



# **Inquiry into the prudential regulation of investment in Australia's export industries**

**Submission on behalf of B.M.D. Constructions Pty Ltd**



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## Overview

BMD Constructions Pty Ltd makes this submission to the inquiry into the prudential regulation of investment in Australia's export industries.

BMD's submission recounts its recent experience in (unsuccessfully) obtaining market standard and contractually required insurance coverage for projects it is currently delivering supporting Australia's export industry and is in response to the following terms of reference:

1. The approach and motivations of our financial institutions, including banks, insurers and superannuation funds, as well as publicly-listed companies, to their investment in Australia's export industries;
2. The consequential impacts of [the above]:
  - a) For legitimate law-abiding businesses connected to Australia's export industries;
  - b) On regional and rural economies that are reliant on Australia's export industries, particularly in light of the COVID-19 recession;
  - c) Our national economy particularly in light of the COVID-19 recession;
3. Any other related matter.

## The projects

### Carmichael Rail Network

BMD Constructions Pty Ltd (BMD) is delivering a section of the Carmichael Rail Network for Adani Mining Pty Ltd (now Bravus Mining and Resources Pty Ltd (Bravus)) within the northern Galilee Basin. The Rail Network is required to transport coal from the Carmichael Coal Mine (pit) to Abbot Point (port). The rail line is a narrow-gauge line, approximately 210 kilometres long connecting the Carmichael Coal Mine to the Aurizon Newland rail line, which connects to the Port of Abbot Point. BMD's scope encompasses all civil, structural and roadworks comprising the western 120km of the rail and mine loop, and includes:

- Constructing temporary access roads;
- Supply of temporary utilities for construction;
- Development of temporary construction laydown areas;
- Sourcing, storage and management of construction water, including batch water;
- Clearing and grubbing;
- Construction of rail formation / embankment including:
  - Ground surface treatments;
  - Earthworks;
  - Cut to fill and Cut to spoil;
  - Borrow – fill (including development of four quarry borrow pits),
- Constructing drainage and diversion drains;
- Completing structural fill;
- Construction of a capping layer;
- Construction of 15 multi span bridge structures ;
- Constructing significant transverse drainage (corrugated metal pipe and reinforced box culverts);
- Constructing occupational and stock crossings;
- Rail maintenance such as access roads and the Rail Services Track (RST);
- Establishment and operation of quarry material (ballast supply); and
- Upgrade of identified existing road intersections.



## Abbot Point Coal Offloading Facility

Abbot Point Bulkcoal Pty Ltd (APB), is a subsidiary company to Abbot Point Operations Pty Ltd (APO). APO holds the Operations and Maintenance contract for the Adani Abbot Point Coal Terminal (AAPCT). The terminal is located at Abbot Point, approximately 30 km by road north of Bowen, on the North Queensland coast. The Site of the proposed Works is within the boundaries of the existing operating terminal.

BMD Constructions was contracted to undertake the Package B Stormwater System Upgrade as part of the Sustaining Capital Works program at AAPCT. The Scope of Works for the Design and Construction Contract included:

- Installation and commissioning of the free issued pumps into the TT6, Jetty abutment and TT11 stormwater pits to ensure all stormwater in severe rain events is pumped to the primary sediment pond.
- Installation and commissioning of the free issued generator and load bank at the Out-loading substation to ensure in the event of a power failure, all stormwater infrastructure continues to operate.
- Installation and commissioning of the free issued Motor Control Centres (MCC) and Variable Speed Drives (VSD) at the Out-loading substation to allow for the operation of all equipment being installed as part of these Works.
- Supply, installation, and commissioning of new pipework, electrical infrastructure, instruments and auxiliary equipment for each of the TT6, Jetty abutment and TT11 stormwater pits.
- Supply, installation and commissioning of all electrical equipment, cables and supporting infrastructure to support operation of the pumps, generator and instruments being installed as part of these works.
- Design, programming and commissioning of all process control systems to operate all equipment being installed as part of these works.
- Sealing of all new pavement works and earthworks batters surrounding the surge bin and sample plant areas with bitumen seal, asphalt surfacing and vegetation to prevent erosion.
- Supply and construction of an overflow channel between the surge bin 1 pit and the main substation pit to channel flows between the pits.
- Supply and construction of an upgrade to the main station pit to increase capacity and maintainability.
- Supply and construction of two new coal collection pits in the stockyard transverse drain to capture coal sediment prior to discharge into the western drain and primary sediment pond.
- Supply and construction of a penstock gates in the southern transverse drain to detain water to the east of Site.
- Supply, construction and commissioning of an upgrade to the secondary sediment pond gravity discharge pipe to allow metered clean water discharge.
- Design, construction and commissioning of an automated flocculant dosing plant for the secondary sediment pond.

