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Economics
Legislation Committee

Energy Efficiency Opportunities (Repeal) Bill 2014 [Provisions]

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Senate Economics Legislation Committee

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Chapter 1
Introduction

Referral of the bill

1.1 The Energy Efficiency Opportunities (Repeal) Bill 2014 (the bill) was introduced in the House of Representatives on 15 May 2014. On the same day, the Senate adopted a report of the Selection of Bills Committee that recommended the provisions of the bill be referred immediately to the Senate Economics Legislation Committee for inquiry and report by 14 July 2014.[1] The bill was subsequently introduced into the Senate on 16 June 2014.[2]

Purpose of the bill

1.2 The purpose of the bill is to repeal the *Energy Efficiency Opportunities Act 2006* (the Act) in its entirety, effectively terminating the Energy Efficiency Opportunities (EEO) Program (the Program). The bill provides that the repeal of the Act will occur retrospectively on 29 June 2014 to ensure the Program is terminated on 30 June 2014.[3]

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website and invited a number of stakeholders to make submissions by 20 June 2014. The committee received 21 submissions, available on the committee's website.[4] The committee did not receive a submission from the Department of Industry or the Department of the Environment and notes that their contribution would have assisted the committee in its inquiry. The committee agreed not to hold a public hearing in relation to this inquiry.

Background

Establishment and operation of the EEO Program

1.4 In June 2004, the Australian Government published an Energy White Paper, *Securing Australia's Energy Future*, which cited evidence showing that Australia's energy efficiency performance had 'improved at less than half the rate of other countries'.[5] It attributed this poor performance to the following impediments:

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1 Selection of Bills Committee, *Report no. 5 of 2014*, 15 May 2014; *Journals of the Senate*, No. 29, 15 May 2014, pp. 818–820.

2 *Journals of the Senate*, No. 30, 16 June 2014, p. 876.

3 *Explanatory Memorandum*, p. [4]. See also Schedule 1, Energy Efficiency Opportunities (Repeal) Bill 2014.

4 See www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics

5 Australian Government, *Securing Australia's Energy Future* (June 2004), p. 106, citing International Energy Agency, *Energy use in Australia in an international perspective* (2001).

- lower energy prices in Australia, whereby it was less likely or rational for individuals or businesses to pursue energy efficiency opportunities;
- price signals and market arrangements that did not fully value the benefits from energy efficiency, either as a mechanism for addressing greenhouse emissions or reducing energy demand in response to higher prices;
- arrangements where energy users did not control their own costs, and had little incentive to manage energy use effectively; and
- a lack of information about energy efficiency opportunities and cultural barriers within firms, resulting in decision makers being unaware of potential commercial opportunities.[6]

1.5 The same White Paper announced that, following stakeholder consultation, the government would fund and develop a regime to ensure the largest energy users in Australia (mainly industrial firms) were required to assess their energy use and identify 'energy efficiency opportunities'.[7] It was envisaged that this measure would address a market failure relating to the availability and use of energy efficiency information and increase investment in energy efficiency opportunities that may otherwise be disregarded. Overall, the White Paper found that:

> The very largest energy users in Australia (those using more than 0.5 petajoules a year—around 250 firms) account for almost two-thirds of all energy used by business. These are mainly industrial firms but include a number in the commercial sector. Improving the uptake of commercial energy efficiency opportunities by these firms has the potential to significantly enhance economic welfare while reducing greenhouse emissions.[8]

1.6 In 2005, while the mandatory energy efficiency opportunities assessment was still being developed, the Productivity Commission conducted an inquiry into the economic and environmental potential offered by energy efficiency improvements. It reported similar barriers to the uptake of 'privately cost-effective energy efficiency opportunities' to those identified by the White Paper, outlined above. However, it had 'strong in principle reservations'[9] about the government's proposed policy response on the basis that energy intensive businesses already had strong incentives to use energy efficiently; that compliance costs would be significant; and that any benefits arising from the policy would be modest and more easily achieved through a voluntary program.[10] The report concluded:

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6 Australian Government, *Securing Australia's Energy Future* (June 2004), pp. 106–107.

7 Australian Government, *Securing Australia's Energy Future* (June 2004), pp. 112–113, 181.

8 Australian Government, *Securing Australia's Energy Future* (June 2004), p. 113.

9 Productivity Commission, *The Private Cost Effectiveness of Improving Energy Efficiency*, Report No. 36 (August 2005), p. 148.

10 See Productivity Commission, *The Private Cost Effectiveness of Improving Energy Efficiency*, Report No. 36 (August 2005), pp. 113–152.

