

Can the Adani Group be trusted to comply with environmental laws?

The Adani Group's global environmental record

About the Authors

Environmental Justice Australia

Environmental Justice Australia is the environment's legal team. We use the law to protect our environment, and we work to change our laws to make sure they protect the right of all Australians to clean air, clean water and healthy ecosystems.



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Introduction

The Adani Group's proposed Carmichael Coal Mine and Rail Project in the Galilee Basin in Queensland, if developed, would be among the largest coal mines in the world. The associated rail infrastructure and expansion of the coal export terminal at the Port of Abbot Point on the edge of Queensland's Great Barrier Reef World Heritage Area would facilitate the export of coal not only from the Carmichael mine, but also from other mines proposed for the Galilee Basin. For the Carmichael mine to proceed, the Adani Group needs to be granted approvals under Queensland and federal laws. Some of these approvals have been granted; some are still under consideration.

The Carmichael mine and expansion of the Abbot Point port threaten to destroy or irreparably damage unique and important wetlands, globally significant natural heritage, habitat for threatened and endangered species, and sacred sites and traditional lands essential for the continued survival of the Wangan and Jagalingou people. Given these impacts, these projects should not go forward and there are ample grounds for the federal and Queensland governments to refuse to issue the necessary approvals.

If the federal and Queensland governments are, however, minded to issue the approvals, this should only occur if the governments can be absolutely confident that the projects will be implemented with the utmost caution so as to ensure full compliance with all relevant laws and conditions or to minimise potential harm to the environment or indigenous culture. The Adani Group and those responsible for its management ought to be able to demonstrate that they have operated to a standard internationally such that they can be entrusted to comply with the approvals to undertake the projects. Unfortunately, the available evidence strongly suggests that Adani Group companies do not meet this standard.

There are already reports of serious harm to the environment and local communities related to the operations of the Adani Group in India and the failure of Adani Group companies to comply with laws and environmental permits. For example, in 2013 an independent committee established by the Indian Ministry of Environment and Forests found 'incontrovertible evidence' that an Adani Group company operating a large coal-fired power plant and port in Mundra, India, had violated the conditions of its environmental approval and caused destruction of mangroves in a conservation area, obstructed creeks and the tidal system, failed to line its storage pond to prevent against salinity intrusion into groundwater, and constructed an airstrip without approval.¹

Now, new information has come to light concerning the actions of a mining company formerly managed by Mr Jeyakumar Janakaraj, who has been the CEO of the Adani Group's Australian operations since September 2013 and who 'oversee[s] all Adani operations in Australia, including the implementation of the Carmichael Coal Mine and Rail Project and the port operations and expansion'.² Mr Janakaraj is also a director of Adani Mining Pty Ltd,³ the operator of the proposed Carmichael mine. In 2010, when Mr Janakaraj was Director of Operations at Konkola Copper Mines ('KCM') in Zambia, KCM caused harm to the environment in violation of Zambian law, and later pleaded guilty to environmental offences and was fined.

It is imperative – and the Australian public rightly expects – that Australian regulatory agencies thoroughly consider the environmental history of companies before granting them the necessary approvals to undertake massive projects like the Carmichael mine and the Abbot Point port expansion. Consideration of the environmental record of the Adani Group and its executive officers is especially important because that record raises serious questions about the attitude of the Adani Group to the protection of the environment and the health and welfare of the communities in which they operate, and to compliance with the laws intended to assure such protection.

To date, however, the federal and Queensland governments have failed to adequately consider the environmental history of the Adani Group and its executive officers. The concerning new information raised in this report should compel both the Federal Minister for the Environment and the Director General of the Queensland Department of Environment and Heritage Protection to revisit the environmental history of the Adani Group and its executive officers, and should be

¹ Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat, *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat* (April 2013), pages 76-82, <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed September 16, 2015).

² Adani, *Media release – Adani Group appoints Australian CEO* (September 10, 2013), http://www.adanimining.com/Common/Uploads/MediaTemplate/Download_10092013_AdaniCEO.PDF (accessed October 8, 2015).

³ Australian Securities & Investments Commission, *Current Company Extract for Adani Mining Pty Ltd, ACN: 145 455 205* (search performed October 9, 2015).

taken into account by the Queensland Minister for Natural Resources and Mines when he is considering whether to grant mining leases for the Carmichael mine. Furthermore, given the history of the Adani Group and its executive officers with respect to environment matters described in this report, the Queensland and federal governments should reconsider whether it is worth the risk to allow the Adani Group to operate in Australia and withdraw their support of the Adani Group's plans in Australia.

1. A record of harm to the environment and local communities

The Adani Group's record of harm to the environment and communities in India has already been reported by us.⁴ In addition to its record in India, it has recently come to light that, prior to taking his role as an executive officer of Adani Mining Pty Ltd in Australia, Mr Janakaraj – whom the Adani Group identifies as responsible for overseeing its operations in Australia, including its expansion of Abbot Point port near the fragile Great Barrier Reef and its development of Australia's largest coal mine – was the Director of Operations and later the CEO of a mining company in Zambia that committed pollution offences during his tenure there.

