

# **Dissenting Report from the Australian Greens**

## **Introduction**

The Safe Climate-Energy Efficient Non-Residential Buildings Scheme Bill 2009 is an exciting and innovative piece of legislation. It was drafted in consultation with leaders in the field of energy efficiency in non residential buildings and has the support of international organisations and experts such as William Sisson, Co-Chair of the World Business Council for Sustainable Development's Energy Efficiency in Buildings Project; RAND Corporation, one of America's oldest research institutes; and Dr David Vincent, Projects Director, Carbon Trust - an independent company set up by the UK Government to accelerate the move to a low carbon economy.

Given the level of support for this legislation outside the Parliament and the lack of any legislative measures that drive energy efficiency in non residential buildings in Australia, it is surprising that the Economics Committee's report fails to analyse the legislation in any serious way and delivers such a confused and superficial analysis of the issues or their relationship to a possible emissions trading scheme. It reflects the lack of internal consistency or whole of government approach to climate change and emission reduction under the Rudd government in Australia.

In several areas the report fails to represent the evidence received. Policy makers domestically and internationally are strongly encouraged to read the written and oral evidence provided by the original proponents of the scheme (Lend Lease, WSP Lincolne Scott and Advanced Environmental) rather than rely on the Committee's report.

The following comments outline the Green's response to the Committee's report and recommendations. These comments are intended to be read in conjunction with the submissions to the inquiry and the Hansard of the hearings.

## **Comments on the Recommendations**

### **Recommendation 1**

This recommendation misunderstands the scope of the Government's proposed mandatory disclosure of commercial office building energy efficiency program, which is limited to commercial office buildings only and is based on a measurement tool

which is designed for market comparison, not reporting, with no unified reporting period.

The essence of Recommendation 1 is that Government should collect and analyse data collected from the mandatory disclosure initiative to "identify factors that correlate with the emissions intensity of the non-residential buildings." One assumes that this means the government intends to investigate the relationship between building age or size and emissions intensity. This begs the question, what then? It is not at all clear to us how this information would be used in the future. Does it foreshadow a move for the government to pick winners in this sector with selective subsidies and exemptions? It does not seem to be a step towards introducing the Efficient Building Scheme (EBS) which would establish a level playing field on which all non residential buildings of a type, size, and climate zone would be treated equally, with the only exception being heritage buildings.

The data collected from the mandatory disclosure of building energy performance at the time of sale or lease will be too sparse to allow a future Government to establish energy performance caps for a range of building types in a range of climate zones as is envisaged in this Bill.

To reiterate, the mandatory disclosure program only applies to office buildings and not the schools, hospitals, shopping centres and other buildings that this legislation was designed to capture. Data collection is required to underpin the design of this scheme, but it has to be the right data: a fact that has escaped the Committee.

The EBS would introduce a cheap and simple method of collecting building energy and emission intensity data based on the annual reporting of electricity and gas bills together with building size. The Greens believe this methodology should be used for purpose of mandatory disclosure on an ongoing basis (not just at the time of sale or lease) and that in the future this information should inform the determination of other scheme design aspects such as which building types to include and the level of their emission intensity cap. Evidence given at the Committee hearing supported this information being made publicly available.

## **Recommendation 2**

It is very difficult to understand what Recommendation 2 actually means. It seems to be saying that the Committee recommends that a scheme to enforce energy efficiency in commercial buildings, based on data from mandatory disclosure initiative, should be developed. However, there is no detail at all about what such a scheme may look like, and this idea was not proposed in any submission to the Committee. We can only

presume that it won't resemble the proposed EBS because the previous paragraph (6.20) says that "the committee considers that the decision-making process for setting baselines [ie the cap] in the scheme would be highly complex and contentious." In any case, as stated above the data collected by the mandatory disclosure initiative will not be useful for implementing proposed scheme.

As discussed further below, an "appropriate scheme to enforce energy efficiency" must balance incentives with an obligation to act, be based on mandatory participation, and include a carbon price set by the market if it is to be effective.

### **General comment on the body of the Committee Report**

In general the Report fails to capture the essence of the arguments relating to the EBS Bill. That argument boils down to:

- (a) Which is the best method of assessing a building's energy performance?  
and;
- (b) Which is the best complementary energy efficiency policy for non-residential buildings?