> Currently, there are no programs, at the State, Territory or Australian Government level which mandate implementation of energy efficiency improvements on the grounds of private cost-effectiveness, nor is the Commission aware of any international programs which adopt this approach. The Victorian Environment Protection Authority Greenhouse Program incorporates mandatory assessment and implementation of energy saving opportunities by large energy using firms. However, the objective of that program is a reduction in greenhouse gas emissions, rather than achievement of cost-effective energy efficiency improvements.
>
> The Commission considers that the policy of requiring firms to undertake particular energy efficiency improvements could not be justified on private cost effectiveness grounds.[11]

1.7 In 2006, the Coalition Government proceeded with the policy response proposed in the White Paper, legislating and implementing the EEO Program.[12] The stated object of the Program was to 'improve the identification and evaluation of energy efficiency opportunities by large energy using businesses and, as a result, to encourage implementation of cost effective energy efficiency opportunities'.[13] The Program required large energy-using businesses:

(a) to undertake an assessment of their energy efficiency opportunities to a minimum standard in order to improve the way in which those opportunities were identified and evaluated; and

(b) to report publicly on the outcomes of that assessment in order to demonstrate to the community that those businesses were effectively managing their energy.[14]

1.8 Importantly, there was no requirement on participating organisations to implement any of the energy efficiency opportunities that they identified.

1.9 The Program, which operates in five year cycles, commenced on 1 July 2006 and is mandatory for organisations that, individually or as part of a corporate group, use over 0.5 petajoules (PJ) of energy annually.[15] During the first cycle, corporations were required to assess 80 per cent of their total baseline energy use and 100 per cent of sites that used more than 0.5 PJ of energy annually. In the second cycle, participating organisations were required to assess 90 per cent of their total baseline energy use, unless an exemption was granted.[16]

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11 See Productivity Commission, *The Private Cost Effectiveness of Improving Energy Efficiency*, Report No. 36 (August 2005), p. 151.

12 See *Energy Efficiency Opportunities Act 2006* and *Energy Efficiency Opportunities Regulations 2006.*

13 Section 3(1), *Energy Efficiency Opportunities Act 2006*.

14 Section 3(2), *Energy Efficiency Opportunities Act 2006*.

15 Sections 6-10, *Energy Efficiency Opportunities Act 2006*.

16 Department of Industry, *Energy Efficiency Opportunities Program—The First Five Years: 2006–11—Overview* (December 2013), pp. 1–2.

1.10 In July 2011, amendments were made to the Program to extend its applicability to: electricity generators; electricity and natural gas transmission and distribution network businesses; and new developments and expansion projects. Further amendments were made to the Program in July 2012 to allow energy users below the 0.5 PJ annual energy-use threshold to participate voluntarily.[17] As at 25 November 2013, over 300 corporations, from the manufacturing, mining, resource processing, electricity generation, transport and commercial sectors, were registered under the Program, accounting for approximately 65 per cent of Australia's total energy use.[18]

Mid-cycle and full-cycle reviews

1.11 In accordance with an evaluation timetable set out in the Explanatory Memorandum of the Energy Efficiency Opportunities Bill (2005), the Program was reviewed mid-cycle in November 2010 and at the conclusion of the first five-year cycle in May 2013.

1.12 The Mid-Cycle Review, undertaken three and a half years after the commencement of the Program, concluded that 'effective energy savings identification and implementation' was occurring under the Program.[19] This was supported 'by evidence of organisational change associated with the systems, procedures and behaviour of participating corporations'.[20]

1.13 The review did, however, consider barriers to implementing the program and found that they were 'generally internal barriers for corporations'. Respondents to a survey conducted as part of the review, identified the following major barriers:

- lack of time and resources;
- investment in energy efficiency projects being a low priority;
- lack of capital; and
- opportunities identified do not meet internal acceptance criteria.[21]

In the review's assessment:

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17 Department of Industry, *Energy Efficiency Opportunities—Context for the EEO Program*, 16 October 2013, http://energyefficiencyopportunities.gov.au/about-the-eeo-program/about-the-program/context-for-the-eeo-program/ (accessed 26 June 2014).

18 Department of Industry, *Energy Efficiency Opportunities – About the Program*, 25 November 2013, http://energyefficiencyopportunities.gov.au/about-the-eeo-program/about-the-program/ (accessed 26 June 2014).

19 Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010), p. 69.

20 Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010), p. 69.

21 Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010), p. 50.

> This is consistent with feedback gained from interviews in which a lack of capital, time and resources were cited by EEO coordinators as the main barriers to implementation. In addition, feedback from C-level executives of participating corporations (Ogilvy Earth, 2010) identified that 'energy efficiency' is not rated as highly as other investment decisions, rating equal third with 'research and development' and below 'new capital infrastructure' and 'new products'. One comment was that "(Energy efficiency projects) generally don't offer transformational opportunities for the business".[22]

1.14 The review noted further:

> The barriers to implementation were also reported as a reason for there being some disillusionment with the EEO program from some corporations interviewed, and an increased perception that the EEO program is a compliance exercise.[23]

1.15 The first full five-year cycle review, prepared by ACIL Tasman, an independent consulting firm, involved a desktop review, interviews and a survey to evaluate the effectiveness, efficiency and appropriateness of the EEO Program. A number of findings about the EEO Program and its impact were made, including the following:

- Energy efficiency understanding, focus and management had improved in most participating corporations.
- There was a reduction in nearly all barriers to the uptake of cost effective energy efficiency opportunities, though this could be attributed to a range of drivers.
- A proportion of the energy savings (88.8 PJ) net financial benefits ($808 million per year) reported from opportunities to be implemented were attributable to the EEO Program. While challenging to quantify, the Program was responsible for approximately 40 per cent of the energy efficiency improvements in the Australian industrial sector over the lifetime of the Program.
- The best available estimate suggested the Program was likely to be responsible for approximately 20 per cent of energy efficiency improvements achieved if continued for a second cycle.
- The Program was cost-efficient and had achieved a high degree of compliance, using a supportive rather than punitive approach to assessment and verification.[24]

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22 Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010), p. 50.

