

# Media Briefing

## AGL v. Greenpeace Australia Pacific

<b>Spokesperson available</b>	Greenpeace General Counsel Katrina Bullock can talk about the legal case  Greenpeace Senior Campaigner Glenn Walker can talk about the campaign for AGL to close its coal burning power stations by 2030  Greenpeace Head of Research and Investigations Dr Nikola Casule can speak about our report on AGL's climate pollution
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<b>Subject</b>	AGL v. Greenpeace Australia Pacific

### Summary

Greenpeace Australia Pacific and AGL will face off in the Federal Court in Sydney on 2 June 2021 in a landmark case that could determine the ability of charities, comedians and others, to use corporate logos for the purpose of satire, parody and criticism.

The coal giant initiated legal action against the environmental charity following the launch of a Greenpeace campaign calling AGL out as Australia's biggest climate polluter. AGL is not refuting that it is Australia's biggest climate polluter, it is arguing that the use of logos identifying AGL in the campaign should be removed because they allegedly breach copyright and trademark.

The court refused AGL's request for an urgent interlocutory injunction to have the identifying logos removed from the campaign. The matter will return to court on 2 June for final determination where Greenpeace will vigorously defend its campaign materials. Greenpeace's General Counsel Katrina Bullock says "this is just the latest example in a well-established pattern of [powerful fossil fuel companies attempting to weaponise the legal system to silence, intimidate and censor their critics](#)".

### Q&A

#### Why is AGL taking legal action against Greenpeace Australia Pacific?

AGL has launched legal action against Greenpeace Australia Pacific, following the launch of a Greenpeace campaign on May 5, alleging that AGL is Australia's biggest corporate climate polluter. The campaign includes a research report and [digital ads that parody AGL's advertising and include the AGL logo](#). On May 6 AGL requested that the Federal court order the urgent removal of its logo from Greenpeace's campaign materials on the basis that the

use of the logo allegedly infringed AGL's copyright and trademark. On May 7 the court refused to grant this interim order and scheduled the matter for a hearing on June 2, 2021.

### **Why is Greenpeace Australia Pacific campaigning against AGL?**

[AGL is Australia's biggest climate polluter](#). It accounts for 8 percent of Australia's total climate emissions, more than double the pollution of the next biggest emitter and more than BHP, Rio Tinto, Glencore and Qantas combined. As such, AGL is the biggest contributor to climate change in Australia. Even worse, AGL plans to continue burning coal up to 2048, which is completely at odds with the [best scientific advice](#) about what is necessary to avoid catastrophic climate change.

Greenpeace is calling on AGL to close its three coal burning power stations by 2030 at the latest and replace them with clean energy options like wind and solar backed up by batteries. This is inline with the [UN position](#) as well as the [International Energy Agency](#).

### **Why is this case important?**

This is the latest example of the fossil fuel industry using heavy-handed legal tactics to stifle legitimate criticism about its poor environmental record. Freedom of speech is a fundamental component of any functioning democracy. In Australia there are 'fair dealing' exceptions to copyright in order to allow satire, parody and criticism.

If Greenpeace Australia Pacific successfully defends this legal attack, it could set a powerful precedent about how the 'fair dealing' exception is applied by the courts, which will hopefully allow other charities, not for profits, comedians and members of the community to criticise, parody and satirise without fearing litigation.

### **Who is representing Greenpeace?**

Greenpeace Australia Pacific will be represented by Maurice Blackburn. Two barristers are acting for the charity - Frances St John , and Neil Murray SC who represented Larrikin Music in its successful case against 80s band Men At Work who were found to have plagiarised a flute riff from the song *Kookaburra Sits In The Old Gum Tree* in their hit song *Down Under*.

## **Fossil Fuel Industry v. Environmental Movement | A Timeline**

### **Australian Examples**

**2004, Gunns Ltd v The Gunns<sup>20</sup>:** Tasmanian logging giant Gunns Ltd, sued 17 individuals and 3 community groups seeking \$6.3 million compensation for "ongoing damaging campaigns and activities" by environmental activists against the company's operations. The activities

included the publication of media statements, lobbying of shareholders and customers, and disruption of the company's logging operations. [Background details here.](#)

**2007, New South Wales Minerals Council v. Rising Tide:** The New South Wales Minerals Council (NSWMC) sought to have Newcastle-based group, Rising Tide, take down their campaign website - which was an anti-coal parody of the mining industry's "Life: Brought to you by mining" - for breaching copyright.