1.1 Harm to the environment in Zambia

From 2008 until he joined the Adani Group in September 2013, Mr Janakaraj was Director of Operations and later CEO of Konkola Copper Mines ('KCM') in Zambia,⁵ one of Africa's largest integrated copper producers, with mining operations in Zambia's Copperbelt and Central Provinces.⁶ KCM is a subsidiary of Vedanta Resources Plc, a company listed on the London Stock Exchange.⁷ Mr Janakaraj was 'responsible for overall operations of KCM'.⁸

The Kafue River is a source of life and livelihood in much of Zambia, relied upon by local communities for drinking, cooking and other domestic uses, and for fishing and agricultural irrigation. On or around October 29 to 31, 2010, while Mr Janakaraj was KCM's Director of Operations, KCM discharged 'pregnant liquor solution' – highly acidic, metal-laden water generated from leaching in copper mining⁹ – into the river and the river changed colour.¹⁰ According to documents filed by the government in court proceedings against KCM, KCM failed to report the pollution, professing ignorance at first but later agreeing that the pollution came from its tailings leach plant.¹¹

In November 2010, the Government of Zambia brought a successful criminal prosecution against KCM for this pollution and the harm it caused.¹² The government charged KCM with four offences relating to the pollution:

1. 'Polluting the environment contrary to section 91(1) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia';
2. 'Discharging poisonous, toxic, ecotoxic, obnoxious or obstructing matter, radiation or other pollutant into the aquatic environment contrary to sections 24 and 91(1) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia';
3. '[W]illfully failing to report an act or incident of pollution of the environment contrary to section 86 subsections (1) and (3) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia'; and
4. [F]ailure to comply with the requirements for discharge of effluent contrary to Regulation 12(b) of the Environmental

4 Environmental Justice Australia, *A review of the Adani's group's environmental history in the context of the Carmichael coal mine approval* (January 2015), https://envirojustice.org.au/sites/default/files/files/envirojustice_adani_environmental_report.pdf (accessed October 8, 2015).

5 Vedanta Resources plc, *Vedanta Resources Annual Report 2009*, page 37, http://www.vedantaresources.com/media/11649/ar2009final_website.pdf; Vedanta Resources plc, *Vedanta Resources Annual Report 2010*, page 15, <http://www.vedantaresources.com/media/11705/vedantaar2010.pdf>; Vedanta Resources plc, *Vedanta Resources Annual Report 2011*, page 27, <http://www.vedantaresources.com/media/11675/vedanta2011ar.pdf>; Vedanta Resources plc, *Vedanta Resources Annual Report and Accounts 2012*, page 61, http://www.vedantaresources.com/media/11708/vedantafy2012ar_final.pdf; Vedanta Resources plc, *Vedanta Resources Annual Report and Accounts 2013*, page 75, <http://www.vedantaresources.com/media/126374/vedantafy2013ar.pdf>; Vedanta Resources plc, *Vedanta Resources Annual Report and Accounts 2014*, page 79, <http://www.vedantaresources.com/media/164998/VedantaAR2014.pdf> (all accessed October 8, 2015).

6 Konkola Copper Mines plc, *Corporate profile*, <http://kcm.co.zm/corporate-profile/> (accessed August 14, 2015).

7 Konkola Copper Mines plc, *Corporate governance*, <http://kcm.co.zm/corporate-profile/corporate-governance/> (accessed August 15, 2015).

8 Vedanta Resources plc, *Vedanta Resources Annual Report 2009*, page 37, http://www.vedantaresources.com/media/11649/ar2009final_website.pdf (accessed October 8, 2015).

9 Pregnant liquor solution is also known as pregnant leach solution. US Forest Service, *Rosemont Copper Project Environmental Impact Statement – Glossary – Pregnant Leach Solution*, <http://www.rosemonteis.us/glossary/term/285>; US Environmental Protection Agency, *Technical Resource Document – Extraction And Beneficiation Of Ores And Minerals, Volume 4, Copper* (August 1994), <http://www3.epa.gov/epawaste/nonhaz/industrial/special/mining/techdocs/copper/copper1a.pdf> (both accessed October 8, 2015).

10 *The People v Konkola Copper Mines Plc – Statement of Facts* (1C/232/2010) (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction)) (November 25, 2010). See also Mines and Communities, *Vedanta: serial offending in Zambia too?* (December 27, 2010), <http://www.minesandcommunities.org/article.php?a=10613> (accessed August 14, 2015).

11 *The People v Konkola Copper Mines Plc – Statement of Facts* (1C/232/2010) (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction)) (November 25, 2010).

12 See *The People v Konkola Copper Mines Plc* (1C/232/2010) (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction)) (November 25, 2010).

Protection and Pollution Control [Water Pollution (Effluent and Wastewater)] Regulations Statutory Instrument No. 172 of 1993.¹³

KCM pleaded guilty to all four charges before the Subordinate Court of the First Class for the Chingola District Holden at Chingola, Zambia, and the court imposed a monetary fine.¹⁴

This was not an isolated pollution incident, as reports and court documents indicate that KCM has a history of pollution in the region. For example, only a few months later, in January 2011, a newspaper in Zambia reported that KCM had again polluted the Kafue River, that a member of parliament had expressed irritation about KCM's continuing pollution, and that the environmental authorities were investigating.¹⁵

In addition, there have been at least two other lawsuits filed against KCM for water pollution. First, in April 2015, the Supreme Court for Zambia agreed with a judgement of a lower court in 2011 (namely, the High Court for Zambia) that KCM was liable for polluting water with acidic effluent in Chingola in 2006, which led to the sickness of local residents.¹⁶ Although the pollution incident predated Mr Janakaraj's management of KCM, the High Court's decision was made during Mr Janakaraj's tenure there.¹⁷ Whether Mr Janakaraj was aware of the 2006 incident, and what actions he took to improve KCM's environmental record and prevent further incidents, are issues that should be addressed by Australian regulators in undertaking a proper assessment of the environmental history of Adani Mining Pty Ltd and its executive officers.