23 Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010), p. 54.

24 ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation—Final Report* (April 2013), pp. 93–94.

1.16 Even so, it should be noted that ACIL Tasman drew attention to compliance costs:

> The survey and interviews identified that aligning EEO assessment and reporting compliance requirements with internal business systems creates inefficiencies for many corporations through duplication and diverting available resources away from energy management. Some respondents also noted that that the requirement to follow the key EEO Program requirements meant that assessments were completed in a manner that was less sophisticated than other business improvement activities, were less integrated and received less support from management. For corporations with sophisticated business improvement programs, the prescriptiveness of key EEO Program requirements may lead to a continuation of the view that the EEO Program is merely a compliance activity.[25]

1.17 The evaluation also referred to the 'high level of prescription in the assessment, planning and reporting of opportunities' as a 'key tension in the EEO Program'. In its view, this problem stemmed from the 'prescriptive Assessment Framework and other elements of the Regulations that simultaneously seek to provide guidance to corporations and compliance assurance to Government'.[26]

1.18 The ACIL Tasman review recommended that the second full cycle of the EEO Program be completed. It also recommended the implementation of alternative compliance mechanisms, greater clarity on negotiable aspects of compliance requirements, and the adoption of a whole-of-government approach to industry energy efficiency policy and program development.[27]

Decision to terminate the EEO Program

1.19 The *2013-14 Mid-Year Economic and Fiscal Outlook* (MYEFO), published on 17 December 2013, announced the termination of funding for the EEO Program from 1 July 2014. This proposal was consistent with government's 'election commitment to repeal the carbon tax and associated measures'.[28] The bill's Explanatory Memorandum summarises the government's justification for ending the Program:

> The Energy Efficiency Opportunities Program has been successful. It has lifted energy management capability and awareness significantly with many corporations reporting that key elements of the program are now standard business practice. With energy productivity now core business for many

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25 ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation—Final Report* (April 2013), p. 95.

26 ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation—Final Report* (April 2013), p. 96.

27 ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation—Final Report* (April 2013), pp. 95–97.

28 The Honourable J.B. Hockey MP, Treasurer, and Senator the Honourable Mathias Cormann, Minister for Finance, *2013-14 Mid-Year Economic and Fiscal Outlook* (December 2013), p. 145.

> Australian industries, industry is best placed to define the right processes and make decisions on how best to manage energy within their businesses. The energy market has also changed—increasing energy prices, in particular electricity, have been the driver for better energy management. The need for such a regulatory response to improve energy management is no longer required.[29]

1.20 A Regulation Impact Statement (RIS), *Encouraging Energy Efficiency Activity in Australian Industry: removal unnecessary regulation*, produced by the Department of Industry and attached to the bill's Explanatory Memorandum, provides further insight into the government's decision to terminate the Program. In light of the government's commitment to repealing unnecessary regulation of Australian industry, the RIS analyses the costs and benefits of retaining, reforming and repealing the Program. It concludes that the EEO Program had 'successfully embedded energy management practices in many of the companies it covered', and that there were 'still significant gains to be made in industrial energy efficiency and productivity'.[30] However, it recommends the repeal of the Program for the following reasons:

- Market forces, particularly high and rising energy prices, would be a more effective mechanism for achieving improved energy efficiency across industry in the future. [31]
- With the EEO Program having successfully embedded energy management practices in many of the companies it covered, companies were now better equipped to manage their energy use and therefore take decisions to best suit their needs. Further, the ongoing benefits of EEO Program were expected to decrease significantly.[32]
- The removal of the EEO Program would reduce compliance costs to industry by $17.7 million per year, enabling businesses to better allocate time and resources to energy efficiency activities rather than compliance tasks.[33]
- There were now a range of state and territory, as well as federal, legislative programs that focus on achieving similar outcomes as the EEO Program, and as such it was an unnecessary duplication of regulation.[34]
- The 2014 Energy White Paper was exploring options and recommendations for improving energy efficiency and productivity, and the proposed Emissions Reduction Fund would help businesses and industry to take direct action to reduce emissions and improve their energy efficiency.[35]

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29 Explanatory Memorandum, p. [4].

30 Explanatory Memorandum, p. [30].

31 Explanatory Memorandum, pp. [13, 30–31].

32 Explanatory Memorandum, pp. [14, 30].

33 Explanatory Memorandum, pp. [21, 30].

34 Explanatory Memorandum, pp. [13–18, 30].

35 Explanatory Memorandum, pp. [18–19].

1.21 The RIS rejects the option to reform the Program, by reducing compliance costs, for similar reasons to those outlined above. It notes that if energy prices were to decrease in the future, there would be no need to reintroduce the Program because 'a significant proportion of businesses have developed improved capacity to address energy management as part of the overall productivity of the business'. Furthermore, it suggests that 'supporting information would still be made available for those businesses that wished to access it'.[36]

1.22 The RIS indicates that its conclusions were informed by 'extensive stakeholder discussions over the life of the EEO Program including in relation to the program review', as well as through the more recent consultation processes in relation to the 2014 Energy White Paper (Department of Industry) and Emissions Reduction Fund White Paper (Department of the Environment).[37] It is notable that the RIS does not cite the recommendation in the ACIL Tasman Review that the Program continue, but rather focuses on industry feedback that supports repeal of the Program for the reasons outlined above.

