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SLAPPED: THE RELATIONSHIP BETWEEN SLAPP SUITS AND INCREASED ESG REPORTING

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SLAPPED: THE RELATIONSHIP BETWEEN SLAPP SUITS AND INCREASED ESG REPORTING BY FIRMS

Abstract
The level of corporate ESG disclosure continues to rise and there appears to be no single theoretical model which explains why firms decide to report their ESG outcomes. Hopwood (2009) called for research into the different and complex motivations that underpin corporate ESG reporting decisions. In responding to Hopwood’s (2009) call for research into such different motivations for corporate ESG reporting this study investigates, through the lens of legitimacy theory, whether a relationship may exist between firms utilising a Strategic Lawsuit Against Public Participation (SLAPP) and an increase in their ESG reporting.

SLAPP suits are typically issued by large corporations and target individuals engaged in public debate “on issues of societal and political significance” (Pring & Canan, 1996, p. 9). SLAPP suits generally try to gag “individuals and groups [who] publicly protest against activities ... that undermine human rights or result in damage to the environment” (Anthony, 2009, p. 1). SLAPPs are designed to address threats to corporate legitimacy and rather than having a legal outcome as their goal, SLAPPs form part of a broader communication strategy aimed at legitimating the firm’s behaviour. This paper investigates whether ESG reporting is used as a complementary legitimating activity by firms which have issued SLAPPs.

Purpose:
To explore any potential link between the use of SLAPP suits as a corporate legitimation strategy supported by the increased use, or changed focus, of ESG reporting.

Design/methodology/approach:
A content analysis of the Annual Reports of three case study corporations was undertaken measuring changes in disclosure levels and disclosure focus around the time a SLAPP was issued by the case study firms.

Findings:
Support for the contention that both the number of ESG disclosures and the type of ESG disclosures changed after the case study firms issued SLAPPs

Research limitations/implications:
A number of limitations are identified within the paper including difficulties.

Originality/value:
To the researchers knowledge this is the first investigation of the relationship between SLAPPs and ESG reporting and this study helps open up an new area of research into how ESG reporting is used.
SLAPPED: THE RELATIONSHIP BETWEEN SLAPP SUITS AND INCREASED ESG REPORTING BY FIRMS

1 Introduction

There has been a significant increase in the number of firms in Australia and internationally who are voluntarily preparing and issuing Environmental, Social and Governance (ESG) reports (KPMG, 2008). Reporting of this nature has attracted various labels both within the Social and Environmental Accounting (SEA) literature and public practice and include Corporate Responsibility Reporting, Corporate Social Disclosure, Corporate Social Responsibility (CSR) reporting, Global Reporting Initiatives (GRI), Social and Environmental reporting, Sustainability reporting, and Triple Bottom Line (TBL) reporting, amongst others. In this paper the term Environmental, Social and Governance (ESG) reporting is utilised to collectively encompass all of these terms.

Within the broader SEA literature there has been a number of research studies conducted which have sought “to identify, and possibly go on to predict, the driving factors behind [such] managerial disclosure decisions” (Owen, 2008, p. 247). To better understand this reporting behaviour Hopwood (2009) called for research into the different and complex motivations that underpin corporate ESG reporting decisions. Hopwood argued that “a variety of motives may well be implicated in the production of environmental and sustainability reports” (2009, p. 438) and that the increase in voluntary ESG reporting may be caused by a range of disparate corporate motivations. In responding to Hopwood’s (2009) call for research into such different motivations for corporate ESG reporting this study investigates, through the lens of legitimacy theory, whether a relationship may exist between firms utilising a Strategic Lawsuit Against Public Participation (SLAPP) and an increase in their ESG reporting.

SLAPPs represent a threat to the fundamental democratic right of protest which has underpinned much of modern Australian society. A society in which citizens are silenced by the intimidatory tactics of large and powerful entities, and in which members of the public are reluctant to participate in political debate out of fear of retaliatory legal action, cannot be considered truly democratic. The motivation behind this current study is to identify whether the production and content of ESG reports are utilised as a complementary communication stratagem by firms involved in SLAPP litigation as part of an overall strategy designed to gain control over the flow of information in order to manipulate public awareness and perception; and thereby legitimise corporate conduct.

This paper responds to Hopwood’s (2009) call for further research into the motivations underpinning corporate ESG reporting and also to Gray, Kouhy, and Laver’s (1995a, p. 48) call for SEA research into corporate social responsibility that critically examines “the role of information in organization-
society dialogue”. The question as to whether accounting, through public reporting disclosure, may be specifically used to complement the strategic corporate use of SLAPPs to control information in the organisation-society dialogue is of concern and an issue that we believe has not been addressed in prior research.

2 Strategic Lawsuit Against Public Participation (SLAPP)

The use by corporations of civil legal action designed to deter public criticism and punish any civil protest has become increasingly common. Cases of this nature were initially recognised in, and considered unique to, jurisdictions within the United States of America (USA) where they have been dubbed ‘Strategic Lawsuits Against Public Participation’ (SLAPPs) (Pring & Canan, 1996). SLAPP suits are typically issued by large corporations and target individuals engaged in public debate “on issues of societal and political significance” (Pring & Canan, 1996, p. 9). These legal actions have been initiated against defendants who were engaging in public debate on a broad range of public welfare issues including political appointments, workplace sexual harassment, official misconduct, health violations, environmental protection, consumer protection, civil rights, civil liberties, health, safety and welfare (Abrams, 1989; Shapiro, 2010).

The targeting of environmentally, socially and politically significant debate is alarming due to the damaging impact that SLAPPs can have on the level of participation in civic debate. Any threat to the ongoing engagement of the community in environmental or social issues should be of concern in a civil society because “public participation is one of the most fundamental rights in a democratic society and needs to be protected” (Ogle, 2005, p. 21).

SLAPP suits generally try to gag “individuals and groups [who] publicly protest against activities... that undermine human rights or result in damage to the environment” (Anthony, 2009, p. 1). These cases utilise a number of legal tactics to effectively transform what is legitimate debate in the public arena into private legal disputes. These legal suits serve to tie up, usually for extended periods, the resources and time of those individuals and organisations who publicly criticise corporate behaviour (Hurley & Shogren, 1997; Pring & Canan, 1996).

The ‘chilling effect’ of SLAPP litigation was first identified by Pring and Canan who stated that “SLAPP targets who fight back seldom lose in court yet are frequently devastated and depoliticized and discourage others from speaking out – ‘chilled’” (1996, p. xi). Numerous researchers have highlighted the deterrent effect that SLAPP suits have on public participation drawing attention to the power such litigation gives to corporate SLAPP plaintiffs (see, for example; Anthony, 2009; Donson, 2010; Ogle, 2005, 2010; Pring & Canan, 1988, 1996; Shapiro, 2010). Within this literature several
explanatory factors have been identified as reasons for the success of SLAPPs in curtailing criticism of corporate behaviour and inhibiting public debate. These intimidatory factors include the power imbalance between SLAPP plaintiffs and defendants, the prolonged time and resource strain involved in contesting SLAPPs, and the dollar size of SLAPP damages claims.