Second, according to news reports, 1,800 Zambian villagers have recently filed a lawsuit against KCM in the UK to recover damages for injuries they claim result from water pollution caused by the company.¹⁸ The villagers say that because of the pollution, people have become sick and died, the soil has become non-productive, and the water smells foul and is orange-coloured.¹⁹ The BBC and *The Guardian* report that leaked documents, including a report by a Canadian engineering company retained by KCM in 2010, indicate that KCM has been discharging sulphuric acid and other toxic chemicals into water sources in Zambia.²⁰ *The Guardian* states that this engineering report refers to 'constant contamination' of streams by KCM, and says that KCM's reservoirs overflow and there are pipe leakages and a lack of spare parts.²¹ Furthermore, a scientist who worked for more than 15 years with KCM in Zambia is reported to have revealed that KCM has cut corners to save costs, and that

[t]here have been heavy spillages and massive leakages. Acid has been leaking all over the place. The pollution control pond is handling too much material. No effort has been made to correct this scenario. Only one of four [waste] pipelines is running – the rest are in disrepair. ...The company has very good plans on paper that have not materialised on the ground for the last 10 years. It is absolutely clear that there is a massive problem.²²

¹³ *The People v Konkola Copper Mines Plc – Statement of Facts* (1C/232/2010) (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction)) (November 25, 2010).

¹⁴ See *The People v Konkola Copper Mines Plc* (1C/232/2010) (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction)) (November 25, 2010).

¹⁵ Lusaka Times, *KCM Kafue river pollution irritates MP* (January 17, 2011), <https://www.lusakatimes.com/2011/01/17/kcm-kafue-river-pollution-irritates-mp/>; Lusaka Times, *ECZ investigating KCM pollution of Kafue River* (January 15, 2011), <https://www.lusakatimes.com/2011/01/15/ecz-investigating-kcm-pollution-kafue-river/> (both accessed October 9, 2015).

¹⁶ *Konkola Copper Mines PLC and James Nyasulu and 2,000 Others* (Appeal No.1/2012) (In the Supreme Court for Zambia Holden at Lusaka (Civil Jurisdiction)) (April 2, 2015), <http://www.zambialii.org/files/zm/judgment/2015/33/KCM%20-%20Supreme%20Court%20%20April%202015.pdf>; *James Nyasulu and 2000 Others and Konkola Copper Mines PLC* (2007/HP/1286) (In the High Court for Zambia at the Principal Registry at Lusaka (Civil Jurisdiction)), <http://www.zambialii.org/files/zm/judgment/2011/86/129%20Judgment%20-%20Konkola%20Copper%20Mines.pdf>; Lusaka Times, *The Supreme Court upholds KCM's High Court guilty verdict of water pollution which poisoned more than 2000 people in 2006* (April 3, 2015), <https://www.lusakatimes.com/2015/04/03/the-supreme-court-upholds-kcms-high-court-guilty-verdict-of-water-pollution-which-poisoned-more-than-2000-people-in-2006/>; Foil Vedanta, *Zambia Supreme Court holds Vedanta guilty of water poisoning* (April 1, 2015), <http://www.foilvedanta.org/uncategorized/call-out-protest-at-zambia-high-commission-2nd-april/> (all accessed August 14, 2015).

¹⁷ See Vedanta Resources Plc, *Vedanta Resources Annual Report 2009*, page 37, http://www.vedantaresources.com/media/11649/ar2009final_website.pdf (accessed October 8, 2015).

¹⁸ John Vidal, *The Guardian*, 'Zambian villagers take mining giant Vedanta to court in UK over toxic leaks' (August 1, 2015), <http://www.theguardian.com/global-development/2015/aug/01/vedanta-zambia-copper-mining-toxic-leaks> (accessed September 14, 2015).

¹⁹ *Id.* See also John Vidal, *The Guardian*, 'I drank the water and ate the fish. We all did. The acid has damaged me permanently' (August 1, 2015), <http://www.theguardian.com/global-development/2015/aug/01/zambia-vedanta-pollution-village-copper-mine>; Nomasa Maseko, *BBC News*, 'Rivers of acid' in Zambian villages (September 8, 2015), <http://www.bbc.com/news/world-africa-34173746> (both accessed September 14, 2015).

²⁰ John Vidal, *The Guardian*, 'Zambian villagers take mining giant Vedanta to court in UK over toxic leaks' (August 1, 2015), <http://www.theguardian.com/global-development/2015/aug/01/vedanta-zambia-copper-mining-toxic-leaks>; John Vidal, *The Guardian*, 'I drank the water and ate the fish. We all did. The acid has damaged me permanently' (August 1, 2015), <http://www.theguardian.com/global-development/2015/aug/01/zambia-vedanta-pollution-village-copper-mine>; Nomasa Maseko, *BBC News*, 'Rivers of acid' in Zambian villages (September 8, 2015), <http://www.bbc.com/news/world-africa-34173746> (all accessed September 14, 2015).