Support for participants of the EEO Program following its proposed termination

1.23 The government has committed to provide ongoing access to resources and information provided under the EEO Program on its website to participants and other interested organisations. This will continue until the resources and information are determined to be out of date.[38]

1.24 The government has also indicated that, if implemented, the Emissions Reduction Fund will support industry to reduce emissions and improve energy efficiency.[39] The Emissions Reduction Fund is a key element of the government's election commitment to reduce carbon emissions and is intended to commence following the repeal of the carbon tax. It would allow businesses, local governments, community organisations and individuals to 'undertake approved emissions reduction projects and to seek funding from the government for those projects through a reverse auction or other purchasing process'.[40]

Financial savings, regulatory impact and human rights issues

1.25 The bill's Financial Impact Statement indicates that, as noted earlier, repealing the EEO Program 'will save industry $17.7 million annually'.[41] The RIS notes that this figure refers only to compliance costs saved by industry and assumes that other,

36 Explanatory Memorandum, p. [14].

37 Explanatory Memorandum, p. [6].

38 Explanatory Memorandum, p. [6].

39 Explanatory Memorandum, p. [18].

40 Explanatory Memorandum, Carbon Credits (Carbon Farming Initiative) Amendment Bill 2014, Background.

41 Explanatory Memorandum, p. [1].

quite significant, industry savings, made by implementing energy efficiency opportunities, were not driven by the Program itself.[42]

1.26 The provisions of the bill commence retrospectively on 29 June 2014 to ensure that companies and stakeholders do not undertake compliance activities after this date. The Explanatory Memorandum states that the retrospective commencement of the bill would not disadvantage any person because repeal of the EEO Program would be beneficial in nature, as it removes the obligation to undertake compliance activities. As such, it is considered that the bill is compatible with human rights and does not raise any human rights issues.[43]

Structure of this report

1.27 The report is structured in two chapters—this introductory chapter, which has provided background on the EEO Program and the context for its termination; and chapter 2, which discusses issues raised by the submissions received.

Acknowledgements

1.28 The committee thanks those organisations and individuals who made submissions.

42 Explanatory Memorandum, p. [26].

43 Explanatory Memorandum, p. [2].

Chapter 2
Key provisions of the bill and issues raised

Key provisions of the bill

2.1 The provisions of the Energy Efficiency Opportunities (Repeal) Bill 2014 (the bill) will terminate the EEO Program in its entirety. Section 2 of the bill states that the provisions will operate retrospectively to 29 June 2014, in order to close the Program, ceasing all obligations under it, as of that date.

Issues raised

2.2 The committee received 21 submissions, including from high energy-using businesses, industry bodies and other stakeholders. Submissions were evenly divided between those in support of the bill and those in opposition. As previously stated, the committee did not receive a submission from the Department of Industry or the Department of Environment. The following sections summarise the major points raised in submissions, either supporting or opposing the bill. A number of submissions also suggested reforms to the EEO Program, while some highlighted other initiatives proposed by the government (such as the Emissions Reduction Fund), which was argued would more effectively achieve energy savings.

Support for the bill

2.3 The 11 submissions received in support of the bill were authored by high-energy-using businesses and the industry associations that represent them. Reasons given in support of the bill essentially reflected those outlined in the bill's Explanatory Memorandum and Regulation Impact Statement (RIS), as summarised in Chapter 1.[1]

Redundancy of the EEO Program and high energy costs as the primary driver of energy efficiency

2.4 All submissions received in support of the bill argued that high—and increasing—energy prices have motivated and equipped industry to identify and implement energy efficiency opportunities. They understand that the profitability of high-energy using businesses was very directly and significantly affected by the effectiveness of internal processes designed to achieve this efficiency. For example, the Australian Industry Greenhouse Network argued that energy efficiency investment was 'a business decision and not an area for government intervention'.[2] In its view:

> …investment in energy efficiency is fundamentally a business decision, which is impacted by a wide range of considerations. In an environment of rising energy costs, examining the cost-effective use of energy is an

1 A confidential submission is included in this number.

2 *Submission 10*, p. 2.