The use of this legal tactic has now become widespread internationally and in Australia where the term SLAPP has found its way into the Australian literature (Anthony, 2009). An increasing number of SLAPP suits have been filed in Australia since the 1990s (see, for example; Australian Wool Innovation v. Ingrid Newkirk & Ors, [2004]; Chapman v. Conservation Council of SA & Ors, [2002]; David Jones Ltd v. The Australia Institute Ltd, [2006]; Frank De Stefano v. Bannockburn Yellow Gum Action Group, (n.d.); Gunns v. Alishah & Ors, (2008); Gunns v. Brown & Ors, (2003); Gunns v. Marr & Ors, (2004); Gunns v. Nicklason, (2007); Gunns v. Welch & Ors, (2004); Harback Logging Pty Ltd v. Morris, (2004); Lord McAlpine & Or v. The Wilderness Society WA Inc & Peter Robertson, (1991); Schwabe Pharma v. Auspharm.net.au, [2006]; Takhar v. Animal Liberation SA Inc & Or, (2000)). In Australia the majority of SLAPPs fail to make it to trial, and the vast majority of those that do go to trial are unsuccessful in their legal claims (Anthony, 2009; Pring & Canan, 1996).

Despite the record of ostensible legal failure, the number of SLAPPs being issued continues to rise around the world. This is arguably because SLAPPs, whilst not successful in the courtroom, are often successful in deterring public debate of corporate conduct and in utilising legal intimidation to generate a “civic climate less conducive to participation by individuals and groups” (Norman, 2010, p. 29). There is evidence that SLAPPs are used for strategic purposes that go beyond the pursuit of compensatory damages for a perceived wrong (Donson, 2010) and that corporations issuing SLAPP suits often have in mind a “strategic victory rather than a legal or moral one” (Norman, 2010, p. 28). As former New York Attorney General Robert Abrams states, “the fact that these [cases] rarely succeed is almost irrelevant. They can still do damage – even if the plaintiffs lose, they win” (1989, p. 39). SLAPPs have the effect of bringing public participation to a standstill by utilising litigation to punish, intimidate and deter current, and future public criticism (Pring & Canan, 1996).

One of the difficulties which confound research around SLAPPs is that the research focus is on actual legal cases which make it to court. It should be recognised that an actual court hearing is often the last step in a long string of legal manoeuvres which occur prior to actually receiving a listing to be heard in court. The intimidation and cost associated with a SLAPP can have a significant impact on defendants long before the case reaches trial. In fact, the mere threat of litigation, ensconced in a threatening letter from a plaintiff’s high-powered solicitor, may cause defendants to retreat and
cease their protests against corporations. In these cases, the SLAPP strategy is successful without even being recognised as a SLAPP because no legal action has actually occurred.

This fact was recognised in an article in The Australian Journal of Mining in August 1988 in the statement “anti-mining opponents generally make outrageous and defamatory claims [however] a crowd stopper in a debate is the threat of legal action” (cited in; SLAPP’s in Australia, 2010). In other words, the mere threat of a SLAPP may be sufficient to intimidate citizens into silence, so much so, that the actual filing of a lawsuit becomes unnecessary. In fact, the majority of SLAPP suits do not make it to trial as the proceedings only need to be pursued until the desired intimidation effect is achieved (Anthony, 2009). Similarly, in the ‘Gunns 20’ case a Tasmanian university newspaper withdrew from publication an article which criticised Gunns Ltd. on a range of environmental issues following receipt of a letter threatening legal action (Anthony, 2009).

Therefore, the most concerning factor about SLAPP suits is not whether the courts find for the plaintiff corporation, but rather the deterrent effect these cases have on public participation (Shapiro, 2010).

3 SLAPPs as a Legitimation Strategy

The motives driving voluntary ESG reporting have been linked to a number of theoretical concepts including Political Economy Theory, Stakeholder Theory, Legitimacy Theory, Institutional Theory and Agency Theory (see, for example; Belkaoui & Karpik, 1989; Branco, Eugénio, & Ribeiro, 2008; Campbell, Craven, & Shrives, 2003; Gray, et al., 1995a; Gray, Owen, & Maunders, 1988; Guthrie, Petty, Yongvanich, & Ricceri, 2004; Hackston & Milne, 1996; Lindblom, 1994; Patten, 1992; C. B. Roberts, 1991; Suchman, 1995). Within the SEA literature Legitimacy Theory and Stakeholder Theory, as overlapping theoretical perspectives set within a Political Economy framework, are the most commonly employed theoretical approaches when attempting to explain and predict ESG reporting behaviour (Deegan, 2009; Lehman, 2001).

It is proposed that, rather than having a legal outcome as their goal, SLAPPs form part of a broader communication strategy aimed at legitimating the firm’s behaviour. In the context of Legitimacy Theory, firms are seen to operate within the bounds of a social contract the terms of which are centred on the values and expectations of the society within which the firm operates. If a firm is to remain legitimate and be granted the right to operate in society, it must demonstrate to society that it is upholding the terms and obligations of its social contract (Deegan, 2009; Gray, et al., 1995a).

For an organisation seeking to be perceived as legitimate the actual conduct of the organisation is not what is most important; it is what society knows or believes about the organisation that has the
greatest influence on legitimacy (Deegan, 2009). Consequently, managing the social perception of
the organisation is regarded as an important strategy by which an organisation can gain acceptance
and approval from society (Branco, et al., 2008). For corporations interested in maintaining their
social contract “legitimacy management rests heavily on communication” (Suchman, 1995, p. 586).
SLAPPs assist corporations to manage social perceptions and legitimise the firm by negatively
impacting on the level of communicative public criticism or debate around the firm’s activities.

It is important to identify the distinction between legitimacy and legitimation. According to Lindblom
(1994), legitimacy is a status or condition, while legitimation is the process undertaken in order
to achieve this state (see also; Deegan & Gordon, 1996). Lindblom defines legitimacy as “a condition or
status which exists when an entity’s value system is congruent with the value system of the larger
social system of which the entity is a part” (1994, p. 2). According to Kaplan and Ruland, underlying
this status of organisational legitimacy is a process called legitimation “by which an organization
seeks approval (or avoidance of sanction) from groups in society” (1991, p. 370). This approach is
consistent with that of Brown and Deegan (1998, p. 23) who regard legitimacy as a “condition or
status”, whereas legitimation is regarded as the “process which organisations can undertake
(perhaps through particular disclosure strategies) to take them to this state”.