**2019, Adani Mining Pty Ltd v. Adrian Burragubba, Patrick Malone & Irene White:** A traditional owner was forced into bankruptcy by Adani after numerous failed legal actions against the company's Queensland coal mine. - [bankruptcy proceedings against an indigenous activist](#)

**2020, Adani Mining Pty Ltd v. Ben Pennings:** [Adani is suing](#) an environmental activist for breach of confidence, despite their lawyers telling a Queensland court they do not know what confidential information – “if any” about the Carmichael coal mine was obtained by him. [Guardian story](#)

**2020, New Acland Coal Pty Ltd v. Oakey Coal Action Alliance:** New Acland Coal Pty Ltd, a subsidiary of New Hope Coal, is taking Oakey residents to court to try to wind up the organisation to prevent their High Court case (2020). [Background detail on this mammoth legal battle here.](#)

## International Examples

**2004, Greenpeace France v SA Société ESSO:** Esso sued Greenpeace France for logo infringement in 2004 after Greenpeace parodied the Esso logo on the Greenpeace website by replacing the double "S" in Esso's logo with a double dollar sign (\$\$). The French court upheld Greenpeace's right to freedom of expression. [Case background here.](#)

**2016, Resolute Forest Products, Inc. v. Greenpeace International:** Resolute Forest Products filed a CAD\$300 million lawsuit under the Racketeer Influenced and Corrupt Organizations Act (RICO) alleging defamation and economic interference against Greenpeace International and other organisations. Resolute's claims were dismissed but three weeks later, Resolute's lawyers filed a repackaged version of the same claims against the same individual defendants in the same court. In 2019, the court issued a landmark decision dismissing all claims under RICO.

**2016, California Independent Petroleum Association (CIPA) v. Youth for Environmental Justice; South Central Youth Leadership Coalition; the Center for Biological Diversity; the City of Los Angeles:** Following the adoption of new oil drilling requirements by the city of Los Angeles to protect vulnerable neighbourhoods, CIPA, an association representing hundreds of oil and gas producers, filed a [SLAPP countersuit](#) against the City of Los Angeles, youth groups, and the Center for Biological Diversity alleging that the new requirements raised drillers' costs without due process. CIPA's lawsuit was dismissed in February 2019.

**2017, Energy Transfer Equity LP v. Greenpeace International:** Energy Transfer Partners filed a baseless [USD\\$900 million racketeering and defamation lawsuit](#) in North Dakota against

independent environmental organisations Greenpeace, BankTrack, and the movement Earth First! The allegations included an implausible accusation about environmental groups and others forming a “criminal enterprise” to instigate violence and damage the company in relation to the proposed Dakota Access Pipeline. The lawsuit was dismissed.

**2018, SG Interests I, Ltd. v. Kolbenschlag:** Delta County District Court Judge Steven Schultz [dismissed](#) a defamation (SLAPP) lawsuit brought by SG Interests I, Ltd. against Paonia activist, Pete Kolbenschlag, following an online comment he made to a Glenwood Springs Post Independent article. The judge called the Texas-based oil and gas company’s lawsuit “baseless” and “frivolous”, and found that Kolbenschlag's online comment was “substantially true.”

**2018, Millennium Pipeline LLC v. Scott Martens:** Millennium Pipeline, a New York-based gas company, attempted to silence a local activist, Scott Martens, who protested against the CPV Fracked Gas Power Plant through a [SLAPP lawsuit](#). Millennium Pipeline claimed that Martens caused “irreparable harm” when he filmed crews beginning to clear trees for the Valley Lateral Pipeline. Martens claimed that Millennium Pipeline's actions were in violation of The Bald and Golden Eagle Protection Act. The case was dropped.

**2018, Energy Transfer Partners v. Krystal Two Bulls:** Energy Transfer Partners (ETP) and its parent company, Energy Transfer Equity, sued Oglala Lakota/Northern Cheyenne woman, Krystal Two Bulls, alleging that her “calls to action” opposing the Dakota Access Pipeline amounted to “racketeering” under the RICO Act. The lawsuit was dismissed in February 2019.

## Further reading

- [Greenpeace report on AGL](#)
- [Greenpeace blog on the AGL legal case](#)

## Comments from spokesperson

- “Freedom of speech is a fundamental component of any functioning democracy. In Australia there are ‘fair dealing’ exceptions to copyright in order to allow satire, parody and criticism”, Greenpeace Australia Pacific’s General Counsel Katrina Bullock said.
- “If Greenpeace Australia Pacific successfully defends this legal attack, it could set a powerful precedent about how the ‘fair dealing’ exception is applied by the courts which will hopefully allow other charities, not for profits, comedians and members of the community to criticise, parody and satirise without fearing litigation,” Greenpeace Australia Pacific’s General Counsel Katrina Bullock said.
- “AGL, Australia's biggest climate polluter, is prioritising this heavy-handed legal action to try to stifle our campaign – but we think AGL's time would be better served shutting its coal-burning power stations, which are fuelling the climate crisis and making people sick,” Greenpeace Australia Pacific senior campaigner Glenn Walker said.