> indispensable part of business management, which both large energy producers and large energy users undertake as a matter of course.[3]

2.5 Likewise, Rio Tinto Alcan Bauxite and Alumina suggested that strong incentives already exist for large industrial energy users to manage energy at existing sites and design and construct energy efficient projects. Furthermore, it noted that, independent of government laws and regulations, commercial realities drive energy intensive businesses.[4]

2.6 Adding to this point, a number of submissions highlighted that the energy market in Australia was now significantly different from when the EEO Program commenced in 2006, with Australian industry currently facing some of the highest energy prices in the world.[5]

2.7 Noting its involvement in the development of the EEO Program, the Minerals Council of Australia was of the view that the Program was now unnecessary. It argued that '[t]o the extent that the prescriptions laid out in the [*Energy Efficiency Opportunities Act 2006*] had a benefit, the intervention has run its course'.[6] In support of this view, it pointed to the following evidence:

> …[I]n the Government's own survey of the scheme, conducted by ACIL Tasman in 2013, businesses listed energy costs (72 per cent) and cost reduction strategies (80 per cent), rather than the EEO program (32 per cent) as the main driver of energy efficiency initiatives in their operations. The main barrier to converting opportunities into projects was the availability of capital (70 per cent) rather than any perceived lack of importance of energy efficiency to the firm (10 per cent).[7]

2.8 In this context, some submitters contended that the Program had become redundant, merely duplicating and complicating existing business processes focused on reducing energy costs. As one submission argued:

> Businesses must consider several factors in determining how to invest limited capital, and energy costs have formed a significant part of the decision-making process in the last ten years…[The EEO Program] requires reporting and evidence based on these decisions, but not the investment in energy saving; that is driven by market forces. As such [the EEO Program] effectively duplicates a business-as-usual process. On paper, energy savings

3 *Submission 10*, pp. 2–3.

4 *Submission 13*, p. 1.

5 See, e.g., Major Energy Users Inc, *Submission 2*, pp. 1-2; Australian Industry Greenhouse Network, *Submission 10*, p. 2; Chevron Australia Pty Ltd, *Submission 19*, p. 2 ('…[R]eal energy prices for industry in Australia have increased by almost 34 per cent from 2005 to 2012.').

6 *Submission 5*, p 2.

7 *Submission 5*, p. 2.

> may appear to be due to this government program, but it is market and cost pressure that has achieved efficiency gains.[8]

2.9 Related to the point above, some submissions suggested that the purported success of the EEO Program could be questioned on the basis that it was not possible to demonstrate a clear and direct link between the Program and actual energy savings achieved by industry. For example, Chevron Australia submitted the following:

> Chevron Australia has long argued that in reporting energy savings, firms should be able to differentiate between those savings realised [through] the firm's internal practices and those which had been identified only because of the existence of the EEO [Program]. Such a differentiation would enable a transparent assessment of the true value of the EEO [Program] to be made. Unless such differentiated reporting is allowed, the energy and cost savings reported under the EEO [Program] should not be equated with the success of the program.[9]

2.10 Others argued that the Program ignored the fact that businesses made decisions about whether to implement energy efficiency opportunities by taking into account the combined cost of a range of inputs—not just energy efficiency. The Australian Industry Greenhouse Network, for example, maintained that:

> As a general rule, higher energy efficiency equals better performance and profitability, but this does not mean that every opportunity to invest in energy efficiency can, or should, be realised. If improving energy efficiency is foregone in favour of more cost-effective opportunities in other areas, this is a rational decision in the best interests of the business. It is not a reflection of market or information failure for a company not to prioritise investment in energy use, but rather it reflects a rational, context-driven perspective that it will seek to maximise return on investment.[10]

Burdensome compliance costs to business and government

2.11 The second major issue highlighted by all submissions in support of the bill was that the costs of complying with the EEO Program were serving as an additional burden on industry, duplicating and unnecessarily complicating existing business processes.

2.12 For example, Brickworks Limited, one of Australia's largest manufacturers, noted that compliance with the EEO Program was actually hampering efforts to pursue its own 'highly successful energy efficiency innovation program':

> In order to comply with the EEO program legislation, Brickworks must undertake expensive annual energy audits of all of its plants to identify energy efficiency opportunities. Brickworks must then report its findings publically, and include information on project costs, paybacks and the quantum of energy savings. The annual report must then be signed off by

8 Wilmar Sugar Australia Limited, *Submission 3*, p. 1.

9 *Submission 19*, p. 2.

10 *Submission 10*, p. 3.

> the Brickworks Board. There is no obligation to actually implement the energy efficiency opportunities identified in the audits. This process means Brickworks must retain a full time staff member, as well as spend time moulding its own energy efficiency monitoring—conducted by specialist staff at plant and kiln level—to ensure it complies.[11]

2.13 The Australian Industry Greenhouse Network noted that a number of its members had reported that the administrative and implementation costs of compliance with the Program were in the order of several million dollars for some businesses and yet no investments had been made as a result of participating in the Program that would not have otherwise been made.[12]

2.14 The submission from Major Energy Users Inc. further demonstrated how the EEO Program reporting requirements could be burdensome on participating businesses:

> Few projects are implemented specifically for improving energy efficiency although many can result in achieving this outcome. Further, many of the projects that are implemented are small in size and often integrated with other activities or driven by reasons other than for energy efficiency, even though they do deliver greater efficiency. This makes accessing data and costs specifically for energy efficiency outcomes often quite complex and time consuming.[13]

2.15 In a similar vein, Kwinana Industries Council noted:

> The requirement for external reporting is therefore simply an additional cost burden on industry created by the bureaucrats, otherwise referred to as red tape. The cost of red tape on industry is onerous, and because industry provides the reports, they have to be read, assessed and reported on by the bureaucrats. Often the focus on the effect of red tape is directed at business, but there is an opportunity to focus on the cost of self-imposed red tape on government as well.[14]

2.16 In essence, the business cost of compliance with the Act operates as an economic debit offset against the existing benefits accrued by businesses. They constantly implement economically viable energy efficiency initiatives identified as part of their own internal continuous improvement processes.

