

Chapter 1

Introduction

1.1 The Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017 (the bill) was introduced by Senator Larissa Waters on 13 June 2017.¹

1.2 On 22 June 2017, the Senate referred the bill to the Senate Environment and Communications Legislation Committee (the committee) for inquiry and report by 13 September 2017.

Conduct of the inquiry

1.3 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisations inviting submissions. The date for receipt of submissions was 14 July 2017.

1.4 The committee received 33 submissions, which are listed at Appendix 1. The committee also received a form letter from five individuals. The submissions and copy of the form letter are available at www.aph.gov.au/senate_ec.

1.5 The committee also received 204 short statements which were accepted by the committee as correspondence. Many of these statements commented on general issues related to the Adani mining project and did not make specific reference to the provisions of the bill.

1.6 The committee thanks all of the individuals and organisations that contributed to the inquiry.

Reports of other committees

1.7 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.8 In its *Scrutiny Digest 7 of 2017*, the Scrutiny of Bills Committee stated that it had no comment on the bill.²

1 *Journals of the Senate*, 2016–17, No. 42, 13 June 2017, p. 1386.

2 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2017*, p. 26.

Scope and structure of the report

- 1.9 This report comprises two chapters as follows:
- Chapter 1—provides background information and the purpose of the bill;
 - Chapter 2—outlines the principal issues raised in submissions, and contains the committee view and recommendation.

Background

Adani

1.10 Adani Mining Pty Ltd, a wholly owned subsidiary of India's Adani Group, is the proponent for the Carmichael Coal Mine and Rail Project. This project includes a proposed open-cut and underground coal mine with an expected yield of 60 million tonnes per annum, and a 189 kilometre railway line. It is to be located in the Galilee Basin, 160 kilometres west of Clermont, Queensland. The railway is expected to connect the mine to Moranbah, where it will join the exiting Goonyella rail system, connecting to coal terminals at the point of Hay Point and Port of Abbot Point.³

1.11 Adani Mining Pty Ltd is also the proponent of the North Galilee Basin Rail Project, an approximately 310 kilometre rail line connecting the Galilee Basin to the Port of Abbot Point. This project would connect with rail infrastructure proposed as part of the Carmichael Coal Mine and Rail Project.⁴

1.12 Both projects have been approved as controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).⁵

1.13 Adani Abbot Point Terminal Pty Ltd is the proponent for the Abbot Point Coal Terminal 0 Project which is also an approved controlled action under the EPBC Act. This project entails the construction of a new terminal located to the south of the existing Terminal 1 facility at Abbot Point.⁶

3 For more information see: <https://www.statedevelopment.qld.gov.au/assessments-and-approvals/carmichael-coal-mine-and-rail-project.html>.

4 For more information see: <https://www.statedevelopment.qld.gov.au/assessments-and-approvals/north-galilee-basin-rail-project.html>.

5 Adani Mining Pty Ltd, *Submission 3*, p. 1.

6 Adani Mining Pty Ltd, *Submission 3*, p. 1. For more information on the project see: <https://gateway.icn.org.au/project/3611/abbot-point-coal-terminal-0-project>.

Northern Australia Infrastructure Facility

1.14 The Northern Australia Infrastructure Facility (NAIF) is a key initiative of the Australian Government's policy framework as established by the *White Paper on Developing Northern Australia: Our North, Our Future*.⁷

1.15 The NAIF will be responsible for administering up to \$5 billion over five years in concessional finance to support significant infrastructure including airports, communications, energy, ports, rail and water. It is designed to complement private sector investment in major infrastructure projects.⁸

1.16 The NAIF is established as an independent statutory authority under the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act) and the NAIF Board is responsible for making investment decisions, and considering the financial viability of proposals. The NAIF Act also provides for the *Northern Australia Infrastructure Facility Investment Mandate Direction 2016* (the Investment Mandate), a binding Ministerial Direction establishing how the NAIF is to perform its duties.⁹

Purpose of the bill

1.17 The bill seeks to amend provisions of the EPBC Act regarding consideration of a person's history in relation to environmental matters for all future projects. In addition, it seeks to apply these amendments to three projects already approved under the EPBC Act.¹⁰

1.18 Specifically, the bill proposes to amend the EPBC Act to:

- require the mandatory consideration of a person's history in relation to environmental matters, both in Australia and overseas, when making statutory decisions related to approvals, and when varying or adding to any conditions attached to an approval;
- broaden the categories of persons or entities, whose history in relation to environmental matters the Minister must consider to include 'associated entities and, in some cases, the executive officers of such entities'.¹¹

1.19 The bill would also require the Secretary of the Department of the Environment and Energy to review the approval decisions in relation to three specified referrals: Carmichael Coal Mine and Rail Project; Abbott Point Coal Terminal 0; and North Galilee Basin Rail Project. This review must consider the new broader considerations of the proponent's history in relation to environmental matters. As a

7 Department of Industry, Innovation and Science, *Submission 15*, p. 2.

8 Department of Industry, Innovation and Science, *Submission 15*, p. 2.

9 Department of Industry, Innovation and Science, *Submission 15*, p. 2.

10 Explanatory Memorandum, p. 1.

11 Explanatory Memorandum, p. 2.

result of this review, the Minister would be required to consider whether the proponent is a suitable person to hold the approval.¹²

1.20 The Explanatory Memorandum describes the proposed amendments as strengthening the EPBC Act 'to make sure that environmental history, including overseas environmental history, must always be considered when approvals are given, varied, suspended, revoked or transferred'.¹³

1.21 The bill also proposes to amend the NAIF Act by inserting new subsections 11(2A) and 11 (2B) to introduce a 'suitable person test'. This test would require the NAIF to assess a project proponent's character prior to making an Investment Decision and to decide whether the proponent is a suitable person to receive finance from NAIF.¹⁴

1.22 The Explanatory Memorandum states that the test 'is intended to be broad given the wide range of possible projects which could benefit from funding under the NAIF and the broad public interest in ensuring that public money is not wasted'. The test would include a proponent's environmental history and prior commercial dealings. The bill also proposes (subsection 11(6)) to require the relevant Minister to veto a project proposal if the NAIF Board reaches the conclusion that the project proponent fails the suitable person test.¹⁵

1.23 Proposed subsection 11(2C) would require NAIF to undertake mandatory consultation with the Australian Securities and Investments Commission (ASIC) and the Australian Criminal Intelligence Commission (ACIC).¹⁶

1.24 The Explanatory Memorandum states that the introduction of a suitable person test into the NAIF ACT is intended to 'make sure that the Australian Government cannot hand out \$1 billion to Adani for their coal railway' through the NAIF.¹⁷

12 Explanatory Memorandum, p. 2.

13 Explanatory Memorandum, p. 1.

14 Explanatory Memorandum, p. 3.

15 Explanatory Memorandum, p. 3.

16 Explanatory Memorandum, p. 1.

17 Explanatory Memorandum, p. 1.