²¹ John Vidal, *The Guardian*, 'Zambian villagers take mining giant Vedanta to court in UK over toxic leaks' (August 1, 2015), <http://www.theguardian.com/global-development/2015/aug/01/vedanta-zambia-copper-mining-toxic-leaks> (accessed September 14, 2015).

²² *Id.*

Those in executive roles at mining companies – as Mr Janakaraj was at KCM and now is in relation to the Adani Group’s Australian operations – have a critical role in ensuring that mining operations like those of KCM and of the Adani Group in Australia operate in compliance with laws that protect the environment and communities. The evidentiary record of harm to the environment by KCM – before and during Mr Janakaraj’s leadership as Director of Operations and later CEO – suggests that KCM may have had a corporate culture of disregard for the environment, local communities, and the law. As discussed below, Australian laws recognise that environmental matters connected with a company’s executive officers, and other companies those executive officers have been in charge of, are relevant when assessing the environmental history of a company to determine whether that company should be entrusted with potentially risky operations in Australia. The fact that someone who has been in charge of a company with so many serious allegations, as well as criminal convictions, in relation to its environmental record now occupies the leadership role in the Adani Group’s Australian operations is a compelling reason for the Australian regulators to investigate this issue.

1.2 The Adani Group’s clear disregard for environmental laws in India

The Adani Group has a very concerning history of failure to comply with Indian law and environmental permits. A report published by Environmental Justice Australia in January 2015, *A review of the Adani’s group’s environmental history in the context of the Carmichael coal mine approval*, described detailed evidence of serious legal violations and extensive environmental harm caused by Adani Group companies in India.²³

In brief, the most concerning evidence in that report details the environmental record of Adani Ports and Special Economic Zone Ltd (‘Adani Mundra’), which operates one of the world’s largest coal-fired power plants, together with a port and special economic zone, in Mundra, India²⁴ – all with an apparent disregard for environmental regulation going back many years. In December 2010, an investigation of Adani Mundra’s operations by officials of the Indian Ministry of Environment and Forests (‘Ministry’) found evidence of large-scale destruction of mangroves near Adani Mundra’s North Port caused at least in part by reclamation using dredged material, obstruction of tidal flow by a dredging disposal pipeline, obstruction of creek systems and natural seawater flow by reclamation along creeks, and development of a township, airport and hospital without the proper environmental approvals.²⁵ Following this investigation, on December 15, 2010, the Ministry issued a notice stating that it was of the opinion that Adani Mundra had violated certain environmental regulations and not complied with the conditions of its environmental approval.²⁶ The notice also required Adani Mundra to show cause why its environmental approvals should not be cancelled and why it should not remove all reclamation in the mangroves and creeks and undertake mangrove afforestation.²⁷

In April 2013, an independent committee constituted by the Ministry to investigate complaints about the environmental impacts of Adani Mundra’s operations issued a report finding ‘incontrovertible evidence of violation[s] of [environmental clearance] condition[s] and non-compliance’, including failure to protect mangroves resulting in the loss of 75 hectares of mangroves in the Bocha Island conservation area and around Navinal creek, and allowing changes to creeks and creek mouths due to construction activities.²⁸ The committee noted that Adani Mundra had:

- attempted to bypass statutory procedures, including public hearings;
- allowed construction of an airstrip without an environmental approval;
- failed to line its storage pond and intake/outlet channel to protect against salinity intrusion into groundwater, in violation of its environmental approvals; and
- failed to comply with the monitoring and reporting requirements of its environmental approvals.²⁹

²³ This report is available at https://envirojustice.org.au/sites/default/files/files/envirojustice_adani_environmental_report.pdf.

²⁴ Adani, *Power generation – thermal*, <http://www.adanipower.com/power-thermal>; Adani, *About Mundra Port*, http://www.adaniports.com/about_mundra_port.aspx (both accessed August 17, 2015).

²⁵ *Site visit to M/s Mundra Port & SEZ Ltd Port site at Mundra and M/s OPG Power Gujarat Private Limited on 6th – 7th December 2010*, pages 2-4, <http://www.moef.nic.in/downloads/public-information/site-visit-Mundra-OPG.pdf> (accessed September 16, 2015).

²⁶ Government of India, Ministry of Environment and Forests, *Show Cause Notice under Section 5 of Environment (Protection) Act, 1986 for violation of the provisions of the Coastal Regulation Zone Notification 1991 by M/s Mundra Port & SEZ Ltd* (December 15, 2010).

²⁷ *Id.*

²⁸ Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat, *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat* (April 2013), pages 78-79, 81, <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed September 16, 2015).

²⁹ *Id.*, pages 76, 77, 80, 81.

The committee concluded that Adani Mundra may have dumped potentially toxic fly ash leading to air and water pollution, in violation of its environmental approvals, and had failed to conduct regular monitoring around the ash pond area.³⁰ The committee recommended that Adani Mundra be required to establish an environment restoration fund of around AUD40 million.³¹

Following the issue of this report, on September 30, 2013, the Ministry placed Adani Mundra's 'environmental clearance'³² for its North Port in 'abeyance',³³ and asked Adani Mundra to show cause why the environmental clearance should not be cancelled.³⁴

³⁰ *Id.*, page 79.