On the question of the method of assessing building energy and emission intensity performance, it was surprising that no evidence or witness challenged the methodology proposed by the original proponents of the EBS scheme, (Lend Lease, WSP Lincolne Scott and Advanced Environmental). This methodology is a simple and inexpensive measurement based on energy bills and building size.

Instead, many witnesses simply argued for retention of the National Australian Built Environment Rating System (NABERS) Energy rating tool. To an extent this is moot point because NABERS Energy, at least in its current form, is an inaccurate rating tool. Even if the technical flaws in NABERS Energy were corrected, it would rely on the use of independent expert assessors – greatly increasing transaction costs. We also highlight that the Committee received evidence that NABERS has been used to rate just 230 buildings in eight years.

A rating system like NABERS Energy may have its uses, but that is not the point. Rather, the point is that the Committee did not hear any arguments, convincing or weak, against the proposed simpler and cheaper option.

On the question of what is the best complementary energy efficiency policy, the two competing proposals are an energy efficiency credit trading scheme or accelerated depreciation for energy efficiency products.

Once again, no strong evidence was presented to the Committee to counter the assertion from the original proponents of the scheme that energy efficiency credit trading schemes (also called white certificate schemes) have not proved effective in the non-residential building sector, either domestically or internationally. On the contrary, the original proponents demonstrated instances where Governments have abandoned white certificate approaches in favour of schemes similar to the EBS.

With regards to accelerated depreciation, whether this would prove effective in the non-residential building sector was a contested point, but the Greens view is that either way it is compatible with and could be additional to the emissions trading scheme and/or white certificate trading or the proposed EBS. It is notable that the Property Council of Australia rejects a market mechanism to drive energy efficiency and prefers regulation and government largesse making it vulnerable to the whims of government in terms of both. Given that no government has this policy on the table why the PCA would take this approach is puzzling.

### **Supporters and detractors**

The Committee Report fails to list the supporters of the Bill or supporters of the concept of a cap and trade scheme for buildings generally. A long list of supporters (both domestic and international), including statements of support, are listed in the first supplementary submission from Lend Lease, WSP Lincolne Scott and Advanced Environmental.

The Committee Report does detail opposition to the scheme, including from some energy efficiency advocacy organisations. To understand why some of these organisations may be opposed to the EBS, it is important to appreciate where conflicts of interest lie. There are essentially two types of building renovations:

- Minor upgrades using retrofit equipment – e.g. replacing inefficient lighting or fans with modern energy efficient substitutes.
- Major upgrades involving refurbishment of the building – eg to introduce more natural light through structural changes and reduce the need for artificial light or installing a passive heating and cooling system which does not require fans. Compared to minor upgrades, building refurbishment can achieve much greater improvements in energy efficiency.

Energy Service Companies (ESCOs) are companies that sell the efficient retrofit equipment, services to install this equipment and services related to guaranteeing savings on energy bills. They are often linked to product and equipment manufacturers and the installation of this furthers the financial interests of ESCOs.

ESCOs tend to support white certificate trading schemes because relatively simple equipment such as efficient lights and fans may earn valuable certificates. However, ESCOs are generally not in the business of major upgrades. They do not offer, for example, to upgrade the building's façade, introduce light wells, install chilled beam air-conditioning etc. ESCOs may even be hostile to policies which may supplant white certificate schemes. Equally those capable of major upgrades see the opportunity in major refurbishments and advocate for a total overhaul.

The fact is that we need both and both have their place.

### **More specific points**

Paragraphs 2.17 and 2.20: It is implied that Mandatory Disclosure of Commercial Office Building Energy Efficiency is separate and additional to the National Strategy on Energy Efficiency. In fact the Mandatory Disclosure program is part of the strategy – indeed it is the only part that will create any incentive to improve the energy efficiency of existing buildings. Improving the Building Code is important but applies to major refurbishments that would have happened anyway. Critically, the mandatory disclosure policy applies only to office buildings whereas this Bill can apply to all non-residential buildings. Hospitals, shopping centres, hotels, etc are all major energy users.

Paragraph 3.6: With regard to the suggestion that the size of penalties is too large for small businesses, while there can be debate about the size of penalties, this Bill does not apply to small businesses, it applies to the owners of large buildings.