A company may engage in a process of legitimation to “gain or to extend legitimacy, to maintain its
level of current legitimacy or to repair or to defend its lost or threatened legitimacy” (O’Donovan,
2002, p. 349). The legitimation process is often crucial in ensuring an organisation’s continued
existence because organisational legitimacy is a resource that corporations depend upon for
survival. Legitimacy theorists regard organisational legitimacy as a valuable resource upon which
organisations depend for survival (see, for example; Basalamah & Jermias, 2005; Deegan, 2009;
is an operational resource... that organisations extract – often competitively – from their cultural
environments and that they employ in pursuit of their goals”. In other words, legitimacy is a resource
that organisations require in order to operate and certain activities or events increase, while others
decrease, this resource (Tilling & Tilt, 2010).

A key assumption underlying resource dependence theory (see; Pfeffer & Salancik, 1978) is that
when management perceives the supply of a particular resource (e.g. legitimacy) to be vital to the
firm’s survival they will adopt strategies to ensure the continued supply of that resource (Deegan,
2009). As legitimacy is regarded as a critical resource companies will engage in legitimation
strategies to ensure the continued supply of legitimacy and as a consequence, ensure the continued
inflow of resources necessary for survival (e.g. capital, labour, raw materials and customers) (Neu,
Warsame, & Pedwell, 1998). One way in which organisations often attempt to manage their legitimacy is through voluntary ESG reporting (Brown & Deegan, 1998; Deegan, 2009; Lindblom, 1994).

Within the extant SEA literature it has been identified that activities and events can impact to increase, or decrease, an organisation’s legitimacy (Tilling & Tilt, 2010). A number of studies have examined changes in corporate reporting behaviour in reaction to circumstances and events which may pose a threat to organisational legitimacy. Patten (1992) studied the reporting behaviour of Exxon Mobil in the aftermath of the Exxon Valdez oil tanker crash in Prince William Sound, Alaska in 1989 and found that the company increased its level of ESG disclosure after the event. Patten (1992) also examined the effect that the 1989 Exxon Valdez oil spill had on the disclosure policies of 21 other North American petroleum firms and identified increases in environmental disclosure across the whole petroleum industry. Utilising Legitimacy Theory, Patten argued that the massive oil spill and public outcry that followed posed a threat to the legitimacy of Exxon and the oil industry as a whole and concluded that “in and of itself, this result might be viewed as strong evidence for the relationship between legitimacy theory and social disclosure” (1992, p. 472).

Consistent with Patten’s (1992) analysis, Deegan, Rankin and Voght (2000) utilised Legitimacy Theory to predict and explain changes in corporate disclosure policies following major social incidents and found evidence that the disclosure policies of firms do appear to change in response to major incidents whether company or industry related. These results “highlight[ed] the strategic nature of voluntary social disclosures” (Deegan, et al., 2000, p. 127). Deegan and Rankin (1996) found that Australian firms who had been successfully prosecuted by the Environmental Protection Authority (EPA) disclosed significantly higher levels of ESG information in the years of prosecution than they did in non-prosecution years. Deegan and Rankin (1996) also found that those firms who had been successfully prosecuted by the EPA disclosed significantly higher levels of ESG information than firms who were not prosecuted. The environmental prosecution was perceived to pose a threat to organisational legitimacy and these firms utilised voluntary ESG reporting in an attempt to offset this threat. Deegan and Rankin (1996) argued that firms increase their disclosure “to offset, at least in part, the effects of any EPA prosecution” (1996, p. 58). Deegan and Rankin identified the existence of a link between ESG reporting, legitimation, and legitimacy and pointed out that when “the legitimacy of the firm is deemed, by management, to be in question … as a reaction to this perception, a process of legitimation is undertaken” (1996, p. 59).
3.1 Research Questions

Within this study, it is contended that SLAPPs form part of a coherent raft of corporate communication strategies which are utilised by firms attempting to manage organisational legitimacy. SLAPPs influence the public flow of information around contentious issues, influence public awareness of those issues, and thus limit any negative impact on the public perception of the SLAPP firm. Whilst the full range of motivations behind the voluntary increase in Environmental, Social and Governance (ESG) communications remains unclear, it can be expected that a modern firm’s communication strategy will be integrated. It is posited that ESG reporting may be utilised as part of a suite of communication strategies to support SLAPP legal actions in legitimising corporate conduct.

To investigate this issue further the following research questions were framed:

Research Question 1:

*Does the total level of ESG information disclosed by a company increase around the time of that firm’s involvement in SLAPP litigation?*

As ESG reporting is voluntary in nature, ESG disclosures are often strategically motivated. Corporations commonly elect to disclose information that serves to achieve some self-laudatory objective (Deegan & Rankin, 1996). Corporations commonly utilise ESG disclosures to counteract any criticism of their operations, or to shift stakeholder attention away from issues of concern and towards more positive aspects of their operations (e.g. by emphasising links with charity) (Guthrie & Parker, 1989; Lindblom, 1994; Tilling & Tilt, 2010). Therefore, voluntary ESG disclosures can be expected to reflect a corporation’s motivation to report and are often designed to achieve a specific outcome or desired effect (e.g. to gain, increase, maintain or repair legitimacy) (Zéghal & Ahmed, 1990). It is therefore anticipated that SLAPP organisations will elect to disclose information that has the greatest impact on stakeholder perception and organisational legitimacy. This may include information that counteracts the initial criticism of the firm’s operations, or which diverts stakeholder attention away from the criticism and towards more positive aspects of the firm’s operations (Lindblom, 1994).

Rather than altering the extent of their total ESG reporting, firms may elect to alter the content of their ESG disclosures (i.e. corporations may alter the extent of reporting within only specific areas of ESG disclosure). SLAPP suits are often centred on one key ESG issue (e.g. animal welfare, employee rights, the environment, etc.) It follows that rather than increasing total ESG reporting; SLAPP firms may increase their reporting only within ESG reporting categories directly relevant to the SLAPP
issue. The firm will still have altered its ESG reporting behaviour to complement the SLAPP suit, but this will not be evident when examining the total level of ESG disclosure. Accordingly, a second research question is proposed:

**Research Question 2:**

*Does the level of information disclosed by a company on specific ESG issues increase around the time of the firm’s involvement in SLAPP litigation?*

In summary, these research questions anticipate that there will be significant changes in a firm’s ESG reporting behaviour in the period surrounding its SLAPP involvement. If accounting, through voluntary reporting disclosures, is found to contribute to the SLAPP phenomenon then the threat posed to public welfare becomes even more alarming. Not only does this corporate communication strategy reduce public awareness of socially and environmentally concerning corporate conduct (i.e. as public participation is chilled), it also makes it easier for corporations to legitimise their conduct through ESG reporting disclosures. In effect, this strategy enables firms to eliminate their public opposition. Such behaviour is of concern to public welfare because it enables amoral corporate conduct to go undisputed, unpunished and therefore, to continue on indefinitely.

