

A review of the Adani group's environmental history in the context of the Carmichael coal mine approval

Adani Mining Pty Ltd, a member of the Adani group, is seeking approval to operate the largest coal mine in the southern hemisphere, in Queensland's Galilee Basin – the Carmichael mine. Reflecting public expectations that the suitability of companies to undertake such operations should be carefully scrutinised, Queensland environmental regulation contains a 'character check' through which a company gains registration as a 'suitable operator'. This is to ensure that companies that are given approval to undertake environmentally risky activities such as large coal mines can be trusted to undertake the activities proposed.

An analysis of legal actions taken against members of the Adani group of companies in India confirms that members of the Adani group demonstrate a consistent pattern of breaching Indian laws and causing environmental harm. This report outlines the results of our investigations as to how Adani Mining Pty Ltd has nonetheless secured the necessary registration as a 'suitable operator' for the Carmichael mine.

Our investigations demonstrate that the Queensland environmental regulator undertook only a very cursory analysis of the suitability of Adani Mining Pty Ltd to hold an environmental approval and operate the largest coal mine in Australia. The convoluted process for determining suitability was inadequate to properly assess whether Adani Mining Pty Ltd should be trusted to operate the Carmichael coal mine.

The results of our investigation indicate that the public can have little confidence that important issues regarding the track record of the Adani Group have been adequately scrutinised. The issues raised in this report should be addressed by the Queensland regulators and those considering public or private financing of the Carmichael mine and associated infrastructure projects.

Inadequate scrutiny of environmental record

Under Queensland law, a company that intends to carry out activities such as mining must be registered as a 'suitable operator' under the *Environmental Protection Act 1994* (Qld).¹ The government may refuse a company's application for registration based on that company's environmental record.² Although Adani Mining Pty Ltd has been registered as a 'suitable operator', there is no indication that its environmental record since 2010 has been considered by the Queensland government. In fact, our investigations reveal that the entire process by which Adani Mining Pty Ltd was found suitable to operate in Queensland demonstrates little government scrutiny and a failure to take into account any of the numerous unlawful actions of Adani group companies that have occurred since that suitability was originally considered.

The need to investigate Adani Mining Pty Ltd's registration as a suitable operator

The *Environmental Protection Act 1994* (Qld) empowers the chief executive of the Department of Environment and Heritage Protection ('the Department') to cancel or suspend a registration if the applicant is not suitable due to its environmental record.³ Here, although the applicant is Adani Mining Pty Ltd it is clearly part of a group of companies interconnected to the extent that they should be considered as a combined operation. This group has committed serious legal violations and caused extensive environmental harm in India. It is therefore not a suitable operator, and its registration should be cancelled. In addition, it may well be that Adani Mining Pty Ltd's executive officers have been executive officers of other Adani companies that have committed disqualifying events, and on that basis the registration may be cancelled under section 318K(a).

Given the gravity of the legal violations and environmental harm in India, and the potential environmental impacts in Australia were Adani Mining Pty Ltd to fail to comply with environmental approvals, the Chief Executive of the Department should exercise her power under section 318R to investigate Adani Mining Pty Ltd's suitability to operate in Queensland.

¹ *Environmental Protection Act 1994* (Qld), ss 318F-318J.

² *Id.*, s 318H.

³ *Id.*, ss 318K(b)

How Adani Mining Pty Ltd secured registration as a “suitable operator” under Queensland law

In Queensland, a company that proposes to undertake an activity such as mining requires an environmental authority, which is issued by the Department following an assessment process.⁴ Adani Mining Pty Ltd obtained its first environmental authority around 4 August 2010 by ‘transfer’. This means it purchased the environmental authority from another company, and this took place only about one week after Adani Mining Pty Ltd was incorporated in Australia on 28 July 2010.⁵ When this transfer took place, the law required the predecessor of the Department to have regard to Adani Mining Pty Ltd’s suitability to hold an environmental authority and to its environmental record.⁶ Notably, at this time, the environmental harm and breach of environmental regulations by various companies in the Adani group described later in this report had not yet occurred.

