

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 publicly, 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

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

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

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

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.

