

Monopoly money

Adani's subsidised rail monopoly

Adani's royalty deal is due to be finalised, which must include provision of multi-user infrastructure. However, Queensland's regulator of monopoly infrastructure has not been approached to begin the necessary process. Without oversight arrangements in place, Queensland risks subsidising a private monopoly coal railway to the detriment of the climate, taxpayers and other miners.

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Summary

In May 2019 Queensland Premier Anastacia Palaszczuk declared she was “fed up” with the Adani assessment process and asked the state’s Coordinator General to publish a timeline for finalisation. The final item listed on the Coordinator General’s timeline is a “royalties agreement”, with a target date of 30 September 2019.

Under the Government’s royalty deferment framework, miners can defer royalty payments if their project includes the provision of common-user infrastructure. Little is known about the other terms of these agreements, but the interest rates charged by the government are likely to be far lower than commercial loans, resulting in significant subsidy to mines. Estimates of the subsidy represented by deferring Adani’s royalties range from \$253 million to over \$700 million.

Adani’s common-user infrastructure would be its Carmichael Rail Network, which will have additional capacity beyond Adani’s initial requirements. Adani emphasises that this rail will help “open up the Galilee Basin” to other miners.

In Queensland, access to infrastructure by third parties is regulated by the Queensland Competition Authority (QCA). The QCA website currently lists no information about access undertakings by Adani. In correspondence with The Australia Institute, the QCA has confirmed that Adani’s railway would not be covered by existing agreements with the wider Aurizon coal network and that there has been no application to begin assessing Adani’s project and get regulations in place.

Adani’s railway should be regulated in the same way as other Queensland railways. Adani’s project appears to meet all conditions for regulation by the QCA, but implementing such processes take time. Under its Act, the QCA must use its “best endeavors” to make its recommendation in under six months, but this can be extended in a range of circumstances.

Without regulation by the QCA, Queensland risks subsidising an unregulated monopoly asset for a private owner. The relevant minister, Treasurer Jackie Trad, should seek advice from the QCA and begin the necessary processes. Adani’s royalty subsidy should not be finalised without detailed conditions on third party access to its railway having been established by the QCA.

Subsidising the development of huge new coal mines in new coal basins as the world attempts to tackle climate change is terrible public policy. The Queensland public and

the wider world stand to lose from the Queensland Government's royalty deal and the damage that Adani's coal will ultimately cause to the world's climate.

By allowing a royalty deal to be struck without regulating the required multi-user infrastructure, the Queensland Government risks damaging yet more stakeholders – other users of Galilee Basin rail, such as other mining companies and potentially other industries. The Queensland Resource Council, the state's mining lobby group, has emphasised its members' concerns around special treatment for Adani in the past. It is likely they will be supportive of beginning the QCA's assessment processes.

Introduction

In May 2019 Queensland Premier Anastacia Palaszczuk declared she was “fed up” with the Adani assessment process and asked the state’s Coordinator General to publish a timeline for finalisation.¹ The final item listed on the Coordinator General’s timeline is a “royalties agreement”, with a target date of 30 September 2019.²

This agreement refers to a policy announced on 27 May 2018. The Queensland government announced that for some mines they would defer payment of royalties, in the hope of increasing mining investment, including “unlocking development in the Galilee Basin”. To access the “new resources framework”, mining companies would need to provide common-user infrastructure.³

Despite being described as a “transparent policy framework”, very few further details are available to the public, such as what financial assurances applicants need to provide, what interest rate would be charged and what the value of this subsidy would be to miners such as Adani. In fact, documents released under Queensland’s Right to Information rules show that public servants described the policy as “not much beyond the press release”.⁴

The Government claims that royalties deferred will be paid back “in full” and “with interest”. However, the deferral represents a subsidised loan. Estimates of the deferred royalty subsidy to Adani range from \$253 million to over \$700 million.⁵

The subsidy accrues because miners will sell Queensland’s resources on the promise of paying the state back at some time in the future. This transfers financial risk from the miner to the taxpayer. Furthermore, applicants will likely pay interest at the

¹ Bavas (2019) *Adani delays lead Anastacia Palaszczuk to ask Coordinator-General to intervene*, <https://www.abc.net.au/news/2019-05-22/adani-approvals-removal-environment-department/11138140?pfmredir=sm>

² State Development (2019) *Carmichael project - Key outstanding approvals needed, target dates & milestones reached*, <https://statedevelopment.qld.gov.au/resources/guideline/cg/adani-outstanding-approvals-milestones-reached-30August2019.pdf>

³ Palaszczuk, Trad and Pitt (2017) *Queensland jobs, investment and royalties boost from new resource policy*, <http://statements.qld.gov.au/Statement/2017/5/27/queensland-jobs-investment-and-royalties-boost-from-new-resource-policy>

⁴ Swann (2018) *Not Adani Deal: Queensland Government subsidies to Adani*, <https://www.tai.org.au/sites/default/files/P567%20Not%20Adani%20Deal%20%5BWEB%5D.pdf>

⁵ Swann (2017) *Palaszczuk’s Promise*, https://www.tai.org.au/sites/default/files/Swann%202017%20Palaszczuk%20subsidies%20for%20Adani_0.pdf

Queensland Government's borrowing rate. This difference in interest between the deferment and that of a commercial loan that miners would otherwise have to take out, represents a substantial financial subsidy.

