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Dissent, Litigation, and Investigation: Hitting the Powerful Where It Hurts

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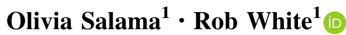

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Abstract Environmentally harmful activity undertaken by powerful corporations receive approvals from multiple levels of government, therefore leaving the wellbeing of the environment to those individuals and organisations committed to fighting against such corporate-driven, government-backed projects. This article discusses three avenues for challenging corporate interests, drawing upon issues and events in Australia. Dissent, as illustrated by the Gunns20 case, can provide ordinary individuals with a means to democratically debate existing practices, proposals, and even the law itself. Litigation, as seen in the Carmichael mining case, can be a valuable tool in postponing environmentally disastrous activities by challenging the government's legitimacy in approving projects that would result in environmental harm. Investigation can expose the manipulation of information presented to the public by both governments and corporations. These three areas of engagement constitute important components for effective environmental activism.

Introduction

When governments and companies do wrong to the environment they often do so quite legally. For example, the clearfelling of forests is not intrinsically criminal even though this method of deforestation is ecologically disastrous. When all else fails—including conventional environmental law enforcement and regulation—then social action becomes necessary to change laws, stop destructive activities and shape public opinion in support of environmental causes.

The dearth of adequate controls and regulatory actions within official criminal justice and state offices on matters pertaining to environmental harm is a problem of considerable proportions. To put it simply, not enough is being done to detect, prevent, prosecute and respond to environmental crime (White 2013a). Accordingly, it is very often

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environmental activists who have stepped into the breach, exposing instances of ecological and species harm, providing details of poor regulation and enforcement practices, and contributing both formally and informally to crime reduction and prosecution processes (White 2012). As increasingly important players in the world of environmental protection, conservation and management, environmental activists frequently both confront powerful social, economic and political interests, and work with and alongside powerful groups, organisations and state apparatus.

The concern of a social action approach is with social transformation involving sustained critique of and systemic change to present institutional arrangements. At the forefront of these activities are environmental social movements. Environmental activism involves many different individuals, groups, and organisations, with diverse aims and missions, employing a wide variety of tactics and strategies. Key international Non-Government Organisations (NGOs) include, for example, include Friends of the Earth, Greenpeace, World Wide Fund for Nature, Sea Shepherd, and the Climate Action Network. The focus of activists varies greatly. 'Brown' issues tend to be defined in terms of urban life and pollution (e.g., air quality), 'green' issues mainly relate to wilderness areas and conservation matters (e.g., logging practices), and 'white' issues refer to science laboratories and the impact of new technologies (e.g., genetically modified organisms). There is generally a link between environmental action (usually involving distinct types of community and environmental groups), and particular sites (such as urban centres, wilderness areas or seacoast regions). Groups are also demarcated by particular notions of justice including those relating to environmental justice (e.g., specific human communities), ecological justice (e.g., protection and conservation of particular ecosystems) and species justice (e.g., animal rights and welfare) (White 2013b).

At the level of practical interventions, activists engage in varying types of tactics. Some organizations engage in militant and spectacular actions (e.g., Greenpeace and Sea Shepherd anti-whaling campaigns). Others focus on specific issues and work closely with governments and international regulatory bodies to enact change, such as the Environmental Investigations Agency and the Freeland Foundation for Human Rights and Wildlife, which engage in independent investigations of illegal environmental activities, gathering evidence that is eventually handed over to local police authorities and which is suitable for prosecutions in relevant jurisdictions and courts. For some groups (such as the Animal Liberation Front) breaking the law (such as illegal entry into animal laboratories or battery hen farms) is considered legitimate if it means that public consciousness is heightened and immediate harm to animals diminished through such actions. Direct intervention by environmental activist groups has included blockades of logging roads, tree sit-ins, demonstrations, protests, and destruction of machinery including through tree spiking.

Not surprisingly, environmental activists bear the brunt of the backlash from powerful corporations, and government, for their commitment to protesting environmentally harmful acts, such as coal seam gas extraction or deforestation. These large-scale industrial activities usually receive the necessary approvals from multiple levels of government, therefore leaving the wellbeing of the environment—a voice-less entity that cannot represent itself—to those individuals and organisations committed to challenging such corporate-driven, government-backed projects. In Australia, legal actions taken by environmental groups against the proposed Carmichael Mine in Queensland have been referred to as "vigilante litigation" by the federal Attorney-General (Peatling 2015). This reaction itself indicates the success, albeit limited and circumstantial, of activists using the law to slow governments and companies down.

