

# Suitable scrutiny

**Queensland's environmental law must be fixed so that there can be proper scrutiny of Adani Mining Pty Ltd's suitable operator status**

## About Environmental Justice Australia

Environmental Justice Australia is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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Mining companies with a history of causing harm to the environment should not be allowed to pursue high-risk mining projects, like the proposed Carmichael coal mine, without appropriate scrutiny of their history of complying with the law. To date, there has been a failure under Queensland's *Environmental Protection Act 1994* ('EP Act') to properly scrutinise the Adani Group's corporate compliance history. This has occurred because the EP Act fails to include scrutiny of offences which happened overseas in the relevant provisions which provide the corporate character check. This is a serious flaw in Queensland's environmental legislation.

The Adani Group has a well-documented history of failing to comply with the law overseas, with serious consequences for people and the environment. The recent reports<sup>1</sup> of allegations brought by community members and filed in the Jharkhand High Court against an Adani Group company operating in Godda should be of concern to the Queensland government and highlights the urgent needs to fix this serious flaw in the law.

The corporate character check in the EP Act is provided for through the registration of "suitable operators".<sup>2</sup> The chief executive under the EP Act has the power to investigate the suitability of an operator, investigate possible disqualifying events, and cancel or suspend suitable operator registration.<sup>3</sup> Adani Mining Pty Ltd's suitability to be a registered suitable operator warrants investigation by the chief executive under section 318R of the EP Act. Currently, the law does not allow for investigation of breaches of the law outside Australia, as those breaches are not currently captured by the definitions of "environmental record" and "corresponding law" in the EP Act.<sup>4</sup> As noted by Transparency International Australia in their 2017 report which analysed corruption risks in mining approvals in Australia, this creates a risk that mining leases

will be granted to operators with a history of non-compliance.<sup>5</sup> This is an unacceptable situation, and particularly concerning given the track-record of The Adani Group. The community rightly expects that there be proper transparency and accountability for Adani Mining Pty Ltd's full track-record of complying with the law before they are allowed to proceed further with the high risk Carmichael coal mine.

Environmental Justice Australia has written to the Queensland Minister for Environment and the Great Barrier Reef to urge the Queensland Government to fix this serious gap in the law. We have also asked that following the amendment to the law, the chief executive of the Queensland Department of Environment and Science take steps to investigate whether Adani Mining Pty Ltd is suitable to be a registered suitable operator.

If Adani Mining Pty Ltd's suitable operator registration is cancelled or suspended the chief executive of the Queensland Department of Environment and Science may cancel or suspend any environmental authorities they currently hold.<sup>6</sup> This includes environmental authority EMPL01470513 held by Adani Mining Pty Ltd for the Carmichael coal mine.

This briefing note details several concerning breaches of the law in overseas jurisdictions which should be closely scrutinised in an investigation of whether Adani Mining Pty Ltd's suitable operator registration should be cancelled. Following that, it details publicly available information about the existing record of failure to comply with Australian laws that will be relevant to any investigation into Adani Mining Pty Ltd's suitability to be a registered suitable operator.

1 Stephen Long, *Adani power plant and coal plans threatened by land owner court action* (ABC News, 10 July 2020) <<https://www.abc.net.au/news/2020-07-10/adani-godda-power-plant-threatened-by-land-owner-court-action/12439624>> (accessed 9 August 2020); Chitragada Choudhury, *Adivasi, Dalit Villagers file suit in Jharkhand High Court against Land Acquisition for Adani Power Plant* (IndiaSpend, 12 February 2019) <<https://www.indiaspend.com/adivasi-dalit-villagers-file-suit-in-jharkhand-high-court-against-land-acquisition-for-adani-power-plant/>> (accessed 9 August 2020).

2 *Environmental Protection Act 1994 (Qld)* Chapter 5A, Part 4.

3 *Environmental Protection Act 1994 (Qld)* Chapter 5A, Part 4, Division 2 and Division 3 (sections 318K to 318V).

4 *Environmental Protection Act 1994 (Qld)*, Schedule 4, 'environmental record' and 'corresponding law'.

5 Transparency International Australia, 'Corruption Risks: Mining Approval in Australia' (October 2017) < <https://transparency.org.au/corruption-risks-mining-approvals-in-australia/>> (Accessed 9 August 2020), page 28.

6 *Environmental Protection Act 1994(Qld)* section 278(2)e.

The flowchart on page 9 depicts the relationships between the various Adani Group entities, their executive directors, and the relevant allegations and findings of non-compliance against companies connected with Adani Mining Pty Ltd discussed below.