### 4 Research Design

This study undertakes a content analysis of the annual reports of three case study firms who are identified as having been involved as plaintiffs in SLAPP suits. Justification for the selection of these three cases can be found in the works of Robert Yin (2003, 2004). As this research considers more than one case it is regarded as a ‘multiple-case study’ (Yin, 2003, 2004). While collecting and processing data from multiple cases requires more time and effort than would be required in order to conduct a ‘single-case study’, analysing multiple cases provides a number of significant advantages (Yin, 2004). Studying a number of cases that replicate one another either by predicting similar results (literal replication), or by predicting contrasting results for specific reasons (theoretical replication), provides a much greater insight into the phenomenon in question than would be obtained by examining a single case (Yin, 2003). By analysing multiple replicating cases the resulting data strengthens the case study’s findings by making the interpretations more robust and generalisable (Yin, 2004).

To establish the extent of ESG disclosure before the SLAPP was issued and compare that with ESG disclosure following the suit a content analysis of the annual reports from two years prior, through to two years after, the SLAPP suit were analysed (five years in total). This follows the content analysis sampling methodology adopted in the Deegan, Rankin and Voght (2000) event study.
Content analysis is a research technique which utilises a set of well-defined procedures to draw valid inferences from text (Weber, 1990). Content analysis is centred on the key assumption that the ‘frequency’ with which certain issues are included in a text reflects the relative importance placed upon each issue by the reporting entity (Dejean & Oxibar, 2003; Gray, Kouhy, & Lavers, 1995b; Krippendorff, 2004). Krippendorff (2004) contended that in undertaking a content analysis “the frequency with which a symbol, idea, reference, or topic occurs in a stream of messages is taken to indicate the importance of, attention to, or emphasis on that symbol, idea, reference, or topic in the messages” (Krippendorff, 2004, p. 59). This assumption that ‘relative frequency’ of disclosure equals the ‘relative importance’ of that disclosure is recognised as a major limitation with the use of content analysis, as is the inherent subjectivity present in determining what constitutes a particular type of disclosure (Deegan & Gordon, 1996).

A factor which informed the decision to utilise content analysis in this study is the accepted role of content analysis as a method within prior SEA research. Deegan and Rankin (1996) published a widely-cited review of the voluntary ESG reporting of corporations in Australia utilising content analysis as the research methodology. A number of other studies within the SEA literature have also utilised content analysis in attempts to draw links between an organisation’s reporting behaviour and its external environment (see, for example; Branco, et al., 2008; Buhr, 1998; Campbell, et al., 2003; Deegan & Gordon, 1996; Gray, et al., 1995a; Guthrie & Parker, 1989; Guthrie & Parker, 1990; Hackston & Milne, 1996; Neu, et al., 1998; Patten, 1992; Tilling & Tilt, 2010; Wilmshurst & Frost, 2000; Zéghal & Ahmed, 1990). A number of studies within the extant SEA literature have utilised content analysis when attempting to measure, explain and predict ESG reporting behaviour through Legitimacy Theory (Guthrie, et al., 2004). It is accepted that content analysis provides a reliable measure of the extent of an organisation’s ESG disclosure at a point in time.

For this study the annual report was considered to be the most reliable proxy for a firm’s total ESG reporting behaviour, making it an ideal document to examine within an ESG reporting content analysis. The decision to adopt annual reports as the source documents is consistent with that reached by a number of SEA researchers (see, for example; Branco, et al., 2008; Campbell, et al., 2003; Cowen, Ferreri, & Parker, 1987; Deegan & Gordon, 1996; Deegan & Rankin, 1996; Gray, et al., 1995a, 1995b; Guthrie & Parker, 1990; Hackston & Milne, 1996; Neu, et al., 1998; Patten, 1992; C. B. Roberts, 1991; Tilling & Tilt, 2010; Wilmshurst & Frost, 2000). The annual report is often regarded as the most relevant document to investigate in ESG reporting studies because “organizations commonly signal what they perceive as important through the reporting mechanism” (Guthrie & Abeysekerika, 2006, p. 114-115). According to Neu et al. “annual reports are a primary information
source for investors, creditors, employees, environmental groups and the government” (1998, p. 269). In light of this, the annual report is commonly regarded as “the most important document in terms of the organisation’s construction of its own social imagery” (Gray, et al., 1995b, p. 82) (see also; Hines, 1988; Neimark, 1992). Management has complete control over what information is disclosed within the annual report. Therefore, the annual report provides a valuable insight into the mindset of corporate management at particular points in time.

The content analysis disclosure variables, coding instrument and decision rules utilised within the present study were derived from those developed by Hackston and Milne (1996) and have been slightly modified to better meet the needs of this study. Hackston and Milne’s coding instrument was “constructed based on the earlier work of Ernst & Ernst (1978), Guthrie and Parker (1990), and Gray et al. (1995a)” and includes the disclosure themes of “environment, energy, products/consumers, community, employee/human resources, [and] general/other” (1996, p. 84). One ESG disclosure category (Animal Welfare) has been added to Hackston and Milne (1996) schema.

A problem in researching whether the initiation of a SLAPP is accompanied by complementary managerial legitimation strategies is determining exactly at which point a SLAPP commences. In this study the ‘event’ has been operationalised as the day that the law suit was issued. However, the legal manoeuvrings, the threats of action, and the lengthy legal process that all take place before civil litigation is launched make it difficult to identify at which point the issuing firm becomes aware of the issue or public criticism being made and commences strategic action to combat the threat to its legitimacy. When conducting an ‘event’ study such as proposed the issue of identifying when the ‘event’ occurred is a unique and problematic differentiator from some of the prior studies cited. Deegan, Rankin and Voght (2000) also identified that an issue that confounds research investigating changes in reporting behaviour around a specific event (in this case a SLAPP suit) is identifying a particular point of time from which to measure as a before and after base point. In their research into firms’ reporting responses to major environmental incidents, Deegan, Rankin and Voght noted that it was necessary to “select events that had a specific date of occurrence (event date) so that we could investigate the disclosure reaction before and after the discreet (sic) event” (2000, p. 107). On this basis Deegan et al excluded the impact of BHP mining on rivers in New Guinea such as the Fly and the Ok Tedi as a potential event to study because they had “been an ongoing issue of concern for many years, and concerns were still ongoing” (2000, p. 107). Similarly, SLAPPs are typically issued over social and environmental issues that are ongoing issues of public concern.
5 Outline of Case Studies

This study utilises content analysis encompassing a sentence-based coding instrument and decision rules to analyse the extent of ESG disclosure included within the annual reports of the three sample SLAPP companies; Australian Wool Innovation Ltd., David Jones Ltd. and Gunns Ltd. This content analysis is designed to determine whether corporations utilise ESG reporting strategies in combination with, and in support of, SLAPP litigation.

The corporations and cases selected for analysis in this paper are (1) Australian Wool Innovation and the SLAPP litigation against criticism over the practice of mulesing and live export, (2) David Jones Ltd and its SLAPP litigation against public criticism of the sexualisation of children in advertising, and (3) the SLAPP litigation by Gunns Ltd over criticism of its logging and timber milling activities in Tasmania. These cases represent some of the highest profile SLAPP suits in Australia to date.

