CIVIL CONTRACTORS FEDERATION

Constructing Australia's Infrastructure

SUBMISSION TO

THE SENATE SELECT COMMITTEE

ON CLIMATE CHANGE

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Submission to the Senate Select Committee on Climate Change

The Civil Contractors Federation welcomes the opportunity to contribute to this important debate.

The CCF or Civil Contractors Federation is the member based representative body of civil engineering contractors in Australia providing assistance and expertise in contractor development and industry issues.

Through our Federation we represent 2000 small, medium and large sized contractors who in turn employ more than 40,000 people.

Our members are involved in a variety of projects and activities including the development and maintenance of civil infrastructure such as roads, bridges, dams, wharves, commercial and housing land development.

Civil Construction is for historic reasons considered as part of the building and construction industries but in effect it represents 30% or more of the sector nationally and over 40% in some states such as Queensland.

Our members are most likely to come within the ambit of the Carbon Pollution Reduction scheme (‘CPRS”) in two ways.

Firstly, as a result of being engaged to perform particular works by another party who has NGER obligations. To ensure accuracy of that reporting, the party with NGER obligations will need to rely on data on emissions provided by contractors performing work on its behalf.

In this regard the major greenhouse gas we anticipate our members will have to report on is emissions from diesel usage. There may however there be other emissions produced from on site production such as in road construction.

Secondly, our members will also be impacted directly by the embedded cost of the CPRS as it flows through to the price of fuel, energy and other materials such as concrete, asphalt and other construction materials.

We are particularly concerned about small and medium sized contractors as price takers with no independent ability to verify if costs passed through to them are truly reflective of the costs imposed by the CPRS. There is the serious potential for price gouging and price exploitation. This issue is dealt with further at paragraph 5.4.

Finally, this submission builds on a number of the concerns that we raised in our submission on the Green Paper on the CPRS (“ our submission”) in October last year.

1 Out starting position on the Carbon Pollution Reduction Scheme

In our previous submission we raised four key issues in relation to the CPRS itself:

- The *coverage of the scheme* and the need for rigorous and verifiable data on emissions and a process for obtaining such data especially in relation to major projects;
- The *design of the Carbon market* and the importance of openness and transparency in relation to the embedding of emission costs in products, fuel and power used by our members and incentives for abatement or offsets;

- Ensuring *reporting and compliance obligations* where they apply to our members are clear, straight forward and kept to a minimum particularly for small and medium sized businesses; and
- The *Regulatory arrangements for the scheme* – that there are express statutory powers either within a new or existing regulator to monitor prices and take action for price gouging or price exploitation.

In this submission we would like to focus particularly on the practical impact of the CPRS to small to medium sized contractors as this is an area where there has been little targeted attention.

This does not detract from concerns we have raised previously, a number of which have not been addressed – indeed both this submission and our earlier submission should be read together.

Prior to dealing in detail with our concerns we would like to provide a snapshot of current economic conditions in the sector.

2 The economic environment and the timing of the introduction of the CPRS.

We have welcomed the government's assistance through a number of stimulus packages and in particular its support for infrastructure development. However, the state of the industry is very concerning, with federal government assistance generally yet to flow through to our members on the ground.

Whilst we have not conducted a detailed analysis of economic conditions for our members it is accurate to say that the work flow situation across the states is patchy. There is strong demand in some states in some sectors for our members (such as subdivision in the first home owners market) but overall activity is down and in some cases considerably so.

Our Queensland branch has carried out detailed work on the downturns in Queensland and have found since September 2008[1]:

- The private earthworks and subdivision market has declined by approximately 50%;
- The civil construction industry workforce has declined by approximately 10 – 15%; and
- Trainees and apprentices have made up 1 in 10 redundancies to date.

The projections to June 2009 are even more concerning:

- Based on current trends CCF estimates that the total civil construction workforce in Queensland will decline by approximately 25 -35% by mid 2009; and
- It is expected that trainees and apprentices will make up approximately 1 in 6 of those redundancies.