### 1. Queensland's environmental laws should be amended to allow consideration of breaches of environmental laws in foreign jurisdictions

- 1.1. Under the current law, when the chief executive considers whether to refuse an application for registration, or cancel or suspend a registration, they may have regard to:
  - the applicant's environmental record of compliance with Commonwealth and State laws of Australia<sup>7</sup>; and;
  - disqualifying events within Australia that have happened in relation to the corporation's executive officers, or another corporation of which any of the corporation's executive officers are, or have been, an executive officer.<sup>8</sup>
- 1.2. The above provisions do not take account of breaches of environmental laws outside Australia by the company holding the permit, nor of breaches by any corporations related to the company via its executive officers.
- 1.3. As noted above, a 2017 report on corruption risks in mining approvals by Transparency International Australia highlighted this serious flaw in Queensland's laws, stating that it 'creates a risk that mining leases will be granted to operators with a history of non-compliance.'<sup>9</sup>
- 1.4. The definition of 'corresponding law' in Schedule 4 of the EP Act should be amended to include a law of a jurisdiction outside Australia that provides for the same or similar matters in the EP Act. If the law were amended to allow consideration of offences in jurisdictions outside Australia, the chief executive of the Queensland Department of Environment and Science would need to consider whether the following incidents, which are arguably relevant to Adani Mining Pty Ltd's suitable operator status through its executive officers, are disqualifying events:
  - 1.4.1. **Zambian pollution disaster** - The poisoning of the river and conviction of Konkola Copper Mines for environmental law violations outlined in section 2.3.3

7 *Environment Protection Act 1994 (Qld)*, section 318H(a), section 318K(b) and Schedule 4 'environmental record'.

8 *Environment Protection Act 1994 (Qld)*, section 318H(c), section 318K(a) and Schedule 4 'environmental offence' 'disqualifying event' and 'corresponding law'.

9 Transparency International Australia, 'Corruption Risks: Mining Approval in Australia' (October 2017) < <https://transparency.org.au/corruption-risks-mining-approvals-in-australia/> > (Accessed 9 August 2020), page 28.

below is likely to amount to a disqualifying event, which would be grounds to cancel Adani Mining Pty Ltd's suitable operator registration.<sup>10</sup>

#### 1.4.2. Potential disqualifying events where Mr Guatam

**Adani is the common executive officer** – The EP Act defines an executive officer of a corporation as a person who is a member of a governing body of the corporation; or concerned with or takes part in the corporation's management; whatever the person's position is called and whether or not the person is a director of the corporation.<sup>11</sup> There is evidence to support a position that this definition includes Mr Gautam Adani who is the Chairman of Adani Enterprises Ltd ('AEL'),<sup>12</sup> the parent corporation of Adani Mining Pty Ltd<sup>13</sup> and the leader of the Adani Group. The Adani Group is characterised by a high level of ownership by members of the Adani family.<sup>14</sup>

Mr Gautam Adani is arguably an executive officer of Adani Mining Pty Ltd because he takes part in and is concerned with its management. For example, he has met with Australian politicians in relation to the development of the Carmichael mine and has, on numerous occasions, spoken to the media about the mine's development, demonstrating his involvement in the operations of Adani Mining Pty

10 *Environmental Protection Act 1994 (Qld)* section 318K(a).

11 *Environmental Protection Act 1994 (Qld)*, Schedule 4 'executive officer.'

12 Adani Enterprises Ltd *Annual report 2019-20*, page 24 <<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-AR-2019-20-05-06-2020.pdf>> (Accessed 9 August 2020).