³¹ *Id.*, pages 81-82.

³² An environmental clearance is similar to an environmental authority or approval; it is required prior to the undertaking of activities that may impact the environment, including natural resource extraction, power generation, primary processing, materials production and processing, manufacturing, and infrastructure development. See generally, Government of India, Ministry of Environment and Forests, *Environmental Impact Assessment Notification 2006*, <http://envfor.nic.in/legis/eia/so1533.pdf>; Government of India, Ministry of Environment, Forest and Climate Change, *Environmental Clearances*, <http://envfor.nic.in/major-initiatives/environmental-clearances>; Government of India, Ministry of Environment, Forest and Climate Change, *Online Submission & Monitoring of Environmental Clearances*, <http://environmentclearance.nic.in/>; Centre for Science and Environment, *Environmental Clearance – the process*, <http://www.cseindia.org/node/403> (all accessed September 14, 2015).

³³ An abeyance is a 'temporary inactivity or suspension.' Macquarie Dictionary (sixth edition, 2013), definition of 'abeyance.'

³⁴ Government of India, Ministry of Environment and Forests, *Issue of show cause notice for alleged violations* (September 30, 2013), <http://www.moef.nic.in/sites/default/files/Adani%20SCN.pdf> (accessed September 14, 2015).

2. The relevance of the track record of the Adani Group and its executive officers to Queensland and federal government regulators

Regulatory agencies should thoroughly consider the past conduct of a mining company and its executive officers prior to any decision about granting that company permission to develop a mine and associated infrastructure that pose serious threats of harm to local communities and the environment. A past record of disregard for laws and regulations intended to protect communities and the environment ought to be a red flag for any proposed project, particularly a project of the scale and impact of the proposed Carmichael mine and associated projects required to transport and export the coal – like the expansion of Abbot Point port on the edge of the Great Barrier Reef World Heritage Area. The degree to which Australian regulators are able to, and in fact do, take these issues into account should be a matter of broad public concern.

There are three key decisions that have been or will be made by the Queensland and federal governments where the past conduct of Adani Mining Pty Ltd and its executive officers may or must be considered prior to allowing the development of the Carmichael mine to proceed. These are:

- (a) the registration of Adani Mining Pty Ltd as a ‘suitable operator’ under Queensland legislation;
- (b) the decision of the Queensland Minister for Natural Resources and Mines whether to grant mining leases for the Carmichael mine; and
- (c) the decision of the Federal Minister for the Environment, made on October 14, 2015, to grant approval for the Carmichael mine under federal environmental legislation.

The following discussion analyses these key decisions and finds that there has been inadequate scrutiny of the track record of the Adani Group.

2.1 The Adani Group’s suitability to operate in Queensland has not been adequately assessed under Queensland law

Since March 2013, a company seeking an environmental approval for a project such as a coal mine or port expansion must first be registered as a ‘suitable operator’ under Queensland’s *Environmental Protection Act 1994*.³⁵ This registration involves a ‘character check’ to ensure that companies that wish to carry out environmentally risky activities can be trusted to do so. To be registered as a suitable operator, a company must declare its full environmental record, including any convictions for environmental offences and any cancellation or suspension of licences, and the environmental record of its executive officers and of any companies of which its executive officers have been an executive officer.³⁶ Importantly, as discussed below, the application form requires disclosure of incidents that occurred outside Queensland, including in countries other than Australia.³⁷

Had Adani Mining Pty Ltd’s suitability been assessed pursuant to the ‘suitable operator’ application and registration process since its introduction in early 2013, Adani Mining Pty Ltd would have been asked to disclose incidents that occurred outside Queensland, encompassing the environmental records of KCM and Adani Mundra. The Director General of the Queensland Department of Environment and Heritage Protection would have had the opportunity to consider whether a company with such history should be allowed to operate large and risky projects in Queensland. Instead, legal loopholes have allowed Adani Mining Pty Ltd’s environmental record to go unexamined, even as the government proposes to issue approvals for the massive Carmichael mine.

Instead, Adani Mining Pty Ltd’s suitability to operate in Australia has been evaluated under the *Environmental Protection*

³⁵ See generally *Environmental Protection Act 1994 (Qld)*, Chapter 5A, Part 4.

³⁶ Queensland Government, Department of Environment and Heritage Protection, *Application form – Environmental Protection Act 1994 – Application to be a registered suitable operator*, page 2, available to download at <http://www.ehp.qld.gov.au/licences-permits/suitable-operators/> (accessed August 14, 2015).

³⁷ See footnote 1 of Queensland Government, Department of Environment and Heritage Protection, *Application form – Environmental Protection Act 1994 – Application to be a registered suitable operator*, page 2, available to download at <http://www.ehp.qld.gov.au/licences-permits/suitable-operators/> (accessed August 14, 2015).