Accordingly, at this time in the economic cycle we have major concerns in relation to the additional costs the CPRS will impose and our members ability to absorb such costs.

We also note that there is no indication publicly that any work has been undertaken by Government in modelling the impact of the CPRS on small to medium sized businesses. However, the impact of the flow through of costs of materials, energy and fuel could have a significant impact on our members. They in turn may have little ability to pass such costs on in a tight competitive market.

How we believe these costs will arise is detailed below.

[1] The Affect of Global Conditions on Queensland Civil Construction Industry January 2009 available at www.civilcontractors.com under Advocacy Queensland.

3 CPRS and major infrastructure projects

3.1 Who will hold the permit?

One issue that is of particular interest to CCF members is how the permit scheme will operate in a new major project or joint venture.

Our understanding is that generally speaking the CPRS will operate in such a way that permits will be held by the upstream emitters for example an electricity generator. It would also appear in the CPRS design that this would also apply in relation to industrial processes which produce building products. These costs will then be factored into the delivery of the project downstream hence the project itself will not generally require emission permits.

However, there may be circumstances where large scale developers or Government Departments who commission road works may need permits in their own right.

In terms of infrastructure construction more generally we believe there are two important issues arising out of CPRS these are detailed below.

3.2 Transitional issues on long term projects

We do foresee some transitional issues in relation to costs of projects with the upstream permit model.

Infrastructure projects can have very long term construction timetables.

This may cause significant pricing issues for projects commenced prior to the scheme but which may complete during the scheme. This might be a difficult issue to manage in the context of fixed term contracts especially for sub-contractors.

This may be exacerbated by delays in projects due to issues beyond the control of the contractors.

These are issues which should be considered in the context of transitional regulations or legislation.

3.3 Offsets and credits

An issue which also arises is what incentives will there be for the reduction in greenhouse gas emissions in major projects. If the emissions are generally the responsibility of those upstream who hold permits and pass on costs what incentives will there be for contractors to use cleaner or more energy efficient processes.

For example if all the emissions are accounted for upstream in a major project what incentive would there be for example to undertake major tree planting on the verge of a major road?

4 CPRS coverage will be broader than that claimed.

4.1 Who will be covered?

We believe the CPRS will have much broader scheme participant coverage than that claimed by Government.

In evidence before the Senate Economics Committee Dr Parkinson in referring to CPRS coverage stated:

“The fifth principle is the need for a practical CPRS that imposes the least possible administrative burden on business. We have attempted to do this by designing an approach which has maximum coverage –as I said some 75% of all emissions – while only directly involving around 1000 companies with mandatory obligations under the scheme."[2]

The broader coverage will come about because upstream permit holders will require sub contractors to also report on their greenhouse gas emissions so that they can meet their own reporting requirements.

Some of our members are already meeting requests from major contractors for their emissions data in order for those contractors to meet present NGER requirements and/or to map carbon footprints.

We would also caution that at present understanding of NGER requirements is very low amongst small to medium contractors – mainly because those contractors are not directly required to report themselves.

4.2 What will our members be reporting on?

In the main we expect our members will be reporting upon diesel emissions. Our members operate plant and equipment which is heavily dependent and reliant on the use of diesel. For example graders, bulldozers, backhoes and earthmovers all use diesel.

At present members who claim fuel tax credits through the Australian Taxation Office do have systems which record their diesel usage. This data needs to be robust and auditable for taxation purposes. However, to meet NGER requirements this information will need to be converted to emissions data.

However, there may also be obligations on members to report in relation to emissions from their production activity on site.[3]

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[2] Dr Martin Parkinson Secretary Department of Climate Change Senate Standing Committee on Economics Hansard 18 March 2009 (Proof Copy)E 5

[3] Members may also be providing separate data to head contractors under NGER in relation to energy consumption on site.

The method whereby this is undertaken combined with the time taken to extract all of this information will impose administrative and compliance burdens.

We would note particularly that calculating and reporting on emissions other than diesel will no doubt require specialist expertise and support – a not insubstantial imposition particularly on small to medium enterprises.

