



27 October 2005

Stephanie Holden
Senate Economics Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

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Dear Ms Holden,

ENERGY EFFICIENCY OPPORTUNITIES BILL 2005 (CTH) SUBMISSION

BlueScope Steel appreciates the opportunity to provide a submission on the Energy Efficiency Opportunities Bill 2005 (Cth) ("**the Bill**").

BlueScope Steel Limited is an international steel solutions company, with a manufacturing and marketing footprint spanning Australia, New Zealand, Asia and North America. The company is a global leader in the provision of high quality metallic coated and painted steel products for the building and construction sector, and also supplies customers in the general manufacturing, automotive and packaging sectors.

BlueScope Steel's strengths include its unrivalled network of manufacturing facilities in Asia, proprietary coating and painting technologies and strong brands, including COLORBOND® steel, ZINCALUME® steel, the LYSAGHT® range of steel building products and the BUTLER® brand of pre-engineered steel buildings.

BlueScope Steel operates a 5.3 million tonnes per annum integrated steelworks at Port Kembla, Australia, a 625,000 tonnes per annum integrated steelworks in New Zealand, and has a 50 per cent interest in a 1.8 million tonnes per annum steel mini-mill in Delta, Ohio. Additional steel rolling, coating and painting plants are located in Australia, New Zealand, Thailand, Malaysia and Indonesia, and under construction in New South Wales, China and Vietnam. BlueScope Steel has a network of more than 50 rollforming facilities in 13 countries that is unmatched by any other steel company, and is the market leader in pre-engineered metal buildings in China and North America. Our website www.bluescopesteel.com contains further details about our business.

Given BlueScope Steel and its related Australian subsidiaries have a collective annual energy use well over the threshold of 0.5 petajoules for mandatory registration in the Energy Efficiency Opportunities Scheme, BlueScope Steel is directly impacted by the Bill if it is passed. In this regard, we would like to raise the following issues and concerns with the Bill:

- **[Regulations]** We note a vast majority of the detail regarding how the Bill will operate in practice has been left to the Regulations. Accordingly, it is difficult, if not impossible, to properly understand and comment on how the Bill will impact our business until this information is released. For example, crucial detail regarding:
 - the meaning of the term "energy used";
 - information to be contained on the Register of Corporations for the Energy Efficiency Opportunities Scheme;
 - additional energy efficiency opportunities assessment plan requirements (especially in clause 20);
 - the frequency of reporting on a corporation's energy efficiency opportunities assessment; and

- o the timing of the release of the public report on a corporation's energy efficiency assessment;

has been left to the Regulations.

Despite this, we note that the Department of Industry, Tourism and Resources ("DITR") is undertaking a series of consultation exercises regarding the drafting of the Regulations. BlueScope Steel has been involved with this consultation. We submit that it is important for DITR to pay serious attention to the views and practical experience of large energy users (such as BlueScope Steel) in implementing the scheme, which should not seek to 'micro manage' energy efficiency within companies. Giving effect to a scheme that fails the test of practical implementation at reasonable cost would be highly detrimental to our business.

- **[Cost of Compliance]** We are concerned about the impact the Bill could have on the cost of our business compared to the benefits that are derived. Considering that energy is a substantial cost component of our business, it already receives significant amount of our operating and management focus. This is because BlueScope Steel recognise the competitive benefits that can be achieved by minimising its energy costs and therefore, the costs of production. As a result, the Bill is unlikely to result in BlueScope Steel identifying significant new commercial energy efficiency measures beyond those that its existing internal programs and decision-making hurdles already identify.

Over the past few years, BlueScope Steel has carried out audits of both energy and utility use by production departments. BlueScope Steel is also currently in the process of drafting energy plans for our operations to meet both internal and NSW Government requirements to identify energy efficiency opportunities. Accordingly, we believe there is a limited benefit from merely reporting these to government and thereby resulting in additional compliance costs.

- **[Energy Administration Amendment (Water and Energy Savings) Act 2005 (NSW)]** As you may be aware, New South Wales (NSW) has recently enacted the Energy Administration Amendment (Water and Energy Savings) Act 2005 ("**WES Act**"). The broad aims of the WES Act seem to be similar to those prescribed for the Bill. However, the schemes are actually quite different in terms of the detail and reporting requirements. BlueScope Steel considers that it is unreasonable to impose additional costs, and most likely, duplicate provisions on large NSW energy users.

Should the Bill be assented, we support the position of Energy Users Association of Australia ("**EUAA**") in its submission and believe it would be prudent for the Commonwealth to allow the NSW scheme to take precedence and that compliance with the federal legislation should be voluntary for NSW energy users who have completed obligations under that scheme. Like the EUAA, the basis for this view is that the NSW scheme was in place first and large users have already been preparing to comply with the scheme. In addition, a requirement to also comply with the program set out in the Bill would create an unreasonable cost to industry without delivering any additional benefit.

- **[Assessments to be approved]** Assessment plans are subject to approval of the DITR Secretary. The DITR Secretary must approve a plan if they are satisfied that it "substantially meets" the requirements prescribed in clause 18. If they are not satisfied that it substantially meets the requirements of clause 18, they must refuse to approve it, and prepare a revised plan that does so. The DITR Secretary must invite the corporation to comment on the revised plan within a "specified period" (see 17(3)(b)). After considering any comments, the DITR Secretary can either approve the plan as is, or revise it again and seek further comments. We are concerned that the DITR Secretary's power to approve is too broad and discretionary and may result in BlueScope Steel having a plan imposed upon it with which it does not agree and must comply. We would like to see the powers of the DITR Secretary refined so they are exercised in accordance with set criteria to ensure consistency and fairness in this regard.

