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CIVIL CONTRACTORS FEDERATION SUBMISSION

**THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
INFRASTRUCTURE, TRANSPORT AND CITIES INQUIRY INTO
PROCUREMENT PRACTICES FOR GOVERNMENT FUNDED
INFRASTRUCTURE**

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1. Introduction

The Civil Contractors Federation ('CCF') wishes to thank the House of Representatives Standing Committee on Infrastructure, Transport and Cities for inviting input into its Inquiry into procurement practices for government funded infrastructure.

The CCF believes this Inquiry is vital in identifying much needed policy and procurement reform for government funded infrastructure projects at both commonwealth and state levels to increase our sovereign capability and the long-term sustainability of the Australian civil construction industry.

We welcome the inquiry's specific interest in enhancing the sovereign capability of the Australian industry as the peak representative group of local civil construction companies. CCF has a strong interest in ensuring that *all* businesses have fair and reasonable opportunities to participate in Government infrastructure works.

The Australian Government is investing \$110 billion over 10 years from 2021-22 in civil infrastructure across Australia through its rolling infrastructure pipeline, of which a substantial component is under the Infrastructure Investment Program.¹ The CCF estimates that federal/state/territory governments and the private sector are collectively investing around \$65 billion per annum (FY20) which equates to 3.8% of GDP.² This is forecast to rise to around \$82 billion per annum for 2023.³

The CCF recently released its newly commissioned infrastructure report, [Rebuilding Australia – A Plan for a Civil Infrastructure Led Recovery](#) that discusses the need for a more efficient, equitable and competitive procurement regime in Australia and also analyses the risks to an infrastructure-led recovery that require urgent attention by all levels of government. The CCF submission to this Inquiry is based largely on the findings of its Rebuilding Australia Report.

The Report finds that for every A\$1 million invested in the civil construction industry:

- 7.2 workers are employed in the construction and related industries,
- \$2.95 million of output is contributed to the economy, and
- \$1.3 million is contributed to Australian GDP.⁴

The Report also highlights that boosting civil construction's GDP contribution from 3.8% to 4.1% would generate 11,100 jobs and boosting its GDP contribution to 4.5% would create 36,100 jobs. Considering these figures, the CCF is continuing its call on the Federal Government to boost short term funding to civil infrastructure and to use 'debt-funding' to ensure the level of infrastructure spend over the 10–15-year investment pipeline is maintained as well business confidence.

It is essential however that these infrastructure funding commitments are accompanied by policy and procurement reforms to maximise returns to the Australian economy.

¹ 'Infrastructure Investment Program', *Department of Infrastructure, Transport, Regional Development and Communications* (Web Page, 11 May 2021) <<https://investment.infrastructure.gov.au/>>.

² Civil Contractors Federation, 'Rebuilding Australia – A Plan for a Civil Infrastructure Led Recovery' (19 March 2021) 15 ('Rebuilding Australia').

³ *Ibid* 17.

⁴ *Ibid* 6.

2. Who is the Civil Contractors Federation?



The CCF is the peak national representative body for the Australian civil construction industry comprising over 1,900 civil construction companies across the construction supply chain in all jurisdictions ranging from tier 1, 2, 3, 4, SME's and one-person ABN holders.

With offices in every major capital city, the CCF is best positioned to promote, cultivate and advance the civil construction industry in Australia for the benefit of all Australians by working collaboratively with government and industry at all levels.

The CCF's members are responsible for the construction and maintenance of Australia's civil infrastructure, including roads, rail, bridges, water supply, pipelines, drainage, ports, and utilities, and also play a vital role in the residential and commercial building construction industry by providing earthmoving and land development services including the provision of power, water, communications and gas.

3. Executive Summary - Recommendations

The CCF is pleased to provide the following recommendations for the consideration of the House of Representatives Standing Committee on Infrastructure, Transport and Cities with the aim of building a more sustainable and productive civil construction sector in Australia by improving our sovereign capability. This in turn will enhance the sectors contribution to Australia's economic recovery efforts.

Infrastructure Spending

The CCF recommends that the Federal Government continue to fast-track spending on civil infrastructure from its \$110 billion 10 year rolling infrastructure investment pipeline as an ongoing measure to ensure continued viability of civil construction companies and to boost the economy during and post COVID-19.

That this fast tracked and ongoing spending be targeted at tier 2 companies and below given they have significant capacity to tender for additional infrastructure projects as evidence by the CCF COVID-19 Member Survey.⁵

Debt Funding to Increase Infrastructure Investment

The CCF recommends that the federal government utilise debt funding for productive infrastructure investment over the medium to longer term whilst interest rates are at historically low levels to ensure the level of infrastructure spend over the 10–15-year investment pipeline is maintained as well business confidence.

In-House Capability of Procurement Agencies

To ensure procurement agencies have appropriately qualified and sufficient procurement staff to manage a timely and streamlined tender process, the CCF recommends state and territory procurement agencies be required to report their inhouse capabilities to manage all federally funded infrastructure projects through the National Partnership Agreement⁶.

⁵ CCF COVID-19 Member Survey (n 6).

⁶ 'National Partnership Agreement and State Schedules', *Department of Infrastructure, Transport, Regional Development and Communications* (Web Page, 30 April 2021) <https://investment.infrastructure.gov.au/about/resources/national_partnership_agreement.aspx>.



Best Practice Planning and Delivery

The CCF recommends that procurement agencies be required to adopt Infrastructure Australia's best practise for infrastructure planning and delivery guidelines, *Infrastructure Decision-making Principles* as a condition of federal government funding on all infrastructure projects.

Procurement Model Selection

The CCF recommends a more considered approach be taken by procurement agencies to procurement model selection as the risk profile presented on individual projects is a key determinant in managing risk allocation and driving positive outcomes.

Streamlining the Tender Process

The CCF recommends that procurement agencies be required to simplify their procurement processes where possible and to work more closely with civil construction companies via collaborative contract arrangements. Further, that procurement agencies be required to provide annual performance reports detailing project delivery time to market on all federally funded infrastructure projects as a condition of federal funding.

Collaborative Contracting Models

The CCF recommends that collaborative contracts must be genuinely considered by procurement agencies when the circumstance warrants it.

Industrial Relations

The CCF recommends the federal government should satisfy itself that the Queensland Best Practice Industry Conditions (BPIC) and the ACT Secure Local Jobs Code are not legally inconsistent with the Fair Work Act and Commonwealth's *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016).

Enhancing Australia Sovereign Capability

The CCF recommends that the Federal Government include the following conditions in the National Partnership Agreement with states/territories for all federally funded infrastructure projects:

- To disaggregate (or debundle) large projects where possible to foster broader competition and a more sustainable contracting industry at both head contractor and subcontractor levels.
- To include local content participation levels as a tender requirement at employment and product source level.
- To adopt contracting models that encourage greater participation from tier 2 and 3 head contractors enabling them to secure more work and providing the opportunity to mature commercially.
- Further, that the federal government conduct annual audits of procurement agencies on all federally funded infrastructure projects to measure the level of debundling and local participation rates.

CCF recommends that Federal, State/Territory Governments require all foreign owned companies tendering for major infrastructure projects to specifically and in detail demonstrate how they will:

- adequately reinvest into the Australian economy and thereby contributing to our economic recovery.
- demonstrate how they will contribute to the growth and sustainability of local contractors by either entering into a meaningful joint venture arrangement or by other means.
- satisfy any specific concerns the Government has in relation to security or any other matter on the project.

- all foreign owned companies provide financial surety as a tender criterion to ensure funds are available to settle all contractual or other obligations down the contracting chain.



Employment and Workforce Capability

The CCF recommends that the Federal Government reinstate civil occupations on the National Skills Needs List as a matter of urgency. In addition, the federal Government to include private Registered Training Organisations as recipients for all Federal Government VET funded financial incentive schemes.

Further detail on these key recommendations is contained in the body of the CCF submission.