The *Environmental Protection Act 1994* (Qld) requires the Department to provide copies of environmental authorities to the public for inspection upon request.⁷ However a copy of Adani Mining Pty Ltd’s original environmental authority is not publicly available, and the Department has been unable to locate a copy. Environmental Justice Australia has filed a right to information application to obtain it.

Around 11 August 2011, the type of environmental authority that Adani Mining Pty Ltd held was changed.⁸ Then, on 14 March 2012, the environmental authority number was changed by the Department, apparently due to administrative error.⁹ As a result, the original environmental authority had three different numbers over the course of two years. This is particularly concerning given the findings of the Queensland Auditor General in 2014 that the Department is not fully effective in its supervision, monitoring and enforcement of environmental conditions and is exposing the state to liability and the environment to harm unnecessarily.¹⁰ According to that report, data being used to regulate the industries that directly harm Queensland’s environment is “unreliable, hard to access, difficult to analyse, and often incapable of providing timely and quality information to inform decisions”.¹¹

The second iteration of the permit gave Adani Mining Pty Ltd permission to undertake very limited exploration activities on the site for the proposed Carmichael coal mine including:

- (i) Drilling, costeaning, pitting or carrying out geological surveys;
- (ii) Chemical storage of 50t of chemicals or dangerous goods; and
- (iii) Sewage treatment of design capacity with a total daily peak capacity of 100 to 1500 equivalent persons.

On 31 March 2013, the *Environmental Protection Act 1994* (Qld) was amended to require a company to be registered as a ‘suitable operator’ before the Department could grant it an environmental authority. However, the amending law, the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Qld), deemed the holder of an existing environmental authority to be registered as a ‘suitable operator’.¹²

This means that Adani Mining Pty Ltd was automatically registered as a ‘suitable operator’ without having to disclose any information about its environmental record and without the government investigating its suitability.¹³ The government never considered the breach of environmental approvals and laws by various companies in the Adani group described later in this report.

⁴ See generally, Queensland Government, Business and Industry Portal, Applying for an environmental authority, available at <https://www.business.qld.gov.au/business/running/environment/licences-permits/applying-environmental-authority> (accessed 23 January 2015).

⁵ ASIC search, Adani Mining Pty Ltd – ACN 145 455 205, available at https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=hchuxn830_4 (accessed January 21, 2015).

⁶ *Environmental Protection Act 1994* (Qld) (Reprint No.9F, as in force from 5 July 2010), s 304.

⁷ *Environmental Protection Act 1994* (Qld), ss 540 and 540A.

⁸ Department of Environment and Resource Management, *Environmental Authority (exploration and mineral development) for Non-code compliant level 1 mining project*, Permit Number: MIN200857709, 11 August 2011.

⁹ Department of Environment and Resource Management, *Environmental Authority (exploration and mineral development) for Non-code compliant level 1 mining project*, Permit Number: MIN102643011, 14 March 2012.

¹⁰ Queensland Audit Office, *Environmental regulation of the resources and waste industries – Report 15: 2013-2014*, page 1, available at <https://www.qao.qld.gov.au/files/file/Reports%20and%20publications/Reports%20to%20Parliament%202013-14/RTP15Environmentalregulationoftheresourcesandwasteindustries.pdf> (accessed 23 January 2015).

¹¹ Id

¹² *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 31 March 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/EnvProGRQLAB12Exp.pdf> (accessed 22 January 2015).

¹³ *Environmental Protection Act 1994* (Qld), s 705(1)(b).

