

TITLE: Want to break laws and get away with it? Form a company

AUTHOR: Richard Denniss

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Is it OK to break laws that you don't believe in? Corporate Australia certainly seems to think so.

Coles lost a Federal Court battle in June over the definition of "fresh", when it was discovered their "baked today, sold today" bread range included products made overseas, frozen and transported months earlier. Coles took a slap on the wrist, assured consumers it "never intended to be misleading", and moved on with a new marketing campaign.

When caught out, corporations pay a fine and move on. Staff aren't sacked and boards seem rather relaxed about paying small fines when they get caught undertaking profitable, if not legal, activities. Just this week an OECD analysis of the large number of cases of corporate bribery found that senior staff are usually involved in approving the majority of bribes.

But this week when a brave Canberran, former Wallabies captain David Pocock, was arrested along with farmer Rick Laird for trespassing on the Maules Creek Mine site, elements of the conservative media went into meltdown. He was called an idiot and a hypocrite by Miranda Devine, a conservative columnist who rages against subsidies for renewables yet barracks for the subsidised coal industry and wants to establish a subsidised nuclear industry.

The spokespeople for the foreign mining companies couldn't resist a sporting metaphor while jumping straight for the moral high ground. Whitehaven Coal's chief spruiker claimed that as an elite athlete Pocock "should know better than others the importance of respecting the umpire's decision". Yeah, because that's what the miners always do, right?

When Rio Tinto first proposed to build its Warkworth Mine in the Hunter Valley it said that it would never seek to remove the ridge that separated its mine from the small town of Bulga. That was a lie.

Later, when Rio Tinto decided to extend its mine through the ridge it'd promised to never mine, their consultants claimed the expansion would create 44,000 new jobs. That wasn't true either.

In rejecting the proposal to extend the mine, the Chief Justice of the NSW Land and Environment Court described Rio's economic claims as "deficient".

But despite the fact that the umpire had said the Warkworth mine extension couldn't go ahead, Rio Tinto pressed ahead with its determination to renege on the promise it made in 2003. When the Land and Environment Court ruled against it, Rio Tinto appealed to the NSW Supreme Court. And lost.

So what does a global mining giant do after its desire to renege on a promise has been stopped short by two different umpires? It changes the rules of the game, of course.

Soon after the court decisions, Rio began meetings with the NSW government, which resulted in the introduction of new planning laws that push decision makers to pay less attention to the social, environmental and health impacts of mines.

The Karreman Quarries in Queensland provide another interesting interpretation of "law abiding". Until recently the quarry was facing prosecution for illegal extraction of sand and gravel from the Brisbane river until the Parliament passed retrospective legislation which specifically deemed their activities "lawful, and is taken to have always been lawful". Nice. Perhaps Pocock should push for such an amendment.

The notion that the spin doctors of the mining industry can lecture a former Wallabies captain on good sportsmanship is as ridiculous as Devine's support for a new subsidised nuclear energy industry. Pots just don't know what to call kettles that black.

Of course it's not just the miners who seek new rules when they don't like the old ones. In 2005 Bob Brown raised about \$1 million to take court action to prevent logging that would destroy the habitat of the swift parrot and the Wielangta stag beetle. When Brown won at first instance, the forestry industry rushed to change the law. It didn't even stop to hear the outcome of the appeal to the Full Federal Court, which it eventually won.

Corporate Australia has a strong sense of entitlement these days. Once upon a time big business hid their calls for tax cuts, wage cuts and deregulation behind a veneer of concern with lower prices and greater choice for consumers. These days they just demand that governments commit to a "pro-business agenda".

In such an environment, when courts find that sometimes what is good for business is bad for communities, detractors point to it as proof that "green tape" is making us "uncompetitive" or - heavens forbid - "reducing certainty for business". But what about certainty for communities?

In response to the bleating when Rio Tinto didn't get its way with the Warkworth mine the Newcastle Herald opined that "The NSW government's bias in favour of approving mining proposals is a joke. And statements by government ministers in response to the latest court decision against Rio Tinto's controversial Warkworth extension project only served to add a pointed punchline."

The Newcastle Herald is willing to stand up for the 95 per cent of its readers who don't work in mining. And the NSW courts, when asked to act in disputes between communities and miners have been willing to stand up to the miners as well. But most politicians wouldn't dare.

Unfortunately, the only time many Australian politicians will stand up to the global mining giants is when they enter the room. Barry O'Farrell was elected premier after wearing a shirt that said "water not coal" but, once elected, he knew his job was to deliver for the foreign mining companies rather than his constituents.

The mining industry employs 2 per cent of Australians and pays less than 5 per cent of all taxes collected - mine workers pay a higher rate of tax than mining companies. Yet sycophantic politicians act as if our labour market and our budgets would be simply devastated without them.

As for claims by mining lobbyists that citizens should "respect the umpire's decision", it's hard to go past the Newcastle Herald's response to Rio Tinto's determination to ignore the courts and the community of Bulga. The Newcastle Herald continued: "No mention of abiding by the umpire's decision. No suggestion of respect for the integrity of the judiciary and its role in adjudicating disputes between the powerful and the not-so-powerful. Not a hint of sympathy for the Hunter Valley residents who are fighting to preserve their way of life against a mine extension that Rio Tinto itself promised, years ago, it would never seek."

When prime ministers and premiers won't stand up for their communities, we are lucky that brave folk like David Pocock and Rick Laird do.

Richard Denniss, an economist, is executive director of The Australia Institute.