4. Existing Infrastructure Pipelines and Related Supply Requirements

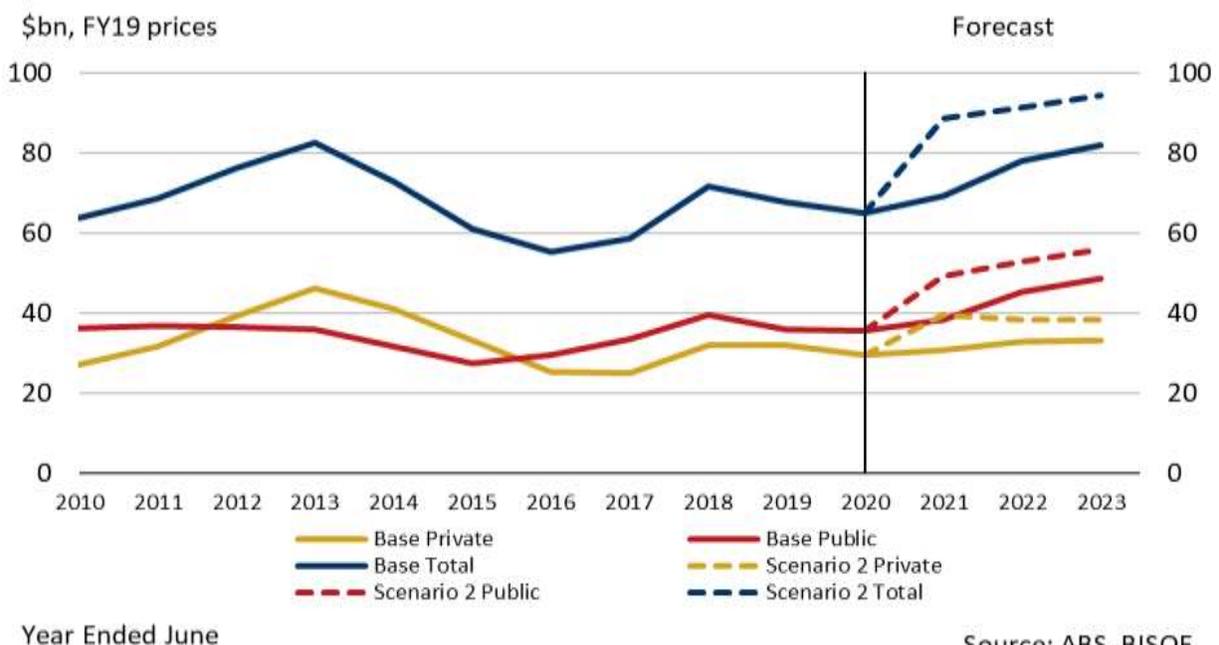
For the purpose of this submission civil construction includes: roads and highways; subdivisions; bridges; railways; harbours; water storage and supply; sewerage and drainage; electricity generation, transmission and distribution; pipelines; recreation, and telecommunications.

4.1 Civil Infrastructure Pipeline

The need to embark on much needed policy and procurement reform for government funded infrastructure projects should be seen within the context of the civil infrastructure pipeline. Civil construction activity has been relatively insulated from domestic activity restrictions that have been imposed due to the COVID-19 pandemic since April 2020, although not completely immune.

For example, roads construction stalled more than previously expected in FY20. This is attributed to some productivity losses due to social distancing guidelines and lockdowns, as well as far weaker than expected public works commencements.

Figure 1: Total Civil Construction by Funding Source, Australia⁷



Source: ABS, BISOE

⁷ Historical data of civil construction is sourced from the Australian Bureau of Statistics' (ABS).

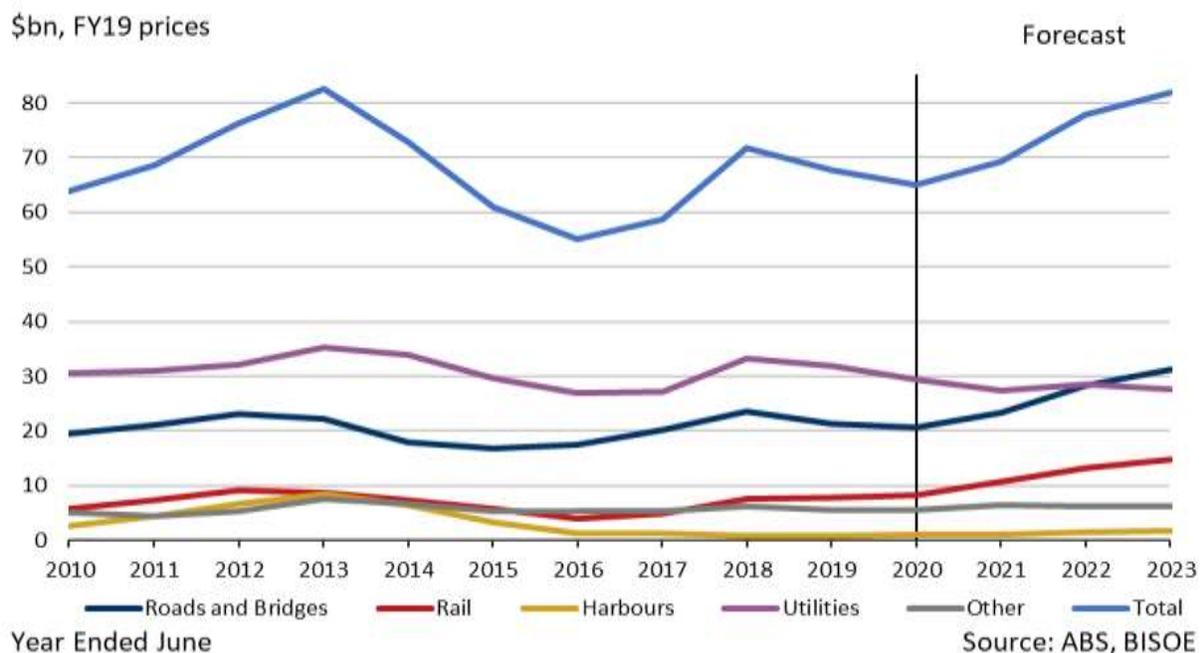


Headline civil construction work peaked around FY13 at over \$87 billion driven by privately funded infrastructure that supported the mining investment boom. Here, the largest contributors from the civil sector included rail, harbours, supporting utilities, and pipelines. During this time, publicly funded work remained relatively flat at around \$36 billion per annum.

Civil construction then slumped to FY16, dropping below \$60 billion, underpinned by declines in nearly all sectors across public and private funded work. Total work has since moved higher through rising publicly funded transport megaprojects across roads and rail, a private sector funded renewable energy generation boom in electricity, the rollout of the NBN and 5G networks in telecommunications, and a range of public water security projects.

Over the next three years, total civil construction work is expected to grow to between \$82 billion and \$94 billion, mainly driven by rising activity on roads and rail projects in the state capitals. Higher levels of transport work are expected to overshadow declining work across utilities. Here, telecoms work is set to fall as the NBN rollout moves to completion, despite additional funding in the 2020-21 Federal Budget. Most other sectors are forecast to see steady and/or rising work.

Figure 2: Total Civil Construction by Sector, Australia⁸



The Commonwealth Government has committed \$1.5 billion of funding for the Local Roads and Community Infrastructure Program ('LRCI') over the next 2 years. The LRCI targets council level spending to fund smaller and immediate road construction and maintenance works across all states. The CCF is strongly supportive of this initiative as it targets small to medium size enterprises throughout Australia, creating jobs, training opportunities and boosts economic activity in rural and regional Australia.

However, scope may exist for further spend, especially in the short run, to drive a sustained recovery in economic activity and employment. The economic impacts of such an 'infrastructure-led recovery' are explored in the CCF's Rebuilding Australia Report.

⁸ Engineering Construction Activity quarterly release (Cat. No. 8762.0).



CCF's comments in relation to proposed policy and procurement reforms should also be viewed against the backdrop of CCF's findings in relation to local industry capacity. A [survey of the CCF's members](#)⁹ undertaken in April 2020 confirmed the industry has the capacity to take on more work and employ more workers. The overriding objective of the Survey was to obtain feedback and data on the following:

- the business impact of COVID-19,
- the capacity for companies to tender for more civil construction projects in the short term, and
- the likelihood of companies employing more workers should they be successful in a tender.