(Together 'the Projects').

In summary, the Projects:

- Are Australian Federal and State Government approved infrastructure works;
- Do not include the mining or extraction of coal;
- Do not include work within any mining lease area;
- Are associated with the transport of coal (being Rail Networks or Coal Offloading Facilities);
- Do not involve the handling of coal; and
- Are important projects within Australia for employment in rural and regional cities;



## 2020 insurance renewal process

BMD obtains insurance with the assistance of a very large international insurance broker. During BMD's annual insurance renewal process (August – September 2020), BMD was informed by its insurance broker, that it would be unable to obtain insurance for the Projects. Specifically, BMD was informed that it would be unable to obtain the following insurances to cover the Projects:

- Public Liability Insurance;
- Environmental Protection Insurance;
- Director and Officer Insurance.

Whilst BMD was able to obtain the above policies to cover the balance of its business, it was informed that the Projects would be expressly excluded from the cover. This meant that BMD would be uninsured in these areas for the remaining delivery of the Projects. A risk so substantial that if it materialised could easily impair the company's ability to continue to trade. In 41 years of performing construction work in Australia, BMD had not previously been exposed to such a large and immediate risk.

An example of the exclusion BMD's current Liability insurer attached to BMD's Public Liability Insurance Policy during the 2020 renewal is contained at Appendix 1.

BMD instructed its broker to conduct a wider search for the required insurances on learning that the usual domestic and international markets would not respond. BMD's broker obliged, and conducted exhaustive searches into domestic and international insurance markets and reported the following:

- Regarding Public Liability Insurance, 33 underwriters across the pre-eminent insurance market were approached to underwrite BMD's policies associated with the Projects. In all cases coverage was declined due to the client being Bravus or an affiliated entity. This search also sought coverage from Europe, USA and Asian markets.
- Regarding Environmental Protection Insurance, approximately 10 underwriters were approached and declined to provide coverage that included the Projects.
- Regarding Director and Officer Insurance, BMD's insurer stated that it would no longer respond to claims associated with the Projects and reduced its coverage by almost half. BMD's insurer claimed that this was due to stances taken by underwriters in Europe and US concerning coal.

## Impact

An inability to obtain the insurances listed above placed BMD in breach of its contracts under which it was delivering the Projects. Not only is BMD contractually obligated to hold the insurances, doing so is a precondition to payment under the contract. Therefore, BMD risked not being entitled to claim payment for the performance of works on the Projects. So fundamental is the requirement to hold these insurances that not doing so is a trigger for termination under the contracts. BMD's inability to obtain these insurances put in jeopardy not only its ability to claim over \$20 million dollars a month of progress payments but also its ability to continue to deliver the Projects which collectively employ over 600 workers.

BMD is aware that the worldwide insurance market is removing its support for coal related projects and that coverage for projects associated with coal moving forward will see limited available coverage. Clearly this position will impact the Australian coal market but what BMD is hoping to highlight in this submission is the peripheral consequences this stance is having on the broader Australian construction industry and the ability of contractors to perform works not directly related to the extraction of coal. Works which support Australia's export industry and are supported by local, state, and federal governments as well as the local communities which benefit massively from these industries.



The inconsistency between the position adopted by the underwriters and that of the Australian export industry must be brought to light as it places contractors such as BMD in circumstances of unacceptable risk. It cannot be the case that companies performing lawful, government supported works on which the country is dependent, are not supported by the finance and insurance industries that allow these works to be performed.

In response to this, BMD (and no doubt other contractors) will be forced to make pricing allowances in tendered prices to incorporate the additional risk. This results in higher cost to construct projects and will in turn increase the overall cost of infrastructure in Australia.

Currently, BMD is forced to investigate international captive insurance markets to source insurance coverage and to manage the risks in continuing to build resource related projects in Australia. This is an extreme measure considering BMD performs no coal extraction work nor work within mining lease limits.

## Related matters

### Activism

Because of its relationship with Bravus, BMD has been subject to activism from climate change extremists and anti-coal groups. This culminated in personal threats of violence being made against BMD's owners and their families. Posters and other anti BMD material were placed around Brisbane and widely on the internet. BMD understands that Bravus is currently pursuing legal action against one of the activists.

BMD's offices (and offices of BMD's subcontractors and suppliers) were picketed and intruded in Melbourne and Brisbane and BMD staff harassed with verbal taunts and flyers urging them to provide confidential information relating to the Projects.