5.1 Australian Wool Innovation v. Ingrid Newkirk & Ors, Federal Court [2004] NSD 1630

In 2004, AWI sued People for the Ethical Treatment of Animals (PETA) (a U.S. based international animal rights lobby group), Animal Liberation NSW (an Australian based animal rights lobby group) and officers from both organisations for allegedly campaigning against Australian wool and wool products (Ogle, 2005). As a typical SLAPP suit this case involved a large and powerful entity (i.e. AWI) attempting to intimidate and deter its much smaller critics through legal action. Whilst PETA is a large and comparatively well-funded organisation smaller defendants like Animal Liberation NSW, and the individuals named, Angie Stephenson and Sally Dingle-Wall, possessed significantly fewer financial resources and legal expertise to defend the claims against them (McEwen, 2011). As Dingle-Wall stated, “there is no way known I can afford to fight this case” (cited in; Marr, 2007). Lawsuits of this nature can be both financially and emotionally devastating for these smaller defendants. Despite the fact that AWI was ultimately unsuccessful in its legal claims against these animal activists, the defendants were still tied up in a long, costly and stressful legal battle for almost three years.

As in many reported SLAPP cases it appears that AWI may have never really been interested in, or even expecting, a legal victory in these proceedings. Rather, the main aim of AWI in this case appears to have been the intimidation of its critics and the deterrence of public participation. AWI’s chairman Ian McLachlan gave a hint of this tactic in his comment that “if we have a massive bill, so have they got a massive bill. This industry is extremely well financed and these sorts of crises are catered for. The Australian wool industry is not going to walk away from something it’s been building up for 200 years” (Walters, 2005, p. 17).
5.2 David Jones Ltd v. The Australia Institute Ltd, Federal Court [2006] NSD 2490

Another high profile Australian SLAPP involved one of Australia’s largest retailers, David Jones Ltd. (DJs), and the Canberra based think-tank, The Australia Institute (TAI). On 20 December 2006, DJs initiated legal action against TAI and its Executive Director Dr. Clive Hamilton in response to TAI’s public criticism of the sexualisation of children in advertising (Ogle, 2010). TAI’s October 2006 discussion paper by Emma Rush and Andrea La Nauze, entitled ‘Corporate Paedophilia – Sexualisation of children in Australia’, investigates the portrayal of children in corporate marketing and advertising material. The Institute’s paper accuses a number of parties, including retailers, marketers and magazines, of utilising sexually suggestive poses of children in order to sell their products. The paper argues that marketing material utilised by these parties commonly depicts images of children in poses designed to exhibit the sexual attributes of adults (Ogle, n.d.; K. Roberts, 2006).

This case represents yet another example of a large and powerful entity drawing upon a pool of seemingly limitless resources to threaten and intimidate its significantly smaller opponents into silence. At the time of the lawsuit DJs operated 37 department stores across Australia and generated AUD $1.8 billion in revenue for the 2006 financial year (Burton, 2007). On the other hand, TAI is a non-profit organisation which describes itself as “an independent public policy research centre funded by grants from philanthropic trusts, memberships and commissioned research” (Donald, 2009, p. 8). Therefore, this case involves yet another “corporate Goliath trying to squash the dissenting views of a non-profit critic” (Burton, 2007).

5.3 Gunns v Marr & Ors, Victorian Supreme Court, No. 9575 of 2004 (‘Gunns 20’ Case)

Possibly the highest profile of recent Australian SLAPPs is that involving Australian timber giant Gunns Ltd. On one side of this case was a group of environmental activists and community groups while on the other side was the forestry industry dominated by Gunns Ltd. (Topham, 2006). Faced with a well organised campaign of protest over its environmental impact Gunns launched legal action against a number of environmental activists in the Victorian Supreme Court (Friends of Forests and Free Speech, n.d.). On 13 December 2004, Gunns lodged a 216 page writ against a group of 20 environmental activists and community groups which came to be known as the ‘Gunns 20’ (Friends of Forests and Free Speech, n.d.). The Gunns 20 was made up of private citizens and lobby groups opposed to Gunns’ logging of old growth forests. Most notably, the Gunns 20 included the Australian Greens Senator Bob Brown, Tasmanian Greens Member of Parliament Peg Putt, and one of Australia’s largest environment groups, The Wilderness Society (Ogle, 2005). In the original pleading of the Gunns 20 case, Gunns sought damages from the defendants totalling AUD $6.3
million (Nettlefold, 2004). Of this $6.3 million, $1.1 million (including $450,000 for unspecified ‘trouble and inconvenience’) related to damage to reputation, while $5.2 million related to aggravated and exemplary damages (Ogle, 2010).

Gunns Ltd. is a billion-dollar Tasmanian forest products company which at the time of the case, shipped five million tons of timber to Japan annually, and earned an annual revenue of AUD $674 million, of which AUD $105 million was profit (“Gunns Logging Case”, 2005; Price, 2005). This large and powerful entity initiated legal action against 20 significantly smaller opponents who were either small community groups or private citizens with insufficient financial resources and legal expertise to defend the claims against them.

Overall, the Gunns 20 case dragged on for over five years and eventually ended on 29 January 2010. After reaching settlement with the final four members of the Gunns 20, the company had been forced to pay the legal costs of all 20 defendants and additional damages to some defendants. In total, Gunns paid over AUD $1.4 million dollars in damages and costs to the Gunns 20 defendants and is estimated to have paid a further AUD $2.8 million in its own legal costs (Denholm, 2010). The case was described as “an embarrassing backdown” for Gunns, who had spent over $4 million of its shareholders’ money on the case (Sanders, 2010). One of the defendants, Mr Burling, stated that while the money would cover most of the defendants’ legal fees, it would not make up for the “pain and anguish the case has caused for five years” (cited in; Glaetzer, 2010).

The selected case studies outlined above involving Australian Wool Innovation Ltd., David Jones Ltd. and Gunns Ltd. represent examples of the increasing occurrence of SLAPP legal action being utilised to deter public participation in important debates in Australia. Each case study is based on very different facts and circumstances yet are very similar in the way that disproportionate legal action was initiated by large corporations in an attempt to prevent criticism of their corporate behaviour.

6 Results

6.1 Australian Wool Innovation Ltd (AWI) Results

The extent of total ESG disclosure included within AWI’s annual reports across the sample period (2002 to 2006) is presented in Figure 1. AWI launched its SLAPP in 2004 and as per the research design, the analysis of ESG disclosure includes 2004 (the year of litigation) and the two years prior and post the commencement of the SLAPP. Figure 1 provides a graphical representation of the extent of total ESG disclosure included in AWI’s annual reports over the 5 years being sampled.
Figure 1 enables comparison to be made between AWI’s ESG reporting behaviour in the period immediately prior to the firm’s SLAPP involvement (2002 – 2003), the SLAPP year (2004) and the period immediately following the launch of the SLAPP (2005 – 2006).