2.17 Several submissions reiterated the point made by Kwinana Industries Council that the government, too, faced increased costs in administering a scheme that, in their view, was no longer necessary.[15]

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11 *Submission 7*, p. 2.

12 *Submission 10*, p. 3.

13 *Submission 2*, p. 2.

14 *Submission 1*, p. 2.

15 See, e.g., Kwinana Industries Council, *Submission 1*, p. 2; Australian Industry Greenhouse Network, *Submission 11*, p. 2; Rio Tinto Aluminium Limited, *Submission 13*, p .1.

Opposition to the bill

2.18 The committee received 10 submissions opposing the bill and in favour of retaining the EEO Program. These submissions primarily came from relevant research institutes and stakeholders, including those who were involved in the design of the EEO Program and/or provided consultancy services to businesses participating in the Program. They disputed a number of the claims made in the bill's Explanatory Memorandum and RIS, instead contending that the EEO Program directly provided significant energy and financial savings to industry, as well as other benefits, and would continue to do so in the future.

Evidence of additional energy savings and net financial savings

2.19 Submissions in opposition to the bill highlighted that various reviews of the EEO Program had found it to be both effective and successful in achieving its stated objective.[16] A number of submissions also noted that the Program had been recognised by Maria van der Hoeven, Executive Director of the International Energy Agency, as a 'leading-edge example of how best to reduce energy use and improve energy management systems'.[17] In particular, reference was often made to the 2013 ACIL Tasman Review and its findings, outlined in Chapter 1, as well as its recommendation that the EEO Program continue for a second cycle. In essence, these submissions argued that there was strong evidence that businesses participating in the EEO Program had achieved energy and financial savings in addition to what they would have achieved without the Program and that these savings outweighed any compliance costs.

2.20 ClimateWorks Australia, a research institute, cited its own research to further support the contention that the EEO Program had been successful:

> In research conducted by ClimateWorks Australia on the energy savings enabled by the Energy Efficiency Opportunities (EEO) program in its first cycle and proposed second cycle, it was identified the program had been successful in enabling an additional 35 PJ of energy savings in the industrial sector compared to what would have occurred without the program. The results of this analysis showed additional energy savings enabled by EEO account for around 41% of all energy savings achieved in the sector, with additional energy savings delivering a net annual financial savings of $291 million.[18]

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16 Submissions cited the following reviews and reports: ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation—Final Report* (April 2013); ClimateWorks Australia, *Energy Efficiency Opportunities Program Additionality Analysis—Technical Report* (April 2013); Department of Industry, *Energy Efficiency Opportunities Program—The First Five Years: 2006-11—Overview* (December 2013); Department of Resources Energy and Tourism, *Energy Efficiency Opportunities Program: Mid-Cycle Review—Final Report* (December 2010).

17 See, e.g., Mr Alan Pears AM, *Submission 4*, p. 4; Energy Efficiency Council, *Submission 14*, p. 1.

18 *Submission 17*, p. 2, citing ClimateWorks Australia, *Energy Efficiency Opportunities Program Additionality Analysis—Technical Report* (April 2013).

Future energy and financial savings to be gained

2.21 Many submissions opposing the bill highlighted findings in the ACIL Tasman Review (and other reviews) that the EEO Program had not yet achieved an optimal level of business management of energy efficiency and that future energy and financial savings were attainable. For example, the Energy Efficiency Council argued that '[w]hile many energy users have significantly improved their energy management capability, the majority still have gaps in their core capabilities'.[19] ClimateWorks Australia, citing its own research and the ACIL Tasman Review, submitted that 'there is still considerable room for improvement in the majority of companies in the EEO Program' and that 'in the absence of a replacement, there is [a] risk that some of the energy related capabilities developed…will be eroded before becoming fully embedded'.[20]

2.22 The point was made that increasing energy costs actually indicated an ongoing need for the EEO Program, contrary to claims by industry and the government that high energy costs were the primary driver for energy efficiency savings.[21] The Australian National University Energy Change Institute (ECI) and Climate Change Institute (CCI) submitted that these claims ignore 'the fact that many informational and organisational failures and skills gaps still exist':[22]

> We maintain that reversion to previous behaviour will occur if the EEO Program is not continued, and that because of the significant gains already achieved, ongoing compliance costs will be relatively low. Gains in present energy efficiency will cost less than delaying efficiency gains into the future, when more expensive measures will be required to rapidly reduce emissions.[23]

2.23 Mr Alan Pears AM, an energy efficiency expert, maintained that energy prices were only one factor affecting the pursuit of energy efficiency and that it was wrong to assume businesses would 'optimally pursue energy efficiency in its cost-benefit analysis'.[24] Senvion, a wind energy supplier, similarly argued that the EEO Program was still relevant in the context of rising energy prices:

> [T]he ACIL Tasman review took rising energy prices into account and found that the EEO could be expected to still deliver an additional 15 PJ of savings. Importantly this analysis assumed the introduction of a carbon price, and given that this is not going ahead then further savings could be expected. The policy has a healthy financial return ratio of 3.67, indicating

19 *Submission 14*, p. 1.