4.3 What are the additional administrative and compliance burdens?

(a) Diesel usage

We expect that a number of our members who have to meet reporting requirements will implement systems which allow them to calculate emissions on the basis of their diesel usage. They will do this either by:

- using on line calculators (such as that on the NGER site);
- through software solutions which we expect will become available; or
- on vehicle technology which will capture a range of information such as location of the vehicle, diesel usage, greenhouse gas emissions etc. This information can then be downloaded into an accounting/recording system.

However, whether members use computer solutions which download the information from plant and/or equipment or they undertake calculation through some other form – administrative time will need to be devoted to it.

Further, the on vehicle technology is expensive and may not be cost effective for a small business. Dependent on the fleet that is to be fitted it can cost thousands of dollars including monthly licensing fees.

(b) Other emissions data

Other emissions data apart from diesel might be more difficult to capture and report on. As stated previously we envisage that our members will be capturing data to report on emissions for other parties who have permit obligations.

(c) Burden of additional reporting

However in the case of all greenhouse gas emissions which have to be reported on there will also be other “add on” costs.

Business will need to seek specialist technical, accounting and legal advice for example in relation to:

- Implementing reporting frameworks which are auditable and verifiable and which effectively capture the data required;
- current contractual arrangements which do not provide for price rises due to the CPRS coming on line. Many infrastructure projects take a number of years from planning to commencement and conclusion – businesses will rightly be concerned about their obligations and liabilities in these circumstances;
- What provisions should be included in the contractual arrangements for future projects when the prices imposed by the scheme are as yet unknown;
- Technical support and training for staff in relation to reporting frameworks.

This will be in addition to a number of other reporting requirements such as the GST, taxation generally, employment and OHS records and other state obligations such as payroll tax. This is particularly disappointing given the continued emphasis at least at a conceptual level by government in relation to cutting red tape for business.[4]

As outlined in paragraph 2 of our submission these impositions will come at a time of extremely difficult business conditions when businesses are struggling to survive.

4 Strong Regulatory arrangements and enforceable sanctions

We also remain very concerned about lack of clear mechanisms to protect small to medium businesses from price gouging and price exploitation. One of the major concerns of our members is the imposition of costs flowing from the CPRS as embedded costs in material they purchase or energy sources they use.

We note that the Bill contains a number of provisions to deal with the failure of CPRS participants to report or comply with the new CPRS. We would like to see information on what are the rights of third parties who are required to participate in the scheme through their dealings with permit holders. What are their remedies and who will enforce the law in this area.

What steps we believe the Government should take in this regard are outlined at paragraph 5.4 below.

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[4] See Commonwealth, State and Territory Business Regulation and Competition Working Group (BRCWG). "The Working Group aims to drive the Council of Australian Governments (COAG) agenda for the reduction of the regulatory burden on businesses by accelerating and broadening regulation reduction work program, and improving processes for regulation making and review." Joint Media Release the Hon Lindsay Tanner and the Hon Craig Emerson 31 January 2008.

5 What action we believe Government should take to support small to medium enterprises.

5.1 Consideration of compensation scheme

We note that a comprehensive assistance package has been developed for Emissions Intensive Trade Exposed ("EITE") industries, coal fired electricity generators and middle to low income households. However, our members will be directly exposed to cost increases without any consideration of compensation.

In this regard we fully support the comments made by the Australian Chamber of Commerce and Industry in Section 6.2 of their submission to the Senate Standing Committee on Economics.[5] This impact must be looked into urgently prior to the CPRS' introduction.

5.2 Education, on line tools, standard form reporting and industry assistance to develop best practice

There are three practical actions that need to be undertaken as a matter of urgency. These are outlined below.

(a) Education campaign

At a minimum there will need to be an extensive education campaign. As stated many small to medium businesses do not yet appreciate that they will come within the CPRS ambit. NGER obligations are not well understood in spite of efforts by the Greenhouse and Energy Data Officer (GEDO). This as previously stated is because small to medium businesses see the NGER obligations as not relevant to them.