Across the sample period (2002 – 2006) a total of 2,180 sentences were disclosed in AWI’s five annual reports in relation to the firm’s ESG performance. AWI’s total ESG disclosure increased nearly four-fold over the sample period; from 153 sentences in 2002, up to 605 sentences in 2006. Interestingly, the greatest increase in total ESG disclosure (184.31%) occurred between the 2002 and 2003 annual reports. The 2003 annual report (produced at the end of the 2003 financial year) is significant within the context of this study due to its timing in relation to the launch of AWI’s SLAPP suit. The increased level of ESG disclosure included within the 2003 annual report may have coincided with initial planning for AWI’s 2004 SLAPP action targeting the ongoing campaign against mulesing and live animal export. This may in part explain the doubling of ESG reporting between 2002 and 2003. The second highest increase in total ESG disclosure (31.69%) occurred between the 2004 and 2005 annual reports which also aligns with the launch of AWI’s SLAPP. The increase in ESG reporting between 2004 and 2005 may have been designed to complement the SLAPP in managing public perception and organisation legitimacy.

AWI’s total ESG disclosure peaked in the two years immediately following the launch of the SLAPP. 53.49% of the total ESG disclosures across the five year period were disclosed within the 2005 and 2006 annual reports alone. ESG disclosure increased from an average of 294 sentences across 2002 and 2003, up to an average of 583 sentences across 2005 and 2006. These figures indicate an increase in total ESG disclosure in the period immediately following the launch of AWI’s SLAPP suit.

In terms of the individual ESG disclosure sub-categories, AWI’s total disclosure ranged from 0 sentences in four sub-categories, up to 572 sentences in the ‘Animal Health and Welfare’ category.
The results obtained within the ‘Animal Health and Welfare’ category are of particular interest in this study given that the criticism levelled at AWI related directly to issues surrounding animal welfare and the practice of ‘mulesing’ sheep. The extent of ‘Animal Health and Welfare’ related disclosure included within AWI’s annual reports across the sample period is presented below in Figure 2. There is an

![AWI Animal Health and Welfare Disclosure](image)

**Figure 2: AWI Total ESG Disclosure**

Figure 2 highlights several noteworthy trends in AWI’s animal welfare related ESG disclosure. There is an evident spike in animal welfare related disclosure in the period immediately prior, and the period immediately following the launch of AWI’s 2004 SLAPP suit. Disclosure in this category increased from 32 sentences in 2002, up to 176 sentences in 2006; an increase of 81.82%. Interestingly, animal welfare related disclosure experienced a significant increase between 2002 and 2003 (66.32%), and then again between 2004 and 2005 (34.97%).

AWI’s ‘Animal Health and Welfare’ disclosure peaked in the two years immediately following the launch of the SLAPP. 59.27% of the total ‘Animal Health and Welfare’ disclosures across the five year period were disclosed within the 2005 and 2006 annual reports alone. Other trends were also observed when comparing average ‘Animal Health and Welfare’ disclosure in the period immediately prior to the launch of the SLAPP, to average disclosure in the period immediately following the SLAPP launch. Disclosure within this category increased from an average of 63.5 sentences across 2002 and 2003, up to an average of 169.5 across 2005 and 2006. To understand the significance of these changes in AWI’s ‘Animal Health and Welfare’ related disclosures it is helpful to compare these changes to the changes in the levels of AWI’s other ESG disclosures (other ESG disclosure refers to total ESG disclosure excluding ‘Animal Health and Welfare’ disclosure). Figure 3 (below) provides a comparison between AWI’s ‘Animal Health and Welfare’ related disclosure and all other ESG disclosure across the sample period.
In 2002 ‘Animal Health and Welfare’ ESG disclosure made up 26.5% of total ESG disclosures by AWI. By 2006 ‘Animal Health and Welfare’ disclosures had increased to 41.0% of all disclosures. Between 2002 and 2006 ‘Animal Health and Welfare’ related disclosure increased by a multiple of 5.50 or 550%, while all other ESG disclosure only increased by a multiple of 3.55 (approximately 350%). In the SLAPP year (2004) AWI’s Animal related ESG disclosure increased by 11.58%, whilst all other ESG disclosure actually fell by 5.88%. In the year immediately following the SLAPP (2005) Animal related disclosure increased by 53.77%, whilst all other ESG disclosure only increased by 24.38%. These results indicate that in the period surrounding their SLAPP litigation AWI deemed ‘Animal Health and Welfare’ related ESG disclosure to be of more importance in shaping their public image than all other forms of ESG disclosure. The results also provide evidence that increased reporting by the SLAPP firm was not simply part of a general increase in ESG reporting by all firms. Increases in both total ESG reporting and ‘Animal Health and Welfare’ related ESG reporting in the period surrounding the launch of AWI’s SLAPP are of interest to this study because they provide partial evidence of a link between SLAPP suits and the use of ESG reporting as a corporate legitimation strategy.
6.2 David Jones Ltd.

The extent of ESG disclosure included within David Jones Ltd’s (DJs) annual reports across the 5 year sample period (2004 to 2008) is presented in Figure 4 below. DJs launched its SLAPP in 2006 and as per the research design, the analysis of ESG disclosure includes 2006 (the year of litigation) and the two years prior and post the commencement of the SLAPP.

![David Jones Total ESG Disclosure](image)

Figure 4: David Jones Total ESG Disclosure

Across the sample period (2004 – 2008) a total of 825 sentences were disclosed in DJs’ five annual reports in relation to the firm’s ESG performance. DJs’ total ESG disclosure increased from 136 sentences in 2004, up to 244 sentences in 2008 (an increase of 79.41%). Interestingly, the greatest increase in total ESG disclosure (49.69%) occurred between the 2007 and 2008 annual reports. The 2007 and 2008 annual reports are significant within the context of this study due to its timing in relation to the actions targeted in DJs’ SLAPP suit. The Australia Institute’s discussion paper and Media Release (the basis of the SLAPP) were both issued in October 2006 and DJs filed its SLAPP suit in December 2006. Therefore, the anti-corporate paedophilia campaign targeting corporations like DJs did not gain momentum until after the publication of DJs’ 2006 annual report. The incident involving The Australia Institute and the subsequent SLAPP is therefore expected to impact only upon the 2007 and 2008 annual reports. This timing issue highlights one of the research limitations facing this study.

It is also interesting to note that in 2007, the year immediately following DJs’ SLAPP suit, the firm included a new section within its annual report entitled ‘Community and the Environment’. This indicates that DJs did attempt to emphasise its ESG performance in the period immediately following
the launch of its SLAPP. It therefore appears that DJs’ management did believe that information pertaining to the firm’s ESG performance was of increasing importance to its relevant publics.

DJs’ total ESG disclosure peaked in the two years immediately following the launch of the SLAPP. 49.33% of the total ESG disclosures across the five year period were disclosed within the 2007 and 2008 annual reports. ESG disclosure increased from an average of 142.5 sentences across 2004 and 2005, up to an average of 203.5 sentences across 2007 and 2008. These figures indicate an increase in total ESG disclosure in the period immediately following the launch of DJs’ SLAPP suit.