13 Australian Securities and Investments Commission (ASIC) search of Adani Mining Pty Ltd. (9 August 2020)

14 Adani Enterprises Ltd is 56% owned by Guatambhai Shantilal Adani and Rajeshbhai Shantilal Adani on behalf of SB Adani Family Trust (Adani Enterprises Ltd *Annual report 2019-20*, page 51 <<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-AR-2019-20-05-06-2020.pdf>>; Adani Ports and Special Economic Zone Ltd is 39% owned by Guatambhai Shantilal Adani and Rajeshbhai Shantilal Adani on behalf of SB Adani Family Trust, with 7% held by Adani Tradeline LLP, 17.8% held each by Priti G Adani, Shilin R Adani, Pushpa V Adani, Ranjan V Adani, Suvarna M Adani. (Adani Ports and Special Economic Zone Ltd *Annual report 2019-20*, page 226 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/Integrated-Annual-Report-FY20.pdf>>; Adani Power Ltd is 36% owned by Guatambhai Shantilal Adani and Rajeshbhai Shantilal Adani on behalf of SB Adani Family Trust and 9% by Adani Tradeline LLP (Adani Power Ltd *Annual Report 2019-20*, page 51 <<https://www.adanipower.com/-/media/Project/Power/Investors/Investors-Downloads/Annual-Reports/Adani-Power-Limited-AR-2019-20.pdf>>; Adani Transmission Ltd is 56% owned by Guatam S Adani and Rajesh S Adani on behalf of SB Adani Family Trust, and 9% by Adani Tradeline LLP (Adani Transmission Ltd *Annual Report 2019-20*, page 117 <<https://www.bseindia.com/bseplus/AnnualReport/539254/5392540320.pdf>>; Adani Tradeline Limited Liability Partnership is an Indian Company, its directors are Guatambhai Shantilal Adani, Rajesh Shantilal Adani and Shah Bhavik Bharatkumar who are all directors of a variety of other Adani Group companies (Adani Tradeline LLP, <https://www.zaubacorp.com/company/ADANI-TRADELINE-LLP/AAJ-0233>) Despite not being the majority shareholder in all of these companies the Adani family does have the largest portion in each. They also have three directors on the board of Adani Enterprises Ltd and Adani Ports and Special Economic Zone Ltd, and two directors on the board of Adani Power Ltd and Adani Transmission Ltd. respectively (Adani Enterprises Ltd *Annual report 2019-20*, page 85-6 <<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-AR-2019-20-05-06-2020.pdf>>) (All accessed 9 August 2020).

Ltd.<sup>15</sup> Furthermore, Adani Mining Pty Ltd is clearly integrated into the operations of the wider Adani Group: it is a wholly owned subsidiary of AEL, one of the parent companies in the Adani Group;<sup>16</sup> Mr Adani is the chairman of the board of directors of AEL, AEL is 75% owned by the Adani family;<sup>17</sup> and Mr Adani is described on the Adani group's website as 'the Chairman and Founder of the Adani Group'.<sup>18</sup> Mr Adani is also the Chairman and a director of two other Adani Group corporations registered in India, Adani Power Limited<sup>19</sup> and Adani Ports and Special Economic Zone Limited.<sup>20</sup> Therefore, with the appropriate amendment to the law, the following potential disqualifying events relevant to these three corporations should be investigated to determine if Adani Mining Pty Ltd is a suitable operator:

- **Adani Enterprises Ltd, held liable for sinking coal ship causing damage to beaches and marine life and Mumbai tourism industry**

In August 2016 the Indian National Green Tribunal found Adani Enterprises Limited (AEL) and several other companies liable for failing to clean up after the unseaworthy coal ship they chartered sank off the coast of Mumbai in 2011, spilling oil and coal into the sea.<sup>21</sup> AEL was fined the equivalent of AU \$975 000. The judicial members recognised

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 to the tourism industry and local people. AEL has appealed this decision, which is now pending before the Supreme Court of India.<sup>22</sup> Further information on this matter can be found on page 20–21 of *The Adani Brief*.<sup>23</sup>

- **Illegal destruction of land within a wildlife sanctuary by Adani Power Limited**

In March 2018 the Comptroller and Auditor General of India found that Adani Power Limited (APL) violated the Indian *Forest Conservation Act* and the *Wildlife Protection Act* by laying a high-voltage transmission line through a protected wildlife area without approval.<sup>24</sup> The transmission line crossed a nesting ground and a migration stopover area for flamingos. APL was found to have failed to implement required mitigation measures to prevent bird deaths.<sup>25</sup> Mr Adani held both his directorial positions with AEL and APL during the time of the breaches.<sup>26</sup> We note that none of the offences made any allegations against Mr Adani or other executive officers personally. Further information on this matter can be found on page 9 of *The Adani Brief*.<sup>27</sup>

- **Litigation regarding environmental harm at Mundra Port and Special Economic Zone.**

Adani Ports and Special Economic Zone Limited (ASEZL) operates one of the world's largest coal power stations in a port and special economic zone called the Mundra SEZ. There is significant evidence of harm to the environment and local communities related to the development of the Mundra SEZ. In 2010 the Indian Ministry of Environment and Forests investigated Mundra SEZ, finding evidence of large-scale mangrove

15 See, for example, The Indian Express, 'Adani crosses green hump in \$7.5 bn Australia project' (15 November, 2014), <<https://indianexpress.com/article/business-others/adani-crosses-green-hump-in-7-5-bn-australia-project/>>; Sydney Morning Herald, 'Concerns at Barrier Reef contractor's humanitarian, environment record' (5 September 2014), <<http://www.smh.com.au/federal-politics/political-news/concerns-at-barrierreef-contractors-humanitarian-environment-record-20140904-10c9xk.html>>; LiveMint, 'Adani gets Australia's nod for \$15.5 bn coal mining project' (29 July 2014), <<https://www.livemint.com/Companies/fuuBoDeXgdsFeoWjGWG7PP/Australia-clears-Adani-Minings-155-billion-Carmichael-coa.html>> (accessed 9 August 2020).