What follows is a discussion of three strategies that have been used by environmental activists within Australia when government approval of industrial projects indicates an allegiance with corporate interests rather than a commitment to environmental and ecological sustainability. Dissent, through peaceful protests and demonstrations, is the most common avenue for people to voice their opinions. Litigation is less common, as it is costly and time-consuming. However, as the discussion of the Carmichael Mine will show, litigation can successfully postpone a project for years even if the court cases themselves are unsuccessful. Investigation of various stakeholders who stand to benefit from proposed industrial developments also provides activists with valuable information that can be used to educate the wider public on these issues.

Dissent

Every year hundreds of lawsuits totalling millions of dollars are filed against individual citizens and environmental groups for speaking out against corporations (Beder 2004). The targets of these suits are, in effect, penalized for exercising their democratic rights—the right to organize, petition, and engage in public discourse and peaceful demonstrations—because powerful corporations see this behaviour as detrimental to their business and profits. Pring and Canan (1996) have labelled these law suits SLAPPs: Strategic Lawsuits Against Public Participation. Corporations, knowing that they cannot sue people for exercising their democratic rights, file SLAPPs on technical legal grounds (such as conspiracy) to stifle discourse and deter future opposition on a local public issue (Pring and Canan 1996). It is the cost of the court case, in both time and money, which is most detrimental to the individual or environmental group. The defendant finds him or herself having to take a hiatus from speaking out against the corporation or proposed harmful act and to hire a lawyer, prepare arguments, and appear in court. Although these cases are rarely argued successfully by the corporation that filed the writ, the corporation still "wins" if the defendant stops engaging in the so-called "detrimental" activism. Even if the SLAPPs do not go to trial, the objective of scaring off opponents can sometimes be achieved by the mere threat of a court case (Beder 2004).

However, SLAPPs can also, ironically, provide insight into those strategies that most threaten corporate interests. They can, therefore, be read as a guide for effective activism (White 2005). The following case study illustrates what we mean by this.

One of the most (in)famous SLAPPs in Australia was the 2004 Gunns Limited writ. Gunns Limited was Australia's largest forest products company at the time, owning more than 175,000 hectares of land. The main contributor to the $606 million company was the export of woodchips—most coming from old growth forests—to Japan to be made into paper products. Recognising the scope of the environmental damage caused by this trade, activists from different environmental organisations throughout Australia and Japan collaborated in a strategy of dissent to prevent future destruction of old growth forests by Gunns. The Wilderness Society, Japan Tropical Forest Action Network, and Greenpeace Japan, among others, launched a multi-pronged campaign against turning old growth forests into woodchips. Through sit-ins and protests at the logging sites, for example, the activists disrupted "business as usual."

Gunns responded with a 216-page writ that referred to the direct action taken to stop logging as "guerrilla activities" (*Gunns v Marr 2006*) The "Gunns20"—that is, 20 targets ranging from individual activists that included Green MPs Bob Brown and Peg Putt

through to environmental groups such as The Wilderness Society, were accused of conspiring to injure and damage Gunns by interfering with the company's trade and business through unlawful means (White 2005). The company argued the multiple direct and ideological campaigns launched by these 20 individuals and groups were detrimental to the company. The timber company sued this group of environmentalists, protesters and Green MPs for AUS$6.3 million.

Read from a different point of view, the writ's public identification of parties and actions that were most threatening to their corporate interests can be useful in understanding how and where to "hit them where it hurts." The company identified four main areas of concern (as outlined below). These concerns directly aligned with the activists' multi-tiered strategy of dissent. Their campaign would have been less effective if, for example, they had solely targeted Australian citizens and had not disseminated information about Gunns to Japanese citizens; both Gunns and the Japanese corporate clients would have had less pressure to respond to greenwashing allegations. Similarly, if the activists had not targeted "the money," that is, the shareholders, investors, and banks, they would have been neglecting those who have the most influential power regarding the corporation's decisions.

In summary, to gauge what works when it comes to activism it is useful to consider what specific companies or states view as especially threatening, damaging or confounding (White 2011a). In the Gunns20 case, the areas of campaign activity included:

- Campaigns and actions that directly disrupt company operations (e.g., logging and transportation of wood products).
- Corporate vilification campaigns that undermine their 'clean' and 'green' image (e.g., publicly challenging company 'green' credentials).
- Campaigns against overseas customers of corporate products (e.g., especially business customers, for example, purchasers of woodchip products, who depend upon a degree of positive community sentiment in their sales strategies).
- Corporate campaigns targeting shareholders, investors and banks (e.g., those groups and organisations that hold strategic decision-making vis-à-vis financial planning and expenditure).