Act 1994 (Qld) only once, in 2010, when it obtained its first environmental authority for very limited exploration activities on the proposed Carmichael mine site.³⁸ At this time, because Mr Janakaraj had not yet become an executive officer of the Adani Group and the environmental incidents in India had not yet taken place, these events were not considered.³⁹

When the ‘suitable operator’ scheme was introduced in 2013, Adani Mining Pty Ltd avoided scrutiny because the legislation establishing the scheme deemed the holder of an existing environmental authority to be already registered as a suitable operator.⁴⁰ Adani Mining Pty Ltd thus did not have to disclose any information about the new incidents relevant to its environmental record that occurred after it received its first environmental authority in 2010.⁴¹

If Adani Mining Pty Ltd had not held an environmental authority at the time that the law changed in 2013, the Queensland government would have had to assess whether Adani Mining Pty Ltd was suitable to operate in Queensland before the government could grant it an environmental authority for the Carmichael mine. Adani Mining Pty Ltd, when filling out the relevant application form, would have been asked to disclose the incidents that occurred outside Queensland, including in countries other than Australia, both in relation to the company itself and any company of which its executive officers have been an executive officer.⁴² Had that information been disclosed, the Queensland Department of Environment and Heritage Protection could have made a more informed decision about Adani Mining Pty Ltd’s suitability to operate in Queensland.

2.2 The track record of harm should be grounds for cancellation or suspension of Adani Mining Pty Ltd’s registration as a ‘suitable operator’

Initial registration as a suitable operator is not necessarily the last opportunity to consider suitability; information that later comes to light may provide grounds for cancelling or suspending an operator’s registration. The chief executive of the Department of Environment and Heritage Protection is empowered to cancel or suspend a company’s registration in two circumstances:

1. if the company, its executive officers, or another company of which its executive officers are or have been executive officers, commit a disqualifying event;⁴³ or
2. if the chief executive is satisfied that the company is not suitable to be registered as a suitable operator having regard to the company’s environmental record.⁴⁴

An ‘executive officer’ is defined as a person who is a ‘member of the governing body of the corporation’ or ‘concerned with, or takes part in, the corporation’s management’, ‘whatever the person’s position is called and whether or not the person is a director of the corporation’.⁴⁵ A ‘disqualifying event’ includes convictions for environmental offences or the suspension or cancellation of an environmental permit.⁴⁶

³⁸ Queensland Government, Department of Environment and Resource Management, *Environmental Authority (exploration and mineral development) for Non-code compliant level 1 mining project*, Permit Number: MIN200857709, August 11, 2011.

³⁹ Although the ‘suitable operator’ scheme was not in place at the time of this transfer, the law did require the predecessor of the Queensland Department of Environment and Heritage Protection to have regard to Adani Mining Pty Ltd’s suitability to hold an environmental authority and to its environmental record. See *Environmental Protection Act 1994* (Qld) Reprint No. 9F, as in force from July 5, 2010, s 304.

⁴⁰ *Environmental Protection Act 1994* (Qld), s 705, inserted by s 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld) with effect from March 31, 2013. See also, *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012 – Explanatory Notes*, pages 4 and 180, available at <https://www.legislation.qld.gov.au/Bills/54PDF/2012/EnvProGROLAB12Exp.pdf> (accessed October 20, 2015).

⁴¹ The convoluted process by which Adani Mining Pty Ltd was registered as a suitable operator and which led to the Queensland government’s failure to properly assess Adani Mining Pty Ltd’s suitability to operate is detailed in the report published by Environmental Justice Australia in January 2015, *A review of the Adani’s group’s environmental history in the context of the Carmichael coal mine approval*. This report is available at https://envirojustice.org.au/sites/default/files/files/envirojustice_adani_environmental_report.pdf.

⁴² The application form for registration as a suitable operator requires that if a company declares any environmental incidents, then

[The applicant for suitable operator registration] must indicate if the event [being disclosed] occurred to [the applicant] individually or to a company or business in which [the company or its executive officers] currently hold, or have held, a position of management or control. [The applicant] must ... provide complete details [of the event being disclosed] (including the *state/territory/country* in which the event occurred...).

See Queensland Government, Department of Environment and Heritage Protection, *Application form – Environmental Protection Act 1994 – Application to be a registered suitable operator*, page 2 footnote 1 (emphasis added), available to download at <http://www.chp.qld.gov.au/licences-permits/suitable-operators/> (accessed August 14, 2015).

⁴³ *Environmental Protection Act 1994* (Qld), s 318K(a).

⁴⁴ *Id.*, s 318K(b).

⁴⁵ *Id.*, Schedule 4 – definition of ‘executive officer’.

⁴⁶ *Id.*, Schedule 4 – definitions of ‘disqualifying event’ and ‘environmental offence’.

These provisions are clearly intended to give Australian decision-makers the power to protect Australia and Australians against the risk of potentially harmful activities being carried out by operators who have shown themselves unlikely to be able or willing to avoid causing harm. Under these provisions, the offences committed by KCM when Mr Janakaraj was its Director of Operations could potentially form the basis for the suspension or cancellation of Adani Mining Pty Ltd's registration as a suitable operator. Without such registration, Adani Mining Pty Ltd would be ineligible to hold environmental authorities in Queensland and could not receive the necessary approvals to develop and operate the Carmichael mine and to expand the Abbot Point port.

