



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

ECONOMICS LEGISLATION COMMITTEE

Reference: Energy Efficiency Opportunities Bill 2005

FRIDAY, 28 OCTOBER 2005

SYDNEY

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SENATE
ECONOMICS LEGISLATION COMMITTEE

Friday, 28 October 2005

Members: Senator Brandis (*Chair*), Senator Stephens (*Deputy Chair*), Senators Chapman, Murray, Watson and Webber

Substitute members: Senator George Campbell for Senator Stephens and Senator Allison for Senator Murray

Participating members: Senators Abetz, Adams, Bartlett, Boswell, Bob Brown, George Campbell, Carr, Colbeck, Conroy, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fifield, Forshaw, Hogg, Joyce, Kirk, Lightfoot, Ludwig, Lundy, Marshall, Mason, McGauran, Milne, Murray, O'Brien, Parry, Payne, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja and Wong

Senators in attendance: Senator Brandis (*Chair*), Senators G. Campbell and Milne

Terms of reference for the inquiry:

Energy Efficiency Opportunities Bill 2005

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Committee met at 9.41 am

CHAIR (Senator Brandis)—We are here this morning to take evidence on the provisions of the Energy Efficiency Opportunities Bill 2005. On 5 October 2005, the Senate referred the provisions of the bill to the committee for enquiry and report by 7 November 2005. The bill implements the government's policy outlined in the Energy white paper to require large energy users to undertake assessments of energy efficiency opportunities every five years. Before we begin taking evidence, I remind you that parliamentary privilege protection applies to witnesses appearing before the committee. That is, the special rights and immunities necessary for discharge of parliamentary functions without obstruction, or fear of prosecution. Any act by any person that operates to the disadvantage of the witness because of their evidence before this committee may be a breach of privilege. I also remind witnesses and committee members, that witnesses have the right to request to have all or part of their evidence heard in private. Witnesses may also object to answering a question in circumstances that are consistent with the Senate's privilege rules. I also remind witnesses that giving false or misleading evidence to the committee may constitute contempt of the Senate.

[9.42 am]

RITCHIE, Mr Stuart John, Sustainable Development Policy Manager, Cement Industry Federation

CHAIR—Welcome. I invite you to make a short opening statement, if you wish, after which the members of the committee will ask you questions.

Mr Ritchie—The Cement Industry Federation represents the three major Australian cement producers in Australia, and has been an active member of the Australian government's Greenhouse Challenge Plus, achieving a significant reduction in greenhouse gas abatement. In summary, maintaining absolute emissions of greenhouse gases at least at our 1990 baseline, while at the same time increasing our production by 22 per cent. From an efficiency perspective, this is equivalent to a 21 per cent reduction of specific emissions per tonne of product.

The Cement Industry Federation recognises the need for and supports mandatory government programs aimed at improving energy efficiency and reducing greenhouse gas emissions. Our principal concerns with the proposed legislation is the additional impost on industry where competing programs impact on the same targets, rather than expanding the reach of existing programs. Differing program triggers and particularly in this legislation, program entity definitions, can have this effect. These effects are also multiplied where state governments additionally impose similar programs. These competing programs simply increase the administrative burden, and will not achieve additional stated benefits. With only three industry competitors in our federation, and again being high energy users, maintaining the commercial confidence of energy data is critical for us. The issues raised in our submission in relation to corporate entity reporting and officer confidentiality provisions are therefore also important.

While not critical given the current structure of the cement industry in Australia, we believe that the requirement for report sign off by the chairman may not be the most effective means of obtaining the intent of this provision, and may unnecessarily duplicate clause 290 of the Corporations Law requirement for environmental compliance sign off. Practically, we do not believe that this will achieve the intent of raising energy efficiency measures within a corporation.

We are also concerned with the inclusion of open ended clauses pertaining to as yet un-drafted regulations, particularly in relation to information requirements to be contained within registers, public reports and assessment plans. We believe that the bill should be more precise in placing definitive limits on such requirements. Thank you.

CHAIR—Thanks very much Mr Ritchie. Can I just ask you a couple of things? The core of this bill as I read it, is part 5, the assessment plan, the obligation to prepare and lodge an assessment plan. Is that right?

Mr Ritchie—That is correct.

CHAIR—You say on page 2 of your submission:

We believe that there is a need for greenhouse abatement action, but that voluntary, early-movers should not be penalised by overlapping mandatory programs, and request that consideration be given to better integrating voluntary and mandatory programs.

I understand your complaint is that members of the industry that you represent have been very proactive in greenhouse abatement action. They are good corporate citizens, have voluntarily undertaken a range of measures, and that it is burdensome to them to impose this obligation upon them. Is that your basic argument?

Mr Ritchie—I perhaps would not go so far as to say burdensome. We believe that the intent of this legislation can be incorporated within the methodology that we use as an industry.

CHAIR—Yes. I am just struggling to see why there is a problem for you. If you have a good suite of measures to abate greenhouse gas emissions which you assume voluntarily, that is your abatement plan, is it not? Can you just lodge that in satisfaction of your obligations under part 5 of the bill?

Mr Ritchie—That is correct. We do those things already, and we are prepared to do those under this legislation. Our concern is that when it comes to the public reporting provisions specifically, the reason we have a facilitated Greenhouse Challenge Plus agreement is to protect the confidentiality of our members, so we report publicly in an aggregate manner.

CHAIR—So your real concern is not over regulation, but protection of commercially sensitive information?

Mr Ritchie—That is correct.

CHAIR—All right. One other question: you point out that the bill leaves a lot to the regulations—and reading it, it strikes me that it leaves an astonishing amount to the regulations—are you familiar with any other bill that regulates or governs your industry, where so much is left to regulations rather than to obligations imposed transparently by the statute itself?

Mr Ritchie—My experience has been that where a significant amount of requirements are left to regulations, that usually they are presented at a similar time and we can see the detail of those regulations.

CHAIR—Have draft regulations not been promulgated to your knowledge, as far as you are aware?

Mr Ritchie—That is correct.

CHAIR—Has there been any suggestion from the department that your industry would be consulted in the preparation of draft regulations?

Mr Ritchie—Yes, and that consultation has commenced.

CHAIR—It has, all right, thank you.

Senator GEORGE CAMPBELL—Mr Ritchie, the organisations you represent, do they have overseas arms of their companies?

Mr Ritchie—There is some overseas ownership in those companies, but in terms of them controlling overseas operations that is not currently the case.

Senator GEORGE CAMPBELL—Do you not have any overseas affiliates?

Mr Ritchie—No.

Senator GEORGE CAMPBELL—What are the views of your organisation in respect to emissions trading?

Mr Ritchie—At this point in time we believe that voluntary technology measures are the most appropriate manner in which to address greenhouse gas emissions. At this point, we do not favour an emissions trading scheme.

Senator GEORGE CAMPBELL—You do not favour a regime where emissions trading can take place

Mr Ritchie—Our principal concern in relation to emissions trading programs or carbon pricing of some sort, is that as a trade exposed industry we believe that there needs to be some boundary measures put in place to protect Australian industry. We believe that were there to be some trading program, that simply we would see cement production moving off shore to non-annexure 1 countries and in Kyoto terms, with no greenhouse benefit globally.

Senator GEORGE CAMPBELL—Right. Have you done any research into this issue of emissions trading?

Mr Ritchie—Yes we have.

Senator GEORGE CAMPBELL—Is that public?

Mr Ritchie—I do not believe so.

Senator GEORGE CAMPBELL—Is it possible to make it available to the committee?

Mr Ritchie—Yes, I could look at that and see what we have.

Senator GEORGE CAMPBELL—Thank you.

Senator MILNE—I do note the 21 per cent reduction per tonne of product and that is terrific to see. The work that you are doing with the government's Greenhouse Challenge program, unfortunately not all industries are as proactive in terms of trying to address the issues that we are trying to address as a nation. I am interested in exploring a bit more the matter that Senator Brandis talked to you about, and that is you are already involved with your voluntary commitments under the Greenhouse Challenge and certain regulatory requirements. There are state programs in place, in Victoria you have mandatory requirements; in New South Wales, different requirements, and now the Commonwealth will have different requirements again, and you have your voluntary requirement with the Greenhouse Challenge. What would you put forward as a way of resolving the several stages of compliance within the regulatory framework? What would you do about it if you were in our position?

Mr Ritchie—From the state position I think it is very difficult to answer that question. From this legislation specifically, I guess we believe that there is scope to provide some greater flexibility in the way that you define entities or corporations under this legislation. The intent of the legislation is to provide energy efficiency improvements, and we agree with that.

Senator MILNE—Yes.

Mr Ritchie—The original white paper requirement simply says that companies will undertake energy efficiency assessments. Unfortunately, I think when you take that word ‘company’ and turn it into legislation; you need to define the word ‘company’ in easily measured ways. We believe that there could be some flexibility approaches, be that through ministerial discretion or some other means drafted into what you call an entity. We completely understand the need to protect the intent of the legislation by ensuring that corporations do not disaggregate to a point that they fall under a trigger threshold. In our case, all of our members understand that they fall within the triggers, so there is no debate about whether we are included. We concede that we are in and we are happy to cooperate. However, we are particularly concerned about the confidentiality provisions, and reporting publicly.

CHAIR—What about part 2? Does that not help you? That sets out the obligations of companies extending to members of corporate groups in an orthodox way. I cannot see why there would be any greater confusion about the entity upon whom the obligation lays here, than there would be in any other statute governing the obligations of a company.

Mr Ritchie—I think there is a differentiation there between the compliance requirements. Again, we would be willing to have a disaggregated approach, so a corporate approach, to the compliance requirements. However, when it comes down to the public reporting, the interpretation that we are currently getting from consultation with the department, is that that will have to be on a company basis, and very explicit.

Senator MILNE—In terms of discussion around this bill, Victoria of course has the regime where you not only have to report, but you have to take action on the basis of that reporting. This legislation requires only the audit and reporting, not the action that is required. In your view, how has the Victorian scheme worked as far as your industry is concerned? Of that reduction that has been achieved, what percentage has been achieved by virtue of the approach that Victoria has taken compared with elsewhere where your entities operate?

Mr Ritchie—I think where you have a number of overlapping mechanisms occurring, it is arbitrary as to where you assign those savings. We would say as an industry federation, because we have been in Greenhouse Challenge since 1997, that that has been the central program—

Senator MILNE—The driver.

Mr Ritchie—that our members have followed. What our members have had to do is individually deal with those state measures typically in the same manner, but again it adds to their reporting burden each time one of these schemes come in. Again, it also threatens the commercial aspects.

Senator MILNE—Can I just follow up? You talk about it in terms of reporting burden, and I understand that in terms of several regimes to report on. What I am trying to establish here is that the Victorian system requires action; your industry in Victoria has had to comply with that action of reporting and then taking the action. Now that it has done so, has there been the demonstrated cost savings to the industry over time from having that regularly environment in place?

Mr Ritchie—Not that we could outline. In terms of cost savings, that is not something that we report on from the individual programs. We rely on, as this legislation does, if an efficiency improvement or greenhouse reduction is seen through some program, that the individual company will look at the cost effectiveness of that and either implement it or not. In terms of can we see a cost effective benefit, to date those measures have only been undertaken because they have been considered within the scoring method of that individual company to be cost effective.

CHAIR—I am sorry, perhaps I am making too much of this, but I am struggling to see what your problem is about where the obligation lies. You have spoken to the department, may be you should speak to your lawyers. The obligation lies upon registered corporations. The obligation to register lies upon what are called controlling corporations, and controlling corporations are defined by the act as ‘constitutional corporations which do not have a holding company incorporated in Australia and are covered by subsection (2)’. Subsection (2) says that a corporation is covered by this section unless the corporation’s activities are mainly in the electricity generation, electricity and gas transmission or electricity and gas distribution sectors, and it is within a class or corporation specified in the regulations. There is a capacity for the regulations to exempt

coverage of the act by regulation, but unless there is an exemption, and unless you fall within the explicit exclusion for the electricity and gas industries, you are in. What is the problem with knowing upon whom the obligation lays?

