Legal challenges over lost mining licences on shaky ground, says law professor

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LEGAL challenges threatened by two companies whose operations have been caught up in a NSW corruption inquiry are unlikely to be successful, according to legal experts.

NuCoal Resources and Cascade Coal yesterday ramped up their criticism of the O'Farrell government's move to cancel their key coal exploration licences, after those licences were found to have been granted corruptly.

The NSW government has refused to pay compensation and will introduce legislation to protect it from legal redress.

In response, NuCoal has said it will launch a "constitutional challenge" against that move.

University of NSW Professor of Law Rosalind Dixon said the courts had only ever ruled in favour of companies in those situations where the commonwealth was also involved, which it had not been in this case.

"Relying on the commonwealth constitution is a fairly challenging road to travel," Ms Dixon said yesterday. "The most challenging hurdle would be showing that the constitutional requirement of 'just terms' applies to the states, absent some commonwealth involvement."

There would also be questions about whether the NSW government's actions amounted to an "acquisition of property", of the kind which would "enliven a just terms requirement".

NSW Premier Barry O'Farrell yesterday shrugged off threats from the companies, saying he was confident the new legislation would withstand legal challenge.

He also denied cancelling the licences without compensation would damage the safe investment reputation of NSW - claimed by the companies - because it was a "two-off situation".

"Nothing that ICAC unveiled since suggests it is a widespread practice," Mr O'Farrell said.

The new legislation is likely to be introduced to parliament when it is recalled next week.

Cascade Coal yesterday issued a statement saying: "The decision to confiscate the assets of Cascade Coal by enacting special legislation without due and proper process is wrong and it won't become any less wrong by doing it as fast as possible."