16 Adani Mining Pty Ltd is 100% owned by Adani Global Pte Ltd, which is 100% owned by Adani Global Ltd, which is 100% owned by Adani Enterprises Ltd. Adani Enterprises Ltd, *Annual Report 2019-20*, pages 44, 219, <<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-AR-2019-20-05-06-2020.pdf>> (Accessed 9 August 2020).

17 *Ibid.*, page 1; Tim Buckley, Institute for Energy Economics and Financial Analysis, Briefing Note – Adani: Remote Prospects (September 2015), page 9, <[http://www.ieefa.org/wp-content/uploads/2015/09/IEEFA-Briefing-Note-Adani-Remote-Prospects\\_Sept-2015.pdf](http://www.ieefa.org/wp-content/uploads/2015/09/IEEFA-Briefing-Note-Adani-Remote-Prospects_Sept-2015.pdf)> (Accessed 9 August 2020).

18 Adani, Gautam Adani, <<https://www.adani.com/About-us/One-Vision-One-Team/Gautam-Adani>> (Accessed 9 August 2020)

19 Adani Power Limited, Annual Report 2019-20, page 37 <<https://www.adanipower.com/-/media/Project/Power/Investors/Investors-Downloads/Annual-Reports/Adani-Power-Limited-AR-2019-20.pdf>> (Accessed 9 August 2020)

20 Adani Ports and Special Economic Zone Limited, Annual Report 2019-20, page 94. <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/Integrated-Annual-Report-FY20.pdf>> (Accessed 9 August 2020).

21 National Green Tribunal, Principal Bench, New Delhi, Original Application no 24 of 2011 In the matter of *Samir Mehta vs Union of India Ministry, State of Maharashtra, Maharashtra State Pollution Control Board, Maharashtra Maritime Board, Delta Shipping Marine Services SA, Adani Enterprises Ltd, Delta Navigation WLL, Union of India Ministry of Defence, Astra Asigauri Insurance, Interport Marine Services Pvt Ltd, Delta Group International, GAC Shipping India Pvt Ltd, Ministry of Shipping*. Pronounced on the 23 August 2016, at page 199.

22 *Adani Enterprises Ltd. Vs. Samir Mehta* (2016) CA 010312.

23 Environmental Justice Australia, *The Adani Brief: what governments and financiers need to know about the Adani Group's record overseas* (2017). p.20-21 <[https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani\\_brief\\_eja.pdf](https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani_brief_eja.pdf)> (accessed 9 August 2020).

24 Environmental Justice Australia, *Adani Brief Update*, December 2018, page 9.

25 *Report of the Comptroller and Auditor General of India on Economic Sector for the year ended 31 March 2017*, p 49 <[https://cag.gov.in/sites/default/files/audit\\_report\\_files/Report\\_No1\\_of\\_2018\\_Economic\\_Sector\\_Government\\_of\\_Gujarat.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Report_No1_of_2018_Economic_Sector_Government_of_Gujarat.pdf)> (Accessed 9 August 2020).

26 Adani Power Ltd, Annual Report 2010, p. 1 <<https://www.adanipower.com/-/media/Project/Power/Investors/Investors-Downloads/Annual-Reports/APL-Annual-Report-FY10.pdf>> (Accessed 10 July 2020).