If Adani Mining Pty Ltd had not held an environmental authority at the time that the law changed in 2013, it would have had to go through a statutory process to assess its suitability to operate. To be registered as a suitable operator, a company must disclose information about its environmental record – including whether it has been convicted of an environmental offence or had an environmental approval or similar permit cancelled or suspended *whether in Queensland or elsewhere*.¹⁴ A business partner includes ‘any of the corporation’s executive officers and any other corporations of which the executive officers are, or have been, an executive officer’.¹⁵ If the government is not satisfied that the company is suitable for registration, due to its environmental record, the government may refuse to register the company (or cancel its existing registration).¹⁶ The government may also refuse or cancel a registration if the company, its executive officers, or another company of which its executive officers are or have been executive officers, commit a disqualifying event.¹⁷ A ‘disqualifying event’ includes a conviction for an environmental offence or the cancellation or suspension of an environmental approval or similar permit.¹⁸

Adani Mining Pty Ltd is a wholly owned subsidiary in the Adani group, and is inextricably linked to the group’s integrated operations. The Adani group presents itself as a unified entity – ‘Adani is a globally integrated infrastructure player’¹⁹ – and does not distinguish between the operations of the different Adani group companies.²⁰ Adani Mining Pty Ltd does not even have a separate website; rather, information about Adani Mining Pty Ltd is presented as a component of the mining activities of the Adani group.²¹

Because the Adani group’s operations are so entwined we argue that the environmental harm caused by the Adani group companies in India and their breaches of environmental approvals demonstrate that Adani Mining Pty Ltd is not suitable to operate in Queensland. As noted above, these actions may even provide grounds for cancelling Adani Mining Pty Ltd’s current registration as a ‘suitable operator’ and should be the subject of an investigation by the Chief Executive of the Department under the *Environmental Protection Act 1994* (Qld).

Since its automatic registration as a ‘suitable operator’, Adani Mining Pty Ltd has received four more environmental authority permits for activities with a greatly increased risk of environmental harm – all without having its environmental record assessed. A further approval for an environmental authority to operate the Carmichael coal mine, is currently the subject of legal proceedings before the Land Court of Queensland. At the conclusion of those proceedings, the Minister for Environment and Heritage Protection will consider the court’s judgment when deciding whether to grant that environmental authority. Once again, the environmental history and record of breaches by the Adani group will not be considered. The test of Adani Mining Pty Ltd’s suitability to hold an environmental authority that would have occurred in August 2010, though we’ve not seen the documents to confirm that it did occur, remains the only time this issue has been considered by the Queensland Government – despite the increasingly risky activities that Adani Mining Pty Ltd has been authorised to undertake.

¹⁴ Department of Environment and Heritage Protection, *Application form – Environmental Protection Act 1994 – Application to be registered suitable operator*, available to download at <http://www.ehp.qld.gov.au/licences-permits/suitable-operators/> (accessed 21 January 2015).

¹⁵ *Id.*

¹⁶ *Environmental Protection Act 1994* (Qld), ss 318H(a) and 318K(b).

¹⁷ *Id.*, ss 318H(c) and 318K(a).

¹⁸ *Id.*, Schedule 4 – definition of ‘disqualifying event’.

¹⁹ Adani, *Corporate Brochure*, page 1, available at http://www.adani.com/Common/Uploads/HomePageTemplate/2_File_Adani%20Corporate%20brochure%20.pdf (accessed 21 January 2015).

²⁰ See, for example, *Id.*, pages 8-9.

²¹ See generally, <http://www.adanimining.com/> (accessed 21 January 2015).

Summary of investigations into the Adani group's environmental history

Adani Mining Pty Ltd is a wholly-owned subsidiary of a large Indian company called Adani Enterprises Ltd.²² Adani Enterprises Ltd has around 80 subsidiaries in India, Indonesia and Australia that, among other things, operate mines and coal ports.²³ Unfortunately, Adani Enterprises Ltd and its subsidiaries have a history of breaching environmental regulations and causing environmental harm in India.

As recently as December last year, another subsidiary of Adani Enterprises Ltd, Adani Mormugao Port Terminal Pvt Ltd, was issued a notice by the state pollution control board in relation to Mormugao Port in the state of Goa.²⁴ This notice asked the Adani company to show cause why its 'consent to operate' should not be cancelled, as the state pollution control board had identified a failure to install air quality monitoring, as required by law, and observed coal dust pollution caused by uncovered coal stockpiles and unutilised sprinkling and dry fogging systems.²⁵