This policy was clearly rushed through for Adani's benefit. Just four days after the policy announcement, a deal with the Indian energy conglomerate was announced, emphasising that "Adani adheres to the principles in the resources framework we outlined at the weekend."⁶

Despite this agreement, uncertainty around the Adani coal mine has persisted. The royalty deal remains unclear, with one aspect particularly opaque – how will the state will ensure Adani's rail line is able to be used by other parties. Provision of infrastructure was highlighted in the only royalty deferral deal finalised to date, the New Century zinc mine, which will help other users access regulated port and rail lines.⁷ However, Adani's infrastructure commitments, and how to regulate them, remain unclear.

⁶ Palaszcuk (2017) *Palaszcuk Government welcomes royalties agreement with Adani*, <http://statements.qld.gov.au/Statement/2017/5/31/palaszcuk-government-welcomes-royalties-agreement-with-adani>

⁷ Palaszcuk, Trad and Lynham (2019) *Royalties agreement set to supercharge Century Zinc Mine restart*, <http://statements.qld.gov.au/Statement/2019/8/22/royalties-agreement-set-to-supercharge-century-zinc-mine-restart>

Changing track - Adani's new rail plan

In September 2018 Adani announced changes to its planned rail infrastructure. The major change was a switch from a 388 km standard gauge railway directly to Abbot Point Port, to a 200 km narrow gauge line that would connect with the existing Aurizon coal rail network. Adani calls the new plan the Carmichael Rail Network.⁸

The capacity of the narrow gauge connection would be 40 million tonnes per year, “ensuring capability to manage the Carmichael mine’s 27.5 million tonne yearly production rate”.⁹ The extra capacity also enables the rail line to service other Galilee Basin users, helping “open up the Galilee Basin”. This capacity means Adani complies with the requirement that companies benefiting from the May 2017 royalty framework provide multi-user infrastructure.

Adani said it would “now submit the necessary applications to connect the new rail line with the existing network.”¹⁰ However, a year later it appears that not all processes for this connection have begun. It is unclear how negotiations with Aurizon are progressing,¹¹ with some of the rail company’s key shareholders urging management to avoid the Adani project.¹² It also appears that the process of engaging Queensland’s monopoly infrastructure regulator, the Queensland Competition Authority, has not begun.

⁸ Adani Australia (2019) *Carmichael Rail Network*, https://www.adaniaustralia.com/-/media/Project/Australia/Fact-sheets/ADI0018_MarketingBrochure_Rail_v513.pdf

⁹ Adani Mining (2018) *Adani announces rail design change for accelerated delivery*, https://issuu.com/adaniaustralia/docs/130918_-_factsheet_and_release_-_fo

¹⁰ Ibid.

¹¹ Smee (2018) *Adani faces questions over who will pay for Aurizon rail link upgrade*, <https://www.theguardian.com/environment/2018/nov/11/adani-faces-questions-over-who-will-pay-for-aurizon-rail-link-upgrade>

¹² Long and Robertson (2019) *Adani's ambitions challenged by rail snub and continued investor pressure*, <https://www.abc.net.au/news/2019-08-16/adani-snubbed-by-rail-company-as-aurizon-faces-pressure/11418900>

The Queensland Competition Authority

The Queensland Competition Authority (QCA) is the state's economic regulator, including regulating access to infrastructure. It describes its role as:

We regulate access to support competition by enabling third parties to access essential infrastructure that cannot be economically duplicated, including below-rail (track) infrastructure...¹³

For the QCA to regulate access to multi-user infrastructure, the infrastructure in question must first be 'declared' under its legislation, the *Queensland Competition Authority Act 1997*. The QCA regulates the Aurizon coal rail network and the Queensland Rail network, obliging the two companies to allow third-party operators to use their networks.

The QCA's website makes no mention of Adani's Carmichael Rail Network, even though its act applies to rail services and facilities "to be used" in the future.¹⁴ The Australia Institute has had correspondence with the QCA confirming:

Adani's proposed rail line is not covered by the existing undertaking.

The undertaking is Aurizon Network's undertaking to provide access to its declared infrastructure. The proposed Carmichael rail network is not part of this declared infrastructure, has a different owner and is in a new coal basin.¹⁵

No application for the declaration of Adani's rail line has been received.¹⁶

Any other mine, or indeed any other type of user, wanting to access Adani's rail line currently needs to negotiate directly with Adani.