27 Environmental Justice Australia, *Adani Brief Update*, December 2018, page 9. <<https://www.envirojustice.org.au/the-adani-brief/>> (accessed 9 August 2020).

destruction and that ASEZL had not complied with its environmental approvals.<sup>28</sup> On at least two occasions, the High Court of Gujarat has found that APSEZ has been operating the Mundra SEZ without prior environmental approvals.<sup>29</sup> Mr Guatam Adani has been Managing Director of ASEZL since the entity was created<sup>30</sup> and was Chairman at the time of the breaches.<sup>31</sup> We note that none of the offences made any allegations against Mr Adani or other executive officers personally. Further information on this matter can be found on page 23–27 of *The Adani Brief*.<sup>32</sup>

- **Litigation regarding alleged coercion, fraud and undue influence in Godda, Jharkand State**

Adani Power Limited and Adani Power (Jharkand) Limited<sup>33</sup> are subject to a claim in the High Court of Jharkand, where allegations of ‘coercion, fraud and undue influence’ are made against Adani Power Limited and its agents.<sup>34</sup> Among other

claims, the claimants allege that Adani Power Limited engaged agents, including police officers, to violently exclude local people from a key social impact process related to the development of Adani Power Limited’s coal-fired power station in Godda in 2016.<sup>35</sup> Mr Gautam Adani has been Chairman of Adani Power Limited throughout the development of the Godda plant, including at the time of the alleged exclusion.<sup>36</sup> We note that none of the offences made any allegations against Mr Adani or other executive officers personally. This matter is currently an allegation, not a finding by the court. Any consideration of whether or not this was a disqualifying event would only arise if the court case results in adverse findings against Adani Power (Jharkand) Limited.

28 Site visit to M/s Mundra Port & SEZ Ltd Port site at Mundra and M/s OPG Power Gujarat Private Limited on 6th – 7th December 2010; Ministry, 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).

29 *Ranubha Rajmali Jadeja and others v Union of India and others*, Writ Petition (PL) No. 194 of 2011 before the High Court of Gujarat (judgment of 9 May 2012), pages 2–4, 42–43; *Gajubha (Gajendrasinh) Bhimaji Jadeja and others v Union of India and Others*, Writ Petition (PL) No. 21 of 2013 before the High Court of Gujarat (judgment of 13 January 2014), pages 184–185.

30 Gujarat Adani Port Ltd, 1<sup>st</sup> Annual Report 1998-99. Page iv. <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-1999.pdf>> (Accessed 9 August 2020)

31 Mundra Port and Special Economic Zone Ltd, 7<sup>th</sup> Annual Report 2005-2006, page 0 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2006.pdf>> (accessed 9 August 2020); Adani Mundra Port and Special Economic Zone Ltd, 8<sup>th</sup> Annual Report 2006-2007, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2007.pdf>> (accessed 9 August 2020); Adani Mundra Port and Special Economic Zone Ltd, 9<sup>th</sup> Annual Report 2007-08, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2008.pdf>> (accessed 9 August 2020); Adani Mundra Port and Special Economic Zone Ltd, 10<sup>th</sup> Annual Report 2008-09, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2009.pdf>> (accessed 9 August 2020); Adani Mundra Port and Special Economic Zone Ltd, 11<sup>th</sup> Annual Report 2009-10, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2010.pdf>> (accessed 9 August 2020); Adani Mundra Port and Special Economic Zone Ltd, 12<sup>th</sup> Annual Report 2010-2011, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2011.pdf>> (accessed 9 August 2020); Adani Ports and Special Economic Zone Ltd, 13<sup>th</sup> Annual Report 2011-2012, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2012.PDF>> (accessed 9 August 2020); Adani Ports and Special Economic Zone Ltd, 14<sup>th</sup> Annual Report 2012-13, page 1 <<https://www.adaniports.com/-/media/Project/Ports/Investor/Investor-Downloads/Annual-Report/AR-2013.pdf>> (accessed 9 August 2020).

32 Environmental Justice Australia, *The Adani Brief: what governments and financiers need to know about the Adani Group’s record overseas?* (2017) p.23-27 <[https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani\\_brief\\_eja.pdf](https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani_brief_eja.pdf)> (accessed 9 August 2020).

33 Adani Power (Jharkand) Limited is a wholly owned subsidiary of Adani Power Limited, and was at the time of the alleged exclusion: Adani Power Limited, *Annual Report 2016-17* page 12 <<https://www.adanipower.com/-/media/Project/Power/Investors/Investors-Downloads/Annual-Reports/APL-Annual-Report-FY17.pdf>> (accessed 9 August 2020).

34 Stephen Long, *Adani power plant and coal plans threatened by land owner court action* (ABC News, 10 July 2020) <<https://www.abc.net.au/news/2020-07-10/adani-godda-power-plant-threatened-by-land-owner-court-action/12439624>> (accessed 9 August 2020); Chitrangada Choudhury, *Adivasi, Dalit Villagers file suit in Jharkand High Court against Land Acquisition for Adani Power Plant* (IndiaSpend, 12 February 2019) <<https://www.indiaspend.com/adivasi-dalit-villagers-file-suit-in-jharkand-high-court-against-land-acquisition-for-adani-power-plant/>> (accessed 9 August 2020).

