



The social licence to operate and its role in marine governance: Insights from Australia



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ABSTRACT

Traditionally, the 'social licence to operate' (SLO) refers to the societal expectations imposed on corporate and commercial activities, often displayed by the willingness for corporations to go beyond the requirements of formal regulations. Alternatively, this paper investigates the emerging influence of the SLO in shaping government decisions regarding the use and impact of the marine environment and its resources. Using expert interviews, text analysis and case study analysis, this research delineated the contemporary SLO as it has manifested in Australian marine governance, with the results indicating that this is potentially occurring at a pace faster than can be systematically reacted to within the current political decision-making processes. Under these emerging conditions, the risk has been identified that traditional government decision-making and stakeholder consultation processes are lagging in their capacity to adapt to ensure that public policy processes can support and engage in this shifting dialogue and ensure the influence of information is appropriately weighted. This research highlights an emerging adjustment of community presence in marine governance and the immediate complexities and challenges this creates for government decision-making. In particular, it begins to explore the interaction of differing information, how this information is carried through communication channels, stakeholder behaviour, approaches to withholding or granting a SLO and the responsibility this carries.

1. Introduction

A community which supports the actions of a corporation is increasingly seen as granting a 'Social Licence to Operate' (SLO). This expression was coined by the mining sector where it was typical to witness the act of withholding a SLO and refers to "the extent to which a corporation is constrained to meet societal expectations...whether or not those expectations are embodied in the law" ([30]: 307). In essence, SLO is a special form of public participation in issues usually concerning corporate use of public natural resources. While the use of the term 'licence' suggests that permission can either be granted or withheld, the emphasis on 'social' reinstates the lack of formal processes for gaining a SLO or determining if one in fact exists for a particular activity, decision or organisation. Nevertheless, it is generally understood that to gain a SLO a corporation engages in voluntary activities beyond what is legally required.

SLO emerged as a language in the broader context of triple bottom line (economic, social, environmental) accounting [26,63] and was also initially framed by the concept of 'Corporate Social Responsibility' (CSR), reiterating the notion that corporations acknowledge the benefits of going beyond regulatory requirements in an attempt to

maintain a SLO. Corporations engage in CSR, amongst various other incentives, in an attempt to compensate for historical corporate social irresponsibility or to build goodwill to draw on in the event of corporate negligence, or in other words to provide a margin of protection from the threat of losing a SLO [17]. Here, the corporations hold the power to determine what activities they will or will not engage in to maintain a social licence; whereas the power in social licence is assumed by the community of concern.

The withholding of a SLO may appear in the forms of market forces, campaigns and protest. Up until the use of the Internet any attempt at protest or show of support for an action or activity occurred via traditional forms of media (eg. newspapers and radio) or physical protest. However, in 2015 93.1% of the Australian population was using the Internet and 61.5% were using Facebook [62]. This has globalized business and communication and society now experiences effortless transnational communication. It is becoming increasingly evident that interest groups can now contest a decision with limited disciplinary or political barriers and at an unprecedented pace with the development of social media and networking sites [10]. For this reason, we refer to the 'contemporary' SLO to capture this shift in globalization of influence and effortless boundless communication. With protest,

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campaign and values-sharing platforms over the Internet support for a particular view can appear to be widespread at a significantly quicker rate when compared to traditional forms of protest.

While SLO has mostly been explored in terms of contesting industry actions and how corporations can acquire and keep a SLO by going beyond legal compliance (eg. [69,68,15,13]) it is important to note its influence on government decision-making to the point where a concern that underpins the SLO, or the lack thereof, is legally enforced [30]. After decades of intensifying regulation and legal pressures many industries assume that any harmful impacts that their activity causes or provokes, even if not illegal at the time, will sooner or later be subject to public criticism and subsequent government interception [39]. While there is growing acknowledgement that a SLO can influence political decision-making there is comparatively less volume of literature exploring this area of the social–political interaction, and the role of different information and evidence in informing this interaction, pertaining to SLO. Few authors have analysed the role of SLO in public policy-making and political outcomes, or examined the role of different information and evidence in the formation of a SLO, evaluating it only as a tool used by interest groups (that is, individuals, industry, environmental NGOs, marine science providers, and managing agencies with direct interests) to provoke and influence political decisions. This literature is particularly lacking in relation to SLO in marine governance.