Mr Ritchie—That is fine. We understand that we are in, and we understand that our individual members are in.

CHAIR—But I thought one of your concerns was that you were unsure about which entity bore the obligation. Well the obligation is borne by the controlling corporation, and that is a defined term.

Mr Ritchie—I think that is clear. Our concern is that, again, when it comes to public reporting, that if our individual members need to report publicly then we lose the benefits that we have as a federation representing our members, and reporting in an aggregate manner for our—

CHAIR—That is because you are an industry association.

Mr Ritchie—That is right. We are not a controlling—

CHAIR—The industry association is not the group that reports of course.

Senator MILNE—No.

CHAIR—All right, thank you. Sorry, did you want to say anything else?

Mr Ritchie—Can I table an example of the public reporting that we do, as well as—and it is not perhaps an efficiency assessment—but we have forecast the profile of the industry out to 2012 and out to 2030, and that may be of value to the committee.

CHAIR—Certainly. George, are you happy to receive that?

Senator MILNE—Yes, that is fine.

CHAIR—Thank you Mr Ritchie.

Senator MILNE—Can I ask for a response before you go? You mentioned you do not think the chairman signing off is an appropriate thing to do, can you elaborate on that?

Mr Ritchie—It is not specific to our industry yet, but we understand that there are some specific issues where you have large corporations where controlling boards sit internationally. In terms of the intent of the legislation, we believe this is more an issue for operational management rather than the chair of the board, and that the focus should be at about the level of CEO. We believe that would be more effective, as we understand the intent of the legislation to be to facilitate information exchange at high levels within an organisation.

Senator MILNE—You are assuming from that that boards do not need to be focused on the energy efficiency of their companies?

Mr Ritchie—No. My reference to the Corporations Law is that there is already provision that boards needs to report and sign off on their compliance with significant environmental legislation, and that this would fall under that provision already. At the end of the day, the chairman of a board will, in such a case as this, rely on the chief executive officer to present to the board that they actually comply with the legislation. Therefore, in terms of implementing efficiency opportunities, we believe that it is more appropriate for a CEO to direct that through the organisation.

CHAIR—Can they not both sign? Who signs off on the accounts in public companies—is it the CEO, the chairman of the board, or the chief financial officer?

Mr Ritchie—I am not a hundred per cent sure. I think it goes to the chair of the board.

CHAIR—Okay.

Mr Ritchie—That is certainly the case in our instance.

CHAIR—Thank you Mr Ritchie.

[10.03 am]

MORAN, Dr Alan John, Director, Deregulation Unit, Institute of Public Affairs

CHAIR—Welcome. Would you like to make a short opening statement?

Dr Moran—You have received our submission. We see the bill as being part of a suite of energy saving measures. The genesis of these measures was the 1970s nostrums of the Club of Rome, which were suggesting we were going to be running out of energy and a lot of other materials, which indeed would be depleted by now had their forecasts been correct. This switched over into the modern conditions of energy saving, which focused very much upon global warming, which is much more difficult to verify and quantify in terms of its effect than the previous concerns about running out of resources.

We do know the costs of the sorts of measures proposed, and in some cases implemented, are quite high, especially for an energy rich and energy dependent economy like Australia. In the past we have actually tried to estimate what the imposts are on the economy from the various measures that parliament has promulgated, and we came to a number of about \$1.7 billion a year, that is in terms of taxes and expenditures forced on companies. That excludes measures like the minimum energy performance standards for domestic appliances and other things. All of those sorts of measures are an attempt to insert a smarter or a cost effective way of reducing greenhouse gas emissions. They actually start from the premise that those tailoring the regulatory measures can do so more effectively than if it is a normal market signal, including a price.

There are several matters in the bill we do not address. Some of them have been mentioned already, like the provision for the chairman to sign off on the matter, and the provision for criminal penalties, both of which seem to be odd in a bill of this nature. Our focus is on more broad ranging issues. Firstly, we point to the anomaly that this new piece of regulation, one we regard as somewhat less warranted than most others, is being discussed at a time when the government has introduced its far reaching and high profile enquiry into red tape. The latter enquiry is designed, of course, to pair down the onerous requirements that the government has placed on business in terms of over regulation.

Secondly, we observed that over the past 30 years since the oil crisis, there has been a considerable reduction in the amount of energy used per unit of GDP. This has occurred in Australia in spite of the fact that there has been a migration to this country of energy efficient or energy utilising businesses, simply because energy is quite cheap here. Therefore, we think it is very unlikely that there is an energy gap in Australia, because this actually does mean that we have below par management. It is a very far-reaching statement if it is true.

We point also to the fact that low energy use is not a benefit, per se. It certainly is not a benefit if the achievements of lower energy use only occurs at the expense of other inputs which are more expensive. Indeed, the major facet of this bill is that it forces management to focus in particular on one facet of its management product mix. Hence, this means there will be a corresponding reduction in the focus on other issues that firms have to look at, and the net outcome is likely to be negative. In addition to that of course there is the creation of a new bureaucracy, which we think is of doubtful worth. We have the allocation of scarce resources of management allocated and diverted in this way.

Finally, the bill and its accompanying RIS are very dependent upon estimates of savings from a range of consultancy studies. Over many years government funding has enriched several firms, like Wilkenfeld and Energy Efficient Strategies, for the conduct of work in estimating energy saving free lunches if you like. We are just seeing—issued this week I think—the very rigorous assessment of these by the prime government review body, the Productivity Commission, which has said that they have very little merit. In fact, it says it in rather more guarded terms than that, but it does say that the improvements are not as cost effective for individual producers and consumers as it may seem once all the costs, including the opportunity costs of using the funds elsewhere, are considered. Few of the many perceived barriers and impediments are areas where government intervention is justified. This report to the PC is of course discussing the economy in general; here we are discussing some very specific firms. The comments that the PC makes about the economy in general would be far more applicable to the firms that we are considering in this bill, simply because they have professionals tasked with the idea of saving costs. Therefore, we would urge the bill not go forward.

CHAIR—Dr Moran, are you saying that there is not a problem in respect of greenhouse gas emissions, or, that there may be a problem, but a bill of this kind, for the reasons you rehearsed in the second part of your statement, is not an efficient way to address the problem; or are you saying both of those things?

Dr Moran—We are saying that we do not know if there is a problem on greenhouse gas emissions or not. We are not sure.

CHAIR—I do not pretend to know anything about this area of environmental policy, but a lot of credible people think there is. I do not mean to be rude, but do you speak with any credentials of expertise in relation to the science of this, or does your expertise lie in the assessment of the effect of regulation on businesses and on the economy?

Dr Moran—Yes, the latter. We do not claim any credentials.

CHAIR—You cannot really say anything about the science of this at all can you?

Dr Moran—No.

CHAIR—All right, thank you. One other thing Dr Moran, and I think you have mentioned this in your submission, as others do as well, the bill strikes me as relying extensively on regulations in the technical sense, that is subordinate legislation promulgated under the statute rather than setting out the obligations in the statute itself. Do you want to make a comment about that?

Dr Moran—I think there is a very interesting statement behind the question, that in fact it is very much an overarching regulatory bill with the details to be filled in later, and sort of ‘trust us’.

CHAIR—What do you think about that?

Dr Moran—I think it is poor governance basically. The parliament passes laws. The parliament should be responsible for the laws. It can come back of course through the scrutiny of regulations and acts, but that is not quite as rigorous as in the main bill.

CHAIR—From the point of view of the IPA—and I see you are the head of the deregulation unit of the IPA—is it your view that if there are to be obligations, they are obligations that ought to be embodied in the act itself rather than in delegated legislation?

Dr Moran—We would favour that ordinarily. The reason why you might go for the latter is if you have a very rapidly changing picture and you want to move things along the lines of the intent of parliament. I do not see that that is the case in this particular act.

CHAIR—You are right I suppose. I do not know if you were here when the last witness gave his evidence, but he said that presently a process of consultation between government and industry is used to fill in the details. I guess the flexibility of that dialogue and what it can produce is enhanced if it is embodied in regulation, because it can be more readily changed to meet dynamic circumstances. What do you think of that argument?

Dr Moran—I think there is a case for flexibility there. In this particular case, I am not quite sure that case is made. I do not really want to dwell too much on the mechanics of the particular bill, but it seems to me this matter is not swiftly changing. It is a matter on which the department has not finished consulting, therefore it is passing a bill and then coming back and sweeping out later, which does not seem to me to be good governance.

CHAIR—Thank you. Senator Campbell?

Senator GEORGE CAMPBELL—I have nothing more to say.

CHAIR—Senator Milne.

Senator MILNE—I am very interested. I would like you to tell me what the IPA’s position is on greenhouse. Senator Brandis did ask you that in the beginning, and I think it is critical we have on the record the IPA’s views about greenhouse, because obviously it underpins all your policy positions in relation to matters such as this. Do we have a problem with global warming? Is part of the problem human induced?

Dr Moran—It may or may not, but our position essentially is that we are not a scientific organisation. We read the literature, as many others do. We observe there are a large number of scientists who are estimating there will be increases because of human induced emissions of carbon dioxide. Those emissions are likely to be of the level of 1.7 degrees centigrade, and the feedback—which may be more or less; most people think mostly more—of a doubling of carbon dioxide. We have moved from there to ask about the implications in terms of our economy. What can be done about it? Our position is that very little is going to be done about it. If it is fully implemented, Kyoto reduces temperature increases over the next century by 0.1 degrees centigrade, and everybody is cheating, including Australia. There are issues in terms of the development of China and of India, who have said they will not implement any carbon reduction. We then go on to ask what

will be the implications of Australia taking measures of its own volition in terms of reducing greenhouse gas emissions, and what are the costs, and we start estimating those, and we like to put those before the public.

Senator MILNE—Have you looked at the cost of not implementing measures if in fact the scientific predictions are correct, and issues about disease such as dengue fever, issues about floods, fire and drought regimes being more intense, as the CSIRO puts out? Have you actually measured the cost to Australian business of not taking the action that people are trying to take?

Dr Moran—The answer is that nobody has measured those costs. There are certain assertions made. You mentioned dengue fever disease, which has been suggested that as we move more to the tropics, which is the global warming, that this will increase. It will increase because of the mosquitos, and I notice one is on my table here.

CHAIR—I think that is an ant.

Dr Moran—It has wings. Dengue fever is not a tropical disease. Dengue fever used to be called the ague, and was prevalent throughout Europe. It is associated with a mosquito born disease, not only in the tropics.

Senator MILNE—That is right.

Dr Moran—There are various other facets. I do not know whether there would be more floods or more pestilence generally. I do not think that anybody has estimated those things; they really are too difficult to do. All one can do is to say to get to that position is very costly and it is difficult to see sovereign nations doing so, and indeed I think Mr Blair, who has been a very strong proponent as you know of Kyoto until recently, has suggested that countries will not do this. We have to find another way.

Senator MILNE—The second point you made was that Australia has got cheap, plentiful energy. Do you assume that that is just going to continue?

Dr Moran—In terms of the brown coal for example, in Victoria, we have a thousand years supply. We have not even started looking for it. Yes, it will continue. There is plenty of black coal. In terms of carbon energy, that continues as far as the eye can see. We can build new power stations for electricity at \$30 or \$35 a megawatt hour, which is half the European, we can do that until kingdom come. It will continue.

Senator MILNE—You make the assumption there is cheap, plentiful energy, so you are assuming that the added greenhouse gas emissions from coal mining and coal fired power stations and so on, are externalities to business?