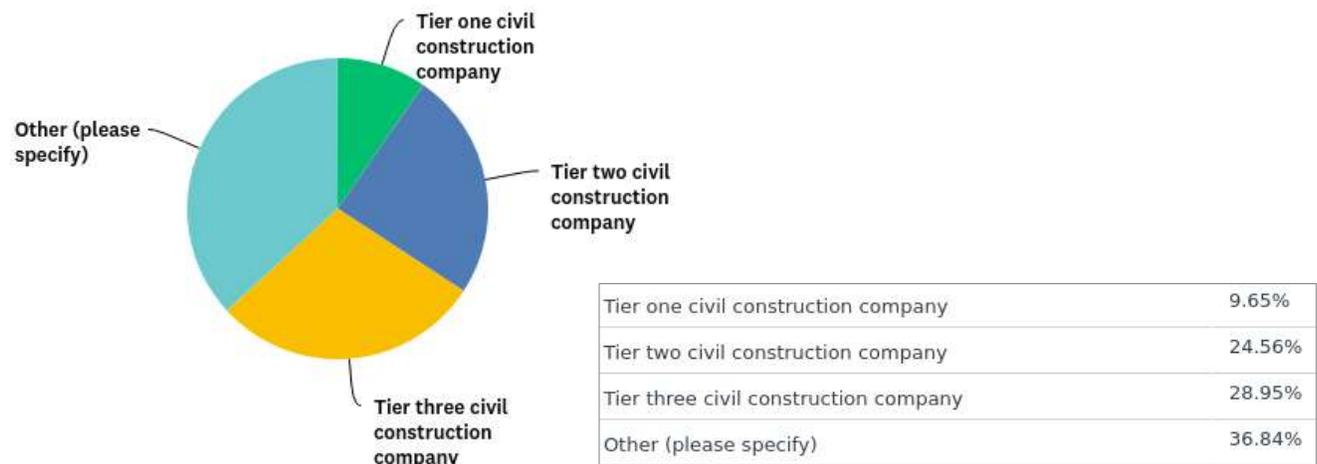
The metrics of the Survey were as follows:

- the Survey duration was 10 days from 4 April 2020 to 14 April 2020,
- the Survey was sent to 1,700 civil construction companies in all Australian jurisdictions,
- the Survey was anonymous and did not identify respondent or companies,
- 228 companies responded representing a rate of 13.4%, and

A. Survey Demographic

The CCF has a membership that comprises tier 1, tier 2, tier 3 companies and below. Survey respondents represented the typical spread of the industry's composition.

Figure 3: CCF Survey – Demographic by Industry Tier¹⁰



B. Capacity for Additional Projects

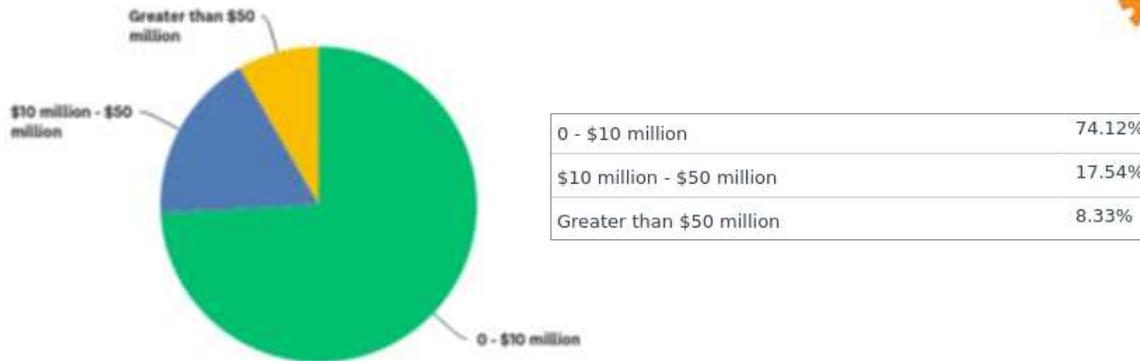
The CCF recommended to the Federal Government in its 2020-2021-2022 pre-budget submission that they fast-track spending on civil infrastructure as an immediate measure to ensure ongoing viability of civil construction companies and to boost the economy during and post COVID-19. The Federal Government responded by announcing an additional \$15 billion toward infrastructure investment in the next few years.

The CCF strongly commends this initiative as the industry has significant capacity to tender for additional infrastructure projects, particularly in the \$0–10 million threshold. The CCF believes this approach will generate maximum return to the Australian economy, and importantly rural and regional communities.

⁹ Civil Contractors Federation, 'COVID-19 Member Survey' (April 2020) ('CCF COVID-19 Member Survey').

¹⁰ Ibid 3.

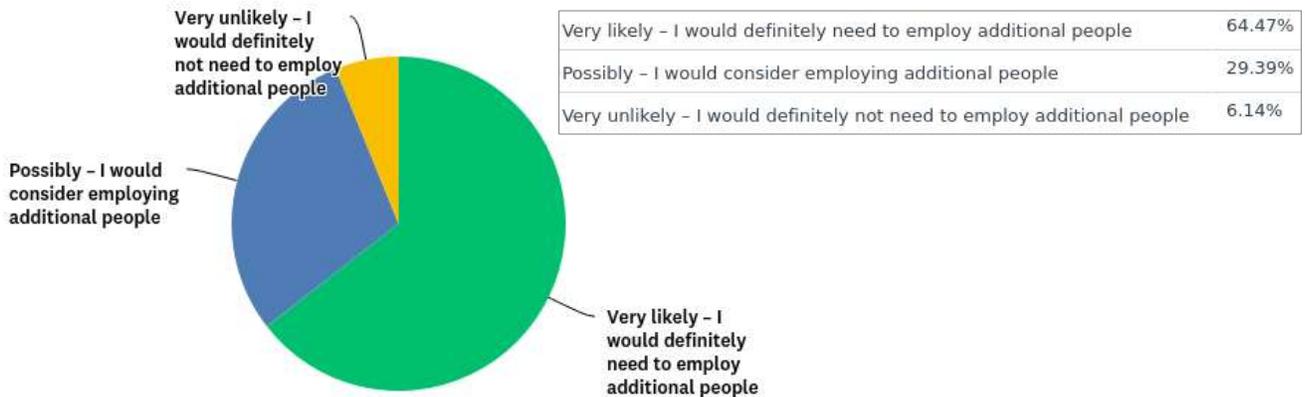
Figure 4: CCF Survey – Industry Capacity for Additional Works¹¹



C. Employment Opportunities

The civil construction sector continues to operate during COVID-19 and has indicated that in addition to being able to tender for new work, an overwhelming majority of companies would also employ additional workers when the Government provides additional project funding.

Figure 5: CCF Survey – Likelihood of Employing Additional Workers¹²



The results of the Survey were provided to the Deputy Prime Minister 3rd June 2020, together with 5 key recommended measures to maximise the economic impact of governments' infrastructure spend and to boost the productive capacity of the civil infrastructure sector particularly in the wake of COVID-19.

Measure 1 – Bring Forward Infrastructure Spending

Encouraging governments to bring forward spending from their infrastructure programs and accelerate shovel ready projects across all civil sectors, including road, rail, bridges, utilities, drainage and telecommunications.

Measure 2 – Disaggregation of Large Projects

Major projects should be disaggregated where possible to encourage expressions of interest from tier 2 and tier 3 companies, and that project allocation be spread across all jurisdictions to ensure widespread community benefits are realized from the stimulus spend.

¹¹ Ibid 5.

¹² Ibid.



Measure 3 – Debt Funding to Increase Infrastructure Investment

The CCF encourages the federal government to use debt funding for productive infrastructure whilst interest rates are at historically low levels to ensure the level of infrastructure spend over the 10–15 year investment pipeline is maintained.

Measure 4 – Streamlined Procurement Processes

Procurement agencies should simplify their procurement processes where possible and work more closely with civil construction companies via collaborative contract arrangements.

Measure 5 – Maximise Capacity of the Civil Construction Sector

A recent [survey of CCF members](#) found the civil construction sector has significant capacity to tender for additional infrastructure projects and a subsequent need to employ more workers if governments rolled out additional project funding.

5. Challenges and Opportunities with Existing Procurement Practices

While the Australian construction industry has been able to deliver rising levels of work over the past two decades, the CCF has identified four key challenges and opportunities with existing procurement practices, which if not addressed, threaten to jeopardise an ‘infrastructure-led recovery’ and the economic and employment benefits that derive from it. These are:

- planning and risk identification,
- tendering process and procurement,
- risk allocation, and
- industrial relations.

5.1 Project Planning and Risk Identification

ISSUE

A. Weakening In-House Capability of Procurement Agencies

In conjunction with increasingly complex projects, the quality of planning for projects has suffered in recent history due to weakening in-house technical capability of procurement agencies. These current conditions are a legacy issue tied to technical expertise lost during the scaling back of the public sector during the 1990s and 2000s.

