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Garnaut Climate Change Review  
Level 2, 1 Treasury Place  
Melbourne VIC 3002

## **Submission to Garnaut Review on ETS Discussion Paper of March 2008**

PB wishes to raise the issue of 'enforceability' of the proposed Emissions Trading Scheme (ETS).

Parsons Brinckerhoff Australia Pty Ltd (PB) is the 2,000-strong local arm of one of the world's largest engineering, environmental and project management consulting companies. Although it provides services across the full range of engineering and environmental management, PB is widely known for its expertise in the energy/power and transport sectors – Australia's top two greenhouse gas (GHG) emitting industry sectors.

PB is fully supportive of the proposed Emission Trading Scheme (ETS). We commend the Garnaut Review for the clear, logical and transparent manner in which it is undertaking its critically important work. PB agrees that a well-designed 'emissions market' is the best way to meet national GHG emission targets, whilst facilitating the most economically efficient use of the permitted emissions and promoting the development and uptake of new low or no emission technologies. However PB believe that a critical requirement of any ETS has not yet been addressed – the enforceability of the law that will underpin the scheme.

The Discussion Paper states that 'credibility' is one of five guiding principles of the ETS.

Whilst the overwhelming majority of organisations and individuals in sectors included in the ETS will fully comply with the ETS law, its credibility depends upon there being a regime in place to enforce the law and a high likelihood that those who breach the law will be caught and punished.

Under 'Governance', the Discussion Paper states that 'sound governance arrangements are necessary to issue permits and ensure that permits are acquitted in line with emissions.' There is considerable discussion about how permits should be issued, but nothing about how to make sure that emissions are matched by acquitted permits.

Under 'Compliance and penalties' it is stated that penalties will be set as a compliance mechanism. However, the issue of penalties is irrelevant unless there is a workable regime for enforcing the ETS law. As with other anti-pollution legislation, such a regime requires that workable arrangements and adequate resources are available to (1) detect possible breaches of the law, (2) investigate breaches, (3) collect legally-admissible evidence, (4) prosecute alleged breaches, and (5) achieve convictions.

PB is aware of just how difficult it is to achieve convictions for discharging pollutants into the environment. However, compared with enforcing the ETS law, enforcing pollution laws is easier because the:

- limited financial benefits of polluting make breaches infrequent
- pollutants discharged are usually detected by their chemistry, colour, miscibility and odour
- pollutants take some time and distance to fully disperse
- samples can generally be collected for analysis and use as evidence.

In contrast, an authority charged with enforcing the ETA law would face a far more difficult challenge in regard to greenhouse gas (GHG) emissions. This is because of the:

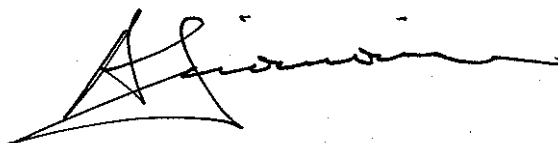
- very large financial benefits of emitting without acquitting sufficient permits
- inability to detect the GHGs, which are colourless and odourless
- immediate dispersal of GHGs upon their emission, and hence the
- inability to collect samples for analysis and use as evidence.

Even where it is conceded that GHGs are being emitted, the amount of GHG emitted – and hence the number of permits required to be purchased and acquitted – could be significantly under reported. Our understanding is that current technologies only allow the amount of GHG emitted to be estimated from measurements of the amount of fuel used and empirical relationships between fuel usage and GHG emitted. In the absence of a ‘whistleblower’, it is questioned whether such estimates would be sufficient for a court to convict.

If the NSW experience with water pollution controls is any guide, the issue of ‘enforceability’ can be expected to grow over time as ETS coverage is extended to more and more sectors. It was relatively straight forward to license and control pollution discharges from large highly-visible sources owned by the government or major corporations, but increasingly problematic as the controls were applied to smaller and smaller widely dispersed sources.

This submission has sought to demonstrate that ‘enforceability’ is a significant issue that goes to the heart of the credibility of an ETS. The issue of how the ETS law can be enforced was not mentioned in the Discussion Paper. PB urges the Garnaut Review to address this critical need.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Arek Sinanian', written over a faint, light-colored signature line.

**Arek Sinanian**

National Technical Executive, Climate Change  
Parsons Brinckerhoff Australia Pty Limited