[5] ACCI Submission to Senate Standing Committee on Economics at www.acci.asn.au

Such an education campaign must be carefully targeted and practical in its nature. It must be based upon issues such as:

- Why your business needs to know its greenhouse gas emissions data and energy consumption usage;
- What emissions need to be reported on – by way of examples which are practical for small business;
- How you can calculate your emissions;
- What reporting format to use; and
- Who can help you with these activities if you have questions?

On a similar matter we have worked very closely as an industry association with the Australian Taxation Office in relation to Fuel Tax Credits. This has resulted in very positive outcomes for our members and we believe the ATO. It has resulted in practical reporting frameworks which members can understand and implement. The same process should be followed with NGER obligations flowing from the CPRS.

(b) On line tools and Standard format reporting

The development of reporting formats and computer software programmes that are practical and easy to use are critical. This is especially so when the calculation task relates to on site production activities.

We would also like to see Governments work to standardisation of reporting with industry so that members are not reporting emissions in different format in different jurisdictions. We note that this is part of the rationale for the NGER framework.

This is particularly critical for subcontractors who would be working for a number of different parties.

(c) Targeted industry assistance/Taxation treatment

Targeted industry assistance through the Climate Change Action Fund should be made available for small to medium contractors:

- to implement best practice technologies which measure greenhouse gas emissions; and
- to explore and develop new technologies to reduce emissions.

There should also be consideration of preferential taxation treatment for entities that are prepared to invest in new technology to measure, record and in some cases reduce emissions.

In relation to all these actions the CCF is very happy to work constructively with Government.

5.4 Monitoring and compliance in support of transparency in embedded costs.

There are a number of aspects of the CPRS which still lack critical detail.

(a) Price gouging and price exploitation

As noted previously the CCF represents small to medium sized contractors amongst our membership. As we have also previously stated a major concern for members is the imposition of costs flowing from the CPRS as embedded costs in materials they purchase or energy sources they use. For example increases in concrete prices or in energy or materials generally.

We have received no “comfort” as to what mechanisms will protect this segment of the market from misuse of market power. This is an essential matter of detail.

The CCF notes that when the Goods and Services Tax was introduced the ACCC was given additional transitional powers in the form of Section VB regarding price exploitation. The three fundamental principles stated at the time of the introduction of that legislation as underpinning the then new powers are relevant to this CPRS:

- Consumers (or in this case smaller players) should benefit from any reductions which come about through changes brought about by the CPRS;
- Consumers (or in this case smaller players) should not be exposed to greater than necessary price rises; and
- There should be no exploitation of consumers (or smaller businesses) or “excessive profiteering”.

The additional price monitoring powers given with the new tax system are an excellent precedent for what should be available with this CPRS.

(b) Moratorium on penalties in relation to reporting

As the CPRS is bedding down and businesses are still unfamiliar with reporting mechanisms we would urge a moratorium in relation to penalties and enforcement.

Such an approach would be consistent with the practice of other regulators such as the ATO in relation to new taxation arrangements. The first step especially with small to medium businesses who fall within the CPRS for the reasons outlined previously must be education.

6 Other matters

6.1 Obligation Transfer numbers

We would like to understand more detail about how Obligation Transfer Numbers (OTN's) will work in practice. We have noted the statement that OTN's are not transferable but we also note the "voluntary" basis where some purchasers will be permitted to quote an OTN.

In particular we would be concerned at what point this obligation could be transferred in the service chain. For example a refiner passes its obligations through the OTN to a distributor who passes the OTN to large consumer and so on.

7 Conclusion

CCF members appreciate and understand the rationale for moving to a CPRS. However, we remain very concerned that the issues outlined in this submission are dealt with as a matter of urgency prior to its implementation.

We are particularly concerned that the emphasis on direct CPRS participants has meant little policy consideration has been given to the position of smaller businesses who will be drawn within the CPRS ambit.

CCF would be happy to provide any further assistance required in relation to this issue.