SOLUTION

Qualified Staffing

Procurement agencies need to retain and employ appropriately qualified and sufficient numbers of procurement staff commensurate with the procurement workload to ensure timely and streamlined tender processes.

ISSUE

B. Poor Planning and Delivery

As planning is the first and one of the most vital stages of infrastructure delivery, miscalculations or poor judgement can significantly impact the entire chain of works required for project execution. Poorly defined scope of work results in industry assuming an inappropriate amount of responsibility for identifying and

managing risks, and long and costly bidding processes to participate. Firms are then incentivised to accept the most risk rather than presenting the best value offer, impacting outcomes for both contractors and funders. At its worst, under investigated or inadequately defined works can cause budget blowouts, delays, and financial hardship.



SOLUTION

Best Practice Planning and Delivery

Additionally, procurement agencies should be required to adopt Infrastructure Australia's ('IA') best practise for infrastructure planning and delivery guidelines, *Infrastructure Decision-making Principles*.¹³

The *Infrastructure Decision-making Principles* are designed to ensure major public infrastructure investments deliver the best outcomes for the community and the best value for taxpayers. The guidelines aim to promote greater accountability and transparency and reduce instances of major projects receiving funding before appropriate planning and assessment.

The IA decision-making processes for infrastructure and planning principles can yield more positive outcomes for all participants. Cost reducing principles include:

- Project identification in accordance with:
 - thorough feasibility studies,
 - proper risk assessment, and
 - genuine engagement of stakeholders.
- Early involvement and collaboration with industry allows for better and earlier identification of risk:
 - for the project funder it allows for more practical development of costings, timelines, and interface management, and
 - for industry this reduces specifications uncertainty, bid costs, and tendering times.

Information is key in improving planning and delivery through previous experience. The best way to enable analytics is through consistent and unbiased collection of data. This allows for comparison of project delivery experiences including risk management and outcomes.

5.2 Tendering Process and Procurement

Tendering processes require special attention as an infrastructure delivery stage faced by all industry participants. The key objectives are reduction of cost and time required to submit compliant bids, and in so doing, industry benefits through increased profitability and participation, and procurers benefit from boosted competition and faster rollout.

ISSUES

A. Tender Costs

The costs of tendering include:

- the preparation of bids,
- the development and acquisition of intellectual property,
- administration or bureaucratic hurdles, and
- and legal resources to develop the contract.

¹³ Infrastructure Australia, 'Infrastructure Decision-making Principles' (July 2018).

Unsuccessful candidates see at best some reimbursement of these costs and must price this risk into the bid for the project and future bids. This necessary process is a financial and time cost that can be reduced for an industry that is already facing profitability and productivity challenges.



B. Lengthy Tender Timelines

When the tendering and bidding processes are longer than necessary, resources and skills are tied up until resolution. Additionally, work packages may be unappealing to contractors if the cost of bidding and riskiness of delivery are higher than potential returns or alternative jobs.

In dissuading participation, competition and value for money is also threatened from a funder's perspective.

Tender costs typically make up 1.00–1.25% of project value, and up to 2.5% for complex tenders. Faster short list definition can be achieved through simpler and lower cost processes. Additionally, clear and thorough identification of scope of works and risks is needed before a project is put out to tender to reduce time spent on bid development and revisions.

While variation in projects requires variation in contracts, a consistent range of solutions is feasible which links the ideal procurement model to the risk profile faced.

SOLUTIONS

A. Procurement Model Selection

Procurement model selection in response to the risk profile presented is one of the key determinants in managing risk allocation and driving positive outcomes. Depending on the nature or complexity of the project, certain approaches are better at allocating risk to the party that is best placed to identify it in planning and deal with it in rollout.

It may be necessary to collaborate with industry at early stages if expertise and specialisation means the contractors are the more appropriate party to manage risk. Ideally this results in better specified projects with less risk and shorter tendering times.

B. Streamlining the Tender Process

Streamlining the tendering process can benefit from a few practical considerations:

- The involvement of industry partners in the planning stage for risk identification and optimal delivery methods.
- Shedding of repetitive bureaucratic and administrative processes for initial bidding stages.
- Shortlisting is the key stage for industry participants and should optimally be simpler and faster to reach. Ideally this allows for participation in the maximum range of bids while reducing costs related to tendering.
- More consistently and broadly publish prioritisation of cost and non-cost factors for individual projects.
- Move towards a suite of standardised contracts which include a range of procurement models.
- Reform, here, requires a centralised approach with public procurers best placed to lead harmonisation across Federal, state, and local government.

5.3 Risk Allocation



ISSUE

A. Unfair Risk Allocation

As discussed in previous points, inefficient allocation of risk is one of the most significant threats to the construction industry. Inappropriate handling of risk identification and responsibility can be detrimental to project delivery, budget concerns, productivity, and the financial viability of the industry.

Industry is increasingly being forced to assume greater risk in infrastructure contracts in order for funders to protect themselves. This can occur at the expense of fairness and efficiency overall, and contractors have very little bargaining power to counter these offers. A pipeline that is dominated by these styles of contracts is unsustainable and unattractive for firms to participate in.

As a consequence of higher risk derived from the work itself, firms are less willing to take on risk from other areas including training and skills development, R&D, and investment in innovation. Without the investment from industry into these areas, a cycle of productivity stagnation is entered and perpetuated.

Procurers suffer in this situation too, with methods of tackling engineering problems never improving in terms of cost or the quality of the end product being constrained. Funders may avoid risk by using models, but it does not eliminate risk. Risk is transferred to another party who may not be in the best position to manage it. This increases the chance of failure which drives the cost of infrastructure up across the sectors that engage in this behaviour.

Traditional procurement models generally result in concentrated contracts where one or very few packages are awarded to a single firm or a joint venture of firms. As infrastructure projects (particularly transport related) become much larger and more complex than ever before these contracts inherently become large and complex.

For a firm to accommodate such scope and risk they must be large, usually tier 1. This results in a concentration of work and risk to a handful of industry participants. Smaller firms with less capacity to absorb risk and ramp up quickly are left with smaller works or the specialised tasks outside of the capabilities of tier 1 firms.

SOLUTION

A. Collaborative Contracting Models

Collaborative arrangements have been used to appropriately distribute and manage risk across large and complicated works. Under this arrangement, all parties share in the successes and failures of delivery. This set up does not create incentive for any participant to shift risk to another. Rather, it promotes effective risk identification and cooperative approaches to overcoming hurdles.

Collaborative contracts must be genuinely considered when the circumstance warrants it. Simple approaches to this include early contractor involvement which engages contractors through the design and planning process to identify risks and advise on possible delivery methods.

Procurers could also take steps to streamline the tendering process through narrowing contractors down based on experience and capabilities relevant to the works. Opportunities to collaborate and negotiate would then be extended to these firms.



Procurers may be reluctant to adopt collaborative arrangements for a number of reasons:

- the need to relinquish some bargaining power to industry rather than the contractor being the price taker,
- prioritisation of short run outcomes like cost to deliver rather than broader benefits, and
- uncertain costs of delivery and perceived track records of previous alliances.

Well designed and implemented collaborative models may also have higher perceived cost than traditional set ups due to all risks being properly priced into the costs at the start than dealt with ad-hoc. Higher prices may also be a result of a higher quality product being approved, more commitment to training and skills development, or a more innovative solution being developed. All of these non-price benefits serve to reduce costs and improve productivity in future engagements.

Incentivising the genuine consideration of collaborative models means adjusting the mindset and priorities of the funders. Headline estimates of construction cost (which are often underestimated) must be given lower priority and greater weight allocated to non-price factors and whole of life cost.

These alternative key performance indicators could include:

- greater market participation and competition,
- local content prioritisation,
- increased training and upskilling on projects which yield long term benefits within the industry,
- worker conditions and diversity targets,
- achieving agreed delivery timeframes,
- minimising long-term operating and maintenance costs across the life of the asset, and
- use of new technology or innovative processes.

Diversification of works means better outcomes for SMEs, less concentrated risk on the tier 1 of the civil construction industry and improved economic returns to the Australian economy.

5.4 Industrial Relations

ISSUE

In addition to the three key challenges and opportunities with existing procurement practices outlined above, CCF is concerned that the following industrial relations instruments are imposing unnecessary red tape and legal risk on civil construction companies, those being, the [Queensland Best Practice Industry Conditions](#) ('BPIC') and the [ACT Secure Local Jobs Code](#) .