At Mundra in India, a company called Adani Ports and Special Economic Zone Ltd ('Adani Mundra') operates one of the world's largest coal-fired power plants, together with a port and special economic zone²⁶ – all with a particular disregard for environmental regulation going back some years. In 2010, following an investigation, the Indian Ministry of Environment and Forests ('Ministry') issued a notice to Adani Mundra asking it to show cause why its environmental approval should not be cancelled.²⁷ The Ministry found violations of Adani Mundra's environmental approval, coastal zone regulation, and a Coastal Zone Management Plan (which has been in place since 1996).²⁸ The environmental harm at Mundra included destruction of mangroves and obstruction of creeks and the tidal system due to large-scale coastal reclamation.²⁹ In addition, a township and hospital had been developed without proper approval.³⁰ This demonstrates a blatant disregard for the law and the environment, and a failure to fulfill responsibilities to protect the environment and comply with environmental approvals.

Despite the Ministry's findings, Adani Mundra continued its course of environmental destruction. In 2013, an independent committee appointed by the Ministry observed more environmental damage to the coastal area.³¹ For example, mangrove forests had vanished, local creeks had disappeared, protective measures for a nearby conservation area were ignored, there was a failure to protect against salinity intrusion into groundwater, and it was possible that fly ash was being dumped – all in violation of environmental approvals.³² Adani Mundra also demonstrated disregard for government regulation: it had attempted to circumvent statutory processes for obtaining environmental approvals, constructed an airstrip without approval, and failed to adhere to monitoring and reporting standards.³³

Adani Enterprises Ltd – the Adani group's parent company – stands accused of active involvement in large scale illegal iron ore exports.³⁴ In July 2011, the Lokayukta (ombudsman) of the Indian state of Karnataka reported that Adani Enterprises Ltd, which was a service provider at a port from which iron ore was exported, had bribed customs officials, the police, the State Pollution Control Board, local politicians and others in return for favours for illegal exports.³⁵ Also, Adani Enterprises Ltd routinely accepted iron ore from traders who were not permitted to supply the ore, or in excess of the permitted

22 Adani Enterprises Limited, *22nd Annual Report 2013-2014 ('Adani Annual Report')*, page 133, available at http://www.adani.com/Common/Uploads/FinanceTemplate/1_FFReport_AEL%20AR%202014-15.pdf (accessed 20 January 2015).

23 *Id.*, pages 28 and 65.

24 Times of India, *Adani Terminal at MDT get GSPCB notice for Pollution* (31 December 2014), available at <http://timesofindia.indiatimes.com/city/goa/Adani-terminal-at-MPT-gets-GSPCB-notice-for-pollution/articleshow/45695541.cms> (accessed 20 January 2015).

25 *Id.*

26 Adani, *Power generation – thermal*, available at <http://adanipower.com/power-thermal>; Adani, *About Mundra port*, available at http://www.adaniports.com/about_mundra_port.aspx (both accessed 20 January 2015).

27 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* (15 December 2010), paragraphs 1-19.

28 *Id.*, paragraph 19.

29 *Id.*, paragraphs 1-19.

30 *Id.*, paragraphs 9-11.

31 *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat* (April 2013), available at <http://www.moef.nic.in/sites/default/files/adani-report-290413.pdf> (accessed 22 January 2015).

32 *Id.*, pages 77-80.

33 *Id.*, pages 76-81.

34 Karnataka Lokayukta, *Report on the Reference made by the Government of Karnataka under section 7(2-A) of the Karnataka Lokayukta Act, 1984 (Part – II)* (27 July 2011), page 55, available at http://www.thehindu.com/multimedia/archive/00736/Report_on_the_refer_736286a.pdf (accessed 22 January 2015).

35 *Id.*, pages 54-55.

quantity.³⁶ The Lokayukta concluded that this scam, in which other companies also participated, resulted in the illegal export of around 7.7 million tonnes of ore between 2006 to 2010.³⁷

Further details on our extensive investigation into Adani group's environmental history are in **APPENDIX A** to this report.