## Conclusion and recommendation

Obtaining market standard insurance cover is necessary for contractors to continue to deliver infrastructure projects in Australia. This is true not only to ensure contractual compliance, but also to ensure that contractors are suitably protected from large scale risks associated with construction work. The fact is that contractors cannot afford to, nor will they, perform work uninsured.

What BMD has endured is the result of a conflict between the social stance of the majority of the insurance industry and the government supported export industry of Australia. Insurers that BMD (and other contractors) have relied on for over 40 years to provide market standard coverage for the performance of common construction work involving rail and roads are prevented from providing coverage to works simply because the work is performed for a client connected to the coal industry. Works that are not performed inside a mining lease and do not involve the extraction of any resources.

When speaking with members of the insurance community, it is clear that the Australian insurance market is frustrated with being restricted by broad worldwide policies that are often forged in Europe and fail to consider the impact to the Australian and other markets dependent on a lawful coal industry.

BMD suggest that there are 2 possible options for resolving the predicament arising from the inability to obtain insurance required to perform construction work:

1. The Clients and Principals absorb these risks to the extent that the contractor is effectively indemnified from risks for which it cannot insure against;



2. Governments (either State or Federal) provide the necessary insurance from public funds to ensure the export industry is supported.

Failure to take any action can only result in very few contractors being willing or able to undertake these critical infrastructure works. Those that can, will have no choice but to heavily inflate prices for undertaking these projects in order to account for the increased risk profile they are forced to adopt.



## Appendix 1

[Underwriter's] Exclusion:

### **Specific Matters Endorsement – Adani Group**

*The insurer will not be liable to indemnify the insured for any loss, settlement or other payment, or pay any defence costs or inquiry costs, directly or indirectly arising out of, based upon, attributable to or in consequence of work performed for or on behalf of the Carmichael mine, Carmichael rail project or any Adani group entity, including but not limited to the below entities and/or any subsidiary thereof:*

*Adani Enterprises Limited*

*Adani Ports and Special Economic Zone Ltd*

*Adani Power Ltd*

*Adani Transmission Ltd*

*Atulya Resources Family Trust*

*Atulya Resources Limited (Cayman Islands)*

*Carmichael Rail and Port Singapore Holdings Pte Ltd*

*Abbot Point Holdings Pte Ltd*

*Abbot Point Terminal Expansion Pte Ltd*

*Adani Australia Coal Terminal Holdings Pty Ltd*

*Adani Australia Coal Terminal Pty Ltd*

*Adani Australia Company Pty Ltd*

*Adani Australia Holding Trust*

*Adani Australia Coal Terminal Finance Company Pty Ltd*

*Adani Abbot Point Company Pty Ltd*

*Adani Abbot Point Holding trust*

*Abbot Point Port Holdings Pte Ltd*

*Carmichael Rail Singapore Pte Ltd*

*Carmichael Rail Australia Company Limited*

*Carmichael Rail Network Holdings Pty Ltd*

*Carmichael Rail Network Trust*

*Carmichael Rail Network Holdings Trust*

*Carmichael Rail Asset Holdings Trust*

*Carmichael Rail Holdings Pty Ltd*

*Carmichael Rail Pty Ltd*

*Carmichael Rail Network Pty Ltd*

*Adani Abbot Point Terminal Holdings Pty Ltd*

*Adani Abbot Point Terminal Pty Ltd*





*Mundra Port Pty Ltd*  
*Mundra Port Holdings Pty Ltd*  
*Mundra Port Holdings Trust*  
*Abbot Point Operations Pty Ltd*  
*Abbot Point Bulkcoal Pty Ltd*  
*Adani Global Limited (Mauritius)*  
*Adani Global FZE (UAE)*  
*Adani Global Pte Ltd*  
*Adani Minerals Pty Ltd*  
*Adani Mining Pty Ltd*  
*Adani Infrastructure Pty Ltd*  
*Galilee Transmission Holdings Pty Ltd*  
*Galilee Transmission Pty Ltd*  
*Galilee Transmission Holdings Trust*  
*Adani Global Resources Pte Ltd*  
*Abbot Point Port Australia Limited*  
*Adani Renewable Asset Holdings Pty Ltd*  
*Adani Renewable Assets Pty Ltd*  
*Adani Rugby Run Pty Ltd*  
*Adani Renewable Asset Holdings Trust*  
*Adani Renewable Asset Trust*  
*Adani Rugby Run Trust*  
*All other terms and conditions of the policy remain unaltered*