Dr Moran—Yes. So what? Why—

Senator MILNE—I appreciate your frankness in saying that you see cheap, plentiful energy as an ongoing capacity for Australia because you externalise the cost in terms of greenhouse gas emissions.

Dr Moran—Well I am not sure what the costs are. We have not estimated those costs. You have made some assertions about the costs. Some of them we know to be incorrect, like the dengue fever one, et cetera.

CHAIR—You assert to be incorrect.

Dr Moran—Well, no actually, that is quite well documented now, that particular case. I think yes, let somebody come up with the cost. I have never seen any; perhaps you have, Senator, I do not know. I have never seen any reputable agency in the world come up and say, well, here is what the cost will be. I think that would be an admirable thing for someone to do.

Senator MILNE—Perhaps the IPA.

Dr Moran—Perhaps if you gave us the money we would.

Senator MILNE—Just one more question. I am interested that you see energy efficiency measures as being totally from the point of view as a cost to business, rather than a win/win situation. It reduces cost to business in the long term, makes them more efficient and competitive, and is good for global climate as an offshoot, whether or not you have come from that assumption in the first place. There are companies like IBM, British Telecom, Alcan, Norske Canada, Bayer, DuPont and on and on it goes, who have saved billions from instituting energy efficiency programs.

We have just heard this morning from the cement industry who have been able to have a 21 per cent reduction per tonne of product from what they have done under the Greenhouse Challenge program. No doubt, those efficiencies also reflect in cost savings to their business. So let us ignore the climate and say it does not matter, why do you not take a perspective of increasing the capacity of business to reduce its own costs?

Dr Moran—I think that is great, that is what business should do, that is what business does do all the time. I think it is most unlikely that being forced to do this and being advised by public servants how to do it, that they will achieve any savings. The cement industry has made major savings, as you heard before in the previous discussion. It has made major savings because it is in its interests. It is a major user of energy. It is a major focus of management in that particular industry to actually reduce the amount of energy per unit of output, and quite rightly so. However, in other industries where energy is typically only say two per cent of your costs, then if you are allocating a lot of management time to that two per cent of your costs, when you could be looking instead at say labour costs or a better product or your transport costs, you are probably wasting management resources.

I agree with you fully that there are energy savings to be made in the normal course of business. We have seen over the last 30 years in particular very significant increases in output per unit of energy and we will see more of that. This bill is about an agency like this forcing such increases on firms which probably have very little of this fruit which is easy pickings.

CHAIR—Have you read the bill?

Dr Moran—Yes.

CHAIR—I suppose the core of your argument, Dr Moran, is probably clause 18(7), requirements for an assessment plan. The scheme of this bill is that it obliges relevant corporations to lodge a plan every five years in accordance with loosely defined criteria, but then under 18(7) the bill says, after setting out certain requisites for the plan, ‘The assessment plan must meet any extra requirements set out in the regulations’. In addition to the obligations imposed by the statute, there is a capacity to expose corporations to an unlimited and unknowable range of additional obligations by regulation. Is that the particular vice you would identify?

Dr Moran—I think so. It is bad enough that the government is forcing firms to focus on a particular facet of their business at the expense of other facets, but essentially those parts that you have just read out say to me that this is not a five-year plan, this is a one-year plan, perhaps a six-month plan. You are going to have people running around to these 300 or so firms, forcing them to undertake reporting matters on which everybody will be playing games. It will probably have no effect whatsoever, but if it does, it is at the expense of something else. Yes, it is going to convert a five-year plan to an annual plan.

CHAIR—I do not share all of your views about the undesirability of regulation, however it seems to me that the particular provision I have directed your attention to is the plainest example of overreach. It goes beyond the scheme of this bill, which is merely to require companies to come up with and publicly expose their plans, by going on to say that they can be required to do anything else that a regulation imposes upon them. That is beyond the scheme of the legislation and a much more far-reaching burden on the relevant corporations, is it not?

Dr Moran—I agree. It is *carte blanche* in terms of the way the agency will operate and its requirements.

Senator GEORGE CAMPBELL—When you talk about costs, what do you define as falling within the realm of costs?

Dr Moran—The added imposts. There are several waves of costs in there. One cost is actually the cost of government taxation, which you can readily see through budget papers, et cetera. Another cost is the requirement that firms do things they would not do in the interests of their normal corporate governance or enriching their shareholders, which is the regulatory cost, and that is over and above that dollar cost.

Senator GEORGE CAMPBELL—You essentially look at it in the context of the costs of business in meeting the regulatory environment?

Dr Moran—Yes. We essentially look at the regulatory environment as it impacts on business. We do so because those costs will be passed on to the consumer in the final analysis.

Senator GEORGE CAMPBELL—What about the social costs of not doing anything?

Dr Moran—Are you talking now about environmental impacts?

Senator GEORGE CAMPBELL—Environmental, health, provision of water, cost of supplying water—a whole range of costs that arise as a result of doing nothing about the issue of global warming.

Dr Moran—Well the issue of global warming is a much wider issue. The assumptions behind what you are saying, that we will be short of water or there will be pestilence et cetera, I am not really very well qualified to answer those questions, so I do not know what those costs would be, if any.

Senator GEORGE CAMPBELL—No-one knows what those costs would be, but do you not think the business community has a requirement to make a commitment or a contribution to meeting those costs?

Dr Moran—Business is not really very well set up for that sort of thing. Businesses are responsible to shareholders and are responsible for maximising the wealth of their shareholders.

Senator GEORGE CAMPBELL—They are part of the community.

Dr Moran—Well we are all part of the community, but essentially businesses are given remit, and I do not need to tell you this, in terms of what their responsibilities are, and they are obliged to follow those responsibilities. Bodies like ASIC ensure that they do so, and their shareholders as well by voting and buying and selling their shares.

Senator GEORGE CAMPBELL—In many circumstances, a lot of these consequences are as a direct contribution of business in terms of business activities.

Dr Moran—If in terms of business activities, for example, if a business is using water or polluting water or whatever it is doing, then it has obligations to ensure that that does not harm other people. That is quite right, and there are laws in place for that. If you are suggesting that by making emissions of carbon dioxide that in a hundred year's time there will be some implications, then it is very difficult to trace those back to individual firms.

Senator GEORGE CAMPBELL—The individual firms have made a contribution to it, in the same way all of us I suppose make a contribution to the consequences of the development of the global economy or the global society. We all contribute in some form or other.

Dr Moran—It is very difficult to actually plan what we do for that many years ahead. If we were sitting here a hundred years ago and asking what are the ramifications of us doing all these things like having steam engines running around the place—we have obligations as a result of that, people may die as a result of this new product the motor car—I think it would be totally bewildering for any legislator to make those sorts of—

Senator GEORGE CAMPBELL—I am not an expert like Senator Brandis on what contributes to global warming.

CHAIR—I am not an expert. I said I did not know anything about it.

Senator GEORGE CAMPBELL—I know a little bit about it.

CHAIR—Senator Milne is obviously the one that has made the closest study of it, I suspect.

Senator GEORGE CAMPBELL—It does strike me as somewhat significant that if people had sat back a hundred years ago and thought about the consequences of some of the things they had done, then may be we would not be facing the series of problems we are today.

Dr Moran—Perhaps not.

Senator GEORGE CAMPBELL—Despite the fact that today we have a lot more knowledge, appear to have a lot more knowledge about the consequences of some of these activities for the future than we did a hundred years ago. It would seem to me to be criminal if we did not take account of that knowledge and do something about ensuring that we implement measures to maximise the benefit to our society as a result of it.

Dr Moran—It is very difficult to do. Suppose one of us said about the motor car, we have this new vehicle and it is going to kill a million people over the next century. What do we do about it? Well a lot of people would say, let us ban it. Imagine life without that. In other words, we could be very risk averse by doing things now, but that would leave us much poorer in the future, if in fact what we did came through in terms of policy action.

Senator GEORGE CAMPBELL—That may be the case, and there are a range of those sorts of arguments. For instance, had there been more knowledge in the automotive industry 40 or 50 years ago about alternative sources of energy other than petrol, and if the petrol engine was not implemented, we would not have some of the problems we have today in terms of the supply of oil and the price of petrol. The point I am really trying to get at is why do you take the view that somehow or other business does not have a contribution to make to this, other than what the business itself sees in terms of its immediate needs?

Dr Moran—I just think it is immensely difficult to actually make those forecasts and then make the right judgements. It is difficult for legislators who have a broad remit. Businesses have a very narrow remit; it is immediate maximisation of the profits of the firm, the enrichment of its shareholders, et cetera. That has served us very well in terms of the standard of living and efficiency in economies. To actually force businesses

to say, well that is not your only job, you have to do all these other things as well, you are actually asking people who are not very well qualified to do these other things as well to do them. It is a different sort of business firm. It becomes more like a parliament.

Senator MILNE—Does the IPA support triple bottom line accounting, or is that rejected as a notional view by the IPA? The whole global reporting initiative is based on triple bottom line accounting. Some of the major global corporations are shifting to it now. What is the IPA's view of the environment being part of triple bottom line accounting?

Dr Moran—A lot of firms are in fact reporting that. Our view is that the business firm is not well set up to do triple bottom line accounting, so we would normally be against it. We do not have any problems with firms of their own volition deciding they are going to do it. A lot of firms do it for their own PR purposes et cetera, and some firms actually may find some value in it and then that is great, they should do it, but we do not suggest that this should be a requirement.

Senator MILNE—Given what you have said so far in terms of businesses' attitude to regulation on energy efficiency, would you prefer an emissions trading scheme which put a financial value on greenhouse gases, and then the whole economy responds accordingly?

Dr Moran—Yes, if in fact a tax or emissions trading scheme would be the way forward. You must bear in mind, of course, that that would also entail the abolition of these other measures that are in place like the MEPS and various other things. A pure scheme which was simply emissions trading or a taxation scheme would then get rid of all the other issues, including this one for example that we have there, otherwise there would be double accounting.

Senator MILNE—Would you support an emissions trading scheme or a carbon tax?

Dr Moran—We would prefer a carbon tax or emissions trading scheme to other regulatory measures.

Senator MILNE—Thank you.

CHAIR—Thank you very much, Dr Moran.

Proceedings suspended from 10.33 am to 10.47 am

DALEY, Mr John, Chief Executive, Australian Industry Greenhouse Network

KNAPP, Mr Ronald Wesley, Executive Director, Australian Aluminium Council

MORRIS, Mr Peter John, Senior Director, Economics Policy, Minerals Council of Australia

CHAIR—I invite to the table representatives of the Australian Industry Greenhouse Network, Mr John Daley, and Mr Knapp from the Australian Aluminium Council. Who are you representing, Mr Morris?

Mr Morris—I am from the Minerals Council of Australia, and we are a member organisation of the Australian Industry Greenhouse Network.

CHAIR—Do you appear with Mr Daley?

Mr Morris—Yes.

CHAIR—Are there any additional comments you would like to make on the capacity in which you appear here today?

Mr Knapp—I am the Executive Director of the Australian Aluminium Council, and any search of ASIC will identify me also as a director of the Australian Industry Greenhouse Network, but today I will speak on behalf of the council, which is a member of the AIGN.

CHAIR—Now I take it because you are here appearing together, that you represent a common point of view, but if in the question and answer period there is something that somebody says that the other does not agree with, I think you should make that known for the record.

Mr Morris—Of course we will.

CHAIR—Good.

Mr Morris—I am Senior Director, Economics Policy, at the Minerals Council of Australia, and I am a director of the Australian Industry Greenhouse Network.

CHAIR—Mr Daley, would you like to make an opening statement?