By way of background, BPIC has applied on a project-by-project basis at the state level and takes the form of a draft enterprise agreement containing specific employment conditions. CCF members have reported concerns with the BPIC with regards to freedom of association, coercion, jump up provisions, adverse action, and possible breaches of the Superannuation Guarantees provisions.

The Australian Building and Construction Commission has issued the following advisory on its website in relation to the Centenary Bridge Upgrade Project in Queensland, causing much angst and concern within industry: "*Contractors should be wary of the legal risks they face in tendering for projects to which BPP's (Best Practice Principles), in their current form apply*". Please click here for the advice: <https://www.abcc.gov.au/queensland-government-procurement-policy-best-practice-principles-bpps>.



Similarly, the ACT Government introduced the Secure Local Jobs Code in 2019 which requires any contractor who performs ACT government work, to hold a Secure Local Jobs Code certificate. This obligation extends to all subcontractors. To obtain and hold a certificate, contractors are required to implement workplace relations policies and practices, including in relation to enterprise bargaining agreements and workplace representatives or union delegates, which ultimately provide third parties (unions) with a role in the procurement process. This ACT Code requires contractors to be continuously assessing whether they are in breach of the Commonwealth 2016 Building Code, an additional impost on business.

As such CCF is concerned that the advice from the ABCC as mentioned above in relation to BPIC, and the Secure Local Jobs Code in the ACT could place the contractor at odds with the Commonwealth's *Code for the Tendering and Performance of Building Work 2016 (Building Code 2016)*, and the *Fair Work Act*.

SOLUTION

The CCF recommends the federal government should satisfy itself that the Queensland Best Practice Industry Conditions (BPIC) and the ACT Secure Local Jobs Code are not legally inconsistent with the Fair Work Act and Commonwealth's *Code for the Tendering and Performance of Building Work 2016 (Building Code 2016)*.

6. Challenges and Opportunities to Enhance Australia's Sovereign Industry Capability Including for Australian Owned Businesses

The ability to enhance Australia's sovereign capability is contingent upon addressing market and pipeline sustainability challenges to realise the full potential of an 'infrastructure-led recovery' and the economic and employment benefits that derive from it.

The CCF has been advocating to the Federal Government for procurement policy reform in relation to its \$110 billion infrastructure investment pipeline by imposing procurement criteria on all federal government funded/cofunded infrastructure projects with the express aim of greater allocation of project work to tier 2, tier 3, tier 4 and below local business.

To attract greater interest from local contractors on large projects, package sizes should be broken down (i.e., disaggregated) to suit the capacity of local contractors and local content provisions included in the tender criteria.

6.1 Supporting Locally Owned Civil Construction Companies

The CCF is advocating for policy settings that support the ongoing growth and development of the sector, both in terms of the number of businesses it supports and the sum of people it employs. This is particularly important in the context of COVID-19 and its associated economic challenges.

It follows therefore that the CCF encourages more project allocation to locally owned civil construction companies to support the economic growth of the sector. It is our view that this policy will deliver a greater multiplier effect to the Australian economy for every \$1 of taxpayers' money invested in infrastructure by supporting local jobs, providing more training and upskilling of local workers, and keeping profits and corporate overheads in local economies, all of which are critical in the post COVID-19 economic recovery strategy.



In summary, the CCF advocates for:

- A more balanced approach to government procurement allocation to the respective Tiers with a clear appreciation that Tier 1's are required for certain risk profile projects, and significant 'balance-sheet' projects.
- A sustainable level of project allocation to Tier 2 and below that recognises local content will result in additional benefits to the community including:
 - higher local employment opportunities,
 - increased and upskilled local workforce, and
 - higher economic growth in the local community, and local economic multiplier.
- A robust security of payments regime to ensure fair and equitable terms of payment for sub-contractors.

Disaggregating (or de-bundling) large infrastructure projects will help create the conditions to enable smaller contractors to grow into mid-tier contractors, and mid-tier contractors into tier 1 contractors. For example, the Australian Inland Rail project is providing greater opportunities for tier 2 and tier 3 contractors to win civil construction contracts thereby leaving the profits and overheads in Australia for Australians.

Industry super-owned IFM Investors recently released a report¹⁴ advocating disaggregation or debundling. IFM, which is owned by a number of Australian industry superannuation funds, is calling for major projects to be broken up into smaller packages, enabling them to be shovel-ready faster and allowing mid-tier contractors, not just large contractors, to compete in bidding processes.

The Australian civil infrastructure sector's ability to positively respond to increased infrastructure investment and a more balanced approach to procurement allocation across all tiers is demonstrated by data the CCF has obtained from its members regarding capacity and employment intentions.¹⁵

6.2 Key Challenges

The CCF supports an enhancement of Australia's sovereign industry capability that is contingent upon government and industry addressing the following key challenges:

- productivity outcomes,
- financial outcomes,
- pipeline conditions and capacity / capability,
- COVID-19 impacts, and
- workforce capacity / skills and training.

A. Productivity Outcomes

One of the key challenges facing the civil construction industry is worsening productivity.

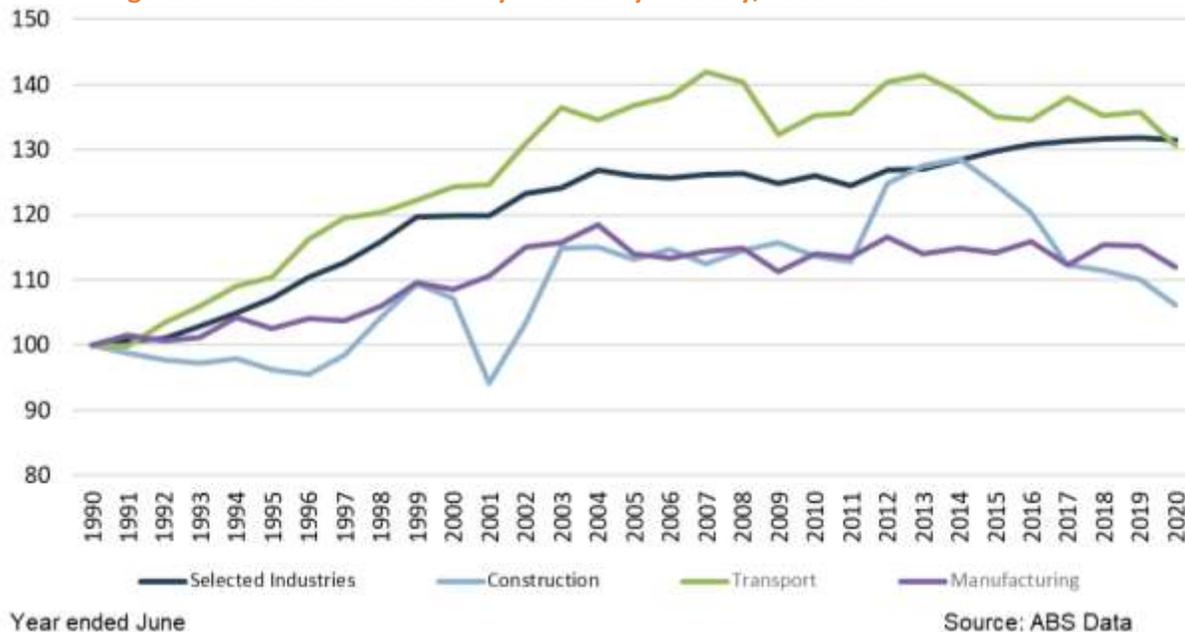
Poor industry financial outcomes together with difficult procurement and contractual conditions are impacting how industry and government work together to achieve efficiency outcomes, as shown in figure 6 below.

¹⁴ 'Building Australia Model', *IFM Investors* (July 2020) < https://www.ifminvestors.com/docs/default-source/insights/ifm-investors-insight---building-australian-model.pdf?sfvrsn=a802305_3>.

¹⁵ CCF COVID-19 Member Survey (n 6) 5.



Figure 6: Multifactor Productivity Indexes by Industry, 1990-2020¹⁶



The construction industry has lagged well behind all other sectors in terms of multifactor productivity growth since 1990. Construction productivity has grown just 0.2% per annum compared to 1.0% per annum for other industries (excluding manufacturing) and 0.5% per annum for manufacturing. Historically, short lived productivity gains have been difficult to sustain. Productivity in the construction industry today stands at levels seen in the late 1990s.

