

The Adani Brief: What governments and financiers need to know about the Adani Group's record overseas

An Overview of The Adani Brief

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The Adani Group's proposed Carmichael Coal Mine and Rail Project in the Galilee Basin in Queensland would, if developed, be among the largest new coal mines in the world. In addition to destroying the traditional lands and sacred sites of the Indigenous Wangan and Jagalingou people, and unique and important species and ecosystems, burning the 60 million tons of coal the mine is projected to produce each year would measurably exacerbate climate change and ocean warming and acidification that are causing human and environmental devastation worldwide. The associated rail infrastructure and expansion of the coal export terminal at Abbot Point Port adjacent to the Great Barrier Reef World Heritage Area would facilitate the shipping of coal through the Reef's water from both the Carmichael Mine and other mines proposed for the Galilee Basin, increasing the risk of shipping oil spills and groundings that would further damage the Reef's already endangered ecosystem.

In addition to these threats, the Adani Brief presents evidence that raises serious concerns about the global legal compliance record of some corporate entities within the Indian-based Adani Group. This evidence includes investigations by an Indian government intelligence agency of illegal business dealings, active involvement in large-scale illegal mineral exports, and numerous violations of Indian environmental laws that have harmed the environment and local communities.

This evidence in the Adani Brief suggests that governments and private stakeholders should give serious consideration to the possibility that if this track record continues in Australia, then supporting the Adani Group's Carmichael Mine and the Abbot Point Port may expose governments and private stakeholders to reputational and financial risks.

Adani Group entities in India are under investigation for corruption and illegal dealings

The Indian government's Directorate of Revenue Intelligence (DRI) is currently investigating a number of Adani Group entities, including Adani Enterprises Ltd (AEL), which is the ultimate holding company of Adani Mining Pty Ltd, the proponent of the Carmichael Mine, for illegally overvaluing imports of coal and capital equipment in order to siphon funds offshore, a practice that creates "black money." A detailed report from a reliable media source also indicates that for more than a decade the DRI has also been investigating Adani Group entities for tax evasion and money laundering whilst trading in diamonds.

In 2011, after a three-year investigation, the ombudsman of the Indian state of Karnataka found AEL to have been actively involved in large-scale illegal export of iron ore. The ombudsman recommended that AEL should be stripped of its rights to operate the port and banned from further business dealings with the government.

These investigations and findings of illegal activity by Adani Group entities should be of concern to potential financial supporters of the Carmichael Mine or Abbot Point Port, including the Northern Australian Infrastructure Facility, in relation to reputational and financial risks. Best practice would likely require Australian financiers to enquire with Indian authorities as to the status of the investigations and defer the provision of finance until any pending Indian investigations are completed.

Irregularities in the ownership of Terminal 1 at Abbot Point Port may create risk uncertainties for lenders

The ultimate ownership of Adani Abbot Point Terminal Pty Ltd (AAPT), which owns and operates Terminal 1 at Abbot Point Port, is opaque, making it difficult to assess the risk profile of any security for a loan to AAPT (or any intermediate parent companies). AAPT has reported to the Australian Securities & Investments Commission that it is ultimately owned by Adani Ports and Special Economic Zone Ltd (APSEZ), a public company that is part of the Adani Group and is listed on the Bombay Stock Exchange. But APSEZ's most recent annual report indicates that the company has divested its stake in AAPT, and attributes ownership of AAPT to a private Singapore company that is ultimately owned by a Cayman Islands entity likely associated with the Adani family. If AAPT is owned by APSEZ, actual or potential lenders' security is tied (either overtly or by implied endorsement/connection) to an Indian publicly listed company with substantial additional assets and relatively transparent accounts. If not, the profile of the security may change. The risks are ultimately borne by lenders, their shareholders, others with financial interests in the lenders, and employees.

Adani Group entities have a concerning record of failing to comply with Indian environmental laws

The environmental record of Adani Group entities in India raises serious questions about those entities' commitment to environmental protection and the health and welfare of local communities, and to compliance with laws intended to assure such protection. This should be of significant concern to governments and financiers in relation to the Adani Group's proposed Carmichael Mine, particularly in light of the integrated relationship between the Australian-based Adani Group companies and the broader Adani Group generally. In addition to environmental compliance issues previously raised in earlier reports,¹ the Adani Brief describes evidence of several other instances of non-compliance with Indian environmental laws:

- In August 2016, the National Green Tribunal, India's specialised environmental court, fined AEL nearly AU\$1 million for its role in chartering an unseaworthy ship to transport coal. This is the same activity the Adani Group would be undertaking in shipping coal from the Carmichael Mine through the fragile Great Barrier Reef. The tribunal found that the ship had sunk, spilling oil and over 60,000 tons of coal that destroyed mangroves and polluted beaches. The tribunal criticised AEL's failure to clean up the spill for more than five years.
- In January 2016, the National Green Tribunal fined Adani Hazira Port Private Ltd, a subsidiary of APSEZ, almost AU\$5 million for undertaking development works at its port in Hajira, India, without an environmental permit. The tribunal found that these works destroyed mangroves and impeded the fishing activities of local communities by interfering with their access to the river and ocean. The tribunal criticised the company for

¹ See Environmental Justice Australia, *A review of the Adani 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; Environmental Justice Australia and Earthjustice, *Can the Adani Group be trusted to comply with environmental laws? The Adani Group's global environmental record* (October 2015), https://envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/Report_Earthjustice%20and%20Environmental%20Justice%20Australia_The%20Adani%20Groups%20Global%20Environmental%20Record_29%20Oct%202015.pdf.

having an “irresponsible attitude” and for failing to care about any “adverse impact [of its development] on [the] environment.”

- The Adani Group’s development of a huge port and one of the world’s largest coal-fired power plants at Mundra, India, has caused significant harm to the environment and local communities, resulting from numerous failures to comply with regulations and permits. Among other things, there is evidence of large-scale destruction of mangrove forests, obstruction of creek systems and natural seawater flow, failure to protect groundwater from salinity intrusion, and possible dumping of potentially toxic fly ash in violation of the relevant environmental approval.

Adani Mining Pty Ltd failed to disclose the concerning environmental record of a company formerly managed by one of its executive officers to the Australian government

Australian laws require the government to examine the suitability of a company to operate projects, like the Carmichael Mine and the Abbot Point Port expansion, that may pose a risk of environmental or human harm. Because a company’s executives are essential to ensuring compliance with laws that protect against such harm, the laws recognise the relevance to the suitability determination of the environmental record of a company’s executive officers and of companies they have managed.

In 2015, in considering whether to approve the Carmichael Mine, the Federal Environment Department asked Adani Mining Pty Ltd (the proponent of the Carmichael Mine) for the environmental history of its executive officers. In its response, Adani Mining Pty Ltd failed to disclose that one of its directors and the CEO of the Adani Group’s operations in Australia, Mr. Jeyakumar Janakaraj, was previously an executive officer of an unrelated company when that company had caused serious water pollution in Zambia. The company later pleaded guilty to criminal charges for the pollution and its failure to report the incident. Because Adani Mining Pty Ltd did not disclose this information when requested, the Federal Environment Minister did not consider it when granting approval to the Carmichael Mine.

For backgrounding and comment:

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