The suspension of Adani Mundra's environmental approval in 2013 could similarly be a basis for suspension or cancellation of Adani Mining Pty Ltd's registration because Mr Gautam Adani, who was and is still an executive officer of Adani Mundra (being its chairman and managing director),⁴⁷ is arguably an executive officer of Adani Mining Pty Ltd because he takes part in and is concerned with its management. For example, he has met with Australian politicians in relation to the development of the Carmichael mine and has, on numerous occasions, spoken to the media about the mine's development, demonstrating his involvement in the operations of Adani Mining Pty Ltd.⁴⁸ Furthermore, Adani Mining Pty Ltd is clearly integrated into the operations of the wider Adani Group: it is a wholly owned subsidiary of Adani Enterprises Ltd ('AEL'), one of the parent companies in the Adani Group,⁴⁹ Mr Adani is the chairman of the board of directors of AEL, and AEL is 75% owned by the Adani family;⁵⁰ and Mr Adani is described on the Adani group's website as 'Chairman, Adani Group'.⁵¹

The conduct described in this report is exactly the kind of conduct that the law intends to bring to light before decision-makers grant authorisations for risky activities. Unfortunately, however, there is a gap in the law that makes it doubtful whether the definition of 'disqualifying event' in the *Environmental Protection Act 1994* (Qld) extends to consideration of incidents that take place outside Australia.⁵²

Nevertheless, because Adani Mining Ltd's behaviour gives cause for the same concerns the law is intended to address, the Director General of the Queensland Department of Environment and Heritage Protection should make further inquiries about whether Adani Mining Pty Ltd should be registered as a suitable operator, and about the adequacy of the *Environmental Protection Act 1994* (Qld) to address international environmental offences.

Given the inadequacies of the suitable operator registration system, it is important to consider the relevance of overseas events to other decisions in the approval processes under Queensland and federal laws.

2.3 The track record of harm should be considered in relation to Adani Mining Pty Ltd's application for mining leases under the Mineral Resources Act 1989 (Qld)

The Land Court of Queensland is currently considering whether to recommend to the Queensland Minister for Natural Resources and Mines that the mining leases for the Carmichael mine should be granted to Adani Mining Pty Ltd. The Minister must then decide whether to grant the mining leases, taking into account a number of factors enumerated in the *Mineral Resources Act 1989* (Qld),⁵³ including whether 'the past performance of the applicant has been satisfactory'.⁵⁴

⁴⁷ Adani Ports and Special Economic Zone Limited, *16th Annual Report 2014-15*, pages 1, 9, 15, 20, http://www.adaniports.com/Common/Uploads/AnnualReportTemplate/30_ARReport_Annual%20Report.pdf (accessed September 16, 2015). See also, Adani Ports and Special Economic Zone Limited, *14th Annual Report 2012-13*, page 1, http://www.adaniports.com/Common/Uploads/AnnualReportTemplate/23_ARReport_Annual%20Report%20for%20the%20year%202012-13.pdf; Adani Ports and Special Economic Zone Limited, *15th Annual Report 2013-14*, page 1, http://www.adaniports.com/Common/Uploads/AnnualReportTemplate/29_ARReport_annual%20report.pdf (both accessed October 27, 2015).

⁴⁸ See, for example, *ABC Brisbane*, 'The mining industry is fighting back' (August 24 2015), <http://blogs.abc.net.au/queensland/2015/08/the-mining-industry-is-fighting-back.html>; *The Indian Express*, 'Adani crosses green hump in \$7.5 bn Australia project' (November 15, 2014), <http://indianexpress.com/article/business/business-others/adani-crosses-green-hump-in-7-5-bn-australia-project/>; *Sydney Morning Herald*, 'Concerns at Barrier Reef contractor's humanitarian, environment record' (September 5, 2014), <http://www.smh.com.au/federal-politics/political-news/concerns-at-barrier-reef-contractors-humanitarian-environment-record-20140904-10cgxk.html>; *LiveMint*, 'Adani gets Australia's nod for \$15.5 bn coal mining project' (July 29, 2014), <http://www.livemint.com/Companies/fuuBoDeX9dsFe0WjGWG7PP/Australia-clears-Adani-Minings-155-billion-Carmichael-coa.html>; *Global Rail News*, 'Galilee Basin rail freight line build moves forward' (July 24, 2014), <http://www.globalrailnews.com/2014/07/24/galilee-basin-rail-freight-line-build-moves-forward/> (all accessed October 13, 2015).

⁴⁹ Adani Mining Pty Ltd is 100% owned by Adani Global Pte Ltd, which is 100% owned by Adani Global Ltd, which is 100% owned by Adani Enterprises Ltd. Adani Enterprises Ltd, *23rd Annual Report 2014-15*, pages 169, 171, http://www.adani.com/Common/Uploads/FinanceTemplate/1_FFReport_AR%202014-15.pdf (accessed September 16, 2015).

⁵⁰ *Id.*, page 1; Tim Buckley, Institute for Energy Economics and Financial Analysis, *Briefing Note – Adani: Remote Prospects* (September 2015), page 9, http://ieefa.org/wp-content/uploads/2015/09/IEEFA-Briefing-Note_Adani-Remote-Prospects_Sept-2015.pdf (accessed October 20, 2015).

⁵¹ Adani, *Chairman's message: a growth story*, <http://www.adani.com/about-us/Us.aspx> (accessed September 16, 2015).

⁵² *Environmental Protection Act 1994* (Qld), Schedule 4 – definition of 'disqualifying event.'

⁵³ *Mineral Resources Act 1989* (Qld), ss 271, 269(4).

⁵⁴ *Id.*, ss 271(b), 269(4)(g).

