

# Australian Greens' Dissenting Report

1.1 The Australian Greens fundamentally disagree with the Committee's view and recommendation in its report on the Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017.

## **Proposed Amendments to the EPBC Act**

1.2 The fact that the Adani Group's projects in Queensland have been granted approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), despite its appalling record of environmental breaches, demonstrates the clear need for this Bill.

1.3 The Government has granted approval for three projects—the Carmichael Coal Mine and Rail Project, the Abbot Point Coal Terminal 0, and the North Galilee Basin Rail Project—proposed by a company that has committed numerous serious legal breaches with adverse consequences for the environment and local people.

1.4 Environmental Justice Australia's submission outlines some of these breaches. For example, in 2013, an independent committee established by the Indian Ministry of Environment and Forest 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 prevent salinity intrusion into ground water, and constructed an airstrip without approval.

1.5 Additionally, the Indian National Green Tribunal found Adani Enterprises Ltd (as well as several other non-Adani entities) liable for failing to clean up after the unseaworthy coal ship that Adani Enterprises Ltd had chartered sank off the coast of Mumbai in 2011. Adani Enterprises Ltd was fined the equivalent of AUD 975,000. The judicial members raised that both the sinking itself and the fact that it had not been cleaned up for over five years were causes of serious damage, including damage to the tourism industry. This is particularly relevant given the Adani Group plans to ship Carmichael coal out of Abbot Point Port and through the fragile Great Barrier Reef World Heritage area.

1.6 In another impropriety, in January 2016 the Indian National Green Tribunal cancelled the environmental approval of Adani Hazira Port Private Ltd because it was found liable for illegally undertaking work without an environmental approval, thus blocking the access of 80 fishing families from their traditional fishing zones.

1.7 There are not just concerns about Adani's operations in India. One of Adani Mining Pty Ltd's directors, Mr Jeyakumar Janakaraj, was Director of Operations of Konkola Cooper Mines (KCM), which in 2010 pled guilty to environmental offences

in Zambia and was fined. Adani Mining Pty Ltd did not provide this information to Australia's Environment Minister, even though it was specifically requested to do so. Reports and court documents indicated that KCM had a history of pollution.

1.8 Yet despite this disastrous environmental record, the Adani Group's projects received approval under the EPBC Act. This is a clear demonstration that the current provisions in the EPBC Act must be strengthened. The Act already recognises that the record of compliance with environmental laws is an important consideration in deciding whether to grant an approval, but clearly these provisions are not stringent enough. The Bill's proposal to amend the EPBC Act to ensure that this information *must* be considered, rather than *may* be considered, is critical. Likewise, the Bill puts beyond doubt that the matters relevant under the EPBC Act in relation to the company's environmental history extend to the environmental history of the company, its officers and associated entities, both in Australia and overseas.

1.9 There is no doubt that leaving a company's environmental destruction as a discretionary consideration is resulting in perverse and damaging outcomes. As the Australian Conservation Foundation noted in its submission: 'The amendments in this Bill would ensure stronger oversight of actions covered by the Act by ensuring that an applicant's compliance and environmental management record is always considered by the Minister before making an approval decision'.

### **Proposed Amendments to the NAIF Act**

1.10 The Bill's proposal to introduce a 'suitable person test' to the *Northern Australia Infrastructure Facility Act 2016* (NAIF Act), and undertake mandatory consultation with the Australian Securities and Investments Commission (ASIC) and the Australian Criminal Intelligence Commission (ACIC), is also manifestly necessary, given the Adani Group's history of corporate malfeasance.

1.11 For example, five Adani companies in India are under investigation by India's Directorate of Revenue Intelligence (DRI). The Directorate is investigating the use of 'black money' associated with inflating the quality, and hence the value, of coal imported from Indonesia.

1.12 Adani Transmission Ltd is also under investigation by the DRI for the use of 'black money' associated with hiding profits by over-valuing capital equipment imports, and the use of an offshore holding company established by the Adani Group in Mauritius for receiving the extra money from the inflated invoices.

1.13 Furthermore, Adani Enterprises Ltd stands accused of active involvement in large-scale illegal iron ore exports. In July 2011, the Ombudsman of the Indian state of Karnataka reported that Adani Enterprises Ltd had bribed customs officials, the police, the State Pollution Control Board, local politicians and others in return for favours for illegal exports, and routinely accepted iron ore from traders who were not permitted to supply the ore. The Ombudsman 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 and 2010.

1.14 Given the Government's public support for the NAIF's consideration of a loan to the Adani Group's Carmichael rail project, evidenced by former Minister for Resources and Northern Australia, Senator the Hon Matt Canavan's press release on 8 December 2016 entitled 'It's time to consider Adani loan', Australian taxpayers deserve additional safeguards around how their money is spent.

### **Review of existing EPBC Act approvals**

1.15 The Committee raised concerns that this Bill violates the fundamental principle of non-retrospectivity, given that it would require the Secretary of the Department of the Environment and Energy to review the approval decisions in relation to three specified referrals. However, the Scrutiny of Bills Committee stated that it had no comment on the Bill. It is clear the Committee is just scratching around for anything to justify its opposition.

1.16 While the Greens acknowledge the long-established presumption that statutes do not operate retrospectively, since 1915 the High Court of Australia has held that the Commonwealth Parliament has power to enact legislation that operates retrospectively, and there are numerous examples of legislation that applies retrospectively.

1.17 In the case of the three decisions referred to in this Bill, retrospective application is critical to both safeguarding Australia's environment and maintaining public confidence in the process for environmental approvals.

### **Recommendation 1**

**1.18 The Australian Greens recommend that the Senate pass the Environment and Infrastructure Legislation Amendment (Stop Adani Bill) 2017.**

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