Without regulation arrangements by the QCA in place, Adani is a monopoly owner and under no obligation to grant access or charge competitive fees. The company's railway line could not be considered multi-user, and therefore should not be eligible for the Queensland Government's royalty subsidy.

¹³ QCA (2019) *What we do*, <https://www.qca.org.au/What-we-do>

¹⁴ *QCA Act 1997*, s72-73.

¹⁵ Correspondence with QCA, dated 25 June 2019

¹⁶ Correspondence with QCA, dated 25 September 2019

How to Regulate the Carmichael Rail Network

Under the *QCA Act 1997*, the Minister responsible, currently Treasurer Jackie Trad, can declare infrastructure necessary for regulation by the QCA as long as they are satisfied that:

- gaining access to the service would materially increase competition
- the essential infrastructure providing the service cannot be economically duplicated
- the facility is significant to the Queensland economy
- access to the service can be provided safely
- gaining access to the service is not contrary to the public interest.¹⁷

All of these conditions appear to be met by the Adani project:

- Ensuring other users can access the rail line clearly increases competition from a monopoly situation. This increases competition in both rail services and downstream markets for coal and potentially other mineral and agricultural products.
- Duplicating a railway to the Galilee Basin is clearly uneconomic. The Adani mine and rail projects are widely considered uneconomic, making duplication of the rail line doubly so.¹⁸
- The importance of coal to the Queensland economy is widely overestimated.¹⁹ Adani's Carmichael mine would make only a marginal contribution to statewide economic output, employment or other economic indicator. It would also displace coal production from other mines in Queensland and NSW.²⁰ However, the rail project and mines would be significant construction projects and 200 kilometres of rail is a significant expansion of the state's rail network.

¹⁷ QCA (2019) *Third party access*, <https://www.qca.org.au/What-we-do/promote-competitive-markets/Third-Party-Access>. Note that the QCA Act 1997 contains slightly more detailed wording on these points in s76 (2).

¹⁸ Quiggin (2017) *The Economic (non)viability of the Adani Galilee Basin Project*, <https://www.tai.org.au/sites/default/files/The%20economic%20non%20viability%20of%20the%20Adani%20Galilee%20Basin%20Project.pdf>

¹⁹ Campbell (2014) *The mouse that roars: Coal in the Queensland economy*, <https://www.tai.org.au/content/mouse-roars-coal-queensland-economy>

²⁰ Long (2017) *Galilee Basin mines will slash coal output, jobs elsewhere, Wood Mackenzie says*, <https://www.abc.net.au/news/2017-07-06/galilee-basin-mining-project-will-reduce-coal-output:-research/8682164>

- There appear to be no safety issues in allowing third party access.
- The Australia Institute has long argued that the development of coal mines in the Galilee Basin is not in the public interest. In particular, government subsidy of Galilee Basin development, such as the royalty deal, is particularly contrary to the public interest. Allowing subsidised infrastructure to become a privately owned, unregulated monopoly asset would be the worst possible outcome for the public interest.

Under the *QCA Act 1997*, the minister can request a recommendation from the QCA. Alternatively, any member of the public can ask the QCA to recommend that a particular service be declared by the Minister.²¹ Under the Act, the QCA “must use its best endeavours to make a recommendation” within six months of receiving a request for declaration. This can be extended under a range of circumstances.²²

Treasurer Trad should immediately ask the QCA to begin the process for a recommendation. Adani’s royalty subsidy should not be finalised without detailed conditions on third party access to its railway having been established by the QCA.

²¹ QCA Act 1997 [s 76-77].

²² QCA Act 1997 [s 79A]

Conclusion

Subsidising the development of huge new coal mines in new coal basins as the world attempts to tackle climate change is terrible public policy. The Queensland public and the wider world stand to lose substantially from the Queensland Government's royalty deal and the damage that Adani's coal will ultimately cause to the world's climate.

However, those with the most to lose from failure to ensure thorough regulation of Adani's railway are Queensland's other miners. No other mining company in the state enjoys monopoly control over 200 kilometres of rail.

The Queensland Resource Council (QRC), the state's main mining lobby group, has previously highlighted the concerns of some of its members around subsidies for Adani's rail project, with QRC boss and former federal mining minister Ian Macfarlane saying:

It's a competitive world and some of our members see [subsidised finance for Adani rail] as giving an advantage to one of their competitors and that's part of commerce.²³

Given the advantage that unregulated rail access would give to Adani, it is likely that the QRC and other miners will support calls for QCA regulation arrangements to be in place before Adani's royalty deal is finalised.

²³ Probyn (2017) *Bill Shorten in bind over Adani coal mine*, <http://www.abc.net.au/7.30/content/2017/s4652955.htm>