then had those assets taken by the state of NSW for political purposes”.

In London, Hermer made the point on Tuesday that the rule of law is not only about contracts and courts – it is also about people.

“Certainty at every turn is a hallmark of our rule of law tradition,” Hermer said.

“It provides assurances that allow businesses to look ahead, to invest in the future with confidence and for families to plan for tomorrow. The rule of law is the silent partner in every contract signed, every investment made, and every job created.”

Minns and the NSW Labor Party did not cause this departure from principle. But they have the capacity to end the suffering that has gone on for more than a decade.

Under the Coalition, NSW drifted away from the legal framework of certainty that, in Hermer's view, has underpinned centuries of economic growth in Britain.

It's time to fix that mistake and restore the primacy of the rule of law. If the Coalition can deal fairly with Chinese communists, why can't Labor do the same for Australian families?

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

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