The analysis of individual sub-categories of ESG disclosure to determine whether specific types of ESG disclosure were employed as SLAPP legitimation strategies was more problematic with the DJs case. Different to the AWI and Gunns case studies, where ESG categories which related directly to the issued SLAPP were relatively easy to identify, there is no ESG category which could be related directly to the DJs SLAPP. The DJs law suit revolved around a report published by The Australia Institute which linked DJs through its advertising to the increased sexualisation of children in Australia in what was claimed to amount ‘corporate paedophilia’. For DJs it was difficult to isolate a single ESG disclosure category of interest. For the purpose of this study it was decided that the closest ESG category that could be identified with this issue was the category on Community Involvement. Also, in prior studies it had been noted that as a legitimation strategy ESG reporting on other areas such as Community Engagement had been used to distract attention away from the legitimacy threat (Deegan, et al., 2000).

In terms of the individual ESG disclosure sub-categories, DJs’ total disclosure ranged from 0 sentences in seven sub-categories, up to 352 in the ‘Other’ category. A total of 124 sentences were categorised within the ‘Community Involvement’ category. The results observed within the ‘Community Involvement’ category were identified as being of most interest in this study given that the criticism levelled at DJs related directly to issues surrounding child welfare. The extent of ‘Community Involvement’ related disclosure included within DJs’ annual reports across the sample period is presented below in Figure 5.

The data presented in Figure 14 highlights some interesting trends in DJs’ community related ESG disclosure. There is a slight spike in community involvement related disclosure in the period immediately prior to the launch of DJs’ 2006 SLAPP suit. however DJs’ ‘Community Involvement’ disclosure peaked in the two years immediately following the launch of the SLAPP. 49.19% of the total ‘Community Involvement’ disclosures across the five year period were disclosed within the latter 2007 and 2008 annual reports.
Interesting trends were also observed when comparing average ‘Community Involvement’ disclosure in the period immediately prior to the launch of the SLAPP, to average disclosure in the period immediately following the SLAPP launch. Disclosure within this category increased from an average of 20.5 sentences across 2003 and 2004, up to an average of 20.5 across 2007 and 2008.

Figure 6 compares the trends in DJs ‘Community Involvement’ related disclosure in percentage terms with all other ESG disclosure by DJs across the sample period. In the year immediately following the SLAPP (2007) ‘Community Involvement’ related disclosure increased by 31.82%, whilst
all other ESG disclosure only increased by 20.72%. These results indicate that in the period surrounding their SLAPP litigation DJs deemed ‘Community Involvement’ related ESG disclosure to be of slightly more importance in shaping their public image than all other forms of ESG disclosure.

Spikes in both total ESG reporting and ‘Community Involvement’ related ESG reporting in the period immediately following the launch of DJs’ 2006 SLAPP suit are of interest within this study because they provide partial evidence of a link between ESG reporting and SLAPP suits in corporate legitimation strategies. Due to the specific timing of The Australia Institute publication (October 2006) which precipitated the SLAPP and the timing of DJs Annual report for that year, analysis of increased ESG disclosure is appropriate only for the 2007 and 2008 years.

6.3 Gunns Ltd.

The ‘Gunns 20’ SLAPP legal action was launched in 2004 and the extent of ESG disclosure included within Gunns’ annual reports across the five year sample period (2002 to 2006) is presented in Figure 7 below.

![Graph of Gunns Total ESG Disclosure](image)

Figure 7: Gunns: Total ESG Disclosure

The data in Figure 7 allows a comparison of between Gunns’ ESG reporting behaviour in the period immediately prior to the firm’s SLAPP involvement (2002 – 2003), the SLAPP year (2004) and the period immediately following the launch of the SLAPP (2005 – 2006). Across the five year sample period a total of 662 sentences were disclosed in Gunns’ five annual reports in relation to the firm’s ESG performance. Different to the other case studies Gunns’ total ESG disclosure actually suffered a slight decrease across the sample period from a total of 135 sentences in 2002 down to 128 sentences in 2006 (a decrease of 5.19%). Gunns’ total ESG disclosure peaked in the year immediately following the launch of the SLAPP.
The results of the content analysis obtained within and between each of the environmental disclosure categories are of particular interest in this study given that the criticism levelled at Gunns related directly to issues surrounding environmental protection. Total Environmental Disclosure is made up of the four Environmental sub-categories; (1) Environmental Pollution and Sustainability, (2) Aesthetics, (3) Environmental Certification, Regulation and Reporting and (4) Other. The extent of environmental related disclosure included within Gunns’ annual reports across the sample period is presented in Figures 8 above.

Although Total Environmental Disclosures spikes in the year immediately following the SLAPP being issued against the Tasmanian logging activists, a closer analysis of the data reveals some interesting patterns in the disclosure. In order to draw inferences from the trends in Gunns’ Environmental disclosure it is necessary to compare these trends to patterns in the firm’s non-environmental ESG disclosure. Rather than concentrate on changes in Total Environmental Disclosure by Gunns the following analysis focuses in particular on two of the four sub-categories of Gunns environmental disclosure; (1) Environmental Pollution and Sustainability, and (3) Environmental Certification, Regulation and Reporting. Disclosure on the Environmental Pollution and Sustainability sub-category related to how well Gunns were performing as a responsible non-polluting firm. ESG reporting on the Environmental Certification, Regulation and Reporting category was data on how well Gunns were meeting the various environmental regulatory requirements under which they were operating.

These sub-categories were deemed to be of particular interest because they represent different aspects, and potential strategies, for environmental legitimation by Gunns. They were also of interest due to the dramatic fluctuations between the two categories in the volume of reporting evident in the aftermath of the launch of the Gunns 20 SLAPP litigation.
Figure 9 provides a comparison between the percentage changes in the level of Gunns reporting on ‘Environmental Pollution and Sustainability’, ‘Environmental Certification, Regulation and Reporting’, and all other non-environmental ESG disclosure across the SLAPP sample period. Between 2002 and 2004 when the SLAPP was issued all ESG reporting was trending slightly down, however reporting on ‘Environmental Pollution and Sustainability’ had decreased significantly by 54% from the base year of 2002. In 2005 the year following the SLAPP all ESG reporting increased rapidly. ‘Environmental Certification, Regulation and Reporting’ disclosures spiked, increasing by 65.15%, whilst ‘Environmental Pollution and Sustainability’ reporting also increased from its low 2004 base by 50%. During the same year non-environmental ESG disclosure also increased, but by only 33.33%. At the end of the 2005 year reporting on Environmental Certification and Regulation was 45% higher than its 2002 base, whilst reporting on Pollution and Sustainability was still 31% below its 2002 level. In the period from 2002 to 2005 the focus of environmental ESG reporting by Gunns was on the ‘Environmental Certification, Regulation and Reporting’ sub-category.