Mr Daley—Chairman and senators, thank you for the opportunity to talk with you about our submission and reiterate the problems we see before us. Before doing so, let me emphasise that AIGN and its members are supportive of the Energy Efficiency Opportunities Assessments program. It was and it remains an important initiative of the government's energy white paper, which has the full backing of industry. The white paper contains a package of measures, several of which we see as imperfect, but necessary or appropriate to today's circumstances. Like Alan Moran, we do not think there is much inefficiency when it comes to energy use in the large energy industries and large energy intensive industries that constitute AIGN's membership.

The Productivity Commission, on an objective basis, came to the same conclusion. However, we are not here to oppose this bill. Indeed, we have been consulting with departmental officers for more than a year to help with the implementation of the program. However, some of the bill's provisions when we got to see them after tabling caught us by surprise. We have real problems with some of the specific provisions of the bill. The protection of commercially sensitive information is a matter of paramount concern. Accordingly, we are not happy with the provision that would have 'any other information required by the regulations' made available in a public report.

CHAIR—Can you direct us to the clauses please.

Mr Daley—Certainly. In that particular case, the clause is 22(d).

CHAIR—22(d) is it, thank you. 22(3)(d).

Mr Daley—Pardon. Yes. I have a schedule here I could table if you wish.

CHAIR—Yes, sure.

Mr Daley—However, I only have one copy of it.

CHAIR—We can get that copied for you. Thank you, Mr Daley.

Mr Daley—We think that clause should simply be deleted, otherwise some guidance should be contained in the bill as to the nature of information that the regulations may require to be published, or a clause should be included to specifically forbid the publication of commercially sensitive information.

CHAIR—Sorry to interrupt, but just on this point, is there anything in the bill that deals with the issue of commercially sensitive information?

Mr Daley—Not that I am aware of.

CHAIR—It is silent, is it? Thank you, go on.

Mr Daley—I cannot overstate the importance of this. In some of our industries, and you have heard from one earlier this morning, details of various operational efficiencies and energy use can betray vital information about competitive advantage. This motivates our concern also about the appointment of authorised officers, who are not public servants and not bound by the secrecy provisions of the Public Service Act.

CHAIR—Where is that?

Mr Daley—It is about the appointment of authorised officers.

Mr Morris—Clause 25.

CHAIR—Yes. Thank you.

Mr Daley—As an example, we were surprised somewhat recently to find an external consultant in relation to another department with authorised access to highly confidential commercial data on emissions and energy use. We would like to see a provision in the bill to ensure that external officers face the same secrecy obligations or equivalent obligations, in relation to this material, as public servants. I should say in discussions with officials very recently, we have been told there is a willingness to take a second look at this.

As to the proposed energy efficiency assessments, they are to be undertaken in accord with a plan that the company or controlling entity would draw up in line with clause 18, and details to be described in the regulations. We are happy with those, as yet sight unseen, regulations for which the bill provides guidance, but we are very uncomfortable with the provision that ‘the assessment plan must meet any extra requirements set out in the regulations’. I was impressed with your questions of the previous witness, Mr Chairman.

CHAIR—Thank you.

Mr Daley—It smacks to us of either a belts and braces approach to regulation or may be just laziness. The department or a future government should not be given carte blanche to take this program anywhere it likes. That is the opinion of all our people.

Senators, there is also the question of sign off by a controlling entity’s chairman. We believe the department has been very poorly advised on this, as it not only indicates a misconception of the role of the company board and its chairman, but it will be found to be totally impractical. We have had some discussions on this, and I believe there is a willingness in the department to explore a couple of amendments. One would allow a controlling company to delegate its obligations in respect of a major subsidiary, to that subsidiary, that would be a practical improvement. The other would require the chief executive, rather than the chairman, to sign off, noting in that sign off that the board had been advised of the report. We think that is consistent with the intent behind the legislation. That would work, and it would be more in keeping with the way corporations are governed, namely the board is responsible for governance rather than operational matters. Finally chairman, business was taken aback to see the provisions of subclause (b) of clause 3.

CHAIR—Before you get to that, what about subclause (a)?

Mr Daley—Subclause (a) seems to—

CHAIR—The monitoring warrants.

Mr Daley—It is the same issue, but the very harsh penalties came in subclause (b).

CHAIR—I thought the whole of subclause 3 of part 8 would alarm you.

Mr Daley—Thank you, Chairman. We actually deleted the word ‘alarmed’ from my speaking notes before.

CHAIR—Do not be too sheepish.

Mr Daley—Let me say, with warrant raids on corporate premises, the authorisations to operate equipment and seize files and most surprisingly the criminal penalties with jail terms for failure by individuals to answer questions or produce documents, was definitely cause for possible alarm. We are talking about firms suspected of possibly using energy inefficiently, or more efficiently than they say. Our biggest corporates are quite offended by this approach. Also in our view, it can hardly be expected to induce voluntary cooperation, which we thought this whole exercise was about. It would be unfortunate if firms or the executive responsible were exploring energy efficiency opportunities under sufferance rather than as a willing effort to discover energy

savings. To be blunt, we find these particular compliance provisions over the top. The civil penalties, as well as the obligation on all companies to report infringements of environmental regulations should be sufficient incentive for any company using this much energy to comply. We hope the committee will incline to a similar view. Thank you for the opportunity to voice our concerns.

CHAIR—Thank you. Mr Knapp, would you like to comment?

Mr Knapp—Let me say we endorse the approach that the greenhouse network has identified. One suggestion we made in our submission was to make the reporting sign off provisions parallel to the situation that currently exists under the Greenhouse Challenge Plus program, which in fact requires a chief executive to be the sign off position. We see that as logical and sensible.

CHAIR—Just help me with this. I should know this, I used to know something about company law but I have forgotten it all. In a public company, who ordinarily signs the financial accounts—is it the chairman of the board or the CEO?

Mr Knapp—Quite often a chairman plus one director.

CHAIR—Why should a different rule apply here?

Mr Daley—If you look at what the chairman and another director normally signs, you will see a range of issues. They are mostly governance issues they are signing off on. They relate to the appointment of directors, the remuneration of directors and senior executives, and inter alia compliance with environmental things. As I read it, that is not what this bill requires. In fact it would be encompassed in that sign off. That is what I am saying at the end of my statement—that one of the incentives is already there.

CHAIR—You say this is super regulatory?

Mr Daley—Yes.

CHAIR—Because the chairman of the board has to sign a general report that all environmental regulations have been complied with, which would include this.

Mr Daley—Something of that kind. I think actually to be precise, they sign off a statement that indicates the infringements that they have been charged with. In many big companies there are minor infringements.

CHAIR—If you are right, Mr Daley, as I am sure you are, why is it a big deal who signs for the purpose of this act?

Mr Daley—This bill seems to be requiring a one off report to be signed off by the chairman. I am saying that is not his normal responsibility. The board reports to shareholders in a report at the end of the year signing off on everything.

CHAIR—What does he sign? Is he required to sign the plan?

Mr Morris—The assessment report.

CHAIR—The assessment report.

Mr Morris—It has been suggested to us by officials that potentially under regulation, that they would also be signing annual mandated reports.

CHAIR—This is clause 22 we are talking about?

Mr Daley—Yes, clause 22(4)(b). It is not the normal function of a chairman to sign off on operational reports going to a department.

CHAIR—Your point is that when the chairman signs he is performing in effect a certifying function, and that this goes beyond a certifying function?

Mr Daley—Yes.

Mr Morris—Also for multi national corporations, which will be caught by this legislation, it becomes quite difficult if it is required that the chairman of the corporation will sign. The chairman for very large companies may live overseas and actually has other responsibilities, and it will lead to companies having to do quite a lot of gymnastics in order to be able to comply with the requirements, which they would of course do. In addition to that, our understanding of the intent here is that investment decisions that are signed off by boards do include consideration of energy efficiency, but we would make a point that companies also look at energy efficiency as an operational practice. Companies such as BHP Billiton have multi billion dollar businesses run by senior managers and they are responsible for operational practices. It would seem more logical that the chief executive of a company sign off, rather than the chairman.

CHAIR—One other matter, Mr Daley. I am concerned about the extent to which the obligations that may be imposed under this bill are not transparent, but are subject to the regulations. However, it occurs to me that perhaps that could be excused by saying that the department is discussing these matters and developing with industry forms and methods of complying with the act, and it is better for industry that that be done by regulation because it is a more flexible and readily alterable way of doing it. What do you say about that? Do you remain uncomfortable with the extent to which the obligations are governed by regulation?

Mr Daley—Yes. The simple answer is we are uncomfortable. We think it should be circumscribed in some way as to what the nature of those powers might be. I should say we are pretty happy with the consultation that has proceeded over the last year, although as I said, we were surprised when we actually saw the bill in more detail.

CHAIR—Was that consultation about the bill specifically or the program?

Mr Daley—No, it was not, it was about the program. We did not have any indication until we saw the bill of the provisions to which I have drawn your attention.

CHAIR—When did you first see the bill?

Mr Daley—The day it was tabled.

CHAIR—Which was in about September?

Mr Daley—September 23. It was the same day as our annual general meeting.

CHAIR—I must say you took me back a bit Mr Daley when you said you are not here to oppose the bill. I was wondering, why not? You support the program, and as a government senator I appreciate that, but the bill seems to overreach vastly beyond the program, or at least potentially.

Mr Daley—You said it, chairman.

CHAIR—Well you are the witness. Do you agree?

Mr Morris—We totally agree.

Mr Daley—Hopefully this process and your committee might recommend some improvements that would see this bill passed in the same kind of timetable that is envisaged by the government. Our position is we would like to see this program enacted and into effect as soon as possible, however, ideally not under these terms. The general drive of the whole program, and as the bill was described to us ahead of time, we want to see it happen.

CHAIR—So that we can get your views on the record, and without limiting yourself, would you recommend to us, at least, the deletion of clauses 27, 28 and 29, and of clause 18 subclauses (7) and (8)?

Mr Daley—That is right. We also run into a problem in clause 12, with the information that may be published.

CHAIR—Yes, all right. Is that the register?

Mr Daley—That is the register.

CHAIR—I see. Are you talking about clause 12(4)(b) are you?

Mr Daley—Yes, any other information. Just to elaborate on one issue of possible concern. You asked a question about developing these regulations in consultation with industry. We have a certain amount of faith in that and I understand that that was the impression you had from one of our member organisations, the CIF, this morning.

We are all active participants and have no real problem with that process of consultation, and we expect it to be ongoing in the development of this program. There are prospects, for instance, greenhouse as everyone should know, is a global issue. The fact that an emission arises at a certain site 10 kilometres out of Melbourne as distinct from somewhere else entirely is of no consequence in the context of greenhouse. We could envisage, because we have heard people in the States mention this kind of thing, that some of this information should be on a site specific basis, which we contend would be irrelevant. We do not want that to happen. A reporting provision of this kind could allow site specific information to be published, and we would be totally opposed to that. That is just one example, but there are many other things one can conceive of that are not remote future possibilities, but they are there on people's minds at the moment.

CHAIR—May I take it, Mr Daley, it follows from what you have been saying, that you would also recommend to this committee that we recommend the deletion of subclause 23(1)(3)(b)?

Mr Daley—It is (3)(d), yes.

CHAIR—No, 23(1)(3)(b).

Mr Daley—It is not on my list.

Mr Morris—Do you mean 23(3)(b)?

CHAIR—I am sorry. 23(3)(b).

Mr Daley—Correct.

Mr Morris—Yes.

CHAIR—In relation to 22(3) and 22(4), you would at least ask us to recommend that there should be some express provision protecting trade secrets and intellectual property?

Mr Daley—Yes, and in relation to the previous question, I draw your attention to the distinction between reporting to the secretary, which is reporting to the government, and reporting to the public.

CHAIR—No I saw that.

Mr Daley—We are much more comfortable about reporting along lines where we have been engaged in consultation about what we are reporting to the department.