For example, when the activists learned that the Banksia Environmental Foundation was considering Gunns as a candidate for its Business Environmental Responsibility and Leadership award, they provided the Foundation with information that discredited Gunns' claims of "incorporating sustainability principles" into its operations and "sustainable forest management that is environmentally sound" into its code of conduct. The activists presented the company's self-proclaimed green credentials as an example of corporate greenwashing, resulting in the removal of Gunns from the list of Banksia Award finalists.

On another front, through the spreading of information about Gunns in major cities of Japan and writing letters to Gunns' Japanese corporate clients—all of whom made public claims that they believed in pursuing corporate activity that is in harmony with nature—the activists created a similar public relations nightmare for the Japanese clients. A letter from Nippon Paper Industries, one of the Japanese corporate clients, to the president of Gunns Limited stated that the Japanese company was "embarrassed with the activities of the environmental groups" since the company was focusing on developing its business "in a way that emphasises sustainability (harmonious balance with nature and business)" (White 2011b: 94).

Through protest events in both Japan and Tasmania, including the construction of a 65-metre-high tree platform, the activists gained the interest of the international

community. Lastly, through pressuring shareholders and bank investors—the "purse" of the project—to cease investing and providing financial service to Gunns, the activists placed pressure on Gunns to change its practices.

A multi-faceted, long term and energetic campaign can have major negative repercussions for targeted businesses (Gale 2011). In this instance, Gunns reputation and share price plummeted and eventually the company ceased operations altogether. Public protests and campaigns that seek to disrupt a corporation's operations and challenge its image as a "clean and green" business are the most common avenues of direct action available to ordinary citizens. However, a company's activities can also be challenged through litigation and its green credentials dismissed through investigation of its stakeholders, as seen in the case of the Carmichael Coal Mine in Queensland.

Litigation

Public trust law has been used in India (Mehta 2009) and the United States (Wood 2014) as an important tool in the activist tool kit in regards to environmental protection. A recent 2015 climate case *Urgenda v State of the Netherlands* saw a non-government organization (Urgenda) file a suit against the government of The Netherlands to the effect that the state is acting unlawfully by falling short of its current emission reduction target. The District Court agreed with the plaintiff that 'given the high risk, the current insufficient emission reduction targets, and the fact that an early and speedy reduction of the emissions increases the chance to avoid dangerous climate change, the state has a "serious duty of care to take measures to prevent it"' (Lambrecht and Ituarte-Lima 2016: 61). Public interest litigation has also been used selectively worldwide to establish future generations as victims of environmental crime (Preston 2011; Mehta 2009; Wood 2014). The notion of intergenerational equity refers to the concept that all generations are partners caring for and using the Earth and that every generation needs to pass the Earth and its natural and cultural resources on in at least as good condition as they received them (Brown Weiss 2008; Lawrence 2014).

Compensation suits involving Chevron in Ecuador illustrate the levels of harm perpetrated by such corporations as well as the clash of basic social interests between corporations and the public good. They also indicate the instrumental use of the law to protect elite interests. For example, in August 2016, the 2nd U.S. Circuit Court of Appeals in New York upheld a decision by US District Judge Lewis A. Kaplan who found that an Ecuadorean judgement that ordered the collection of $9-billion from Chevron Corporation for rainforest damage was obtained through bribery, coercion and fraud, and therefore invalid (Los Angeles Times 2016). Chevron, which struck a deal to buy Texaco in 2000, has long argued that a 1998 agreement Texaco signed with Ecuador after a $40-million clean-up absolves it of liability. Nonetheless, in 2011, a judge in Ecuador issued an $18-billion judgment against Chevron in a lawsuit brought on behalf of 30,000 residents. The judgment was for environmental damage caused by Texaco during its operation of an oil consortium in the rainforest from 1972 to 1990. In 2014, Ecuador's highest court upheld the verdict but reduced the judgment to about $9.5 billion. This decision has now been invalidated by a foreign court—in the USA—a decision which thereby signals that powerful corporations can avoid legal accountability anywhere in the world if they have the legal and financial resources to do so.