20 *Submission 17*, p. 7.

21 See, e.g., Energy Efficiency Council, *Submission 14*, p. 2; Energetics Pty Ltd, *Submission 9*, pp. 1–2.

22 *Submission 16*, p. 2.

23 Australian National University Energy Change Institute and Climate Change Institute, *Submission 16*, p. 2.

24 *Submission 4*, p. 15.

> a strong return to Australian businesses that implemented savings identified through the EEO [Program].[25]

2.24 Assuming industry would continue to find energy savings under the EEO Program, a number of submissions queried the conclusions made in the RIS that industry would save $17.7 million per year if the EEO Program were to be repealed.[26] For example, in his submission, Mr Pears rejected the findings of the modelling set out in the bill's RIS, arguing that incorrect figures in the RIS were used to justify this particular claim:

> The [Explanatory Memorandum's] analysis of future costs and benefits of EEO assumes that repeal will lead to no reduction in achievement of energy savings, on the grounds that firms now have the capacity and the incentive to continue to act at the present level. That is, continuing [the EEO Program] will deliver ZERO additional energy savings relative to repeal while ongoing compliance costs are expected to increase. … No significant evidence is provided in the [Explanatory Memorandum] to support this assumption.[27]

2.25 Further, some submissions noted that the RIS appeared to inflate the compliance costs used in the modelling it produced.[28] However, Mr Pears suggested that '[t]his higher cost of compliance seems to be coincident with broadening of the scheme to include electricity generators and new development projects'. He argued that this may 'unfairly distort perceptions of compliance costs for the majority of participants' as '[t]he lifetime value of savings during design and construction of new developments is likely to be much larger than for existing businesses'.[29]

Benefits other than energy efficiency savings

2.26 Some submissions that rejected the proposal to terminate the EEO Program highlighted the benefits that the Program had delivered, and would continue to deliver, to participants beyond energy efficiency savings.[30] Many of these benefits related to improvements in the internal processes, structures, and tools utilised by a participating business, which in turn resulted in better productivity, work culture, communication, safety, management effectiveness, product quality, and so on. Mr Pears also

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25 *Submission 6*, p. 2.

26 See, e.g., Energy Efficiency Council, *Submission 14*, p. 2; Australian National University Energy Change Institute and Climate Change Institute, *Submission 16*, pp. 3–4.

27 *Submission 4*, p. 6.

28 See, e.g., Mr Alan Pears AM, *Submission 4*, p. 7; Energy Efficiency Council, *Submission 14*, p. 2.

29 *Submission 4*, p. 7.

30 See Energetics Pty Ltd, *Submission 9*, p. 1; Mr Alan Pears AM, *Submission 4*, p. 10; ClimateWorks Australia, *Submission 17*, p. 3, citing ClimateWorks Australia, *Tracking Progress Towards a Low Carbon Economy: Special Report on Factors Influencing Large Industrial Energy Efficiency* (July 2013).

highlighted the benefits of the public reporting requirement under the EEO Program, both to the businesses themselves, as well as to shareholders and the public.[31]

Proposals to reform the EEO Program

2.27 A number of submissions suggested that the EEO Program should be reformed, rather than repealed, with a view to reducing compliance costs. A common theme in these proposals was to amend the Program to support a path for companies to opt out during the 2nd cycle provided they had developed satisfactory energy management practices.[32] Other suggestions included, creating more flexible reporting mechanisms and requirements,[33] and requiring the implementation of projects that fall within agreed payback parameters.[34]

Support for alternative measures

2.28 Some submissions suggested that it was actually a lack of capital, particularly in adverse economic circumstances, that prevented high energy-using businesses from investing in energy efficiency opportunities and that the EEO Program did not address this.[35] On this basis, it was argued that the government's proposed Emissions Reduction Fund would be a more appropriate policy measure to motivate industry, beyond existing drivers, to reduce energy costs. It was claimed that this would encourage investment in what would otherwise be discretionary projects.[36]

2.29 However, a submission from WWF-Australia, a conservation organisation, expressed concern that 'projects that may have occurred under the EEO program without government funding—because their paybacks were sufficiently attractive to businesses—will now be funded under the proposed [Emissions Reduction Fund]'.[37]

Committee view

2.30 The committee acknowledges the benefits and successes of the EEO Program to date. The ACIL Tasman Review indicated that it was likely that industry made additional energy savings because of the Program. However, the same review highlighted that quantifying the exact figure was both exceedingly difficult and

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31 *Submission 4*, p. 13.

32 See, e.g., Energetics Pty Ltd, *Submission 9*, p. 2; Energy Efficiency Council, *Submission 14*, p. 2.

33 Energy Efficiency Council, *Submission 14*, p. 2.

34 *Submission 15*, p. 2.