The matters raised in this report about the environmental track record of members of the Adani Group and its executive officers in India and Zambia – including the senior staff member overseeing the Adani Group’s Australian operations – are clearly matters that should be considered by the Minister when he is deciding whether to grant mining leases for the Carmichael mine, especially given that these matters have not been adequately considered by other decision-makers.

2.4 The environmental history of Adani Mining Pty Ltd and its executive officers was not adequately considered when federal environmental approvals issued

The Federal Minister for the Environment is empowered to consider the environmental history of a project proponent and its executive officers when deciding whether to issue an approval under federal environmental protection legislation. Section 136(4) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (‘EPBC Act’) provides that the Minister, when deciding whether to grant an approval under that Act, may consider whether the person is a suitable person to be granted an approval, having regard to:

- (a) the person’s history in relation to environmental matters; and
- (b) if the person is a body corporate—the history of its executive officers^[55] in relation to environmental matters; and
- (c) if the person is a body corporate that is a subsidiary of another body or company (the **parent body**)—the history in relation to environmental matters of the parent body and its executive officers.’⁵⁶

The Federal Department of the Environment has issued a policy statement noting that information relevant to a person’s environmental history includes information that ‘will indicate whether a person is likely to comply with the conditions of an approval.’⁵⁷

Mr Janakaraj is an executive officer of Adani Mining Pty Ltd (and indeed oversees all of the Adani Group’s operations in Australia), and was also an executive officer – Director of Operations – of KCM at the time of the 2010 offences, and subsequent prosecution, guilty plea, and fine. Given the gravity of the offences committed by KCM whilst under Mr Janakaraj’s management, it would have been appropriate for the Federal Environment Minister to take Mr Janakaraj’s history in relation to environmental matters into account when deciding whether to grant the approval for the Carmichael mine. To our knowledge, however, the Minister did not assess this information when he recently reapproved the Carmichael mine⁵⁸ or when he approved Adani Mining Pty Ltd’s North Galilee Basin Rail Project, which would transport coal from the Carmichael mine to Abbot Point.⁵⁹

Furthermore, the Adani Group’s track record of environmental harm and disregard for the law in India demonstrates that there is a serious and live issue about the likelihood of Adani Group companies operating in Australia complying with the law and with conditions of any approval. This, combined with KCM’s failure to comply with legal requirements while under the management of the now-CEO of the Adani Group’s Australian operations, demonstrates that the analysis undertaken by the Federal Environment Minister in reapproving the Carmichael mine was not sufficiently rigorous and did not properly assess the risk of allowing the Adani Group to operate in Australia.⁶⁰

⁵⁵ An ‘**executive officer**’ of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.’ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 493.

⁵⁶ *Id.*, s 136(4).

⁵⁷ Australian Government Department of the Environment, *EPBC Act Policy Statement – Consideration of a person’s environmental history when making decisions under the EPBC Act* (2013), page 2, available at download at <http://www.environment.gov.au/resource/epbc-act-policy-statement-consideration-persons-environmental-history-when-making-decisions> (accessed October 9, 2015).

⁵⁸ Australian Government Department of the Environment, *Adani Mining Pty Ltd/Mining/Moray Downs Cattle Station 160km North West of Clermont/QLD/Carmichael Coal Mine and Rail Project – EPBC 2010/5736* (October 14, 2015), <http://epbcnotices.environment.gov.au/referralslist/referral-details/?id=b5a97218-4c67-e511-b4b8-005056ba00ab> (accessed October 15, 2015).

⁵⁹ Australian Government Department of the Environment, *Adani Mining Pty Ltd/Transport - land/from proposed Carmichael Mine to Port of Abbot Point/QLD/North Galilee Basin Rail Project, Qld – EPBC 2013/6885*, <http://epbcnotices.environment.gov.au/referralslist/referral-details/?id=437b7a12-4c67-e511-b4b8-005056ba00ab> (accessed October 9, 2015).

⁶⁰ See Australian Government Department of the Environment, *Statement of reasons for approval of a proposed action under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (Adani Mining Pty Ltd/Mining/Moray Downs Cattle Station 160km North West of Clermont/QLD/Carmichael Coal Mine and Rail Project – EPBC 2010/5736)* (October 14, 2015), pages 30-31, http://epbcnotices.environment.gov.au/_entity/annotation/45c02035-e672-e511-b93f-005056ba00a7/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1445373945942 (accessed October 15, 2015).

Conclusion

Australian and Queensland laws recognise that it is important to consider the environmental history of a company and its executive officers when assessing whether the company should be granted environmental approvals. This is especially true when the approvals are for projects that carry the level of environmental impact and risk as the proposed Carmichael mine and associated infrastructure, including the proposed expansion of Abbot Point port.

However, the legal process designed to assess the environmental history of Adani Mining Pty Ltd has been inadequate thus far, and the concerning new information described in this report should compel both the Director General of the Queensland Department of Environment and Heritage Protection and the Federal Environment Minister to revisit the issue.

Further, the Queensland Minister for Natural Resources and Mines must pay particular attention to this issue when considering the mining lease approvals, especially in light of the inadequate scrutiny by other regulators.

The Australian public expects key decision-makers to undertake a proper assessment of the risks of allowing companies to operate in Australia. The international environmental track record of the Adani Group and its executive officers raises serious questions which must not be ignored by decision-makers when assessing the risk to the environment of the Adani Group's plans in Australia.