



19th October 2005

Mr P. Hallahan,
Secretary,
Senate Economics Legislation Committee,
Suite SG.64, Parliament House
CANBERRA ACT 2600.

Dear Mr Hallahan

Inquiry into the provisions of the Energy Efficiency Opportunities Bill 2005

The Australian Industry Greenhouse Network (AIGN) welcomes the opportunity to provide comment to the Senate Economics Committee's Inquiry into the provisions of the Energy Efficiency Opportunities Bill 2005. AIGN's membership is listed in the attached flier.

Most, if not all, AIGN member companies will fall under the provisions of the Energy Efficiency Opportunities program. AIGN is broadly supportive of the objective to improve the identification and implementation of cost effective energy efficiency opportunities by large energy using businesses. AIGN would like to comment on a number of specific aspects of the Bill.

The Regulations

The bill provides for the enactment of unspecified regulations and, potentially, for unspecified and unlimited additions to the regulations in the future. AIGN considers that this unfettered opportunity for regulation is unreasonable, particularly as only sketchy information has been provided as to the likely details of those regulations.

Section 12 of the bill provides for the establishment of a Register of Corporations for the Energy Efficiency Opportunities Scheme, which may be made available to the public.

Section 12 (2) identifies the information that may be made available on that register, including the name of each corporation that the Secretary must register and "*any other matters required by the regulations.*" (12[2b])

AIGN suggests parameters should be set in the legislation which limit what may be added to the Register and which protect Registered Corporations from the publication within the Register of information that may be commercially sensitive.

Similarly, Section 21 states that a registered corporation must prepare and make available to the public a report in accordance with Section 22.

Section 22 provides for the public reporting of an energy efficiency opportunities assessment report, identifying the contents of such a public report, including:

- (a) a description of the way in which the corporation has carried out, during the period, the proposal in its approved assessment plan for assessing the opportunities for improving the energy efficiency of its group; and
- (b) the results of carrying out that proposal; and
- (c) the response of the corporation to those results; and
- (d) any other information required by the regulations. (Section 22 [3])

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The provision to allow for “*any other information required by the regulations*” once again provides no restraints on the regulations, and no limit on what might be required to be publicly reported, in particular information of a commercially sensitive nature. AIGN would suggest that the provision in the Bill for “any other information” public reports be amended to make it clear that regulations must not require the publication of commercially sensitive information.

While the unfettered power to require publication of information, which is provided in these previous sections, is of most concern, the Bill contains a number of other provisions that leave potentially onerous aspects of the program to the regulations.

For example, Section 18 sets out the requirements for an assessment plan, which states that:

The assessment plan must meet any extra requirements set out in the regulations (18 [7]).

The Bill should provide at least some guidance as to the extent and nature of these extra obligations. This section also allows for unspecified additions to the regulations in Section 18 (8). The requirement under Section 20 of the Bill to carry out energy efficiency opportunities assessments contains similar provisions to allow for unlimited additions to the regulations.

As noted previously, these regulations are currently unavailable for comment. They are also not required to be sent to the Senate’s committee for scrutiny. The open-ended character of the potential regulations requires a considerable leap of faith for companies who will be compelled to operate under the program.

AIGN suggests that parameters be set on the information that may be required to be made public under the program and on the nature of the extra requirements that might be called for by regulation. In addition, we ask that consultation take place between the government and stakeholders on the scope and details of the regulations, as has been promised.

Report Sign off by Chair of the Board

Section 22 (2b) states that the report must be signed by the chair of the board of directors (or equivalent officer) of the registered corporation.

AIGN considers that this is outside the normal functions of the Chairman of the Board of Directors. Identifying energy efficiency opportunities and taking appropriate action is an operational function and as such the responsibility of the operational management of the company. The Chairman and Board members are responsible for governance, including ensuring that management fulfils its operation responsibilities. It is appropriate for the Chief Executive to take responsibility for signing off on such reports. In the case of multi-national companies, sign off should be from the head of the Australian operations.

Authorised officers

Section 25 allows for the appointment of authorised officers to verify information provided to the Secretary by registered corporations. It states that the Secretary may, in writing, appoint:

- (a) an officer or employee of the Department; or
- (b) any other suitably qualified person; (Section 25 [1]).

While Note 2 to Section 23 states that *Section 70 of the Crimes Act 1914 imposes secrecy*

obligations on Commonwealth officers, no specific provision is made for confidentiality requirements imposed on authorised officers who are not Commonwealth Officers.

AIGN suggests that given the high level of access to confidential company information that authorised officers will have under the Bill, equivalent confidentiality requirements should be specified in the Bill for those appointed as authorised officers, but who are not covered by Commonwealth secrecy provisions.

