



Australian Government

Department of the Environment and Energy

Dr Gordon de Brouwer PSM
Secretary

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Ms Christine McDonald
Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Thank you for your letter of 26 June 2017 inviting my Department to make a submission to the Senate Inquiry into the Environment and Infrastructure Legislation Amendment (Stop Adani) Bill 2017.

This letter is a submission from the Department of the Environment and Energy to the inquiry and addresses the aspects of the Bill that are relevant to the *Environment Protection and Biodiversity Conservation Act 1999*, which my Department administers.

The Bill seeks to amend provisions in the EPBC Act regarding consideration of a person's history in relation to environmental matters for all future projects and applies these amendments, selectively, to three projects already approved under the Act.

Specifically, the Bill proposes to amend the EPBC Act for all future decisions to:

- Require the mandatory consideration of a person's history in relation to environmental matters (both within and external to Australia) for statutory decisions related to approvals (refer sections 143(3), 144(3), 145(3), 145A(4) and 145B(4) of the EPBC Act) and for changes to conditions attached to an approval (refer section 143(3)).
- Broaden the categories of persons or entities, whose history in relation to environmental matters the Minister must consider, to 'associated entities' and, in some cases, the executive officers of such entities.

The proposed amendments would require the Secretary of the Department of the Environment and Energy to review whether the approval holder for three Adani projects (Carmichael Coal Mine and Rail Project, Abbot Point Coal Terminal 0 and the North Galilee Basin Rail Project) is a suitable person to hold the approval, taking into account the broader 'suitable person' test proposed under the Bill.

The Department considers the EPBC Act provides all the powers necessary to assess the history of people and entities in relation to environmental matters (within or external to Australia). It already enables the Minister to consider the environmental history of all individuals or entities who are in a position to exert control, or who have influence over, the environmental activities of a proponent. These powers are outlined in **Attachment A**. On this basis, the Bill will increase the regulatory burden on business and administrative costs for the Department without materially improving the environmental outcomes for nationally protected matters.

The Department considers it both unnecessary and unreasonable to single out EPBC Act projects for further review. The Adani projects have been subject to stringent environmental assessment.

For example, when making the approval decision for the Carmichael Coal Mine and Rail project the Minister had extensive information about the environmental history of Adani Mining Pty Ltd and its executive officers, as well as Adani's parent bodies and their executive officers. This is set out in the statement of reasons for this decision available on the Department's website at: www.environment.gov.au/system/files/pages/cb8a9e41-eba5-47a4-8b72-154d0a5a6956/files/carmichael-statement-reasons.pdf.

Following the approval decision, concerns were raised with the Department about the environmental history of Adani and one of its executive officers. These allegations were thoroughly investigated by the Department. As a result, the Department found that no changes to the approval of the Carmichael Coal Mine and Rail project were warranted.

More generally, the selective application of these requirements risks eroding business and community confidence in decisions made under the EPBC Act.

Thank you for considering the Department's views on this matter.

Yours sincerely

Dr Gordon de Brouwer

27 July 2017

Attachment A:

Requirements under the *Environment Protection and Biodiversity Conservation Act 1999* relevant to a Person's Environmental History

The *Environment Protection and Biodiversity Conservation Act 1999* requires an action that has, will have or is likely to have a significant impact on a matter protected under Part 3 of the Act to be assessed and approved by the Minister (or their delegate) before it can proceed. Part 9 of the Act sets out the matters that the Minister is obliged to take into account when deciding whether or not to approve an action, what conditions (if any) will apply to an approval, and those matters that the Minister is permitted to consider.

In making those decisions, the Minister may consider whether the person proposing to take an action is a suitable person to be granted an approval, having regard to their environmental history. Section 136(4) of the EPBC Act relevantly provides as follows:

'In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may [emphasis added] consider whether the person is a suitable person to be granted an approval, having regard to:

- (a) the person's history in relation to environmental matters; and*
- (b) if the person is a body corporate – the history of its executive officers in relation to environmental matters; and*
- (c) if the person is a body corporate that is a subsidiary of another body or company (the parent body) – the history in relation to environmental matters of the parent body and its executive officers.*

A person's environmental history may also be considered by the Minister when making decisions regarding:

- The revocation, variation and addition to any approval conditions (section 143(3))
- The suspension or revocation of an approval (sections 144(3) and 145(3))
- Reinstating a suspended or revoked approval (section 145A(4)), or
- The transfer of an approval (section 145B (4)).

To inform the Minister's decision, the Department generally requests that proponents include information in referral or assessment documentation about their environmental history and, where relevant, information about the environmental history of the proponent's executive officers, any parent body of the proponent, and the executive officers of a parent body. Information relevant to a person's environmental history (both within, and external to, Australia) may include:

- Details of previous environmental approvals or permits
- Compliance and enforcement actions
- Environmental audits
- Court or tribunal proceedings, or
- Environmental policies and corporate plans.

In addition, the public has the opportunity to comment on the proponent's referral and assessment documentation as part of statutory consultation requirements under the EPBC Act, including information about a person's environmental history. Public comments received during the consultation period may be considered by the Minister when making a decision on whether or not to approve a project.

Where the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision in relation to an approval, section 132 of the EPBC Act enables the Minister to request further information from a number of sources. This may include additional information relating to a person's environmental history.