Litigation is a two-edged sword for environmental activists. If successful, it can provide needed restraints on the actions of corporations and governments that do harm to the environment. Success can also be measured by the time associated with legal challenges, in the sense that tying companies up in court can serve to delay environmental corporate vandalism regardless of ultimate outcome. Litigation also provides a platform for "spectacles of deconstruction", an opportunity to publicly reveal the "real", and as such are subversive of the dominant narratives pertaining to the environment and the economy (Rogers 2012). Performance and symbolism, therefore, are also important aspects of public interest lawsuits.

Yet, the sheer costs of launching civil actions plus the amount of time, energy and resources necessary to their pursuit, means that litigation has to be weighed up carefully as a potential strategy. A major downside of litigation is that when cases are unsuccessful, costs incurred by the other side can be awarded against environmental groups, an impost that can seriously affect resources for other types of campaign work and tactical interventions. For instance, a law suit hinging upon coals' contribution to 'dangerous global warming' was recently brought against the Alpha coal mine in central Queensland. This has now been through the Land Court, the Queensland Supreme Court and the Queensland Court of Appeal, with the result that the claim was dismissed and the instigating conservation group ordered to pay court costs (Small 2016; Kos 2016b). Moreover, whether successful or not, large corporations and governments have the financial wherewithal to appeal, something that can again be very expensive for non-government organisations to be involved in. For example, in the Urgenda case mentioned above, the Dutch state is appealing the judgment and, even if successful, questions can be asked about the substantial investment in time and money for such cases and whether the benchmarked reduction of emissions (in this instance 25 per cent reduction) is sufficient anyway (Lambrecht and Ituarte-Lima 2016).

The Federal Court in Australia has recently dismissed cases involving the Carmichael Mine in Queensland, both in regards to Native Title determinations and claims that burning coal and climate pollution would be inconsistent with international obligations to protect the Great Barrier Reef (Briggs 2016a; Kos 2016a). Nonetheless, the cases are of interest from the point of view of activism for several reasons, which we describe below.

Adani Mining Pty Ltd (Adani) filed its "Initial Advice Statement" on 22 October 2010. The document outlined the company's plans to develop the Carmichael Coal Mine and Rail Project, a project that would have a mine life of 150 years beginning in 2014 (Initial Advice Statement 2010). Approximately 3 years after the proposed start date and 6 years after the plans were drawn, the Carmichael Coal Mine remained unopened as Adani was preoccupied in court actions with environmental groups. By challenging the Australian government's approval of the mining project simultaneously at various levels of court, environmental groups were to challenge the operation of the mine in a way that was costly and time-consuming for Adani. The strategy here is simple: overwhelm the corporation with legal disputes in order for the project to be deemed unfeasible. The legal battles surrounding the Carmichael Coal Mine show cased various groups—from environmental organisations to the Native Owners of the land—utilising the legal avenues provided to them in a Western democratic society. The judgements of the lawsuits have mostly been in favour of the mining project. Yet each decision provided grounds for appeal and thus another opportunity to postpone the mine, legal costs permitting.

In considering the response by the Australian and Queensland governments, and Adani, to the litigation surrounding the Carmichael Mine, two cases—both brought forth by environmental activist organisations—particularly exemplify the effectiveness in

protesting environmentally harmful acts through the legal system. The first case takes place in a state court; the second in federal court. The first was unsuccessful in its challenge and the environmental activists were subsequently held accountable for the costs of the failed lawsuit. The second initiative, on the other hand, was temporarily successful: the mining approval was set aside with the consent of both parties until further determinations of environmental impact could be concluded. The environmental activists who were responsible for both lawsuits were nonetheless subject to verbal harassment from officials at multiple levels of government, including the Prime Minister at the time, Tony Abbott. The federal government, outraged by the delays of the mining project, at one stage even sought to amend the environmental legislation that allowed the court cases to be brought forward, to ensure no further delay.

The Land Services of Coast and Country Case

In 2010, the Queensland Coordinator-General declared the Carmichael Coal Mine and Rail Project to be a "significant project." Projects under this label require an environmental impact statement (EIS) to be prepared before the Coordinator-General can recommend its approval. Recommended in 2014, the Carmichael Coal Mine and Rail Project was then advertised to the public for objections under the 1989 Queensland Mining Resource Act (MRA) and the 1994 Queensland Environmental Protection Act (EPA). The Land Services of Coast and Country Inc. (LSCC) objected to the grant of the mining lease on a number of grounds including the impacts on the mine on biodiversity (particularly the Black-throated Finch, an endangered bird species), the environmental harm that would result from the mine (including the contribution to climate change from the burning of mined coal, thus threatening ecocide of the Great Barrier Reef), and the lack of economic viability of the mine (contrary to what Adani's reported figures suggested) (*Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors 2015*). In December 2015, after hearing the case for five weeks, The Land Court of Queensland issued its recommendation to grant the mining lease under further conditions that related to the monitoring of the mine's impacts on the Black-throated Finch. The decision resulted in the Environmental Protection Authority granting approval for the mine in February 2016 and the mining lease under the MRA was granted in April 2016.