CHAIR—You would also recommend to us the deletion of subclause 25(1)(b), I take it—the authorised officer question?

Mr Daley—No, we are not opposed to the appointment of such a person.

CHAIR—I see, so you do not care that it is not an officer subject to the Australian public service regulations?

Mr Daley—Correct, or a contract which could contain a similar secrecy provision.

CHAIR—As long as the secrecy is protected, you do not mind who the authorised officer is?

Mr Daley—No, we think it is probably quite efficient—

Mr Morris—The authorised officer actually has to undertake a confidentiality agreement.

CHAIR—I understand. Thank you.

Mr Knapp—Mr Chairman, just one elaboration from the council. We have worked very closely with departmental officials in this, and we have been encouraged by that. It is the case of leaving that open for the future, which is of significant concern to us.

CHAIR—Thank you. Senator Campbell, do you have any questions?

Senator GEORGE CAMPBELL—Is there anything left in the bill?

CHAIR—There is quite a bit left, Senator.

Senator GEORGE CAMPBELL—I was just wondering.

CHAIR—I have only been identifying those clauses that say you can find it in the regulations. Everything that was in the bill when I started is still there.

Senator GEORGE CAMPBELL—I only had an opportunity to look at the bill for the first time during the break. I must say it is a pretty ordinary drafting exercise to say the least. Mr Daley, how long did you say you have been discussing this with the department?

Mr Daley—Certainly since the white paper was published, and there were discussions about this kind of program even proceeding that. The white paper was published in May or June of last year I think, and we have been talking with the department since then.

Senator GEORGE CAMPBELL—So, at least a couple of years, may be longer?

Mr Daley—Yes.

Senator GEORGE CAMPBELL—Why do you think we have such a poorly drafted bill in front of us? Is it difficult to draft because the issues are so complex and complicated?

Mr Morris—Well the bill has been drafted by officials without consultation, so we did not see it until it went into the parliament, so we were not able to offer suggestions.

Senator GEORGE CAMPBELL—Setting that aside, you have been in consultations with the department for at least 12 months, if not more. I would assume your views on a range of issues are pretty well known. I assume that some of the issues that are covered in the bill would have been discussed with you. I just wonder why we have such a poorly drafted bill. Either you were not able to explain your positions very clearly or the department did not understand what you were saying to them.

Mr Daley—If I may answer that. I think many of the things that are there which we have problems with, were not on the agenda of discussions.

Senator GEORGE CAMPBELL—So they were never discussed?

Mr Daley—Like personal compliance provisions. In relation to compliance we certainly had no concept at any time that we would be looking at civil penalties and these monitoring officers.

CHAIR—Criminal penalties, in fact.

Mr Daley—Sorry, I meant to say criminal penalties, people armed with the kinds of warrants that are appropriate to major corporate crime matters. This does not seem to be a topic related to major corporate crime.

Senator GEORGE CAMPBELL—Do you have any inkling where that came from?

Mr Daley—I suggest it might be appropriate to ask the department that. I have the impression that some of these drafting instructions go to the draftsmen, and there are a set of provisions that conveniently pop up that might have been lifted from another set of legislation.

Senator GEORGE CAMPBELL—May be they confused bills that they were drafting at the time?

Mr Daley—Yes.

Mr Knapp—If I may add in response to Senator Campbell, we certainly had discussions with departmental officials on this issue of what information would be contained in the register, and this comes back to our concern of awareness in a public report of precise energy consumption figures. If you are running an aluminium smelter, the moment somebody knows how much electricity you pull down, they know exactly what capacity you are running at, and how efficiently your smelter is running. It is very clear.

CHAIR—Yes.

Mr Knapp—That simple level of detail provides that information. We did have discussions with the department. We understand the department was very sensitive and recognised that concern, and that is one of the issues we would hope is addressed when it comes through the regulations, that those sort of issues are appropriate.

Senator GEORGE CAMPBELL—I think from your point of view it is a sensible approach. You would feel much more secure if a lot of these issues were dealt with in the bill rather than in regulations; if the regulations were guaranteed to read down rather than in the other direction, which is the normal practice in terms of regulations.

Mr Morris—Indeed, and we have a concern about precedent here. We recognise the value and use of regulation, but we would like to see in the legislation, in the black letter law, the clear setting out of what was the parliament's intent, so that companies have an understanding of what their requirements are, and courts of law have an understanding of the proper interpretation of parliament's intent.

Senator GEORGE CAMPBELL—That is totally understandable. Mr Daley, you made a comment earlier that greenhouse global warming is a global issue, and that you are concerned about the information about specific sites being made available. It is true, is it not, that some specific sites make better contributions to the problem than others. So, in terms of addressing the issue, it may be useful to have information about the emissions that are coming from specific sites as opposed to the more general emissions problem. I am saying that in the context that I understand what Mr Knapp was saying about commercially sensitive information.

Mr Daley—We have two issues. Our concern comes down to commercially sensitive information and the revelation of that is a problem. There is also the issue of responsibility. We are not ducking in any way the responsibility for identification of who is responsible for those emissions. I mean if it happens to be a particular corporate, their preference is to report nationally. It seems to me that that is the important thing. You can see why you would want local information in relation to local pollutants that affect neighbourhoods, but emission of greenhouse gases is not one of those. It does not affect local communities. We see no reason at all

why that kind of reporting should not be done, ostensibly globally, but we are working in an Australian national system and see it as a national issue.

Senator GEORGE CAMPBELL—Does your organisation support emissions trading?

Mr Daley—I would have to say there are a range of views amongst the members of AIGN. I could answer it in two ways. One is, emissions trading would have to have a very broad global basis for it not to have very serious impacts on the competitiveness of certain industries; that is not an immediate prospect. Also not an immediate prospect is the opportunity for major switches in technology, which is going to be really important in actually achieving substantial cuts in greenhouse emissions. So an emissions trading scheme into the future is probably a much more valid proposition to all of our people than one now, where we do not see the circumstances as being right. If I can just reflect on the answer that Alan Moran gave you earlier on the same subject. If there is a requirement to put in place a regime to address immediate cuts in greenhouse emissions, then those market instruments of the kind he talked about, as distinct from a whole raft of regulations imposing constraints of one kind or another all over the place, we think they are likely to be much more costly than a market approach.

Senator GEORGE CAMPBELL—A properly designed emissions trading arrangement would solve part of your problem about the individuality of sites, as well as provide a more equal contribution, would it not?

Mr Daley—I could not understate the importance of your expression ‘properly designed’, because there are a lot of parameters about that and that is where this discussion has to go in the next few years and decades, about how that is designed and who is in it, and the nature of property rights and that kind of thing.

Senator GEORGE CAMPBELL—A number of companies that you represent would have overseas affiliates. Are any of those overseas affiliates currently engaging in emissions trading?

Mr Daley—Actually, most of our members would be in that category, and yes, to the extent that their business operations are in Europe, they are active participants in the European emissions market. Mr Knapp may want to add something about their experience on that.

Mr Knapp—Certainly. The issue, and I agree with what Mr Daley has just said, emissions trading theoretically is an efficient way to progress, but when you are dealing with a global issue, it is going to have to be global. Otherwise you are going to get quite serious impacts on a national economy such as Australia. A good example is that 80 per cent of our output is exported. If you are exporting with an emissions trading impact, which is essentially a tax, then you are going to be less competitive in that international environment.

Moving to the emissions trading question and the question of affiliates overseas, a number of our companies, and companies that we deal with on a regular basis through the International Aluminium Institute, are exposed to the issues in Europe, and what we are seeing is a loss of competitiveness in Europe through energy prices.

Let us be clear; emissions trading and the costs imposed through that in Europe is only one part of what is an increasing energy price. It is very hard for us to specify totally one way or the other, but as far as emissions trading is concerned, the increase in the cost of energy in Europe is adding to or exacerbating the energy cost profile that aluminium smelters in Europe are facing. Recent media reports and experts in the industry are identifying up to a million tonnes of aluminium capacity closing in Europe over the next two years as a result of energy prices, which include a cost coming through from emissions trading.

Senator GEORGE CAMPBELL—What about the United States? I understand that emissions trading is taking place in some of the states in the United States. Are any of your companies involved in those processes?

Mr Knapp—We have not received any reports of that. In the US we are seeing another issue of energy costs that are impacting on competitiveness, and that is the same issue as anywhere else in the world.

Senator GEORGE CAMPBELL—It is not necessarily directly attributable to emissions trading?

Mr Knapp—We have not seen any emissions trading in carbon dioxide or greenhouse gases in the US. I am not familiar with any scheme that is operating in the US on greenhouse trading.

Senator MILNE—They have sulphur dioxide trading.

Mr Knapp—That is right.

Senator GEORGE CAMPBELL—I understood that many of the north east states had moved to—

Mr Knapp—At this stage, that is purely an intent rather than a general practice.

Senator GEORGE CAMPBELL—They are establishing a scheme. That is the point I was asking about, are any of your companies involved in that?

Mr Knapp—Not that we are aware of. It is quite likely that they would be following that very closely but we are not aware of any information from that.

Senator GEORGE CAMPBELL—Thank you.

Senator MILNE—I would just like to start by asking whether you think these subsidies to bulk consumers are a disincentive for efficiency, a perverse incentive for inefficiency?

Mr Knapp—Senator Milne, I am not sure what you are talking about. The subsidies to bulk users—

Senator MILNE—The discount in price for bulk power consumption to the bulk power consumers, is that a perverse incentive for those industries to be less efficient than they otherwise would be if they were charged the full cost of power of energy?

Mr Knapp—I contest the assertion in the first instance. Large users of power, if we are talking electricity?

Senator MILNE—Yes.

Mr Knapp—Especially those who use base load power all day long, like the aluminium smelters, impose much lower costs on the production, generation, and transmission sides of the business, than users who choose to turn their lights or their air conditioners on and off. I am sure you know that very well.

Senator MILNE—Yes.

Mr Knapp—The fact that their prices are lower is not a reflection in any way about subsidies. If you are referring to very old contracts, which again probably the most notable of them are in the aluminium industry, I would say that they were negotiated and done a long time ago. They look like good deals now, but they were transactions nonetheless done by equals at the time.

Senator MILNE—I do not dispute that. I am asking about the energy efficiency ramifications.

Mr (?)—Let me move on to that. Mr Knapp can speak more authoritatively on aluminium smelters than I can, but they spend a huge amount of their total expenditure on energy costs. If there is one thing that they are absolutely preoccupied with, it is trying to minimise those costs. Even if in household terms they buy cheap electricity, they spend one enormous amount of money on power, and any savings they can achieve is something they are looking for all the time. They have teams who travel the world, one smelter to another, looking for opportunities to transfer that knowledge from one place to another.

Senator MILNE—If I can pursue that with Mr Knapp. If that is the case, what levels of efficiency improvement has the aluminium industry in particular achieved, say in the last five years?

Mr Knapp—There has certainly been a significant improvement. I would like to bring in part of Senator Campbell's question from before, and it comes back to that site issue, because when you build a pot line, your energy consumption and efficiency is going to be dictated by the technology that was available to you at the time of that particular pot line. You will find that companies in Australia that might have two smelters—and indeed these companies have an array of smelters around the world—will have different outcomes at those different smelters, but perhaps both are operating at their technical efficiency. I apologise for going back to this, but reporting on a site basis does not tell anybody a real story because one smelter to the other will have been dependent on the technology that was available at the time, and seventies technology versus nineties technology—

Senator MILNE—Yes.

Mr Knapp—Coming back to the specifics, Senator. We can provide you with specific details of those efficiency improvements. As Mr Daley indicated, efficiency is most paramount within an aluminium smelter. You would find in the operations management of a smelter on a daily basis, they would report yesterday's energy performance. For some companies energy is not the issue, but for us it is how your performance was yesterday against your potential. This is why right from the start the council has been very active and very involved in the program. If we can find energy efficiency, we will go after it.