Falling productivity, by definition, means that more labour and capital is required to achieve a given level of output. This not only reduces capacity and capability but increases costs in delivering infrastructure. The low profitability / low productivity spiral impacts not just the financial sustainability of civil contracting businesses but also non-financial goals, including work/life balance, mental health, training and upskilling, and innovation itself (which is required for productivity growth).

Poor productivity growth results in infrastructure being more expensive to plan and deliver. For governments and private project owners this threatens value for money in infrastructure delivery and deteriorates community expectations of infrastructure access, quality, and the price of patronage.

The previous section identified a number of causes of poor productivity in the civil construction industry and proposed solutions to these challenges, those being:

- planning and risk identification,
- tendering process and procurement, and
- risk allocation.

Improving interactions between parties can help improve productivity, so too can enhancing contract design and building stronger industry relationships between industry participants, particularly on large,

¹⁶ ABS (2020), Estimates of Industry Multifactor Productivity, 2019-20, Cat. No. 5260.

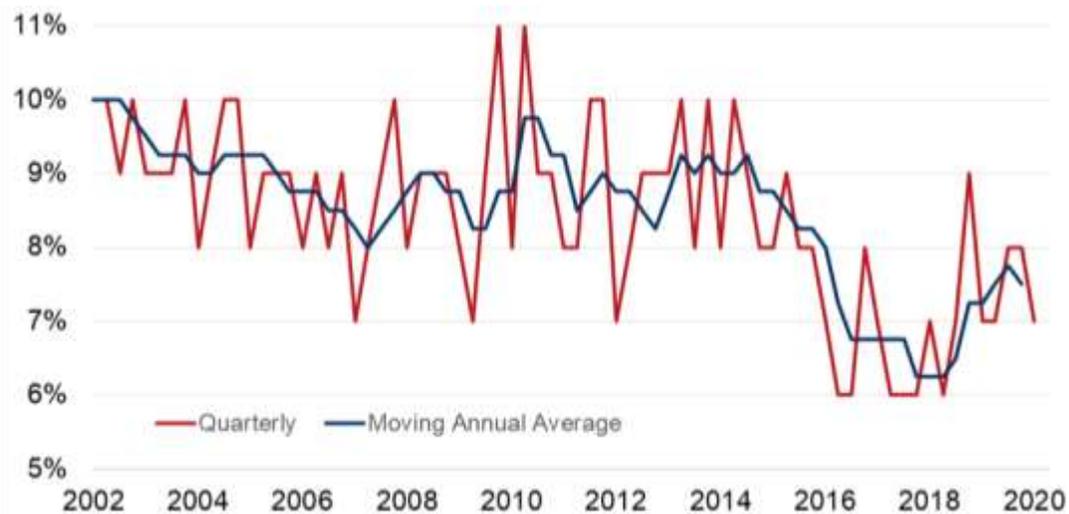
complex, and riskier projects. Addressing these issues will also assist in attracting new talent or technologies.



B. Financial Outcomes

In a synergistic spiral, weakening productivity has coincided with falling financial sustainability. Construction industry profits as a share of sales sharply receded between 2014 and 2018 before seeing a partial rebound in 2019. Engineering construction has been shown to have the lowest profitability of the construction related sub-sectors; 50% of building and one-third of construction services.

Figure 7: Construction Industry Gross Operating Profit to Sales Ratio, 2002-2019¹⁷



Financial sustainability is the cornerstone of wider industry outcomes. Tighter margins are prohibitive to training and innovation, as well as creating challenges for work/life balance and mental health measures.

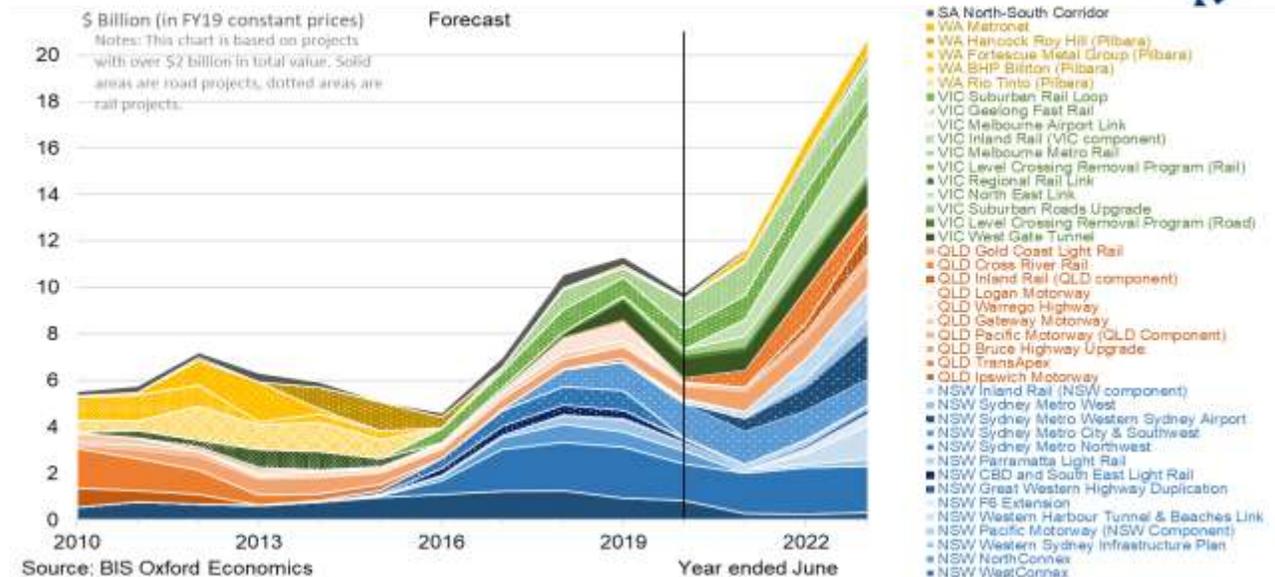
Like low productivity, financial stress is a barrier for new talent and investment. This is a critical issue given the increasing role played by the private sector in infrastructure delivery. In FY2019, the private sector delivered 83% of all transport and utilities infrastructure work in Australia, up from 44% in the mid-1980s.

C. Pipeline Conditions and Capacity / Capability

The pipeline itself presents challenging capacity/capability conditions that industry must contend with. The high cyclical nature of infrastructure rollouts often presents an unsustainable workload for contractors, with shortages of skills in upturns and loss of skills from the industry in downturns.

¹⁷ ABS (2021), Business Indicators, Australia, Cat. No. 5676, March 2021, Australia.

Figure 8: Major Transport Projects (over \$2bn), Australia¹⁸
 (Solid areas are road projects, dotted areas are rail project)



Additionally, the nature of the current projects making up the near-term pipeline are adding difficulty to delivery. A growing proportion of the engineering construction outlook, especially in roads and rail, is composed of multi-billion dollar megaprojects located in dense urban environments. This in turn puts pressure on the capacity constraints on tier 1 contractors when the project is ‘bundled’ as one package size.

ISSUE

From FY20 to FY23 the work done value of transport mega-projects alone is expected to nearly double. These projects are increasingly complex and risky driven by the need to contend with busy brownfield environments and multiple project partners and phases. Large urban transport projects, for example, require more underground works and tunnelling, and hence face more extensive interface challenges than conventional greenfield developments.

In terms of competition, the market for larger projects is becoming increasingly concentrated with the largest tier 1 firms consolidating market share. This is a consequence of the nature of the pipeline and a risk mitigation mind set from procurers. This has resulted in the award of multi-billion-dollar mega projects to tier 1 single contractors and joint ventures between the largest firms. These contracts often take the form of private public partnerships or managing contractor arrangements which see delivery risk borne heavily by the firms involved rather than the procurers.

Large single contracts can act as a barrier for market participation which restricts the ability for smaller firms to access the pipeline of work. The only work for smaller contractors in these deals is whatever is not performed in-house by the tier 1 firm and is allocated to specialists. As the pipeline becomes increasingly dominated by mega-projects, the prospects for non-tier 1 firms can be threatened.

SOLUTION

The CCF advocates that a key objective of procurement policy reform must be to deliver a more sustainable Australian civil construction industry by adopting a more balanced approach to project allocation.