The decision also prompted Adani to file a lawsuit—a SLAPP—against LSCC in the Land Court of Queensland. In doing so, Adani sought to shift its legal expenses from the previous lawsuit—over $1m—to the LSCC. The Land Court, however, decided not to award costs in favour of Adani due to its lack of jurisdiction on the matter (*Adani Mining Pty Ltd v Land Services of Coast and Country Inc & Ors 2016*). Sean Ryan, Principal Solicitor of the Environmental Defender's Office (EDO), which represented the LSCC, stated that the Land Court's decision delivered a "clear message that well-resourced companies can no longer use threats of costs to intimidate community groups into remaining silent with their objections" (Robertson 2016). Ryan highlighted the importance of community objections in leading to changes in conditions that better protect the environment. In a similar fashion to the Gunns case, the LSCC's court case also worked to disseminate information about the mining project to the general public. Without it, the public would not have been aware that Adani overstated the job benefits of the mine, with net job figures closer to 1400 than the 10,000 the company claimed; that there would be serious damage to the continued survival of the largest remaining colonies of the endangered Black-throated Finch; and that there was a lack of investigation into the environmental impacts the mine would have on the surrounding land and water, including the

Doongmabulla Springs Complex (edoqld.org.au 2016). Informing the public of the environmental disaster that is the Carmichael Project in the early stages of the project's approval process was essential for the proliferation of media coverage, international campaigns to protect the Great Barrier Reef, and public support for the continued litigation of the mine.

The Mackay Conservation Group Case

Section 487(2) of the federal *Environmental Protection and Biodiversity Conservation Act* (EPBC) allows anyone, including individuals or organisations who have engaged in "a series of activities related to the protection or conservation of, or research into, the environment", who is "aggrieved" by a decision to seek legal action against that decision (*EPBC Act 1999 Cth.*). This section of Australia's primary environmental legislation provided the Mackay Conservation Group, an environmental organisation that focuses its conservation and protection efforts on Central Queensland, with the necessary legal grounds to file a case in the Federal Court in Sydney against the Commonwealth Environment Minister's approval of the mine.

The Minister subsequently agreed that the effect of the mine on two vulnerable species—the yakka skink and the ornamental snake—were not properly considered and further mine-related activity was set aside with the consent of the litigants until more information was forthcoming. This prompted a vindictive backlash against the Federal Court and the Mackay Conservation Group. Queensland Resources Council Chief Executive Michael Roche and States Mines Minister Anthony Lynham were among the most vocal in expressing their disappointment in the Federal Court's decision. Roche accused anti-coal advocates of using "legal loopholes" to delay a significant economic investment in Australia (ABC News 2015). Perhaps the most noteworthy reaction, however, came from Attorney-General George Brandis, who proposed a change in section 487(2) of the *EPBC Act* to prevent "vigilante litigation" and "lawfare by radical green groups" (The Conversation 2015). Brandis described the lawsuit as having been brought by groups that "have no legitimate interest other than to prosecute a political vendetta against development and bring massive developments … to a standstill" (The Conversation 2015). News of the court case's outcome travelled to the highest office in Australia; (now former) Prime Minister Tony Abbott co-signed the attorney general's comments, calling environmental groups' litigation of the Carmichael Mine "a sustained campaign of harassment through the courts" (Medhora and Robertson 2015). Abbott then sought to clarify that he was not suggesting that people should not be able to exercise their legal right, nor was he criticising the courts, but he was merely being "very critical of the tactics of some elements of the green movement and their apparent ability to play games and to game the system" (Medhora and Robertson 2015).

The response from politicians to the single court ruling that was not in favour of Adani or the mining project, and that was set aside by consent to allow the Minister to reassess the mine after considering new evidence and information regarding the project, is not to be understated. The proposal led by the Attorney General to amend existing environmental legislation to remove citizens' legal rights was far more serious than a SLAPP, so much so that the Australian Senate refused to pass the proposal. Once Malcolm Turnbull became Prime Minister the proposal was shelved (Taylor 2016).