After 2005 there then appears, as graphically represented by the steeply intersecting lines in Figure 9, to be an obvious shift in Gunns environment related disclosure. Gunns shy away from reporting on ‘Environmental Certification and Regulation’ issues and towards reporting on the Pollution and Sustainability sub-category. In 2006 reporting by Gunns on issues around environmental regulation decreased by 66.06% whilst in the same year Gunns reporting on the Environmental Pollution and Sustainability sub-category increased by a multiple of 255.56%.
It may be possible to explain this dramatic shift in Gunns disclosure focus through the posited link between SLAPPs and the use of ESG reporting to combat threats to organisational legitimacy. It can be argued that Gunns attempted to combat the criticism levelled at their logging operations by increasing their Environmental Certification and Regulation reporting in 2005 demonstrating their compliance with the various regulations imposed on them by a largely supportive Tasmanian State government. The firm apparently perceived at this point of time that demonstrating their commitment to meeting all environmental regulations and requirements was of most importance in shaping their legitimacy. During 2006 it becomes apparent that Gunns have changed their tactical approach by targeting Environmental Pollution and Sustainability related reporting in the corporation’s 2006 annual report and virtually ceasing to report on certification and regulation compliance. The dramatic shift in focus implies that Gunns believes that ESG reporting, including its strategic focus, has a legitimation impact.

7 Conclusion

7.1 Research Questions.

Research Question 1:

*Does the total level of ESG information disclosed by a company increase around the time of that firm’s involvement in SLAPP litigation?*

Potential support for a positive response to Research Question 1 can potentially be found within the results obtained from the content analyses conducted on all three SLAPP corporations; AWI, DJs and Gunns. The increases in total ESG disclosure evident in AWI’s 2003 and 2005 annual reports appear to coincide with AWI’s 2004 SLAPP action targeting the ongoing campaign against mulesing and live animal export. The increase in ESG disclosure evident between DJs’ 2007 and 2008 annual reports directly coincides with The Australia Institute’s discussion paper and media release, as well as the subsequent launch of DJs’ SLAPP suit. Finally, the increase in total ESG disclosure evident in Gunns’ 2005 annual report appears to coincide with Gunns’ 2004 SLAPP action targeting environmental activists. In addition, all three SLAPP companies engaged in a higher percentage of ESG reporting after the launch of their SLAPP suit than they did in the period before the SLAPP.

Research Question 2:

*Does the level of information disclosed by a company on specific ESG issues increase around the time of the firm’s involvement in SLAPP litigation?*
Potential support for a positive response to Research Question 2 can potentially be found within the results obtained from all three of the sample SLAPP companies. Increases in disclosure were observed to some extent within key ESG reporting categories in the annual reports of all three SLAPP companies. Each of the three sample SLAPPs focus on a specific ESG issue; AWI and animal welfare, Gunns on environmental issues, and DJs, perhaps more tenuously, on and the sexualisation of children which was related back to the Community Engagement disclosure category.

It was contended that if firms were utilising ESG reporting as a strategy to legitimise SLAPP behaviour that, rather than increasing ESG reporting in an overall sense, SLAPP firms may increase their reporting only within ESG reporting categories directly relevant to the SLAPP issue. This reporting is highly targeted towards combating any damage the SLAPP debate may have caused to the firm’s reputation and provides support for a possible link between ESG reporting and SLAPPs in corporate legitimation strategies.

All three corporations appear to have increased their ESG reporting in specific areas of disclosure in the period surrounding the launch of their SLAPP suits. Of particular interest is the dramatic increase in ‘Animal Health and Welfare’ related ESG disclosure in the aftermath of the launch of AWI’s 2004 SLAPP suit. While all other ESG disclosure by AWI did increase in the aftermath of their SLAPP launch, a much more significant increase was observed in ‘Animal Health and Welfare’ related disclosure. The fluctuating focus observed in Gunns’ environmental reporting in the period immediately following the launch of the Gunns 20 case is also of interest within the context of this research. It appears that Gunns’ management made a deliberate and strategic choice to reverse the focus of their environmental ESG disclosures from the regulation and certification sub-category to the pollution and sustainability sub-category.

It is argued that the results observed in the AWI and Gunns cases are significant because they indicate a potential link between targeted ESG reporting and SLAPP litigation in corporate legitimation strategies. It is contended that this study does provide evidence of changed reporting behaviour in the ESG reporting sub-categories related to the SLAPP suits issued. This study therefore provides a foundation for future research to further investigate the nature of the link between ESG reporting and SLAPP litigation.
7.1 Research Limitations.

This study has a number of inherent limitations that must be borne in mind when interpreting the results presented. Limitations arise in this study specifically due to the choice of content analysis as the analysis methodology, a sole focus on the annual report as a source of corporate ESG communication and the use of a relatively small sample of case study corporations however every effort was made to avoid the common pitfalls of these research methods outlined in the various literatures. The most significant limitation is the difficulty of identifying the point of time at which a SLAPP occurs. Of course, intimidation of corporate opponents may occur with the first letter threatening legal action and on many occasions protests will subside without the need for corporations to actually issue SLAPP writs. This makes identifying when a SLAPP behaviour by a firm actually commences, with the initial threat or with the issue of the writ, or when it goes to trial. Event studies, which effectively this research is, are obviously problematic when the time of the event cannot be objectively identified.

Limitations surrounding the research methodology adopted and the use of case study method in this research are acknowledged however every effort was made to avoid the common pitfalls outlined in the various literatures. This study has adopted a largely qualitative focus through its use of case study method and content analysis. It is acknowledged that within this study it is impossible to determine a causal relationship between the SLAPP behaviour and a consequent increase in ESG reporting.

However, this it is contended that this study does provide evidence of changes in ESG reporting behaviour and increases in total ESG reporting observed in the period surrounding corporate SLAPP litigation. This study therefore provides a foundation for future research to further investigate the nature of the link between ESG reporting and SLAPP litigation. Such research may involve comparison between the ESG reporting of SLAPP firms and the reporting of a significant sample of similar firms from similar industries.
7.2 Future Research.

A further limitation to the results presented lies in the fact that this (to the researchers’ knowledge) is the first study to investigate the potential link between SLAPPs and ESG reporting in organisational legitimation strategies. As a result, there are no prior research findings for comparison or to add support to the findings of this study. Despite the above limitations, this study is exploratory in nature and provides new and innovative insights into the mindset of, and tactics utilised by, large corporations. This study provides an avenue for future studies to explore the relationship between SLAPP suits and ESG reporting.

7.3 Conclusion.

It is contended that this study does provide evidence of changes in ESG reporting behaviour and increases in total ESG reporting observed in the period surrounding corporate SLAPP litigation. This study therefore provides a foundation for future research to further investigate the nature of the link between ESG reporting and SLAPP litigation. Such research may involve comparison between the ESG reporting of SLAPP firms and the reporting of a significant sample of similar firms from similar industries. Or research that more directly tries to uncover the realities of corporate strategising to address issues deemed to be impacting their corporate legitimacy.
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