¹⁸ Rebuilding Australia (n 2) 27.



Procurement initiatives to achieve this include:

- the disaggregation of contract size that foster broader competition and a sustainable contracting industry, both head contract and subcontract delivery methods,
- establishment of local participation requirements at employment and product source level, and
- a focus on contracting models that ensure more contracts are awarded to tier 2 and 3 contractors enabling them to secure more work and providing the opportunity to mature commercially.

D. COVID-19 Impacts

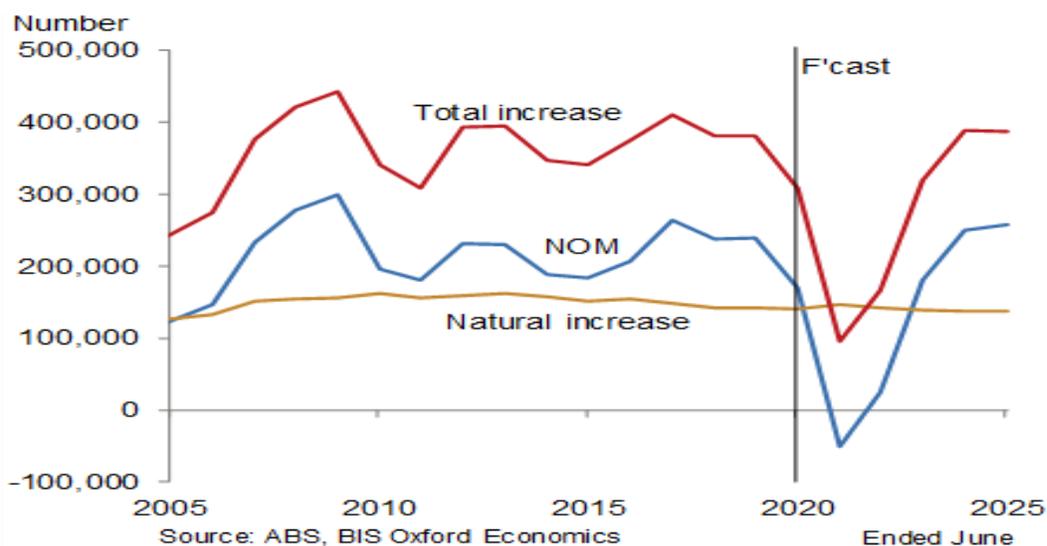
COVID-19 disrupted the civil construction market in FY20, albeit not as extensively as it impacted building markets, and there will likely continue to be impacts to infrastructure delivery over the medium term. In addition to the challenges mentioned above, industry must deal with the uncertainty associated with the global pandemic and policy responses.

Significant COVID-19 impacts include:

- Increased cyclicality over the short run. Weakness in FY20 was caused by a stalling of private sector funding and productivity losses from social distancing. This will likely be followed up by a period of sharp escalation driven by an existing ramp up in the pipeline combined with stimulus measures that are directed towards infrastructure.
- State and international border closures temporarily (and possibly structurally) disrupting material supply chains and the supply of skills.
- Domestically, skilled labour and equipment may face limited mobility in the face of snap lockdowns and border closures. Meanwhile, global supply chains of inputs and specialised equipment will likely remain a risk factor for both cost and timing of project delivery.

As compared to pre-pandemic forecasts Australia's population is expected to see 455,000 fewer people by June 2024, than in a 'no-COVID' world, due to migration restrictions. Recent data from the ABS shows that Australia's population declined in the September quarter of 2020, the first such decline for 104 years. Not only will this shrink the future pool of talent and skills, but a smaller population base will also likely see decreased demand for infrastructure assets in the longer run.

Figure 9: Components of Population Increase, Australia¹⁹



¹⁹ ABS (2021), National, state and territory population, Cat. No. 3101, September 2020, Australia.



E. Workforce Capacity / Skills and Training

Increased infrastructure investment must run in parallel with the need to increase the level of training, education and funding for up-skilling in the civil infrastructure sector.

The CCF notes a recent report by McKinsey & Company²⁰ that found Australia could potentially need an additional 260,000 to 385,000 infrastructure construction workers over the coming years if the projected infrastructure pipeline materialises, which could potentially be exacerbated by the coming ramp-up of mining production. The McKinsey Report also noted that bridging the gap will require better managing both the demand for workers and their supply, including upskilling the current workforce, reframing the culture of the industry to retain more talent, and seeking ways to increase the talent pool and train the future workforce.

Better managing the supply of workers in the industry hinges on ensuring apprentices, VET providers, and employers gain access to funding incentives provided by Federal and State Government.

Under Commonwealth Government's flagship program, the *Australian Apprenticeships Incentives Program* ('AAIP'), an apprentice undertaking a Certificate III or IV qualification that leads to an occupation listed on the *National Skills Needs List* ('NSNL') may be eligible for additional employer incentives and personal benefits including Support for Adult Australian Apprentices payments, Rural and Regional Skills Shortage incentives, and Trade Support Loans.

Unfortunately, in many cases a civil construction an apprentice, employer and training provider are ineligible for funding under the AAIP because a number of civil construction occupations were removed from the NSNL in 2012.²¹ These civil occupations need to be reinstated to the NSNL as a matter of urgency to ensure industry is not hampered in its efforts to deliver the Government's infrastructure agenda at both federal and state levels. Examples of occupations that need to be included on the NSNL include: including bridge, road and tunnel constructors, civil plant operators, pipe layers and line markers.

ISSUE

With strict and indefinite barriers for international supply of labour, there is an increase in emphasis to fulfil the civil construction industry skills needs through the development of the domestic labour pool.

SOLUTION

In order to ensure that the civil construction sector is able to take full advantage of government funded training initiatives, the Federal Government needs to reinstate civil occupations on the National Skills Needs List.

In addition, the federal Government should also acknowledge that private RTO's have a significant role to play in the VET sector as part of the overall skills strategy, and as such should be the recipient of any Federal Government financial incentive scheme.

²⁰ McKinsey & Company, 'Australia's Infrastructure Innovation Imperative' (September 2019).

²¹ 'The National Skills Needs List', *Australian Apprenticeships* (2019) <<https://www.australianapprenticeships.gov.au/sites/default/files/2019-06/NSNL%20Final.pdf>>.

7. Lessons Learned from other Australian Jurisdictions and Other Portfolio Areas, including Defence Industry Capability Approaches?



Victoria provides a very relevant and positive example of CCF's recommend collaborative approach to procurement reform outlined in Section 4.3 as follows.

Major Road Projects Victoria ('MRPV') is a dedicated government body charged with planning and delivering major road projects for Victoria. Future road upgrades will be progressively awarded to pre-qualified contractors using a new Program Delivery Approach ('PDA') model, with projects awarded based on the contractors' capability, capacity, past performance, and ability to deliver value-for-money solutions.

Construction and design companies were invited to join the MRPV Construction and Design Panels to fast-track procurement and get projects shovel ready sooner and there is an ongoing opportunity for new contractors and designers to join these panels.

The PDA approach features elements of the Alliance and Design and Construct (D&C) contracts with the express aim of achieving the best outcomes for MRPV projects by:

- creating a more sustainable contractor and design market
- reducing procurement time and costs
- better integrate project planning and project delivery
- improved collaboration and providing financial and future project opportunities.

Benefits for the construction market include:

- sustainable supply opportunities for small, medium, and large companies
- long-term competition
- improved cost certainty
- better allocation of risk pricing
- streamlined procurement processes.

8. Maximising Local Content Opportunities, including Leveraging Foreign Direct Investment

The CCF acknowledges the importance of the ongoing interest and involvement from foreign owned civil construction companies tendering for Australian civil construction projects, however, CCF supports a more balanced approach to the tender process to support industry sustainability and the broader national interest by maximising the return to the Australian economy of taxpayer funded civil construction projects.

The CCF's submission into the Federal Government review of the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* ('Bill') sets out our formal position regarding the ongoing involvement of foreign civil construction companies, whilst at the same time, maximizing local content opportunities and adhering to our international obligations.

The CCF's input into the draft Bill focused on the legislative framework applying to foreign owned contractors undertaking major civil infrastructure projects in Australia and our recommendations were provided in the context of Australia's deteriorating economic position as a result of the Coronavirus pandemic. To this end, we submitted two recommendations to the foreign investment reform review for consideration as follows:



Recommendation 1

The CCF encourages the Federal Government to use the Foreign Investment Review Framework reform process to achieve greater industry sustainability by adopting a more balanced project allocation policy. Examples of how this can be achieved include:

- disaggregation of contract size,
- procurement reform,
- establishment of local participation requirements at employment and product source level only, and
- a focus on contracting models to ensure tier 2 and 3 contractors secure more work and can mature.