However, the act of publicly suggesting such change in legislation indicates the disproportionate response to the purported "offence." Should this amendment have passed, it would have profoundly restricted the avenues of citizens to express their disproval of

government decisions regarding the environment. Furthermore, the language and rhetoric utilised by the politicians cannot help but taint the way in which environmental organisations are viewed and dealt with in the future, beyond the initial media reports. Accusatory remarks linking environmental activists with the destruction of an additional ten thousand jobs further perpetuates the script that environmental activism and economic interests cannot coexist. Derogatory remarks, especially when the source includes the highest political figures in the country, strengthen the beliefs of those who are predisposed to have a negative view towards environmental activists, such as locals in the rural communities that expect to benefit from the mining project's job creation.

Critical debate in an open democracy is vital. It is particularly crucial in regards to seeking truth about environmental impacts, social benefits and corporate virtue. For activists, this means investigation of the claims of the powerful, and exposure of the silences and lies perpetrated in their interests.

Investigation

The crimes of the powerful are difficult to resist and push-back against precisely because the stakeholders—whether government or private enterprise—are powerful (Tombs and Whyte 2015). Yet, information and intelligence on companies and company directors can be utilised effectively by activists as part of public campaigns against specific projects.

Studying perpetrators of environmental harm, including organized criminal networks (both 'legitimate' and non-legitimate), can be approached using a variety of techniques and methods (White and Heckenberg 2014). One of the more important of these is undertaking analysis of particular industries and identifying key stakeholders (e.g., financial backers of illegal logging, and shipping companies), and the study of specific company profiles in terms of history, activities and relationships to particular local communities (e.g., Trafigura, Monsanto). These techniques can be applied to different kinds of environmental harm and the different players involved in these crimes. A key purpose of such investigation is to put the public spotlight on wrongdoing, and on wrongdoers.

In Queensland, considerable consternation has been associated with the proposal to expand certain mines, the effect of which would not only contribute to global carbon emissions but harm the Great Barrier Reef. In the subsequent mining/environment wars, information and misinformation has been a key weapon.

In early December 2016, for example, the federal resources minister, Matt Canavan, who as a backbencher was an advocate of the Abbott government's proposed amendments to the *EPBC Act*, claimed that the "sunshine state" (namely, Queensland) was under attack from those environmental activists who have brought court cases against the Carmichael coalmine (Taylor 2016). The economic argument for amending Australia's environmental legislation was presented as an issue of cost of delay rather than one of blocking the project altogether. Canavan cited a report from PriceWaterhouseCoopers (PWC) which found that the "legal delays" had cost Queensland roughly AUS$3.9bn and over 2600 jobs and cost Adani AUS$200m.

The newspaper *Guardian Australia* set out to investigate these claims and their merit. What would it mean if these numbers were found to have been exaggerated? The PWC report was exclusively reported in the *Courier Mail* (a decidedly right-wing Brisbane daily newspaper) in June and subsequently published in numerous mining journals. However, PWC told *Guardian Australia* they would not be able to provide a copy to that newspaper

since the report remained the property of the client who commissioned it, Adani. Adani, perhaps unsurprisingly, determined that the report would not be released (Taylor 2016). *Guardian Australia* was nevertheless able to find the report and the investigation continued. In an article published on the 8 of October 2016, Lenore Taylor describes the *Guardian Australia*'s findings, which show case the creative and misleading way PWC interprets its figures.

First, the PWC report operates under the assumption that the Carmichael mine will proceed at its original scale once the legal hurdles are brought to an end. Looking beyond the environmental harms, this assumption also disregards the question of the mine's economic viability, an issue that was repeatedly raised by scientists and analysts alike (Small 2016). The figure of 2665, which PWC claims represents the "jobs lost" due to the "legal delays, turned out to be the difference between the average number of jobs over the decade from the original start date and the average number of jobs assuming the mine started 3 years after the original date. These numbers were based on the project's original size and Adani's claim that the mine would create 10,000 jobs. Yet in the LSCC case mentioned above, the economist commissioned by Adani suggested that the mine would create about 1464 jobs in total—fewer than the supposed number of jobs "lost" due to legal delays (Taylor 2016).