- **[Definition of “controlling corporation”]** We note the definition of controlling corporation under clause 7 of the Bill. Based on the current drafting, we query whether the Act applies to parent companies only or whether it applies to parent companies and their subsidiaries where both entities are incorporated in Australia. Based on our reading of the provision, it seems that the Act only applies to controlling corporations, that is, parent companies and not their holding companies or subsidiaries. If this is the case, it may be that BlueScope Steel falls outside the regime.
- **[Reporting to the public]** Clause 22(3)(a) requires a company to “describe the way in which a corporation has carried out, during the period, the proposal in its assessment plan for assessing the opportunities for improving the energy efficiency”. When assessing opportunities, we query whether DITR also require companies to list the financial criteria of the assessments. If so, we believe it is imperative that such information is protected by section 70 of the Crimes Act 1914 and treated as commercial in confidence. Accordingly, we query how we can comply with these public reporting requirements in a way that can protect commercially sensitive information.
- **[Need to obtain Chairperson (or equivalent) sign off on public reports]** We submit that this requirement is unreasonable for large publicly listed companies such as BlueScope Steel. We therefore submit that the chairperson is not the appropriate person to sign public reports and that these provisions should be amended to so that directors and/or company secretary can sign. This is consistent with execution requirements under the Corporations Act.
- **[Powers of Authorised Persons]** We note that authorised officers have extremely broad powers of entry onto premises, search and securing of evidential material, issue and use of warrants and the conditional ability to compel the answering of questions and/or the production of documents. Given the objectives of the Act, namely to compel large energy users to assess the potential to improve their energy efficiency and report publicly on that assessment, BlueScope Steel submits that these powers are excessive and unnecessary. These types of powers are typically applicable to legislation that regulates at the operational and functional level such as the OHS Act and environmental legislation. We submit it is inappropriate for an Act that is essentially regulating data production to grant broad powers to its watchdog to essentially come onto a large industrial site such as ours and do as they may.

We have identified a number of concerns regarding these powers. These are set out below.

Entry into premises by authorised officers must be under warrant or by the consent of the occupier. If seeking the consent of the occupier to enter premises, the authorised officer must inform them that they may refuse consent (see clause 31(1)). However there is no obligation to tell the occupier that they may withdraw consent after entry.

Once entry is gained through consent or by warrant, authorised officers may exercise various powers listed in clause 28 – essentially they are to search the premises and anything on them, inspect records and documents and take extracts or copies of them. Evidential material can only be seized by a warrant, although can be secured until a warrant is obtained (clause 28(1)(h)). Under this proposed provision, there is no express limitation of how long evidential material may be ‘secured’ if there is a delay in obtaining a warrant to seize it. There is also a power to operate equipment and facilities at premises to assess the validity of information provided under the Act (clause 28(2) and (3)). For a large, heavy industrial, complex manufacturing site such as BlueScope Steel’s, we submit this is far too broad, unacceptable and needs to be significantly watered down. An authorised officer exercising this power may put the security of our operations at serious risk or at worse, the safety and well-being of our employees and contractors. These provisions need to be struck out or tightened so that our operations, production levels and people are not compromised.

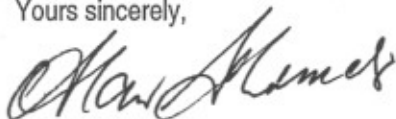
If entry is by warrant, an authorised officer can require the occupier of the premises to answer questions and produce documentation (clause 29(2)). Failure to comply with such a request is an offence carrying a maximum penalty of six (6) months imprisonment. This is quite draconian in light of the objects of the Act. Furthermore, there is no requirement on the part of the authorised officer to warn a person about the penalty for non-compliance. Clause 29(4) provides that a person is not obliged to comply with the demand if this would tend to incriminate them or expose them to a penalty. Again, there is no requirement to inform a person that they are excused from complying under the self-incrimination provision which is inconsistent with legislation containing similar provisions.

Clause 37 is a standard provision regarding the obligation of the occupier to provide all "reasonable facilities and assistance for the effective execution" of the authorised officer's powers where entry is via warrant. This is ambiguous and there is no explicit exemption from the obligation even where compliance might tend to incriminate the person or expose them to a penalty. There is also no requirement on the part of the authorised officer to warn a person about the penalty for non-compliance (which is a maximum of \$3,300).

- **[General Submission]** Compared to overseas cross-country comparisons, Australia has a relatively high level of energy consumption per unit of output. However, such comparisons can be misleading because of significant differences between countries in climate, energy prices and the size of energy-intensive industries. Australia must achieve the right level of energy efficiency for its own circumstances. Many governments see energy efficiency improvements as a low-cost means of reducing emissions of greenhouse gases. However, the scope for achieving environmental gains through increasing the uptake of only those energy efficiency improvements that are privately cost effective appears to be modest at current and expected energy prices.

If there are any questions about BlueScope Steel's submission or you would like to discuss any issues further, please do not hesitate to contact Colin Foye, Energy Services Commercial Manager on 02 4275 3503.

Yours sincerely,



Alan Thomas
Vice President, Technology and Environment