35 Ibid.

36 Adani Power Limited, *Annual Report 2016-17* page 1 <<https://www.adanipower.com/-/media/Project/Power/Investors/Investors-Downloads/Annual-Reports/APL-Annual-Report-FY17.pdf>> (accessed 9 August 2020).



## 2. Relevant record of failure to comply with the law in Australia

- 2.1. It is open to the chief executive under the *Environmental Protection Act 1994* to investigate if Adani Mining Pty Ltd is suitable to be registered as a suitable operator and to suspend or cancel their registration. They must have regard to Adani Mining Pty Ltd's environmental record and to any disqualifying events that have happened either for Adani Mining Pty Ltd or for another corporation of which any of Adani Mining Pty Ltd's executive officers are, or have been, an executive officer.<sup>37</sup>
- 2.2. A corporation's environmental record is defined in the EP Act as an environmental authority holder's record of complying with a law of the Commonwealth or the State about the protection of the environment or the conservation and sustainable use of natural resources.<sup>38</sup>
- 2.3. The following is a summary of Adani Mining Pty Ltd's failure to comply with environmental laws in Australia. These matters are relevant to any investigation by the chief executive of the Department of Environment and Science into whether Adani Mining Pty Ltd is suitable to be a registered suitable operator by having regard to Adani Mining Pty Ltd's environmental record:

### 2.3.1. Adani Mining Pty Ltd's conviction for providing false or misleading documents to the Queensland Department of Environment and Science

- On 6 February 2020, Adani Mining Pty Ltd pleaded guilty to the offence of providing false or misleading documents to the administering authority of the EP Act and was fined \$20,000 for the offence.<sup>39</sup>
- This conviction and fine is relevant to the suitability of Adani Mining Pty Ltd as a suitable operator under the EP Act.<sup>40</sup> The chief executive may cancel or suspend a registration as a suitable operator if satisfied that the operator is not a suitable operator having regard to the operator's 'environmental record'.<sup>41</sup>
- Adani Mining Pty Ltd's conviction goes directly to the holder's 'record of complying with a law...about the protection of the environment' because it is a conviction for an offence under the EP Act, and therefore forms part of Adani Mining Pty Ltd's 'environmental record'.<sup>42</sup>

37 *Environmental Protection Act 1994 (Qld)* s318R and s318K

38 *Environmental Protection Act 1994 (Qld)*, Schedule 4, 'environmental record.'

39 Josh Robertson and Jessica Rendall, *Adani pleads guilty to giving 'false or misleading documents to an administering authority', fined \$20k* (ABC News, 6 February 2020): <<https://www.abc.net.au/news/2020-02-06/adani-fined-after-pleading-guilty-court-qld/11932640>> (accessed 9 August 2020).

40 Notwithstanding the fact that no conviction was recorded, Schedule 4 EP Act defines 'conviction' to include any finding of guilt whether or not a conviction was recorded.

41 *Environmental Protection Act 1994 (Qld)* section 318K(b).

42 *Environmental Protection Act 1994 (Qld)* Schedule 4.

## 2.3.2. Compliance violations 2012 to 2015

A Freedom of Information Request to the Federal Department of the Environment revealed disclosure of a number of environmental offences self-reported by Adani Mining Pty Ltd.<sup>43</sup> These include:

- Uncontrolled burning impacting 18,400 hectares of suitable habitat for protected fauna which was reported 39 days after the required 24 hour period in 2012.
- Removal of quarry material without a permit under *Forestry Act 1959* (QLD) in 2012, 2013 and 2015 resulting in:
  - payment for the cost of the material removed and the cost of the department investigation (2012);
  - payment of \$96,035.70 (2013); and
  - a Penalty Infringement Notice (\$4,554.00) and costs of investigation (\$24,550.92).
- Non-compliance involving a sewerage treatment plant malfunction and spill of 150L of effluent.
- Non-compliance involving not rehabilitating:
  - 20.4 ha of 30.08 ha of disturbed area (2011);
  - 54.66 ha of 160.55 ha of disturbed area (2011); and
  - 0.324 ha of 1.284 ha of disturbed area (2015).
- Two spills of treated effluent from absorption trench located in exploration camp in 2012.