To begin to fill this gap, this paper focuses on the role of different information and evidence in the formation of a SLO, or lack thereof, under contemporary conditions, and the influence this has on public policy and management decision-making process in the context of marine governance. This continues on from research by Olsson et al. [50] which touches on the uncertainty and ill-defined causes surrounding marine governance issues with multiple actors and is the first time that the complexity of socio-environmental issues is clearly mentioned.

This research explores the role and legitimacy of different information and evidence in debates around the use, or impact on, the marine environment and how it is debated among interest groups as well as the broader community with an indirect stake in the issues at hand. In doing so, this paper examines mechanisms by which a SLO, or lack thereof, is developed and, once a particular activity or decision either gains or loses a SLO, the influence that this has on the public policy and management decision-making processes affecting the particular issue. This is achieved by conducting interviews with key stakeholders and in-depth content analysis of texts regarding three case studies of marine governance.

In recent years in Australia, there have been diverse examples where withholding a SLO has played a key role in the governance of marine resources. Three in particular – the *FV Margiris*, the Western Australian shark mitigation strategy, and the Japanese whaling in the Southern Ocean – are cases demonstrating differing domains in which a SLO is constructed and the results it has had on political decision-making, industry activities and the marine environment itself. The action of withholding a SLO to operate has been shown to be influential. This is most marked through government's use of national law and/or international obligations to address public concerns regarding common pool resources. Such threats and responses have been acknowledged as an increasingly influential factor in complex marine governance [44]. Subsequently, while *social* licence differs to the legal meaning of *licence*, the concept has been given its power from the legal ramifications it can indirectly invoke on resource users.

2. Methods

This paper centres on three related research questions:

1. Do public policy and decision-makers regard the value positions and agendas of environmental pressure groups as representative of the broader community?

2. Has contemporary social licence displaced traditional science–policy processes? For example, how has a) the role of different information, and b) the role of the Internet impacted on decision making?
3. How should public policy and decision-making processes respond?

These questions were addressed through case study analysis of three cases in Australia which represent a SLO response regarding perceived impacts on the marine environment; 1) *FV Margiris* 'super trawler'; 2) Western Australian Shark Mitigation Program; and 3) Japanese whaling in the Southern Ocean. Two methods of data collection were undertaken: firstly, documents relating to these cases were collated and analysed thematically; secondly, in-depth interviews with selected stakeholder representatives were undertaken to provide in-depth analysis and a source of triangulation to verify and shed any additional light on the cases.

2.1. Text analysis

To test the second research question, in-depth content analysis of texts was undertaken to determine whether, to varying degrees for the three case studies, the traditional science-policy linear model had been disrupted. Content analysis of media and policy texts was conducted to compile a narrative of governance changes for each case study, and provide insight into how opposition arguments are framed and positioned compared with the biophysical science on these given marine governance issues.

2.2. Expert interview

To explore these questions and unpack behind-the-scenes dynamics, key informant interviews were conducted in order to examine processes of participation, political representation, policy formulation and information channels of the social licence. "Qualitative methods, such as interviews, are believed to provide a 'deeper' understanding of social phenomena than would be obtained from purely quantitative methods, such as questionnaires" ([29]: 2). In-depth interviews consisted of a structured set of questions conducted either face-to-face or over the telephone. Participants were selected for their knowledge and background, including in the fields of policy and management, marine science, commercial fishing industries, environmental NGOs and recreational fisheries. These five groups are referred to as the 'stakeholder groups'. To minimize potential for bias in results toward one particular issue, participants were chosen in a way that ensured data was collected across various examples of withheld SLO in Australian marine governance, represented by the *FV Marigis*, the Western Australian Shark Mitigation Program, and the Japanese whaling in the Southern Ocean. Interviews were conducted with 15 participants, with three participants from each of the major stakeholder groups. These interviews are not considered representative of these stakeholder groups but rather provide an in-depth analysis and a source of triangulation or verification of results from the textual analysis.

To explore the research questions a thematic analytical evaluation was undertaken. This process consisted of interviews being recorded and transcribed. Initial codes were then generated in the software program, NVivo (QSR International), and relationships between codes identified. Themes were then reviewed, compared and, when necessary, redefined. Descriptive coding was used to identify and categorize statements made by participants. Hierarchical coding was employed to assist with the organisation and presentation of results. This resulted in 'categories' encompassing the key concepts, 'core ideas' examining these concepts in greater detail, and finally 'codes' exploring further nuances. Open coding was first applied to identify major headings and subheadings. Axial coding examined the nuances of these initial categories, exploring what causes or influences categories and the relationships between them. As the process progressed, coding and analysis occurred simultaneously. Categories were constantly being

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