So, too, the $200m figure that PWC claims represents the cost of "legal delays" to Adani, is also questionable. Out of this cost, $123m was reported to be the cost of "redesigning previously approved components" (Taylor 2016). However, most of the documents Adani had to redesign were due to the conditions imposed by the federal government. These include the provisions to monitor the status of the Black-throated Finch and the location for the disposal of dredge spoils from the mining. Bolstered by former environment minister Greg Hunt, it can be argued that this figure should not be counted towards the cost of the lawfare.

The numbers presented by PWC were clearly exaggerated, which is not surprising considering the report was paid for by Adani. Uncovering the methods used to calculate these figures provides readers with a counter-claim to the previously unchallenged report cited in the media. It is difficult for the average media consumer to be aware of the relationships underlying company commissioned reports when this itself is not publicly conveyed. Investigating the claims against environmental activists and writing about the findings of the investigation is therefore an important part of spreading information to the public so that they are aware of the biases and conflicts of interest associated with such reports.

Adani and the Panama Papers

From an activist viewpoint, crimes of the powerful can become newsworthy partly because of the global scope of the coverage, and partly because of the timing of the release of information. For example, the "Panama Papers" refer to the release of secret documents from a law firm in Panama that provided information on the illegal tax havens used by the world's rich and famous. The papers identify more than 300,000 companies, trusts, foundations and funds that are incorporated in 21 tax havens, from Hong Kong to Nevada. The papers were published by the International Consortium of Investigative Journalists (Kitney 2016).

On 6 April 2016, *The Quint*, an Indian newspaper, published an article titled "Panama Leak: IT Dept Chasing Tax Havens, Adani's surname change" (The Quint 2016). This was the latest article in a series of Indian publications discussing the Panama Paper scandal.

The day before, the *Indian Express* published three articles on the topic, the headings of which were:

- Panama Papers: Two months after Adani brother set up firm in Bahamas, a request to change name to Shah (Mazoomdar 2016).
- Panama Papers: List involves Adani…unlikely Modi government will probe, says AAP (The Indian Express 2016).
- Indians in #PanamaPapers list: Aishwarya Rai, Amitabh Bachchan, KP Singh, Iqbal Mirchi, Adani elder brother (Sarin et al. 2016).

Each of these headlines explicitly state Adani as being involved in the Panama Papers. The newspapers of Australia, the country that is to sign a 60-year mining project with the Adani Group of India, however, have released stories on the Panama Papers in general, but none of these sources have commented on the possibility that the soon-to-be owner of the Carmichael Project may be involved. According to the *Indian Express*—whose journalists are part of the Indian team working with the International Consortium of Investigative Journalists, the group that has been analysing the documents from the leak—Gautam Adani's brother, just months after the formation of Adani Group's flagship company Adani Enterprises in 1993, set up a company in the Bahamas in 1994 with Mossack Fonesca as their agent. He sought a name change shortly afterwards, asking Mossack Fonesca to "drop the Adani" and never reveal the beneficial owners if asked (Mazoomdar 2016). This information, crucial to the Australian public, has been absent from the debate on whether the Carmichael Project should be approved to operate. Although the Adani family's ties with Mossack Fonesca have not yet been verified, the Adani Group has already released a public statement to the media denying the allegations, suggesting the charges are too severe to ignore (The Times of India 2016). Again, no mention of this statement has been reported on by the Australian media.

This is not the first time that the Adani Group "withheld" information from the Australian public. In August 2015, the Federal Environment Department asked the company to inform them of any executive officer who "has been the subject of any civil or criminal penalties or compliance-related findings, for breaches of, or non-compliance with environmental laws…[and] information about his or her roles both in Australia and in other countries." (Willacy 2015). The information received from this broad request would be used as a part of the government's assessment of the proposed mine. The Minister approved the mega-mine in October 2015. After the approval, it was found that Adani had failed to disclose the fact that the current head of Adani Australia, Jeyakumar Janakaraj, was the director of operations of KCM, the company that owned the Zambian copper mine when the Kafue River was contaminated and was convicted of wilfully failing to report the pollution. Mr Janakaraj had been the director of operations of the KCM copper mine in Zambia when the company pleaded guilty to four charges, including polluting the environment (discharging dangerous contaminants into a major river) and wilfully failing to report an incident of pollution (Willacy 2015). The failure to disclose this information, both in the original assessment and later as requested by the Environment Department, did not affect subsequent decisions affecting the mine's approval. After inquiring into Adani's omission of this fact, the Environment Department concluded that the omission was simply a mistake, that Adani officials were cooperating, and that the omission did not result in environmental harm.

