

SUBMISSION FROM DR LINDSAY SIMPSON AUTHOR AND TOURISM OPERATOR IN
THE WHITSUNDAYS

Call for Public Input on Updating the Authority's Advice on Meeting the Paris Agreement

Australia has made a specific commitment under the Paris Agreement to reduce its greenhouse gas emissions by between 26 and 28 per cent below 2005 levels by 2030.

I am addressing one aspect for this submission:

What are the barriers (regulatory and non-regulatory) to realising emissions reductions?

It is my submission that we need a national approach both in our legal and governmental approval processes which includes the impact of climate change for all new coal mines. It is arguably proved that coal mines are one of the highest contributors to anthropogenic global carbon emissions.

As author of *Following Its Dirty Footsteps: Adani A Personal Story*, I spent a year researching the Adani Group, its historical presence in India including visiting Adani Headquarters in Ahmedabad in Gujarat and the fishing villages of Hazira interviewing local fishermen displaced by Adani's activities. I documented the many environmental breaches and violations committed by the Adani group through many of its Indian projects including the building of the coal-fired power plant in Mundra which wrought 'massive ecological changes in the landscape' of the Gujarat coastline across from one of India's largest marine parks in the Gulf of Kutch.

I am also a tourism operator and operate two boats, with my husband, Grant Lewis, Providence V and MiLady which daily take tourists snorkelling off the fringing reef on the continental islands in the Whitsundays. The threat to our own Great Barrier Reef and the recent catastrophic bleaching in 2016-17 has been well documented both in my book and in many scientific studies. Professor Terry Hughes, one of the most informed coral scientists in the world, who flew over the length of the reef following the two bleaching incidents, has placed the blame squarely on climate change. The Chair of the Great Barrier Reef Marina Park Authority (GBRMPA) Dr Russel Reichelt also told a Parliamentary Senate Committee on 22 May 2017, (quoted in Following Its Dirty Footsteps) that global warming needed to be limited to 1.5 % to allow a good survival rate for the coral on the reef. He added: 'The safe levels [of warming] for coral reefs, probably we've passed already.'

We handed back a bronze tourism award to Tourism Whitsundays because it was sponsored by Adani, a company whose aims we considered to be completely contradictory to our business interests and the interests of protecting the Great Barrier Reef which provides more than 70,000 jobs in Queensland.

This kind of advice directly from the statutory body who advises the Federal government appears to have been ignored. The warning signs are continually being compromised in return for business acumen to the detriment of the Great Barrier Reef, the world's largest living organism which can be seen from outer space.

This national responsibility and our duty as custodian of the Great Barrier Reef is not taken seriously by governments at any level in my view.

In my book I documented the Adani Group's entry into Australia in 2010 and its progress through the environmental approval processes at both state and federal levels within the Australian legal system as well as governmental approvals at both levels. This included the Queensland Government invoking critical infrastructure capabilities for the

Adani mine. The company the first to be granted as a private project this privilege and thereby bypassed much of the public scrutiny which should have been applied to such a project.

The Adani mine had challenges from environmental groups such as the Australian Conservation Group and Coast and Country Association of Queensland (CCAQ) both of whom argued for climate change to be a major consideration in rejecting the Adani project and other mines through several levels of our court system. CCAQ challenged the granting of mining leases and environmental authority granted to several of the mines including Adani's Carmichael mine. Having failed before the Queensland Land Court, the CCAQ appealed to the Queensland Supreme Court for a judicial review of the government's decision and this was also dismissed in November 2016. One of the bases that CCAQ had objected was climate change. An appeal to the Queensland Court of Appeal was similarly dismissed. It was later refused in April 2017 special leave to appeal to the High Court on grounds relating to the Land Court's failure to consider greenhouse gas emissions. Its application was deemed to be 'not a suitable vehicle' for addressing the questions raised in the application (p.61 Following Its Dirty Footsteps).

My contribution in this submission is to address the shortfalls within the Australian environmental legal approval processes both at a state and federal level to properly evaluate the environmental impact of building new coal mines in Australia. And to challenge why we have a 20-year old national environment law which does not mention climate change in its 527 provisions. Nor does Australia does have a national climate law or any formal codification of its Paris commitments. The law does not provide guidance to decision makers. Nor does it consider the ongoing catastrophic environmental damage aspects of climate change on a global scale.

The Paris Agreement provides a model to recognise a 'global carbon budget' produced by all countries and therefore gives the opportunity for all legal and governmental

processes to scrutinise this aspect in determining whether or not to permit such ventures to be approved.

Yet, as far as I know, there has only been one landmark decision recognising climate change in deciding whether or not to approve a new coal mine. In February 2019 Chief Justice Preston in the NSW Land and Environment Court dismissed on appeal Gloucester Resources' proposal to construct a new open-cut coal mine in the NSW Hunter Valley. The decision challenged and dismissed the idea that one mine in Australia represents only a small fraction of global emissions. Instead it found that all of the direct and indirect greenhouse gas (GHG) emissions of the Rocky Hill Coal Project would negatively impact on the environment, since "all anthropogenic GHG emissions contribute to climate change".

