

Leading Indigenous lawyer hits back at Marcia Langton over Adani

Tony McAvoy says traditional owners are 'proud and independent' and are not being used by anti-mining activists to block the \$16bn mine



Tony McAvoy says Marcia Langton's rhetoric on Adani is 'so inaccurate'. Photograph: Lucy Hughes Jones/AAP

Joshua Robertson
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One of Australia's leading native title lawyers has spoken publicly for the first time as a traditional owner fighting to stop the Adani mine, a campaign he said was driven by "proud and independent people" who were among the best-informed Indigenous litigants in the country.

Tony McAvoy SC, who became Australia's first Indigenous silk in 2015, said the Wangan and Jagalingou people were keenly aware of how their priorities differed from environmentalist allies in a battle to preserve their Queensland country from one of the world's largest proposed coalmines.

McAvoy dismissed claims by the prominent Indigenous academic Marcia Langton that Indigenous people had become "collateral damage" as the "environmental industry" hijacked the Adani issue.

He said the rhetoric of Langton and Warren Mundine, who likened anti-Adani campaigners to colonial oppressors running roughshod over Indigenous self-determination, “serves a purpose for them but is just so inaccurate”.

The barrister said to suggest that “the greens are puppet masters pulling the strings and we’re somehow puppets” was wildly off the mark and disrespectful to the many families opposing the mine, including his.

The W&J are the only Indigenous group in Australia to have, in McAvoy, a senior counsel with expertise in native title law within their ranks.

“We are likely to be one of the best informed claimant groups in the country, we have many people who are experienced in native title, including my own input, and representation by an extraordinary team of lawyers,” he said.

McAvoy is part of a contingent within W&J who have mounted legal challenges to an Indigenous land use agreement (Ilua) with Adani, contesting the right of pro-Adani representatives to approve a deal previously spurned by their claim group. The miner resurrected an Ilua last year with majority support in the W&J native title applicant, then sought to register it with the native title tribunal.

But the W&J opponents challenged the deal in the federal court, on grounds including that the pro-Adani applicant members were voted out in a claim group meeting, and that a rival meeting that endorsed the Adani deal was not legitimate.

Then Adani’s hopes suffered a blow with the McGlade native title case, which found that an Ilua was invalid because not all Indigenous representatives had signed it.

The shock precedent prompted the government to put up a bill changing native title legislation to safeguard what it argued were hundreds of Iluas thrown into doubt because they had a majority but not all the signatures of claimants.

The bill also contains amendments that would pave the way for Adani’s unregistered, contested Ilua.

Langton lashed out at Greens and environmentalists on Wednesday for delaying the government’s bill “in order to bolster their campaign against the Adani project”.

In an Australian mining industry lecture, Langton said: “Let me be clear for those who are not aware of the problems we face: cashed-up green groups, some funded by wealthy overseas interests, oppose mining projects with often-flimsy evidence and misrepresent the evidence to the public.”

“They deliberately thwart the aspirations and native title achievements of the majority of Indigenous people by deception, by persuading the media and the public that a small handful of Indigenous campaigners who oppose the legitimate interests of the majority of their own people, are the truth-tellers and heroes.”

Until now, the public faces of the anti-Adani group in the W&J have been Adrian Burragubba and Murrawah Johnson. Their advocacy has been portrayed by Adani supporters as a minority protest, propped up by furtive green support.

But the cracks appear in that portrayal when McAvoy's role in the group is taken into account. Where Burragubba ("my father's youngest brother – and we're very close") has a background as an activist, McAvoy's advocacy has been in the context of the most distinguished legal career of any Indigenous Australian.

His role as senior counsel assisting the royal commission into youth detention in the Northern Territory is the latest chapter.

The Australian newspaper, which has editorialised strongly in favour of the Adani mine, last year featured McAvoy in its "Great Eight" series on high achievers.

McAvoy said Langton was "very poorly informed" on the Adani issue.

He and a swathe of the W&J argue there should be no rush to pass law changes dealing with critical issues around Indigenous property rights through future land access deals.

McAvoy argues for "splitting the bill" to validate Iluas already registered with the National Native Title Tribunal, but not those unregistered, such as Adani's. McAvoy said he hoped this proposal would find favour with Labor and crossbench senators, with the bill due for voting as early as next week.

The W&J objectors were open about the fact that "we have an alliance between our objectives [and those of environmentalists] so that we can make use of each other and we do that", he said.

But the group raises its own funds for its legal challenges.

"And more than that, we are very, very aware that our interests of preserving our country are not entirely aligned with the green interests," he said.

"The green interests are about the world stage and keeping greenhouse gases in the ground, and there's concern about preserving that particular bit of country, but it's of a lower order [for them].

McAvoy said the "real test" of the independence of Adani's W&J opponents was "what our approach and our understanding is – and we are independent and proud people".

A land access deal is crucial to Adani gaining finance for the mine, initially needing \$3.3bn.

The miner last week cited the end of this year as its deadline for finance. But the federal court this week signalled a trial to decide the fate of Adani's deal with the W&J would take place in March 2018.

McAvoy said that even if the Senate “amends the Native Title Act in the way proposed [by the government], that proceeding is still to run its course”.