### 2.3.3. Failure to disclose Zambian pollution disaster<sup>44</sup>

In 2015 it came to light that Adani Mining Pty Ltd had failed to declare relevant information about a Zambian pollution disaster to the Australian government when applying for an approval.<sup>45</sup> In 2010 Konkola Mines (KCM), which is not an Adani Group entity, caused harm to the environment by polluting the Kafue River with discharges of 'liquor solution',<sup>46</sup>

43 Department of the Environment, Document 171001, Annexure 5: Summary of information provided by Adani in response to a request relating to environmental history,' Page 3-4. (Document page 47-49). Obtained by Freedom of Information Request 171001 on 12 December 2017. Available on Department of Environment and Energy FOI Disclosure Log as Document 171001 - Document 8 - <<https://www.environment.gov.au/about-us/freedom-information/foi-disclosure-log/previous-years>> (Accessed 9 August 2020); see also: Oliver Milman, 'Adani investigated over removal of material from quarry, court told' *Wednesday 1 April 2015*, *The Guardian*, <<https://www.theguardian.com/australia-news/2015/apr/01/adani-investigated-over-removal-of-material-from-quarry-court-told>> (accessed 9 August 2020).

44 A full summary of information about this incident can be found on pages 29-32 of Environmental Justice Australia's 'The Adani Brief: what governments and financiers need to know about the Adani Group's record overseas' (2017), <[https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani\\_brief\\_eja.pdf](https://www.envirojustice.org.au/wp-content/uploads/2018/12/adani_brief_eja.pdf)> (accessed 9 August 2020)

45 Mark Willacy, ABC News 'Adani boss Jeyakumar Janakaraj failed to disclose link to African pollution disaster before Carmichael coal mine was approved' (10 December 2015), <[www.abc.net.au/news/2015-12-10/adani-boss-failed-to-disclose-link-to-african-pollution-disaster/7012554](http://www.abc.net.au/news/2015-12-10/adani-boss-failed-to-disclose-link-to-african-pollution-disaster/7012554)> (Accessed 9 August 2020).

changing the colour of the river.<sup>46</sup> KCM failed to report the pollution incident, but later pleaded guilty to violations of Zambian law and was fined.<sup>47</sup>

From 2008 until he joined the Adani Group in September 2013, Mr Janakaraj was Director of Operations and later CEO of KCM in Zambia.<sup>48</sup> Mr Janakaraj was 'responsible for overall operations of KCM'.<sup>49</sup> Accordingly, Mr Janakaraj was Director of Operations of KCM at the time of the 2010 offences and subsequent prosecution, guilty plea, and fine. We note that none of the offences made any allegations against Mr Janakaraj personally.

Following Environmental Justice Australia and Earthjustice writing to the Federal Minister for the Environment concerning the events in Zambia, correspondence between the Federal Environment Department and Adani Mining Pty Ltd was released. It revealed that Adani Mining Pty Ltd was specifically asked for details of the environmental history of its executive officers, but that it had failed to disclose the link to the Zambian pollution disaster in its response.<sup>50</sup>

The Federal Environment Department made inquiries into the omission and found that it was likely 'due to a mistake'.<sup>51</sup> The ABC reported that the Federal Environment Department told the media outlet that they have 'elected to not take further compliance action on this matter ... [but] Adani Mining Pty Ltd has been reminded of its obligations under the Act to provide accurate information to departmental officers'.<sup>52</sup>

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46 *The People v Konkola Copper Mines Plc – Statement of Facts* (In the Subordinate Court of the First Class for the Chingola District Holden at Chingola (Criminal Jurisdiction) (November 25, 2010).

47 Ibid.

48 *Vedanta Resources Annual Report 2009*, page 37, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2009.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2009.pdf)>; *Vedanta Resources Annual Report 2010*, page 15, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2010.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2010.pdf)>; *Vedanta Resources Annual Report 2011*, page 27, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2011.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2011.pdf)>; *Vedanta Resources Annual Report and Accounts 2012*, page 61, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2012.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2012.pdf)>; *Vedanta Resources Annual Report and Accounts 2013*, page 75, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2013.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2013.pdf)>; *Vedanta Resources Annual Report and Accounts 2014* page 79, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2014.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2014.pdf)> (All Accessed 9 August 2020).

49 *Vedanta Resources Annual Report 2009*, page 37, <[http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE\\_VED\\_2009.pdf](http://www.annualreports.com/HostedData/AnnualReportArchive/v/LSE_VED_2009.pdf)> (accessed 9 August 2020).

