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

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].