

28 October 2005

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

Dear Mr Hallahan

The Minerals Council of Australia (MCA) welcomes the opportunity to provide comment to the Senate Economics Legislation Committee's Inquiry into the provisions of the *Energy Efficiency Opportunities Bill 2005*.

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85% of Australia's annual mineral output. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally and socially responsible, attuned to community needs and expectations.

The Energy Efficiency Opportunities Program was announced as part of the Australian Government's 2004 Energy White Paper. The MCA strongly supports the White Paper policy initiative, which establishes a longer-term strategic energy policy platform for achieving:

- energy efficiency, cleaner production, energy security and market reform; and
- improved environmental performance through:
  - a suite of measures to lower the cost of significantly reducing greenhouse gas emissions in the future; and
  - improved air quality in the transport sector via progressively tightening fuel standards to improve emissions and facilitate new, more efficient engine technology.

The White Paper underscores the central role of technology to achieve "step-change" improvements in greenhouse gas abatement for both fossil fuels and renewable energy sources. It also recognises that the "here and now" imperative in greenhouse gas reduction is technological research and development and commercialisation in both fossil fuels and renewable energy sources.

The MCA has been involved in consultations on the development of the policy behind this Bill (but not the Bill itself) and, as a member of the Australian Industry Greenhouse Network, supports the Network's submission to this Inquiry. The Minerals Council emphasises two crucial concerns regarding the Bill currently before the Senate:

- the requirement for the chair of the board of directors (or equivalent officer) of the **controlling** corporation (registered under Part 4) to sign the public report; and
- the extensive provisions in the Bill for further requirements to be provided in *unspecified* Ministerial Regulations with the open possibility of *unlimited additions* to the Regulations in the future.

### **Report Sign off by Chair of the Board**

The Council's members are generally large corporations operating in highly competitive environments. They produce a wide range of mineral products using many different processes and they sell into a range of markets. Almost all MCA member companies will fall under the provisions of the Energy Efficiency Opportunities program, which inter alia will require public assessment reporting every five years by companies whose annual electricity costs exceed \$3 million.

Section 22(4)(b) of the Bill requires that a report about energy efficiency opportunities assessments is signed by the chair of the board of directors (or equivalent officer) of the registered corporation (which is defined in section 4(1) as "a controlling corporation").

While the purpose here is to ensure that Boards consider energy efficiency issues as part of their deliberations on considering new investment activity, many of our member companies have multi-billion dollar divisions where identification of energy efficiency opportunities and taking appropriate action is an operational function. As such this is the responsibility of the operational management of the company. The Chairman and Board members are responsible for governance, including ensuring that management fulfils its operational responsibilities.

*Enduring Value – the Australian Minerals Industry Framework for Sustainable Development* (a copy of which is enclosed), provides comprehensive guidance on translating the principles of sustainable development to operational practice for exploration, mining and minerals processing sites, and, where possible, suppliers.

Signature to Enduring Value is a condition of membership for the Minerals Council of Australia. However all exploration, mining and minerals processing companies and contractors are eligible to become signatories to Enduring Value, provided that they commit to meeting the Enduring Value obligations.

As part of the obligations under Enduring Value, signatories are required to publicly report site level performance, on a minimum annual basis, with reporting metrics self-selected from the Global Reporting Initiative (GRI), the GRI Mining and Metals Sector Supplement or self-developed. These reports address performance across the full scope of social, environmental and financial aspects of the business.

Consistent with the view that Boards are responsible for governance issues and company management for operational issues, **the Chief Executive Officer or equivalent is required to sign the annual Enduring Value report. In the case of multi-national companies, sign off is from the head of the Australian operations.**

**The MCA therefore recommends that:**

- **section 22(4)(b) of the Bill be amended to read: "be signed by the Chief Executive Officer or equivalent of the registered corporation." and**
- **the definition of registered corporation "means a controlling corporation resident in Australia that is registered under Part 4."**

### ***The Regulations***

The Bill provides for further provisions to be provided in unspecified regulations with the open possibility of unlimited additions to the regulations in the future. For example, officials are now suggesting the regulations under section 23(2) could include mandating annual reporting by companies of energy efficiency opportunity assessments and, in 23(3)(b), "any further information required by the regulations."

The MCA considers this to be unreasonable, particularly as only sketchy information has been provided as to the likely details of those regulations. The Bill should set out as “black letter law” its legal intent – not just the framework – having regard to the specific Australian Government policy on energy efficiency opportunities **so that the clear intent of the Parliament is reflected in the resulting legislation.**

In addition, as pointed out in the AIGN submission to this Inquiry, there are many other occasions in the Bill where the provisions allow for “*any other information required by the regulations*” thus providing no restraints on the regulations, and no limit on what might be required to be publicly reported (including information of a commercially sensitive nature).

**The MCA recommends that the provisions in the Bill for “any other information” be amended to make it clear that regulations must not require the publication of commercially sensitive information or the mandating of any additional reporting that is not specifically required in the legislation.**

The MCA would welcome the opportunity to meet with the Committee to discuss these comments.

Yours sincerely

Peter Morris  
SENIOR DIRECTOR - Economics Policy