Senator MILNE—On that basis the Victorian scheme requires that you assess for efficiency gains, that if those efficiency gains can be demonstrated to be recouped in a certain period, I am not sure what it is, three or four years whatever, that the company is required to do it. How has that impacted on the businesses in your network in Victoria? I am just interested in the experience, because where I am coming from on this is that my preference would be to have one national scheme, not a Victorian scheme, a New South Wales scheme, a

Commonwealth scheme and a Greenhouse Challenge scheme and any other number of schemes. I am interested in how we get integration so that we get a uniform regulatory environment in relation to energy efficiency. I like the Victorian scheme because it not only requires the audit, but it requires some action on the audit providing the returns are within a reasonable time. I am just asking you about the experience of your members since the Victorian scheme has come about.

Mr Daley—I commend your question, and the approach about the single scheme. It is one of our problems across the whole range of these activities, that we have typically seven or eight different arrangements. I do not have any specific information about how, in the Victorian arrangement, you then proceed to the must do thing, and if it has happened. I am not even sure whether as yet it has got to that point in its implementation. AIGN members have consistently said that a lot of the time these energy audits are very narrowly focused. They can identify some of these things without taking into consideration a much broader range of issues that a company might have in front of it. Some of them could simply be lack of capital, or better opportunities for the capital it does have. Often you find that those pretty impressive payback periods that are quoted do not really yield those periods when other things are taken into account, and the energy auditor does not necessarily have access to that. So I think this is yet to be proven.

Mr Knapp—Could I add to that?

Senator MILNE—Yes.

Mr Knapp—We would like to refer you chapter 13 in the Productivity Commission Energy Efficiency Report that has just been released. They basically oppose the setting of national energy efficiency targets, and we agree with that, essentially for the reasons that Mr Daley has just pointed out. We do have a problem in terms of the efficiency of the scheme in mandating or enforcing, and taking decision-making away from company management. Let me give you an example of a situation. Alumina refineries are full of electric motors driving pumps. You might have identified an inefficiency in the energy used in those particular motors, in that particular plant. Do you close that plant down to achieve what would be required if you have a mandatory situation where you have to undertake that action? Closing the plant down might cost you 10 or 20 times the benefit that you are ever going to recoup from the actual action. We are much more in favour of the approach under this program that we are discussing today, than under any program that places a mandatory requirement on actions, because those actions will invariably be inefficient in the overall scheme of running that plant or that company.

Senator MILNE—One last question. How do you propose then that we are going to get a 50 per cent reduction in greenhouse gas emissions by 2050 if we just have voluntary agreements and nothing mandatory? I would say we need more than that, but the scientific view is that we need a 50 per cent reduction by 2050. How are we going to get there if we do not have a requirement? And, in answer to what you were just saying, if there is no driver, what is the incentive for that company to progressively switch over its motors, not all in one go necessarily, but to actually recognise that it has to phase in more efficient technology rather than operate on worst case technology and then shift elsewhere? This has been the experience of a number of industries, certainly in the state I come from, where a slack regulatory environment allowed them to maximise profits over a mid term period with a view to moving to Malaysia or wherever else they intended to go in the long term.

Mr Daley—Senator, I think that your long term perspective in looking at 2050 is highly appropriate. One element of that is the capital stock turnover issue that Mr Knapp mentioned is in some way or other solved in that process in any case. Every generation of new smelters will incorporate the latest technology as he said, and that applies generally. In relation to the early part of your question, the big cuts of the kind you were talking about by 2050 require a huge suite of measures and contributions, of which energy efficiency is probably one-seventh. If the world is to achieve those things, then the more supply side things—

Senator MILNE—Demand and supply side.

Mr Daley—Demand and supply side, but I am just trying to put the energy efficiency stuff in a box. We have to be looking at geosequestration, all the new transport technologies, hydrogen fuels and systems, new bio fuels, advanced nuclear. One perspective is those things have contributions to make and none of them can be missed out if we are going to achieve the kind of number that you just mentioned. How is that going to be achieved? Most importantly through that whole range of technologies, and that is what the government is advancing closely in the Asia-Pacific Partnership on Clean Development and Climate, which we see as having great merit. That is where most of this achievement is going to happen, rather than in small near term shavings at the margin.

Senator MILNE—I guess the Rocky Mountains Institute would put on the table quite a different perspective in terms of small savings at the margin. Energy efficiency is a lot cheaper both financially and in ecological costs than new supply. We will have to agree to disagree on that.

Mr Morris—That is actually a reason why large energy users get discounts too.

CHAIR—Just one last question from me. Forgive me if you have already said this and I missed it. One of the issues that has been raised as well in relation to this bill, is potential inconsistency between this scheme and some of the state schemes.

Senator MILNE—Yes we did discuss that.

CHAIR—I take it you say that such inconsistency is to be avoided, if at all possible?

Mr Daley—Yes, absolutely. I did elaborate a little on that in answer to Senator Milne. We think this experiment with the voluntary thing is worth doing. I think it really does test the proposition of these opportunities. In the course of this program we will test raising it as an information matter to company boards.

Mr Morris—And, it recognises the principle of firstly moving in regulatory steps for light-handed regulation before more heavy-handed approaches are used.

CHAIR—Thank you.

Mr Knapp—May I just add to that. We endorse the single efficiency scheme, a national scheme, and we would have a preference for the federal scheme over existing schemes, some of which include efficiency targets, which we oppose.

CHAIR—Thank you very much indeed Mr Daley, Mr Knapp, Mr Morris. You are excused.

Mr Knapp—May I table a report, which is our *Sustainability report 2004*, which does include a couple of pages on energy efficiency which may also be of assistance.

CHAIR—Thank you very much.

[11.38 am]

DOMANSKI, Mr Roman, Executive Director, Energy Users Association of Australia

STACEY, Mr Scott, Manager, Policy and Regulation, Energy Users Association of Australia

CHAIR—Welcome. Gentlemen, would you like to make a brief opening statement before we proceed to questions?

Mr Domanski—I would just like to make a few opening points. Thank you for inviting us to do that. We have provided you with a submission and I wish to highlight a few of the points coming out of that submission. First of all, just to reinforce the view that our members are expressing concerns regarding the impact the EEO program could have on the cost of their business compared to the benefits that might be derived from that program. We think that is something that needs to be given serious attention, that we look at both sides of the equation and the magnitudes.

For many of our members, energy is one of their largest input components in terms of operating costs. In fact, just about all of them are spending many millions of dollars each year on energy. I just wish to reassure you that considering the substantial cost component that it represents, energy already receives significant attention in terms of operating and management focus, largely because users recognise the competitive benefits that can be achieved by minimising energy costs and therefore the costs of their production. We are concerned that the EEO bill is unlikely to result in these companies identifying significant new commercial energy efficiency opportunities beyond those which their existing internal programs and decision-making hurdles already identify. That is not to say that they would not already be identifying a number of measures that they do not implement because they do not get over the hurdle for business decision-making.

We therefore believe there is a limited benefit in reporting these to government, and thereby forcing additional costs on to users. We note that the costs of the program remain uncertain at this point in time because of a lack of information about obligations; possibly the costs could be significant. That is something we are yet to see, and it is something we are concerned about going forward in terms of implementation. We would also like to draw your attention to the fact that New South Wales is implementing a similar program almost simultaneously, but probably a little bit ahead. The requirements under that program in terms of detail and reporting are quite different even though the broad aims of both the schemes are identical.

CHAIR—Is New South Wales the only state to do so to your knowledge?

Senator MILNE—Victoria as well.

Mr Domanski—They are the only one that is implementing a program almost simultaneously. Victoria has had the set program in place for several years.

CHAIR—I see, and what about the states and territories?

Mr Domanski—The other states, as far as we are aware, do not have programs of this kind. They have other energy efficiency initiatives in place in a number of instances.

CHAIR—But not programs of this kind.

Mr Domanski—They do not have this kind of mandatory reportable energy efficiency program in place, at least not on a broad scale. One of the issues for us is certainly that there should be consistency nationally across these programs.

CHAIR—Is there consistency between the New South Wales and the Victorian programs?

Mr Domanski—No, there is not. The Victorian program was implemented about three or four years ago.

CHAIR—It is different?

Mr Domanski—It is in fact quite draconian in its impact on our members. A number of our members complain quite regularly about the sort of impact that it has on them. I think there are also some questions being asked about just how effective that scheme is in terms of its impact on energy efficiency, and implementing economical ways to use energy more efficiently. Also, it is fairly intrusive as well in terms of almost seeking in some instances to micro manage operational aspects of a business.

CHAIR—So if this bill is to be enacted, companies trading in both the New South Wales and Victorian markets will have three inconsistent schemes with which they will have to comply?

Mr Domanski—Absolutely. Quite a few of our members who are in that category. It is certainly something that concerns them. Their initial estimates of what these obligations might cost them are quite considerable. Of course, they are more firm in relation to the New South Wales scheme because more is known about that at this point in time. Less is known about the details of this scheme.

CHAIR—I am sorry.

Mr Domanski—Would you like me to go on?

CHAIR—Yes.

Mr Domanski—Therefore we believe that there needs to be consistency and there needs to be avoidance of overlap and duplication between these schemes. One way to do that is to recognise that if you comply with one of the schemes, then you should also be complying with the other. We certainly would not want, for example, companies to be in a position where they have to do two separate audits to comply with both the schemes, or perhaps even three if you take the Victorian one as well.

CHAIR—But they will? They can not pick and choose. It is not an if is it?

Mr Domanski—Well it is unknown at the moment, the extent to which that will be the case.

CHAIR—There is nothing in the bill that says you are excused from the obligations if you are compliant with a state scheme.

Mr Domanski—The issue for us is more one at the practical level. What are you going to be required to do. Even allowing for what the bill provides, if you do an audit for one, is that going to be in fact good enough to be submitted as an audit for the other, perhaps by changing the name of the scheme under which you are heading the report.

CHAIR—Well the answer to the question you pose is that we do not know, because clause 18(4) of this bill, states the requirements can be whatever the regulations prescribe.

Mr Domanski—Exactly, and that is the exact point. There is greater clarity emerging about what will be required under the New South Wales scheme. There is not yet really any clarity about the federal scheme, and it could quite possibly be the case that someone having done an audit under the New South Wales scheme, then has to turn around and almost de novo complete another audit under the federal scheme. We certainly do not want that extreme to be the case.

Senator MILNE—So providing the regulations are consistent in terms of what constitutes identification and evaluation of energy efficiency opportunities, to submit the same information to both schemes would be a better system.

Mr Domanski—Yes, absolutely. I think most of our members would see that as a significant benefit to be able to do that. In relation to that, that although industry tourism and resources and DEWS in New South Wales have been talking about the details of the schemes which we welcome, certainly the indications we have been given to date are that there are going to be some differences between those schemes. That is a matter of concern to us. What that means in terms of how you actually go about undertaking your obligations under each scheme is still unclear.

CHAIR—Are you recommending to this committee that we consider recommending to the parliament that there should be a clause in the bill that says: that if a firm is compliant with a state scheme, that is sufficient compliance for the purposes of their obligations under the Commonwealth act?

Mr Domanski—Yes. We would like something like that to come forward. We acknowledge that there has to be a similar intent or objective as far as the scheme goes.

CHAIR—It would have to be an approved state scheme or something like that.

Senator MILNE—Yes, not just any state scheme.

Mr Domanski—My understanding is the Victorian scheme is more onerous than will be the New South Wales scheme, although I do not think that that is completely clear yet. We could say on the balance of probabilities that is going to be the case.

CHAIR—Sorry for interrupting. When you say it is more onerous, would that mean that any company trading in both states that satisfied the onerous Victorian requirements would therefore also satisfy the less onerous New South Wales requirements?