35 See, e.g., Minerals Council of Australia, *Submission 5*, p. 2; Major Energy Users Inc., *Submission 2*, p. 2.

36 See, e.g., Major Energy Users Inc., *Submission 2*, p. 2; Australian Industry Greenhouse Network, *Submission 10*, p.3; Australian Petroleum Production & Exploration Association Limited, *Submission 20*, p. 2.

37 *Submission 15*, p. 2.

contentious.[38] The Program was introduced at a time when energy prices were much lower and many businesses had not yet established rigorous processes for identifying energy efficiency opportunities. Industry today faces a vastly different regulatory environment, significantly higher energy prices, and is increasingly equipped with internal processes to identify energy efficiency savings.

2.31 The main point of contention between those in support of the bill and those opposing it was whether the EEO Program had directly resulted in additional energy efficiency savings for participants and would continue to do so in the future. This is a complex debate giving rise to very different perspectives on the merits or otherwise of the Program. However, it is clear to the committee that any future gains to be made under the Program, if they exist, are much smaller and will reduce over time. In these circumstances, the committee is of the view that the burden of compliance costs on industry under the Program must be addressed as a priority. Feedback from industry strongly supports this course of action and is reflected in the bill's RIS, the ACIL Tasman Review, and all submissions received in support of the bill.

2.32 The committee highlights that businesses may still access energy efficiency information under the EEO Program until it becomes out of date. Further, if the government's proposed Emissions Reduction Fund is successfully implemented, businesses will be supported to overcome barriers to investment in energy efficiency opportunities, rather than just being forced to identify them.

2.33 In the current climate of high energy prices and following eight years of improved energy efficiencies in the industry, the committee is confident that repealing the EEO Program is both cost-effective and the best policy. Should energy prices decline in the future, industry will be well-equipped to maintain its existing energy efficiencies and continue to use internal processes to identify energy efficiency opportunities.

Recommendation

2.34 The committee recommends that the bill be passed.

Senator Sean Edwards

Chair

38 See ACIL Tasman, *Energy Efficiency Opportunities Program End of First Full Five Year Cycle Evaluation – Final Report* (April 2013), pp. 56-67. ACIL Tasman noted in its report that its 'preferred approach' to calculating the attribution of additionality to the EEO Program was to use a 'time series analysis', but that this could not be achieved with the available data.

Dissenting Report by the Australian Greens

1.1 The Australian Greens do not support the repeal of the *Energy Efficiencies Opportunities Act 2006* (the Act) and are deeply disappointed that the Labor party is facilitating the government's legislative hostility towards action on global warming.

1.2 There are many well-known barriers to firms (and households) implementing energy efficient opportunities. In order to chip away at these barriers, the Act requires 190 firms with massive energy inputs to publicly report on where savings could be made to their energy use and therefore their cost structures. The Act promotes firms to realise what financial savings could be made by implementing their assessments.

1.3 The Act should be strengthened to make it mandatory to implement energy efficiency opportunities for projects that are covered by a two year payback which grows over time and that the energy use threshold gradually lowers to apply to more companies over time. This was in line with the proposed amendments put forward by the Greens when the original bill was first debated.

1.4 Arguably, there would be no such need for the Act with a capped market in greenhouse gas emissions that drives the market to solve their own problems in innovative and cost-effective methods. However, because the government intends to replace Australia's existing Emissions Trading Scheme with a government controlled grants program which picks the biggest polluters to award money to, there is still a strong case for the Act's retention.

1.5 The Australian Greens realise that the dismantling of the Act is a necessary precursor to fulfil the government's indefatigable policy of corporate welfare. Firms cannot apply for subsidies from the government under Direct Action if they are not additional to what is already required under legislation. Australia's largest polluters will now be able to do what they were going to do anyway under the *Energy Efficiency Opportunities Act 2006*, but will now receive taxpayer's money for their projects.

1.6 The current scheme operates at little cost to government, it has a cost-benefit ratio of 1:3, it will drive innovation, reduce costs for businesses and reduce emissions for the Australian community.

1.7 The only reasons the government intends to repeal the Act is because it places a small compliance on huge businesses, but more importantly because the government is committed to arrest the rapid decline in energy demand that has occurred since 2009-10 in order to prop up its associates in the failing fossil fuel generation sector.

Recommendation

1.8 For these concise reasons, the Australian Greens recommend opposing the Energy Efficiency Opportunities (Repeal) Bill 2014.

Senator Christine Milne

Senator for Tasmania

APPENDIX

Submissions received

Submission Number	Submitter
1	Kwinana Industries Council
2	Major Energy Users Inc.
3	Wilmar Sugar Australia Limited
4	Mr Alan Pears AM
5	Minerals Council of Australia
6	Senvion Australia
7	Brickworks Limited
8	Cement Industry Federation
9	Energetics Pty Ltd
10	Australian Industry Greenhouse Network
11	Australian Aluminium Council
12	Ms Mary Voice
13	Rio Tinto Alcan Bauxite and Alumina
14	Energy Efficiency Council
15	WWF-Australia
16	Australian National University - Energy Change Institute and Climate Change Institute
17	ClimateWorks Australia
18	Sustainable Business Pty Ltd
19	Chevron Australia Pty Ltd
20	Australian Petroleum Production and Exploration Association
21	Confidential