50 Mark Willacy, ABC News 'Adani boss Jeyakumar Janakaraj failed to disclose link to African pollution disaster before Carmichael coal mine was approved' (10 December 2015), <<https://www.abc.net.au/news/2015-12-10/adani-boss-failed-to-disclose-link-to-african-pollution-disaster/7012554>> (Accessed 10 July 2020).

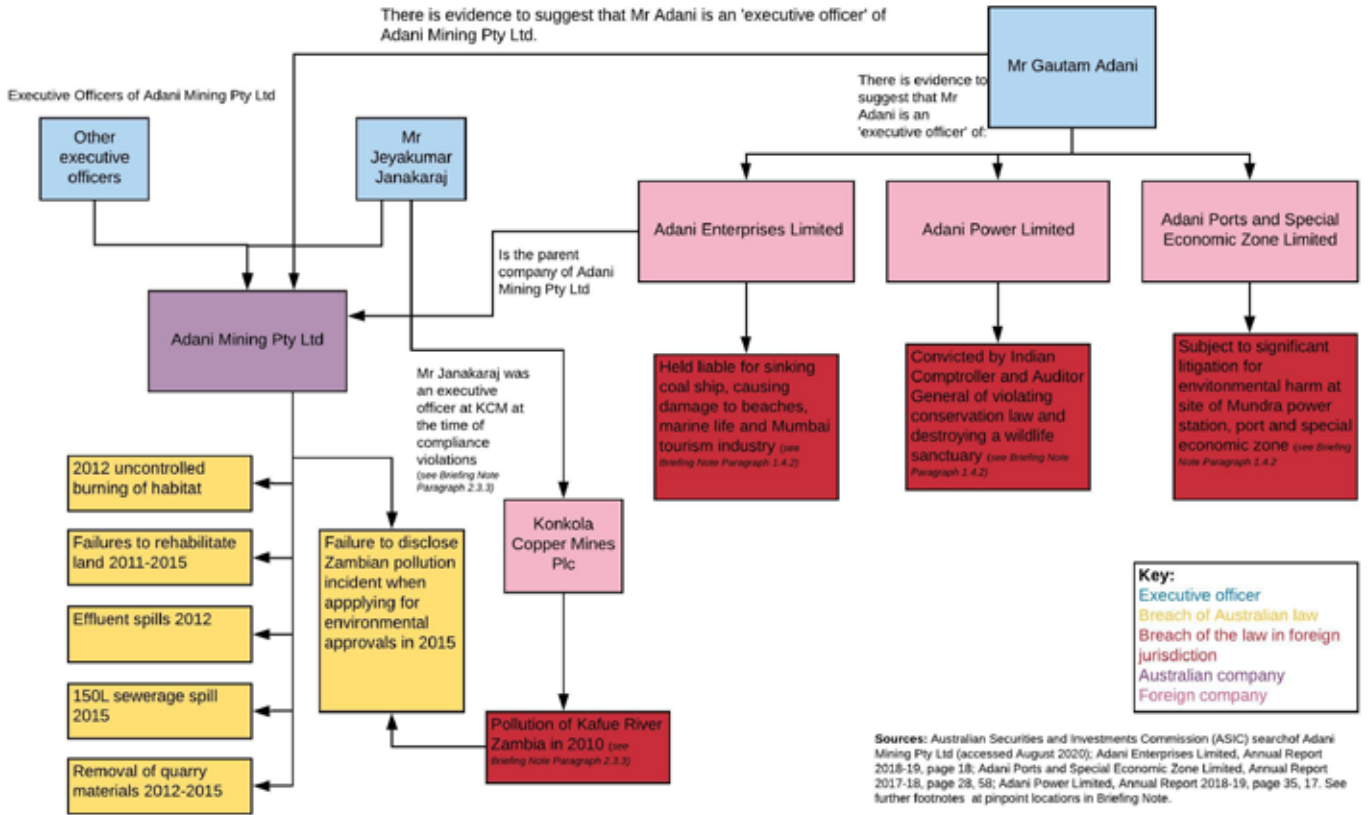
51 Mark Willacy, ABC News 'Adani's failure to disclose Jeyakumar Janakaraj history with African pollution disaster a 'mistake': Environment Department' (21 Jan 2016), <<https://www.abc.net.au/news/2016-01-21/adanis-non-disclosure-of-ceos-pollution-history-a-mistake/7102270>> (Accessed 9 August 2020).

52 Ibid.



**Figure 1**

This figure outlines corporate relationships and events relevant to an investigation of whether Adani Mining Pty Ltd is suitable to be ‘registered suitable operator’ under the *Environmental Protection Act 1994 (QLD)*



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