Mr Domanski—Logic would tell you that that probably should be the case.

CHAIR—Not necessarily, because there might be different criteria.

Mr Domanski—There could be different criteria. You would need to look at the detail, but I think the intent of both schemes is broadly similar in terms of trying to encourage greater energy efficiency or energy savings. The mere reason that some of the criteria might be different is not necessarily going to mean that if a company had satisfied one obligation, it will not have satisfied the other, unless there was a major difference or major flaw in there somewhere.

CHAIR—Keep going.

Mr Domanski—The other point we wanted to highlight is the high level nature of the bill currently before the parliament is forcing a lot of detail into subordinate instruments, such as regulations and guidelines. That has certainly created some additional initial uncertainty about the ultimate shape of this scheme, and its impact on affected users.

There have been consultations to try and address that with DITR and affected users and bodies like ourselves. We certainly welcome those consultations and have found them to be very open, useful and informative. Our impression is that DITR is certainly taking their obligations in that area seriously. It is also running a pilot program which hopefully will help to form the ultimate direction and detail of the scheme. We also welcome that because one of the key things that our members are telling us, is that DITR need to pay special and quite serious attention to the views and practical experience of users in relation to implementing this scheme. They should not follow the Victorian scheme and start micro-managing energy efficiency within companies. That is something best left to the companies themselves. I think giving effect to a scheme which fails that sort of practical test, at a reasonable cost, would be highly undesirable and not something that parliament should be encouraging.

CHAIR—Do you generally agree with other witnesses who have said that the matters to be covered by the regulations should be exposed on the face of the bill rather than dealt with by subordinate instruments?

Mr Domanski—Our preference would be for as much detail as possible to be in the legislation. However, we also recognise that there is a balance that needs to be struck, and it is probably undesirable and perhaps not practical to have all the detail in the legislation. We are not convinced that the bill presently is sufficiently detailed, and perhaps there is too much that is being left for the regulations and the guidelines. So it may be that there is currently not the correct balance. We certainly recognise that some of the detail does need to be in subordinate instruments.

The other element of that is, in some ways, this is fairly seminal and new, especially for the Commonwealth. There is also the issue that if the legislation contains too much detail, it removes some of the flexibility of learning by doing and those sort of elements as we move forward.

The other issue that we wanted to highlight, is that this committee should carefully consider the economic merits of the bill. We do not believe at this stage that there really has been any rigorous analysis of that. That is a concern to us, probably strengthened by some of the scepticism which the Productivity Commission has expressed in their report on energy efficiency. If there is a desire to implement ‘opportunities’ identified from implementation of this scheme beyond a commercial threshold, then I think government needs to look at that in terms of a market failure or a social public policy type responsibility. It would be economically unjustifiable to force companies to implement energy efficiency measures which are above the threshold that they set for commercial decision-making. In my view, if there is any intent to go beyond that, then government really needs to look at other measures, such as a subsidy for companies to undertake that. We note the New South Wales government has recently enacted an energy savings fund which is allocating \$40 million per annum for five years to energy savings initiatives in that state. We are yet to see how successful that scheme will be. There is a limited recognition that if you want companies to go above the commercial threshold, then you need to give them incentives to do so. Probably the shortcoming in that scheme is that the \$40 million is actually collected from energy users and then redistributed to users who undertake savings measures. We think that if there is good public policy grounds for that, it is far preferable to fund that out of consolidated revenue.

The last point we wished to highlight is the important role that demand management can play in encouraging greater energy efficiency. The Ministerial Council on Energy has an agenda on that matter, which we consider to be very important. However, it has seen limited action over the past year, which is a matter that is of some concern to us. We note that demand side response, in particular, can play an important role in promoting a healthy and more competitive energy market, and delaying the need for costly new investment in energy infrastructure for which there is considerable need over the next 20 or 30 years. We have undertaken a

trial of demand side response, that had some very promising results, and identified significant savings that could be made through that kind of operation. Quite separate from us, there is now a company formed as a limited liability company, and it is the first aggregator of demand side response in the National Electricity Market. They are called Energy Response Pty Ltd and so far they have collected about 170 megawatts of load that can be offset against high prices in the National Electricity Market, shortages in the National Electricity Market or network bottlenecks in electricity infrastructure.

CHAIR—Thank you Mr Domanski. Do you know whether the Victorian or New South Wales legislation has these rather Orwellian provisions about authorised officers executing monitoring warrants and imposing criminal penalties?

Mr Domanski—I am not sure about the criminal penalties. The Victorian legislation is fairly draconian because it relates back to the licenses that manufacturers have with the EPA in Victoria. The EPA has some pretty ‘impressive’ powers in terms of getting companies to comply.

CHAIR—I am sure any of these bills are going to need to have sanctions of some sort, but I am more interested in the policing function, and allowing officers to march on to premises and take or copy documents, and ask questions on pain of criminal penalties. What about that?

Mr Domanski—Well we see that as—

CHAIR—Do you know whether the other states—

Mr Domanski—I do not know specifically whether the Victorian legislation, in relation to energy efficiency, has criminal penalties in it. However, I do know that the EPA has some pretty strong powers in terms of enforcement of licence obligations. I would just make the point that we see criminal penalties in relation to this, which is supposed to be encouraging people to look at energy efficiency opportunities, as being over the top and not appropriate given the objectives of this scheme. I think it is trying to crack a nut with a sledgehammer.

CHAIR—All right. Senator Campbell?

Senator GEORGE CAMPBELL—Mr Domanski, I might have misunderstood because I came in in the middle of your conversation. I understood what you were saying was that if you were found to be compliant with the Victorian act, that would be sufficient to satisfy the New South Wales act, or presumably to satisfy this act? How could you make a judgement that that would be a satisfactory set of arrangements? How could we make a judgement that that would be a satisfactory set of arrangements, given that to a very large extent we do not know what is in this act. There is so much still remaining to be promulgated in terms of regulations. I suppose there is a capacity here to go way beyond anything that is envisaged in the New South Wales or Victorian acts. What about areas that currently are silent in terms of the application of the New South Wales or Victorian acts that may be addressed in terms of this? Would that apply?

Mr Domanski—I am not quite sure what you mean by the second point you are making there, about it being silent.

Senator GEORGE CAMPBELL—There may be issues that are covered under this act or the regulations that are not dealt with by the Victorian act or by the New South Wales act.

Mr Domanski—You would have to look in detail at what the Victorian act says to be absolutely certain. I would just make the point that the Victorian act encourages and forces companies to undertake energy efficiency audits, and to then implement measures identified as a result of those audits that have essentially less than a two year payback. Now that is significantly above, in fact that is probably about double, the commercial hurdles within firms for energy efficiency or other initiatives. I think you can probably take it from that, that the Victorian act has a much more forceful obligation than strictly commercial requirements. I would hope anything identified under the Victorian act, with some sort of obligation to actually undertake it, should be good enough for this act which hopefully does not go as far as that.

Senator GEORGE CAMPBELL—But there is the potential, given the nature of the bill that we have got in front of us, for this act to go much further than the Victorian act.

Mr Domanski—There is the potential. We would certainly be urging that this bill should not go as far as the Victorian act, and certainly should not compel people to undertake energy efficiency initiatives that are beyond their commercial rate of return, unless there is some sort of government inducement associated with that.

Senator GEORGE CAMPBELL—A final question from me. Is it not of some concern, from your perspective, to ensure that there is clarity about which act prevails? You would not want to create a situation where parts of a state act were applying alongside parts of a federal act.

Mr Domanski—Certainly we want clarity of obligations under this act. Under the Victorian act, it would seem to me that companies are already being required to undertake energy audits, and there are a lot of businesses and manufacturing companies that have done that. If they have done that, then are we going to, through this act, force them to go and do another audit for those sites in Victoria. In my view, that should not be forced upon them.

CHAIR—Senator Milne?

Senator MILNE—I would like to discuss this issue of compliance and enforcement, because voluntary arrangements might be desirable but they are not giving us the kinds of returns we would like. In terms of what has been identified as a draconian regime, I am not persuaded that that is the case. Would you prefer a system that they do have in Victoria, whereby if you do not comply then it affects your licensing, rather than a situation as is proposed in this bill, where criminal sanctions are incurred?

Mr Domanski—I would prefer neither actually. There are other options beyond just that. If this is a serious piece of legislation, with serious intent, it needs to be made well known that companies have to take these obligations seriously. However, it is just going over the top to say if you do not take this obligation seriously we are going to withdraw your licence, or we are going to throw you in jail or something like that. It seems to me that a better approach would be to apply some sort of sanction that is more appropriate to the ‘crime’.

Senator MILNE—Right.

CHAIR—I think in fairness to the witness, I should point out that the sanctions in this bill are largely civil penalties. There is one provision, as far as I can see, which is the obligation to answer questions asked by authorised officers, that can potentially carry a criminal penalty, but that is in an adjectival issue. The core obligations are enforced by civil, not criminal, penalties in this bill.

Mr Domanski—Yes. I would question whether you even need civil penalties. There are other things you can do, such as for example, naming people. That can also have an impact. I can assure you that all the companies that we represent would not want to be in a position where they were named for something like that. They do take their obligations as part of the Australian community very seriously. Naming the large companies that we are talking about here, would indeed have an impact on them. Further down the track if you find that naming does not have an impact, then it might be appropriate to try something harsher, but let us have the pudding first and then see what it looks like. That would be my recommendation.

Senator MILNE—Well with respect to that, that means the onus is on the community to spend a lot of time and effort in public shame activities when the company could take the onus on themselves to do the right thing by complying. So, it is a different way of approaching it.

I am particularly interested in what you were saying towards the end of your presentation, about the separate company that has been set up to look at the way in which the National Electricity Market can operate to better reward efficiency, if you like. Could you please make some comments regarding what we could do with the National Electricity Market so that we encourage more efficient energy use. You may not have a particular policy on that, but I am interested to know your thoughts as obviously that is one opportunity that has been identified, and that company has been set up accordingly. How can we make it more lucrative, or how can we actually advance energy efficiency through the National Electricity Market?

Mr Domanski—There are a couple of issues in responding to that. I do not believe that you necessarily actually have to change anything in regards to the National Electricity Market. That market is quite complicated, and it is quite unfriendly towards the demand side, if I can put it that way. It is essentially a market that has been structured around the supply side. There is a separate issue about whether the whole design of that market needs some attention, and we do have some views on that. For example, whether the current market gives generators basically too much opportunity to exploit their market power. In relation to demand side response, if you can facilitate demand side response, that is a good public policy objective. What I would like to highlight, in particular, is that in our trial we identified about 16 or so key areas and I am happy to provide you with a copy of that report.

Senator MILNE—I would appreciate that.

Mr Domanski—One of the key areas that was identified was actually creating awareness among participants in the market and for end users about what opportunities they could avail on demand side response. Now, I think that is a key trigger to get demand side response going. We have undertaken a series of case studies following that trial with our members. There were four case studies and we have just published a report on those case studies. Those case studies involved a dairy manufacturing company, a glass bottling manufacturing company, a large office building in the Sydney CBD, and a vinyl manufacturing company. The potential exists for them to exploit demand side opportunities, and it started to prove a business case for that.

I think a lot of opportunities are being missed at the moment because the facilitation mechanisms are not there. That is something that we have been pushing very hard with governments to get involved in identifying what those facilitation mechanisms are, what they can do, the areas that they can work on to help them, and then to get on and do that. This can certainly make a big impact in terms of improving that problem we have with the huge growth in the use of power during critical peaks.

The other thing I will mention is that demand side response can also be very important in relation to providing support for networks, for example, distribution networks and transmission networks. It can delay the need for very costly capital expenditure in those networks, which is a big issue going forward. I think the ESAA has identified the need for \$30 billion worth of investment over the next 20 years. Probably close to \$20 billion of that would be in networks.