INFORMATION ON THE CARMICHAEL COAL MINE

The Carmichael coal mine will be located in the Galilee Basin, around 400km inland from Abbot Point Port, which is around 980km north of Brisbane on the coast near the Great Barrier Reef. The mine is predicted to begin production in 2017.³⁸ At full production it will be by far the largest coal mine in Australia – authorised to extract up to 74.5 million tonnes of coal per year³⁹ for an estimated 60 years,⁴⁰ disturbing over 32,000 hectares of land⁴¹ – and one of the largest in the world.⁴²

The mine will be operated by Adani Mining Pty Ltd, which was established in Australia in 2010 to mine and export coal.⁴³ Coal from the mine will be transported by rail for export via Abbot Point Port, where another company associated with the Adani group has a lease over the coal export terminal, and has also been granted approval to construct an additional terminal.⁴⁴ Adani Mining Pty Ltd also has approval to build a railway line from the mine in the Galilee Basin to Moranbah where it will join existing lines to Abbot Point Port.⁴⁵

The coal from the Carmichael mine will be predominantly exported to India,⁴⁶ where it will be burned in the Adani group's coal-fired power plants, releasing pollution that harms the local villagers, many of whom are too poor to afford electricity.⁴⁷ This process means that companies in or associated with the Adani group are responsible for the environmental management of the project throughout its supply chain – from mining the coal, to transporting it via rail and putting it on ships that will travel through the Great Barrier Reef, to importing and burning it in India.

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Publication date: 27 January 2015

³⁶ *Id.*, pages 23, 34, 46-49.

³⁷ *Id.*, pages 20, 34, 54.

³⁸ The Sydney Morning Herald, Wiggins J, *Adani threatens to scrap Abbot point over dredging delays* (30 June 2014), available at <http://www.smh.com.au/business/mining-and-resources/adani-threatens-to-scrap-abbot-point-over-dredging-delays-20140630-zsqki.html>; Financial Review, Heath J, *Consortium scraps plans to dump waste in Great Barrier Reef* (2 September 2014), available at http://www.afr.com/p/national/consortium_scraps_plans_to_dump_laabUjzDME6if9kKdQg8eN (both accessed 23 January 2015).

³⁹ See condition A2 of the draft environmental authority EMPL01470513 for the Carmichael mine, dated 28 August 2014.

⁴⁰ See generally, Queensland Government, Department of State Development, Infrastructure and Planning, *Carmichael coal mine and rail project: Coordinator-General's evaluation report on the environmental impact statement ("Report on Carmichael EIS")* (May 2014), page 10, available at <http://www.dsdip.qld.gov.au/resources/project/carmichael/carmichael-coal-mine-and-rail-cg-report-may2014.pdf> (accessed 20 January 2015).

⁴¹ *Id.*, page 9.

⁴² ABC News, Rollo, W, *Carmichael coal mine and rail project: Queensland mine gets federal government approval* (28 July 2014), available at <http://www.abc.net.au/news/2014-07-28/carmichael-coal-mine-project-gets-federal-approval/5628584> (accessed 20 January 2015).

⁴³ See generally, *Report on Carmichael EIS*, above n 38, page 2.

⁴⁴ Adani Abbot Point Terminal Pty Ltd has a long term lease over Terminal 1 at Abbot Point. See generally, North Queensland Bulk Ports Corporation, *Abbot Point Port*, available at <http://www.nqbp.com.au/abbot-point/>; Adani, *Abbot Point Port*, available at http://www.adaniports.com/abbot_point_port.aspx#Dudgeon%20Point; Australia Government Department of the Environment, *Referral detail – Title of referral: Adani Abbot Point Terminal Pty Ltd/Mining/Port of Abbot Point/QLD/Abbot Point Coal Terminal 0*, available at http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=6194 (all accessed 21 January 2015).

⁴⁵ *Report on Carmichael EIS*, above n 40, pages 2, 8.

⁴⁶ *Id.*, page 14.

⁴⁷ The Guardian, Goenka D, *Take it from us in India: the world needs renewables, not more Australian imported coal* (21 October 2014), available at <http://www.theguardian.com/commentisfree/2014/oct/22/take-it-from-us-in-india-the-world-needs-renewables-not-more-australian-exported-coal> (accessed 21 January 2015).