

From the Editor

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Having pushed governments to their democratic limits, Green groups and other activists are now increasingly focused on leveraging the corporate sector to achieve their regulatory ends.

While the process is clothed in references to community, to morality and to transparency, it has more in common with the tactics of the Mafia. And the process poses a major threat to our economic system. More importantly, it threatens the rights and the livelihoods of workers, shareholders and many millions of Australians saving for their retirement.

A major test case of the strategy is currently being played out in Australia with the Wilderness Society's (WS) campaign to stop Tasmanian timber company Gunns Ltd from logging old-growth native timber.

For more than ten years the native timber industry has been the subject of an intensive process of investigation and consultation through the regional forest agreements (RFAs). The aim has been to reach agreement amongst stakeholders upon competing uses of the forests. The RFA in Tasmania was finalized in 1996 and resulted in a huge reduction in native forest open to logging; a plan to phase out logging of 'old growth' forests and a strategy designed to shift the timber industry from native forests to private plantations.

The WS—a small, loose group of anti-logging activists—was involved in the RFA process and achieved much of what it wanted. The community itself, however, decided not to ban logging of old growth timber immediately as



demanding by the WS. Rather, it chose to phase out logging of this timber over a number of decades to allow time and to generate funding for the move to private plantations.

As a result of this process, Gunns Ltd has what other firms would die for: strong bipartisan community support, resource security guaranteed by a joint Act of the Commonwealth and Tasmanian Parliaments, and a union militantly on side. Indeed the process has been a model of community consultation and sustainable development.

Unable to achieve their aims via this process, WS launched a corporate campaign against Gunns, using the full range of tactics at its disposal. The campaign, however, has been decidedly unsuccessful to date—largely because Gunns is close to the real stakeholders.

WS resorted to a slander campaign against Gunns' management. While this usually works against the management of large corporations, it has proved ineffective against the down-to-earth Tasmanians who run Gunns. WS tried to demonize Gunns' brand name, with little success. WS

also spread rumours that Gunns' logging practices were financially ruinous; the reality was that Gunns has proven to be one of the stockmarket's star performers.

Unable to get traction against Gunns in Tasmania, WS refocused its campaign on Gunns' financial backers in Melbourne and Sydney. As part of this campaign, WS succeeded in getting an extraordinary general meeting of Gunns' shareholders held on 29 August to vote on a proposal to immediately stop logging in old growth areas. The proposal was accompanied by research generated by WS which predicted that the proposal, if accepted, would reduce earnings per share by 11 per cent and increase the riskiness of the Gunns' earnings profile. Gunns provided research which showed that the impact of the proposal would be greater. The Tasmanian Government has also made it clear that if Gunns did not fulfil its contract to log the trees in question, the contract would be let to another firm. So, even if the motion were passed, it would not stop the logging.

The proposal was rejected overwhelmingly (50 million against; 250,000 for). However, two major funds management firms—BT Funds Management and Unisuper—abstained from the vote. In other words, two large super funds decided not to express an opinion on behalf of their unit holders on a decision that would have a material negative impact on the company's profit and which would not stop the logging of the trees in question.

Why would trustees of super funds not take action to protect the returns to unit holders?

Well, Westpac, which now owns BT, has apparently adopted a strategy of dancing with the activists under the guise of being a socially responsible corporation. It has, effectively, not just embraced, but become an advocate for, most of the activists' strategies, from ethical investment to triple bottom-line accounting. As a result, it has been deemed by the activists to be 'number one' on ethical corporation rankings.

Westpac's rationale is commercial and it is not alone in this [see Don D'Cruz's article, pages 27–28]. Multinational corporations are flooding their NGO partners with money and stakeholder status.

Westpac has come to the conclusion (as have many other big firms) that, in the end, the values and wishes of activists will probably prevail and that even if they don't, they must be catered for.¹ The activists' influence amongst target markets and their capacity to damage a firm's reputation are simply too great to ignore. Moreover, there is money to be made from being friendly with them. Not only are activists willing to embellish the firm's brand and help lobby governments for mutually beneficial legislation, but many of them are very wealthy.

As part of this strategy, BT appears to have heeded WS's warning that 'Westpac would be judged by its success in preventing Gunns Limited from logging old growth forests'. In the end, it decided to sit on the fence between its shareholders and its owners' new stakeholders, and abstained from voting, claiming insufficient information to make a decision. It probably took the stance it did safe in the knowledge that WS's proposal would be overwhelmingly rejected.

The flaw in the Westpac strategy and that of its many fellow travellers, is that there are trade-offs between the values and aims of its real stakeholders and the new

stakeholders, and by law and by right the firm's priority lies with the former. This is particularly the case with Gunns. The decision was not taken by Westpac but by BT. BT, as a super fund manager, has a fiduciary obligation to give sole consideration to the financial interests of its unit holders. Westpac has no right to override or interfere in this relationship. Westpac and BT's relationship with WS should have no bearing on the decision. The decision of BT not to vote on the motion is arguably in breach of its trustee's responsibilities.

Unisuper was more culpable. It exists solely by government fiat. All academics are forced by law to place a specified percentage of their salary with Unisuper. They have no choice but to join and limited choice about leaving (before retirement age). As with BT, Unisuper has a fiduciary obligation to its unit holders. The motion in question pertained to a clear material threat to unit holder returns. Unisuper's rationale for abstaining, 'that the company and its stakeholders do not appear to have pursued all opportunities to resolve their differences through constructive dialogue and consultation' was both wrong and immaterial.

Moreover, Unisuper gives its unit holders the option to choose so-called ethical funds. However, those unit holders with equity exposure to Gunns elected not to take the ethical fund option. Unisuper in effect ignored their rights and preferences in favour of the activists'.

When the existing mandatory super system was established in the early 1990s, it was recognized that it would create a huge pool of funds (currently about \$600 billion) which would attract an army of rent-seekers attempting to mobilize the funds for their own purposes. The main concern at the time was the unions and their

influence over industry super funds. To date, the unions have in the main behaved properly and given due priority to maximizing returns to unit holders—though the ACTU has been making noises for years about using its influence over the super system for industrial purposes. The Gunns case shows that the real threat to the super system and our financial future comes not from the unions but the so-called ethical investment lobby and its relationship with flaky trustees and big banks, such as Westpac.

The threat to both BT and Unisuper lies with aggrieved unit holders taking legal action for breach of fiduciary responsibility. Such an action would be in the interests of all Australian superannuants and should be undertaken.

Unfortunately, the Tasmanian community has no redress against BT (except perhaps by boycotting Westpac and BT) or Unisuper. Indeed the Gunns case study highlights the false nature of much of the debate on corporate social responsibility. While these funds claim to act in the interests of the local community and sustainable development, in reality they often act directly against these very aims.

Luckily for Gunns and its stakeholders, well-managed firms which are structurally insulated from the influence of false stakeholders such as WS will not face a shortage of low-cost investment. Indeed one suspects that Gunns points the way to the future for resource-based industries—be local, be close to your real stakeholders, be focused, be profitable and keep fake stakeholders at bay.

NOTE

1. 'The Social Responsibility of Corporations', Leon Davis, Chairman, Westpac Banking Corporation, Menzies Research Centre, Melbourne, May 2001.

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