Senator MILNE—So would you not agree that this legislation will raise the awareness of these opportunities?

Mr Domanski—It could well do. In fact, one of the positive things that we would be hoping comes out of it, is that it could raise those sorts of opportunities.

Senator MILNE—Thank you for that. I would appreciate those reports to which you just referred, and the report of the case studies as well.

Mr Domanski—Yes.

Mr Stacey—Can I also point you to the WA experience where last year they required a lot of DSR and it was successfully done. I think the key difference was that the higher body organising it really drove it, whereas I do not think that is really happening in the NEM from a top level.

CHAIR—Thank you, Mr Domanski and Mr Stacey, you are excused.

[12.11 pm]

LEWIS, Mr Andrew, Assistant Manager, Energy Efficiency Opportunities, Energy Futures Branch, Energy and Environment Division, Department of Industry, Tourism and Resources

WALL, Mr Garry, General Manager, Energy Futures Branch, Energy and Environment Division, Department of Industry, Tourism and Resources

CHAIR—Welcome. It is not the practice of the committee to invite public servants to make opening statements, so we will proceed directly to questions. Who drafted the bill?

Mr Wall—The OPC.

CHAIR—The Office of Parliamentary Counsel?

Mr Wall—Yes.

CHAIR—It was neither of you gentlemen?

Mr Wall—No.

CHAIR—But in accordance with drafting instructions issued by your department?

Mr Wall—Correct.

Mr Lewis—In accordance with drafting instructions and usual drafting practices and precedents.

CHAIR—Why was a decision made not to have provisions in this bill protecting the intellectual property or confidential information of corporations that may be governed by it?

Mr Wall—My understanding is that the bill does provide for the protection of commercial—

CHAIR—Well, can you take me to it? Because so many witnesses you have heard this morning did not seem to think so.

Mr Lewis—Sorry, just to clarify what Mr Wall is referring to. I guess there are two issues that witnesses to the committee have identified—

CHAIR—I am just asking you to direct me to the provisions of the bill which protect intellectual property and commercially confidential information.

Mr Lewis—Sorry, the note, in particular, under clause 23(1), note 2 refers to section 70 of the Crimes Act 1914.

CHAIR—Well, for a start, that is not part of the bill, it is a note, and all it says is that section 70 of the Crimes Act imposes secrecy obligations on Commonwealth officers. Now, in the first place, not all of the people who may enforce this act, were it to be enacted, are Commonwealth officers; secondly, I think you will find—I do not have a copy to hand—that section 70 of the Commonwealth Crimes Act does not relate to commercially sensitive information but relates to matters of which officers may become aware in the course of their duties. Depending on the scrutiny, it may not provide sufficient protection for commercially confidential information. But in any event, Mr Lewis, why does not the bill make express provision for what is plainly a matter that would be of proper concern to the industry?

Mr Lewis—To respond to both issues that you have raised. First, we have had advice from the Australian government solicitor that Commonwealth officer, as defined in section 70 of the Crimes Act, does and would extend to any person appointed as an authorised officer under the bill; secondly, in terms of the protection of commercially confidential information, I believe a decision was made that it was difficult or impossible to define that term meaningfully in the bill.

CHAIR—Who made that decision? That is not right. There are plenty of statutes that define commercially sensitive information. It is not beyond the task of a draftsman to define that.

Mr Lewis—Well, that may be the case.

CHAIR—So that issue was not dealt with. I do not want to take too much time, but as every witness today has pointed out, I am struck by the extent to which the bill leaves it to the regulations to really impose the obligations. Rather than take you through it chapter and verse, can I just point out what seems to me to be the most egregious example of this: in clause 18(7) and (8), the assessment plan. First of all, the obligation in relation to the assessment plan is to be found in clause 15(1) which provides that the registered corporation has to give the secretary an assessment plan meeting the requirements of subclauses 18(1), (2) and (3). So,

subclauses (4) and following of clause 18 seem to be otiose. But in any event, clause 18(7) then states, after certain requirements are specified, ‘The assessment plan must meet any extra requirements set out in the regulations.’

Then subclause (8) bizarrely and absurdly states, ‘without limiting subclause (7)’. It is a little difficult to see how you could limit words of that generality. ‘Regulations made for the purposes of that subclause may (a) set out requirements for a proposal in relation to the following: (1) the types of actions mentioned in subclause (4), which is very general in any event. (2) the deadlines for doing those actions, and (3) any other matter.’ Now, how on earth are corporations meant to know what are their obligations if they are so open-ended that an assessment plan can be required to meet any extra requirement in relation to any other matter?

Mr Wall—Mr Chairman, there is a tension here between what you have heard today about the reliance on open-ended or wide regulations versus the need for the legislation to deal with a variety of situations and companies in a variety of industries, and also in relation to at least two of the state government schemes that have been identified here, in New South Wales and Victoria. So the power to make regulations in this instance is in fact to be able to accommodate what are different schemes in different companies, what are different schemes in different states. So that where people are doing assessments already, the scheme does not impose a new or different burden on them to one that they are already meeting satisfactorily.

CHAIR—Mr Wall, I am sure it does that, because it is so wide that it could mean anything, and therefore it could certainly mean that. You are not the draftsman so I am not blaming you for this but it does seem to me, reading through the whole bill, that it tells us nothing about what is required in order to satisfy the scheme. It is not just operational issues either: look at clause 7(2)(b). The obligation here is an obligation that lies upon what is called a controlling corporation. Controlling corporation is defined in clause 7, and then by clause (2)(b) states, ‘A corporation is covered by this clause unless’ and ‘(b) it is within a class of corporations, if any, specified in the regulations.’ Now, as I read that, it means by regulation the government could exclude any company or class of companies from the obligations of the act, simply by passing a regulation. Now, that is not an operational matter, is it?

Mr Wall—No, it goes to policy considerations again.

CHAIR—About which I acknowledge you cannot speak.

Mr Wall—Well, I was going to elaborate on clause 8 where, in a sense, the power is refined by reference to the stationary energy sector.

CHAIR—That is not clause 8; clause 8 is about members of a group. I think you mean clause 7(2)(a)?

Mr Wall—Sorry, 7(2)(a), and thence clause 8(4)(a) also. The regulation is in relation to the stationary energy sector—

CHAIR—But the reason I make the point is that it is not a sufficient answer to the concern about the delegation to subordinate legislation of the work of the Parliament in relation to this bill to say these are only about operational or technical matters. The regulation-making power seems to suffuse the entire bill, including, on a quick reading, clauses 7, 8, 9, 10, 11, 12, 14, 17, 18, 20, 22 and 23. Need I go on?

Mr Wall—No, and in fact, that is quite a feature of this bill for better or worse—

CHAIR—It certainly is. I am struggling to see how it could be for better.

Mr Wall—It is for better in the sense that we have two state-based schemes and because we have a variety of activities taking place in industry that we are not trying to regulate people into one size fits all. Extensive consultations have been conducted and further consultations are still to take place before this—

CHAIR—But we have heard from industry witnesses that although they are happy with the level of consultations in relation to the program, there was no consultation in relation to the bill.

Mr Wall—There was no exposure draft of the bill, but there was consultation as to the scope and coverage of the bill. That is certainly the case.

CHAIR—Why are there criminal sanctions imposed in clause 29?

Mr Lewis—Essentially that is using an existing precedent for what was regarded by the drafter as a representative and reflective—

CHAIR—So this is a blank page from another bill, is it?

Mr Lewis—Not entirely, though somewhat.

Mr Wall—The provisions have been applied in like legislation relating to business.

Senator MILNE—If you could finish the sentence, Mr Wall, in terms of what other similar legislation imposes such a penalty?

Mr Wall—The ACIS legislation, the—

CHAIR—ACIS?

Mr Wall—Sorry, the Automotive Competitiveness and Investment Scheme.

CHAIR—Oh, I am sorry.

Mr Wall—We are getting really serious here, and the Environment Protection and Biodiversity Conservation Act 1999, so they are precedents—

Senator MILNE—So, still under EPBC, yes.

CHAIR—Thank you for alerting us to those provisions, Mr Wall.

Senator MILNE—Just to go on, we have heard this morning from industry saying that they prefer a much more of an awareness-raising and voluntary approach rather than getting anywhere near compliance and enforcement. Can you give an idea of the success of industry's response to date in terms of energy efficiency around Australia such that this bill has been thought to be needed?

Mr Wall—The origins of the bill are that it enacts a measure that was announced in the energy white paper where the government indicated that energy efficiency—

CHAIR—Was that the white paper arising from the energy task force?

Mr Wall—Correct, yes, where the government indicated that energy efficiency opportunity assessments would be a mandatory measure, as part of a package of measures that was carefully crafted. The energy task force, to which Senator Brandis referred, assessed the evidence and noticed that Australia's rate of improvement in energy efficiency was somewhat lower than OECD countries.

Senator MILNE—Thank you. That was really what I was trying to elicit, that the voluntary approach to date has not worked compared with other similar economies.

CHAIR—No, I do not think that is what he said, with respect, Senator Milne. That is what you say.

Senator MILNE—That is my take on the comparison with the OECD. Anyway, we will not debate that. I wanted to ask about the National Electricity Market. Evidence has been given in relation to the design of that market being essentially unfriendly in terms of demand side management. Has your office done any work in relation to that as a complementary measure to this bill?

Mr Wall—No, the demand side management is complementary to energy efficiency in the sense that it relates to the response of energy users. However, demand side response largely relates to the pattern or distribution of load over a narrower period of time, whereas this measure is about looking at energy and energy efficiency opportunities in a strategic sense over a longer period of time.

Senator MILNE—Finally, in terms of the regulations, you have argued for their flexibility in this legislation on the basis of the differing regulations between the states, Victoria and New South Wales in particular. We have heard from everybody today that the preference would be for one scheme. Everybody would be a lot happier if there was one level of compliance across the country. Was there any attempt to negotiate with Victoria and New South Wales in particular, since they are the ones that have this in train, to look at some uniformity of approach?

Mr Wall—Indeed. In fact, Victoria had a legislated-based scheme in place in 2002-03. It is just concluding its third year of operation. Since the Australian government announced its intention to introduce a national scheme, the New South Wales government announced and developed its own scheme some nine months after this one was announced. We are in negotiations with both of those governments at an officials level. You have heard other witnesses refer to the pilots and trials?

Senator MILNE—Yes.

Mr Wall—Those pilots and trials will identify where more than one jurisdiction imposes a burden on a company, and map those differences. We will then work through a process about whether those differences, those burdens, can be changed at an administrative level or whether they need to be raised at a political level, and work through those changes. Our intention when going into consultations with industry stakeholders is

that we are looking for one set of actions to meet all requirements in Australia, and that is clearly our objective to the extent we can achieve that.

Senator MILNE—In what sort of timeframe? For how long are the trials; when would you expect to collate the experience and translate that into regulations?

Mr Wall—The trials are under way at the moment. They will probably run until about the end of the first quarter in 2006, and then we will be looking to translate the results of the trials into the design of the regulations that we bring in under this bill. We need to then compare the schemes as they apply to different industries. We then go through the process of, if you like, a hierarchy of moving them up to the level where they can be resolved. In some senses, we have an agreement under the Ministerial Council on Energy called the National Framework on Energy Efficiency, and this energy efficiency opportunities measure has been put into that suite of measures. We will use the ministerial council as the place to resolve these differences.

Senator MILNE—So you would expect, on that timeframe, towards the end of next year to have regulations in place?

Mr Wall—Our objective is to have the regulations in place before 1 July 2006.

CHAIR—Thank you, Mr Wall and Mr Lewis. That concludes the public hearing into the provisions of the Energy Efficiency Opportunities Bill 2005.

Committee adjourned at 12.33 pm