Civil and Criminal Penalties

Section 29 (3) states that a person commits an offence if the person refuses or fails to comply with a requirement under Section 29(2), the penalty being 6 months imprisonment.

Schedule 1, Section 3 allows that The Court may order a controlling corporation to pay the Commonwealth a pecuniary penalty of up to 1000 penalty units if a declaration of contravention by the controlling corporation has been made under clause 1; and the contravention is serious.

These penalties for contravening the legislation are unduly severe. A “big stick” approach to encouraging energy efficiency seems to be entirely misplaced.

Yours sincerely,



John Daley

Chief Executive

About AIGN

The Australian Industry Greenhouse Network Limited (AIGN) is a network of industry associations and corporations, which contribute to the climate change policy debate and see value in joint industry action on climate change policy issues in order to promote sustainable industry development.

What we do

AIGN seeks to promote the development of Australia's manufacturing, agricultural and industrial resources by:

- providing information, advice and a forum for the analysis and formulation of public policymaking process on the climate change issue;
- consulting with government and other opinion leaders on the adoption of a principled national and international greenhouse policy framework within which effective, equitable, efficient and appropriate domestic greenhouse gas abatement actions are developed and implemented consistent with sustainable development; and
- contributing to the international climate change debate including through participation in international climate change meetings and events

AIGN participates in the AGO's Greenhouse Challenge program *Industry-Government Greenhouse Partnerships Committee* and has been included in the Australian Delegation at UNFCCC negotiations as an Industry Advisor.

AIGN provides a research and information service to its members, giving updates on policy areas and activities of relevance to industry and provides regular summaries of relevant news items and publications on climate change issues.

AIGN hosts monthly meetings to facilitate policy discussions and information sharing between our members, government representatives and other people with relevant expertise and interests

AIGN Members

Industry Associations

Australian Aluminium Council
Australian Coal Association
Australian Institute of Petroleum
Australian Petroleum Production and Exploration Association
Australian Plantation Products & Paper Industry Council
Australasian (Iron and Steel) Slag Association
Cement Industry Federation
Federal Chamber of Automotive Industries
Minerals Council of Australia
National Generators' Forum
Plastics and Chemical Industries Association

Individual Businesses

Alcoa of Australia Limited
BP Australia Limited
BHP Billiton
Caltex Australia
Chevron Australia
ExxonMobil
Hydro Aluminium Kurri Kurri
Mitsui & Co (Australia) Limited
Origin Energy Limited
Rio Tinto Australia Limited
Santos Limited
Shell Australia Limited
Wesfarmers Limited
Woodside Petroleum Limited



Australian Industry Greenhouse Network

Climate Change Policy Principles

Australian Industry Greenhouse Network's position on climate change is informed by the following principles:

Australia should make an equitable contribution, in accordance with its differentiated responsibilities and respective capability¹, to global action to reduce greenhouse gas emissions and to adapt to impacts of climate change.

Australia should engage the international community in pursuing identified and beneficial environmental outcomes through greenhouse gas emissions reduction action which:

- allows for differentiated national approaches;
- promotes international cooperation;
- minimises the costs and distributes the burden equitably across the international community;
- is comprehensive in its coverage of countries, greenhouse gases, sources and sinks;
- recognises the economic and social circumstances and aspirations of all societies; and
- is underpinned by streamlined, efficient and effective administrative, reporting and compliance arrangements.

In this global context, Australia should develop a strategic national approach to responding to climate change which:

- is consistent with the principles of sustainable development;
- is consistent with other national policies including on economic growth, population growth, international trade, energy supply and demand, and environmental and social responsibility;
- takes a long term perspective;
- maintains the competitiveness of Australian export and import competing industries;
- distributes the cost burden equitably across the community;
- adopts a consultative approach to the development of new policies; and
- is consistent and effectively co-ordinated across all jurisdictions throughout Australia.

Australia's future greenhouse policy measures should:

- be consistent with the strategic national approach;
- be trade and investment neutral, in a way that does not expose Australian industry to costs its competitors do not face;
- not discriminate against new entrants to Australian industry nor disadvantage "early movers" in Australian industry who have previously implemented greenhouse gas abatement measures;
- take account of the differing sectoral circumstances;
- be based as far as is practicable on market measures;
- address all greenhouse gases;
- address all emission sources and sinks; and
- balance, in a cost-effective way, abatement and adaptation strategies – both of which should be based on sound science and risk management.

1. Australia's contribution to the global climate change effort as set out here reflects the principle in Article 3.1 of the United Nations Framework Convention on Climate Change. Differentiated responsibilities and respective capabilities could take account of such matters as a country's economic growth and structure, population growth, energy production and use etc.