Fairfax and Chevron are writing a pantomime script

Leo Shanahan – December 4, 2015

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Sitting in front of the Senate inquiry into corporate tax avoidance, Chevron's executives made effective pantomime villains.

The caricature of oil executives in good suits and American accents defending billions in cash stashed in Bermuda is manna from heaven for journalists.

In the theatre of the inquiry the story begins to write itself after a while — and that is less of an accident than you may think.

Chevron managing director Ron Krzywosinski underwent a grilling that rivalled in intensity that of any other witness, the groundwork for which was laid months before by two factors. One was a Federal Court decision that went against Chevron, finding the company owed $270 million to the Australian Taxation Office. The second was an effective and well-timed union campaign stoked by Fairfax Media's *The Australian Financial Review* and *The Sydney Morning Herald*.

There has been an ongoing war between the militant Maritime Union of Australia and Chevron — and little of it has to do with tax.

The Gorgon liquefied natural gas project is the largest infrastructure investment in Australian history, with figures commissioned by Chevron claiming the $US55 billion ($75.2bn) project will generate $69bn in federal taxes in the next 25 years. However Gorgon, which has been running years behind schedule and over budget, has not sent one barrel of LNG from the project, nor generated a cent in revenue or profit.

Chevron is no babe in the woods in tax or union dealings but it is worth remembering vested interests can cut both ways. This a battle for control of the supply chain to the Gorgon project being built on Barrow Island off Western Australia's northwest coast that the MUA desperately wants.

The union has been waging a campaign against Chevron over wages claims, foreign workers and, critically, a court case brought by the oil giant against the MUA.

Much to the chagrin of the MUA, Chevron doesn't employ its members for shipping off Barrow Island, but ongoing enterprise bargaining agreement negotiations are still important to Chevron as the cost for middle operators ultimately flows up.

Perhaps more critical is the fact Chevron is suing the MUA for $20m over an illegal strike; the action — by the union's own admission — has the potential to bankrupt the MUA.

The claim followed a 2012 dispute in which 200 wharfies went on strike at the Australian Marine Complex, south of Perth, over safety complaints. Fair Work Australia ordered a return to work but Chevron claimed the union adopted go-slow tactics in loading crucial materials needed for the construction of Gorgon.

This lawsuit coincided with the MUA and its general secretary, Paddy Crumlin, seriously ramping up its industrial campaign against Chevron, and particularly targeting the Gorgon project. Enter the International Transport Workers Federation. The union-funded ITF claims to represent "4.5 million transport workers from 150 countries" and the president is none other than the MUA's Crumlin. There is nothing secret about Crumlin's work with the ITF and he is proud of his dual role.

In about the past 18 months the ITF has taken a particular interest in Chevron. While the latest front in the campaign has been Chevron's alleged tax avoidance, ITF's industrial campaign against the company has taken many forms.

Crumlin warned that as a result of the lawsuit Barrow Island was declared a "port of convenience", which could lead to worldwide action by docker unions against the project's supply chain.

In April last year the ITF put out a press release entitled “Global campaign to target Chevron over Gorgon delays and overruns”.

“This campaign will expose the real reasons for cost blowouts and delays on the Gorgon project to Chevron management and investors worldwide,” MUA West Australian branch secretary Christy Cain said. Crumlin, quoted as ITF chief, said Chevron “needs to get a grip, cop their stuff-ups on the chin and return to a mature and balanced industrial relations model”.

In July last year Crumlin wrote to the US corporate regulator, the Securities and Exchange Commission, about concerns over the timing of Chevron announcements about the ongoing delays to Gorgon projects, intimating the company had failed in its continuance disclosure obligations while deflecting claims of union delays.

At one point the MUA and ITF set up a website, WeDoNot-Agree.net, to make complaints about Chevron.

Just last week the ITF held a “briefing” for Chevron shareholders on the company’s “growing tax problem” in London led by Richard Murphy, a co-founder of the largely union-funded Tax Justice Network and adviser to British Labour leader Jeremy Corbyn.

The other campaign weapon in Crumlin’s locker has been the Fairfax press, with reports by senior journalists giving credibility to the union campaign. On November 9 *The Australian Financial Review* ran a prominent story by senior journalist Neil Chenoweth headlined “Chevron paid only $248 tax on $1.7b profit”.

The piece echoed an ITF report released two months earlier, entitled “Chevron’s Tax Scheme: Piping Profits out of Australia?” It also quoted heavily from Crumlin as ITF president but did not mention he was also general secretary of the MUA or the industrial campaign it was waging against Chevron. It struck politicians and business operators as a curious decision for the nation’s daily financial newspaper to run an uncritical line from one of the nation’s most militant left-wing unions.