Further investigation into the Adani Panama Papers also indicated that the Carmichael Project had long been tied to development of the port associated with the mega-mine development. Adani secured a 99-year lease at Abbot Point Port for $1.8 billion in 2011.

Fairfax Media uncovered company documents that suggested the ownership of the port, which has been criticised for its proximity to the Great Barrier Reef, is unclear. The *Sydney Morning Herald* reported that:

> Fairfax Media is not suggesting there is anything illegal about Adani's complex corporate structure. But its use of offshore, low-tax jurisdictions in relation to its Australian operations, and the apparent uncertainty about ownership of the Abbot Point Port lease, raise questions about the ability of the public to scrutinise a project of such huge economic and environmental significance (Cox 2015).

A trail of documents has led to Gautam Adani's eldest brother, Vinod Shantilal Adani, as in fact the owner of the Abbot Point port lease. This is the same brother that the *Indian Express* claimed had done business with Mossack Fonesca and sought to drop the "Adani" from his name. However, the paper trail presents apparently conflicting information:

- Annual reports filed in India claim that Adani Enterprises had sold its interest in Abbot Point Port in 2013 for $235 million to a company in Singapore called Abbot Point Port Holdings.
- Company records in Singapore claim the sole director of Abbot Point Port Holdings is Vinod Shantilal Adani.
- Records held by the Australian Securities and Investments Commission, as well as annual reports for Adani's Australian registered companies, continue to name the Indian company "Adani Ports and Special Economic Zone" (APSEZ) as the shareholder for the port.
- APSEZ is owned by Adani Enterprises (Cox 2015).

This investigative journalism suggests that it is not Gautam Adani who controls most of the companies associated with Adani's Australian coal mining project. Instead, Gautam appears to be a figure head; a celebrity who appears before the public while his eldest brother is the real holder of the powerful positions.

In December 2016, it was reported that the business behind the planned Carmichael coal mine is facing multiple financial crime and corruption probes, with Indian authorities investigating Adani companies for siphoning money offshore and artificially inflating power prices at the expense of Indian consumers (Long 2016a). This was revealed just days after the Deputy Prime Minister, Barnaby Joyce, told the Queensland Media Club that the Carmichael coal mine and rail infrastructure were vital for the state's economy (Briggs 2016b). He also appeared to downplay concerns about Adani's eligibility for public finance (eligibility is determined on the basis that such assistance is critical to a project). Adani had applied for a $1billion loan under the Northern Australia Infrastructure Facility (Briggs 2016c). Meanwhile, during the same period it was revealed that the Adani group has set up a complex network of companies and trusts in Australia which are owned in one of the world's major tax havens, the Cayman Islands (Long 2016b).

As long as it is solid and backed up with evidence, such information is 'gold' in the propaganda wars involving large corporations and environmental activists. Investigations into the background and activities of top business leaders and the complex world of corporate finance reveal important silences in their public displays of virtue and honesty, and provide ample ammunition for activists to counter the dominant pro-mining narratives supportive of environmentally dodgy projects.

Conclusion

There are 'pros and cons' of each type of intervention outlined and discussed in this article. Yet it is undeniable that action around dissent, litigation and investigation does indeed provide instances where activists can and do hit the powerful where it hurts. The Gunns20 case proves that a multi-faceted dissent campaign against a powerful corporation can be successful. Although corporations may 'strike back' with SLAPPs, when ordinary citizens and environmental activists utilise their democratic right to protest, and these protests gain an international following, pressure is put on the corporation to act in a way that will not hurt its image and future business ventures.

Litigation may be a costly tool for environmental protection, especially if the judgement is made in favour of the powerful. Yet, the litigation brought forth by environmental groups against the Carmichael coal mine demonstrates how valuable the courts can be in bringing an environmentally disastrous project to a halt—regardless of the legal outcome. By engaging a corporation through numerous legal challenges, the corporation must postpone the project, allowing even more time for environmental activists to build their protests and attract greater citizen support for their cause.

Investigation of stakeholders and company profiles can lead to the discovery of 'new' facts—in particular, those generally not reported by commercial media. These findings can be used to provide a counter narrative against the claims made by corporations in support of environmentally harmful projects. Together, amongst other forms of direct and indirect action, these three strategies provide activists with important tools to challenge the powerful on behalf of the environment, and thus provide a voice for the voiceless.

Cases

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Compliance with Ethical Standards

Conflict of interest The authors declare that they have no conflict of interest.

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