QUEENSLAND resources COUNCIL

Resourcing Queensland's future

14 July 2017

Committee Secretary
Senate Standing Committees
on Environment and Communications
Email: ec.sen@aph.gov.au

Dear Committee Secretary

Thank you for the opportunity to make a submission on the *Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017* (the Bill).

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production and processing companies and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The short title of the Bill highlights that the purpose of the proposed legislation is to halt a project in Queensland. 'Stop Adani' is a crude campaign slogan more suited to a bumper sticker than as the basis of enacting legislative amendments to important national environmental laws.

The premise of the Bill, and the retrospective reopening of existing project approvals, would seem to fly in the face of both fundamental legislative principles and Council of Australian Governments' (COAG) eight Principles of Best Practice Regulation (2007).

The Bill is inconsistent with fundamental legislative principles that underlie a parliamentary democracy based on the rule of law. QRC submits that as tabled, the Bill ignores the principles of (a) natural justice, (b) imposes obligations retrospectively (particularly Schedule 1, clause 12(1)) and (c) arguably doesn't have sufficient regard for the institution of Parliament (at both the State and Commonwealth level). In terms of the COAG best practice regulatory principles, it is difficult to see that the Bill satisfies any of the eight principles with the sole exception being principle 5. The Bill's policy intent is so clear that it appears in the short title, being to 'Stop Adani'.

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 **E** info@qrc.org.au
www.qrc.org.au

QRC submits that the Bill as tabled is unworkable. It is difficult to see why the drafters of the Bill saw the need to develop highly specific amendments in Schedule 2, to amend the *Northern Australian Infrastructure Facility Act 2016* (NAIF Act) because the changes to Schedule 1 have been designed to generate so much sovereign risk for Adani's investments in Australia, that any assessment under the NAIF Act would be immediately confounded. The additional sovereign risk generated by Schedule 1 of the Bill would also likely overwhelm the proposal lodged with NAIF by Aurizon as an alternative to Adani's rail proposal.

The drafting of the Bill deliberately casts the legislative net very broadly. The wording of Schedule 1, clause 2 (1A) is effectively repeated nine times in the Bill. QRC is concerned that by including even past investigations of an offence (Schedule 2, clause 2 (2B)(d)) of executive officers and all associated entities and the executive officers of any associated entities that the practical effect is to ensure that the Minister could never be confident that they have had sufficient regard to all these nested clauses.

QRC also questions the practicality of ensuring that the Minister "*must have regard to ...any other matter the Minister considers to be relevant*". It is difficult to see why the Bill would aim to compel a Minister not to ignore matters they already consider as relevant? In the case of Adani, the project's existing statement of reasons (14 October 2015) shows that the Minister has already considered many of the issues that the Bill seeks to compel the Minister to consider.

Schedule 1, clause 12 is undoubtedly the most troubling of the entire Bill. Not only does it explicitly target a series of approvals granted to one company for review; but also, provides a very limited time for the review to be conducted (clause 12(3) provides for no more than 40 business days) and that the review be published the next day (clause 12(4)(b)). QRC suggests that a more reasonable process would be for the review to be made available to the company and the Minister before it is tabled (clause 12(5) or published (clause 12(4)(b)).

More generally, the proposed Schedule 1 amendments to create mandatory considerations would apply to administrative processes and decisions affecting a range of existing and future resource operations. The Bill's short title is misleading as the effort to 'Stop Adani', would introduce much broader mandatory considerations across a range of important regulatory processes. As drafted the Bill would create substantial regulatory uncertainty for all future applications made under the *Environmental and Biodiversity Protection Conservation Act 1999* (EPBC Act).

The retrospective nature of the Bill in seeking to reopen granted approvals would create untenable levels of sovereign risk for a broad range of existing investments which were made under EPBC approvals. QRC is implacably opposed to any legislative review of granted approvals as proposed in clause 12.

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 E info@qrc.org.au

www.qrc.org.au

QRC recommends that the Committee reject the Bill as unworkable. The Bill has been designed as a crude campaign prop rather than to be enacted as national law. It's a shame that all the effort and legal skill that went into drafting this mischievous Bill wasn't deployed constructively to instead suggest genuine improvements in the assessment process for all future projects under the *Environmental and Biodiversity Protection Conservation Act 1999*.

QRC would welcome the opportunity to answer any questions the Committee might have about this submission.

Yours sincerely

Ian Macfarlane
Chief Executive

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T **07 3295 9560** F 07 3295 9570 E info@qrc.org.au

www.qrc.org.au