Chenoweth’s effort followed earlier pieces in May by his colleague, *The Sydney Morning Herald*’s senior business journalist, Michael West, a vocal critic of tax structures among multinationals, including News Corp, publisher of *The Australian*. West claimed “secretive oil major Chevron Corp has taken the art of tax avoidance to its ultimate form thanks to a scheme so aggressive that it goes beyond merely reducing exposure to income tax, but, rather, has been designed to make a profit from the Australian Tax Office”.

By West’s own admission, the findings were contained in a report “commissioned by unions in the United States” describing Chevron Australia’s tax arrangements as a “sham”. But, again, there was no mention of the MUA’s feud with Chevron. In a bizarre example of the circularity of union reports and Fairfax reporting, many of the report findings referred to by West were repeated in a September ITF report, later quoted by Chenoweth.

There’s no doubt Crumlin is an unabashed fan of Fairfax’s work — a series of Fairfax Chevron stories generously quoting the ITF and the MUA have been posted on the MUA website, adding supposed ballast to the union campaign.

But Trade Minister Andrew Robb is not part of the fan club. He has described the MUA’s tactics towards Gorgon as “just an act of bastardry”, telling *The Australian* this week the MUA’s role in frustrating and adding significantly to the cost and time of the project through stop-works and other tactics has been well documented. “We must not lose sight of the sheer scale of investment in Australia, in excess of $60bn, perhaps the biggest ever,” Robb says.

“The iconic Gorgon project is hugely important for Australia in terms of jobs and building prosperity. We have an obligation to do everything we can to ensure the operating environment is as conducive as possible for projects like this to succeed. Yet the MUA in the past has added very significantly to costs borne by the company, in trying to gouge as much out of it above and beyond.”

The MUA claims it does not directly fund the ITF campaign against Chevron, pointing to the company’s record when asked about Crumlin’s role. It’s no coincidence, however, that the MUA and ITF’s media contact has often been one and the same.

“All reasonable Australians think Chevron should pay its tax, including the Australian tax office, which recently won its long-running case against Chevron in the Federal Court of Australia,” an MUA spokesman tells *The Australian*. “Chevron has proven itself time and again to be a poor corporate citizen across the globe, so it’s of no surprise that the global union movement wants to hold the company to account.”

The timing for the ITF and MUA’s campaign has been impeccable — and disastrous for the energy giant. The Federal Court’s decision could see Chevron hit with a tax bill of $270m, and that could balloon out to $300m if any payment is ever enforced. While the decision is being appealed to the Full Bench of the Federal Court, it merits attention as a test case of transfer-pricing laws. The Federal Court found the company was liable to pay tax on the interest from loans by Chevron’s US parent company to its Australian subsidiary between 2004 and 2008 after the US company merged with fellow oil giant Texaco. Chevron in Australia borrowed $2.45bn from a US-based Australian parent company, with the funds raised and guaranteed by the US parent.

The funds were lent to the American entity at 1.25 per cent, then lent to the Australian subsidiary at 9 per cent, meaning Chevron could claim a tax deductible loss. Justice Alan Robertson found Chevron did not provide enough evidence to show the transaction was at arm’s length.

The ATO is also carrying out a new audit of Chevron to monitor the interest rate payments between 2000 and 2013, but Chevron has said it has not changed its behaviour since the court ruling, waiting on an outcome.

Chevron’s Krzywosinski and global tax counsel Sandy Macfarlane were asked about Fairfax’s reports when they appeared in front of the inquiry on November 18.

“What I found over the last few days and weeks is those articles in the media have been informed by this International Transportation Workers Federation-supported report, which somebody had a copy of up there — I saw it — that seems to be referenced,’’ Krzywosinski said. “I can tell you categorically that that document is riddled with inaccuracies, misconceptions, misrepresentations.”

Macfarlane described the central claims that Chevron Australia charged its subsidiary 25 times the interest cost it pays to external lenders as “patently false”.

Krzywosinksi was at pains to point out that there was no revenue, and no profit to be taxed.

“We have not received one dollar of revenue from either the Gorgon or the Wheatstone project. We are currently in the investment phase,” he said. “These projects have investment horizons of five or six years. We are still in the investment phase of Gorgon.”

Labor Senator Sam Dastyari has been helpful to the union’s campaign, running a line of questioning that echoes the ITF report, reminding the committee of the numerous Delaware and Bermuda-based Chevron subsidiaries.

When Coalition senator Sean Edwards gave Krzywosinksi the opportunity to respond point by point to Chenoweth’s article, Dastyari accused his committee colleague of “running a protection racket” for Chevron. He later withdrew the comment.