Recommendation 2

That the Federal Government require all foreign owned companies tendering for major infrastructure projects to specifically and in detail demonstrate how they will:

- adequately reinvest into the Australian economy and thereby contributing to our economic recovery,
- demonstrate how they will contribute to the growth and sustainability of local contractors by either entering into a meaningful joint venture arrangement or by other means, and
- satisfy any specific concerns the Government has in relation to security or any other matter on the project.

In addition to these two recommendations, CCF also recommends that foreign owned companies should provide the necessary provide financial surety to ensure funds are available to settle all contractual or other obligations down the contracting chain.

9. Procurement Models

As discussed throughout this submission, the CCF supports procurement models that encourage and provide more scope for innovation and collaboration and promote early engagement with industry partners in the front-end loading, or planning / design phase of the project.

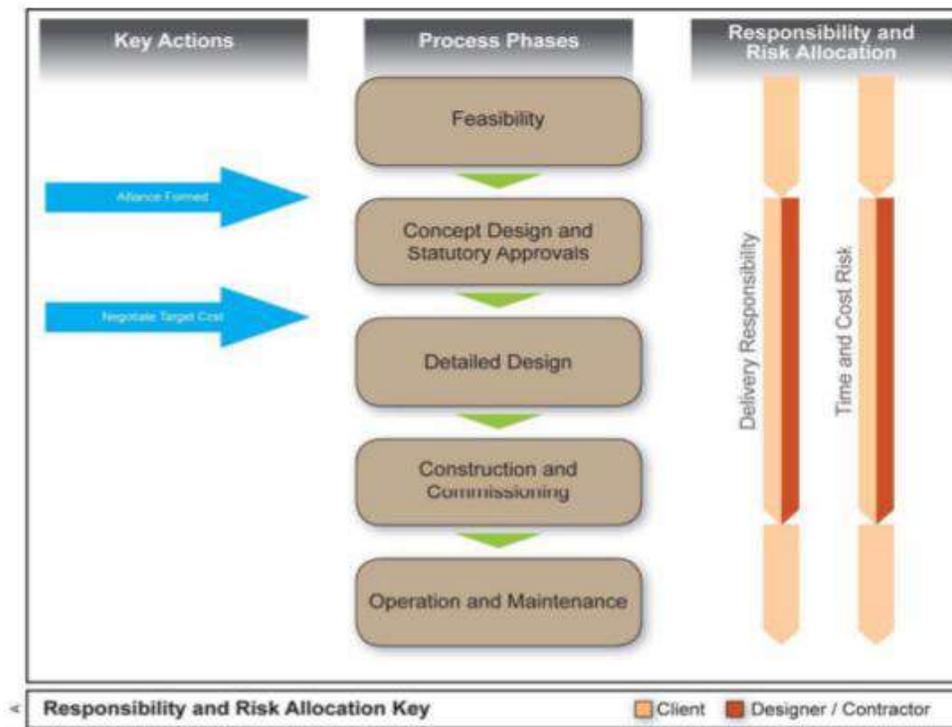
9.1 Alliance Procurement Model

The underlying principle of an Alliance Model is that the parties establish an agreement on the premise of a collective responsibility for delivering best for project outcomes and acceptance of the various types of risk by the Alliance member best able to manage them, thus reducing their likely impacts.

The Alliance team works collaboratively to deliver the project objectives in a 'no blame' environment underpinned by pain share / gain share. Once the Alliance parties have been selected by the client, the first step is the formulation of an interim agreement in respect of the actions required prior to construction commencing. The parties are then represented in the decision-making process as part of an Alliance Leadership Team ('ALT').

The project is ready for construction when all associated costs and other project criteria have been unanimously agreed upon by all of the members of the ALT.

Figure 10: Alliance Procurement Flow Diagram



Source: Aurecon (2009)

The flow diagram highlights the key client actions that are required during the procurement process and the party that is responsible for, and therefore allocated the risks associated with, project delivery, time, and cost for each phase of the procurement.

10. Recommendations

Infrastructure Spending

The CCF recommends that the Federal Government continue to fast-track spending on civil infrastructure from its \$110 billion 10 year rolling infrastructure investment pipeline as an ongoing measure to ensure continued viability of civil construction companies and to boost the economy during and post COVID-19.

That this fast tracked and ongoing spending be targeted at tier 2 companies and below given they have significant capacity to tender for additional infrastructure projects as evidence by the CCF COVID-19 Member Survey.²²

Debt Funding to Increase Infrastructure Investment

The CCF recommends that the federal government utilise debt funding for productive infrastructure investment over the medium to longer term whilst interest rates are at historically low levels to ensure the level of infrastructure spend over the 10–15-year investment pipeline is maintained as well business confidence.

²² CCF COVID-19 Member Survey (n 6).



In-House Capability of Procurement Agencies

To ensure procurement agencies have appropriately qualified and sufficient procurement staff to manage a timely and streamlined tender process, the CCF recommends state and territory procurement agencies be required to report their inhouse capabilities to manage all federally funded infrastructure projects through the National Partnership Agreement²³.

Best Practice Planning and Delivery

The CCF recommends that procurement agencies be required to adopt Infrastructure Australia's best practise for infrastructure planning and delivery guidelines, *Infrastructure Decision-making Principles* as a condition of federal government funding on all infrastructure projects.

Procurement Model Selection

The CCF recommends a more considered approach be taken by procurement agencies to procurement model selection as the risk profile presented on individual projects is a key determinant in managing risk allocation and driving positive outcomes.

Streamlining the Tender Process

The CCF recommends that procurement agencies be required to simplify their procurement processes where possible and to work more closely with civil construction companies via collaborative contract arrangements.

Further, that procurement agencies be required to provide annual performance reports detailing project delivery time to market on all federally funded infrastructure projects as a condition of federal funding.

Collaborative Contracting Models

The CCF recommends that collaborative contracts must be genuinely considered by procurement agencies when the circumstance warrants it.

Industrial Relations

The CCF recommends the federal government should satisfy itself that the Queensland Best Practice Industry Conditions (BPIC) and the ACT Secure Local Jobs Code are not legally inconsistent with the Fair Work Act and Commonwealth's *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016).

Supporting Locally Owned Civil Construction Companies

The CCF recommends that the Federal Government include the following conditions in the National Partnership Agreement with states/territories for all federally funded infrastructure projects:

- To disaggregate (or debundle) large projects where possible to foster broader competition and a more sustainable contracting industry at both head contractor and subcontractor levels.
- To include local content participation levels as a tender requirement at employment and product source level.
- To adopt contracting models that encourage greater participation from tier 2 and 3 head contractors enabling them to secure more work and providing the opportunity to mature commercially.
- Further, that the federal government conduct annual audits of procurement agencies on all federally funded infrastructure projects to measure the level of debundling and local participation rates.

²³ 'National Partnership Agreement and State Schedules', *Department of Infrastructure, Transport, Regional Development and Communications* (Web Page, 30 April 2021) <https://investment.infrastructure.gov.au/about/resources/national_partnership_agreement.aspx>.



The Federal, State/Territory Governments require all foreign owned companies tendering for major infrastructure projects to specifically and in detail demonstrate how they will:

- adequately reinvest into the Australian economy and thereby contributing to our economic recovery.
- demonstrate how they will contribute to the growth and sustainability of local contractors by either entering into a meaningful joint venture arrangement or by other means.
- satisfy any specific concerns the Government has in relation to security or any other matter on the project.
- all foreign owned companies provide financial surety as a tender criteria to ensure funds are available to settle all contractual or other obligations down the contracting chain.

Employment and Workforce Capability

The CCF recommends that the Federal Government reinstate civil occupations on the National Skills Needs List as a matter of urgency. In addition, the federal Government to include private Registered Training Organisations as recipients for all Federal Government VET funded financial incentive schemes.

11. Close

The Civil Contractors Federation formally tables this submission for Committee consideration and remains at the disposal of the Committee to provide further information and representation as requested.

Christopher Melham
Chief Executive Officer
Civil Contractors Federation National

20th July 2021