Indeed Emeritus Professor Will Steffen from the Australian National University gave expert testimony to this court that using the carbon budget approach the remainder of Australia's coal reserves needed to "be left in the ground, unburned" and that fossil fuel phase out in Australia had to happen for global emission reduction targets to be achieved.

Dr Laura Schuijers, Environmental Lawyer and post doctoral research fellow from the University of Melbourne wrote in Pursuit in February 2019: 'To pass the test, a proponent of a fossil fuel project needs to establish why their project should be approved "at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions". The test does not imply that the Paris Agreement prohibits new fossil fuel developments. However, it recognises that a practical consequence of reaching the emission reductions required to achieve the 1.5 to 2°C goal is that coal production needs to reduce rather than expand. Given that context, new proposals must be considered very carefully.

(<https://pursuit.unimelb.edu.au/articles/climate-change-in-court>)

While researching my book and the trajectory of the approvals both at ministerial and legal levels for the Adani mine in particular, I was struck that there has never been a proper evaluation of the proposed coal mine's contribution to Australia's carbon budget as measured by the Paris Agreement.

A Joint Report to the Land Court of Queensland on Climate Change Emissions by Associate Professor Chris Taylor and Associate Professor Malte Meinshausen from the University of Melbourne found that the Adani mine alone will leave a legacy of a massive 4.6 billion tonnes of carbon footprint if it mines 2.3 billion tonnes of coal during its 60-year operation. This, as I noted in my book 'is the contribution to the global footprint of fossil fuels whether it's burnt far away from Australia or not (p.237). The authors of that report also found that the cumulative emissions would be 'among the highest in the world from any individual project.

In 2013 in the Queensland Land Court evidence was led by by environmentalist Kathryn Kelly against Gina Rinehart's partly owned multi-billion Alpha coal mine that if all of the then proposed nine mines went ahead in the Galilee Basin they would produce the equivalent of more than 700,000 million tonnes of carbon dioxide a year once they were in production. (p.237 Following Its Dirty Footsteps) evidence was given in that case that this would 'exhaust the (Australian) carbon budget in a flash' (ibid).

In the Federal Court Justice Griffith's 2016 decision approving the Adani mine was based on the fact that he wasn't persuaded that Adani's mine would have a net impact on global GHG emissions, even though it would be the largest coal mine in the Southern Hemisphere.

On reporting on the proposed Gloucester mine, Schuijers writes that: '... in the Rocky Hill case the Land & Environment Court heard an oft argued claim that if the coal was not mined in Gloucester NSW it would be mined somewhere else such as India and Indonesia and overall global emissions would not be effected.'

This fallacy I submit must be stopped.

Indeed, in handing down his judgement, Chief Justice Preston found that the argument was flawed and that there was no evidence of market forces to support it and that developed nations such as Australian, (the world's largest exporter of coal) should take the lead, a concept enshrined in the Paris Agreement.

Justice Preston stated: "The potential for a hypothetical but uncertain alternative development to cause the same unacceptable environmental impact is not a reason to approve a definite development that will certainly cause the unacceptable environmental impacts."

While new for Australia, this approach is already being taken in foreign courts.

However, I would submit this is where the Climate Change Authority in its advisory capacity to the government on climate change could ensure that Justice Preston's decision does not turn out to be an anomaly but ensure that this argument is properly considered in all planning processes within governments and within legal processes shifting the power of individual government ministers and individual judges from making decisions that erode Australia's ability to contain global emissions under the Paris Agreement.

I would argue that a national climate law is essential to properly enforce the evaluation of climate change on the approval processes of any new coal mine or new fossil fuel development proposed to be built in Australia. Without this in place, as already outlined when considering the effects of the nine proposed mines in the Galilee Basin, Australia's global carbon emissions' budget would be continually eroded.

As Schuijers writes: 'The 'wrong time' test reflects the current global imperative to reduce emissions, which is relevant to Australia as a signatory of the Paris Agreement. It provides a much-needed means to recognise the cumulative effects caused by each fossil fuel projects to the greater problem of climate change, and to the flow-on

environmental, social and economic impacts facing Australia.' (<https://pursuit.unimelb.edu.au/articles/climate-change-in-court>)

There is ample and growing scientific evidence for the effects of new fossil fuel projects as 'significant' rather than 'speculative' or 'remote'. Yet, Australia still does not have a climate change policy.

I understand that there is no requirement under Australian law to outline the impact of approving mining leases on climate change nor do environmental approvals need to take that into consideration. If this is the case, I find it extraordinary that this should be viewed as a major barrier to realising emission reductions. If these aspects were factored into the applications, this may have affected the approval of the proposed mines in the Galilee Basin.

In concluding, the chapters in my book aptly demonstrate the apathy of government to properly address regulations governing carbon dioxide emissions. These chapters are entitled: 'The Ping Pong Politics of Climate Change' and another chapter: 'The Carbon Bomb is Ticking'. I think this sums up the demise of properly managing Australia's carbon budget.

It is my submission we need both a national climate law and a national energy policy, such as submitted by former Prime Minister, Malcolm Turnbull, to ensure that our obligations to the Paris agreement are properly met.