Paragraphs 3.16 to 3.19: With regard to whether the scheme should be termed a 'cap and trade' or a 'baseline and credit' system. I think the clearest indicator as to whether a trading scheme is one or the other is the method of allocating permits. The EBS allocates like a cap and trade scheme – that is, it allocates tradeable certificates up to the cap. If it was a baseline and credit it would allocate “credits” to building owners to the extent that their emission intensity was lower than a baseline.

There are elements of the scheme that borrow from typical baseline and credit schemes – particularly that the cap is based on emission intensity rather than absolute emissions. The word cap is still a valid descriptor however – the intent is to cap building emissions intensity.

It is worth noting the legal advice from Freehills submitted by Lend Lease, WSP Lincolne Scott and Advanced Environmental supporting the view that the correct terminology was cap and trade.

Paragraph 4.4: Regarding problems with NABERS Energy. Lend Lease, WSP Lincolne Scott and Advanced Environmental submitted a significant body of evidence critiquing the NABERS methodology, essentially giving numerous reasons to question the accuracy of the star ratings. This evidence is largely ignored by the Committee Report.

Paragraph 4.6: It is unbalanced to quote CitiGroup's (a bank not a property expert) arguments that 'split incentives' is not a real problem while ignoring evidence to the contrary. See for example RAND Corp report (especially page five), cited by Lend Lease, WSP Lincolne Scott and Advanced Environmental. [http://www.rand.org/pubs/technical\\_reports/2009/RAND\\_TR728.pdf](http://www.rand.org/pubs/technical_reports/2009/RAND_TR728.pdf)

Paragraph 4.12: To clarify, the cautionary comments from Lend Lease and WSP Lincolne Scott about mandatory disclosure were in the context that it has been proposed to use NABERS Energy as the energy performance metric.

Paragraph 5.5: With regard to the comment from the Energy Efficiency Council: We do not want to give people money every year because 10 years ago they upgraded their building and it is really efficient or tax people who have a building that is pretty old and it is very hard to get above a certain performance level.

An implicit reward for early action is consistent with all trading schemes, indeed it is one of the key benefits. Alternative 'carrot only' approaches such as white certificate schemes effectively provide a reward for early inaction by providing subsidies to late-movers. Note too that the early mover advantage diminishes over time as the cap is tightened.

Paragraph 5.3: The notion from the Property Council that there are 54 relevant policy measures is absurd. There is one substantive measure proposed for existing non-residential buildings; mandatory disclosure at the time of sale or lease. The EBS

proposal is potentially compatible with, but would build upon, a mandatory disclosure policy.

Paragraph 5.4: Similar to my comment in relation to paragraph 4.4. Lend Lease, WSP Lincolne Scott and Advanced Environmental submitted a significant body of evidence explaining why voluntary approaches have repeatedly proved ineffective. The Committee Report does not refer to this evidence in any detail.

Paragraph 5.5 and 5.7 discuss support for accelerated depreciation, but there is no mention of the contrary argument as to why this won't be effective in non-residential buildings. The second supplementary submission from Lend Lease, WSP Lincolne Scott and Advanced Environmental said:

"...listed property trusts pass all tax benefits to investors and the superannuation industry gets no benefit so accelerated depreciation is not a fiscal incentive for property trusts."

"Listed trusts cannot use this incentive as refurbishment capital. Unlike the [Efficient Building] Scheme, which is low-cost to Government, accelerated depreciation is high cost to Australians."

Paragraph 5.8: It is one thing to argue that the transaction costs of the proposed scheme could be expensive if a complex energy performance measurement tool (such as NABERS Energy), was used. But this is not what is proposed. It is clearly biased to say that the scheme will be necessarily expensive – after all the Bill defers this issue to the regulations.

Paragraph 6.1: The economy-wide price created by an emissions trading scheme will not “filter through” to “set clear market-based incentives” for the owners of existing non-residential buildings. The owners of non-residential buildings will not get an “effective price signal” because they don’t pay for the electricity and gas – the building occupants/tenants do, and energy costs are less than 1% of their total costs. Further, as large business owners they can negotiate cheaper energy costs than the rest of the market. This is fundamentally why all witnesses agree that complementary measures are required.

Paragraph 6.8: In relation to concerns raised about double counting. There is no suggestion in the Bill, the Explanatory Memorandum or the second reading speech that there should be any attempt to shield participants in the EBS from the impact of any emissions trading scheme. The observations from Mr Sterland, the representative from the Department of Climate Change, are true but irrelevant. It is disappointingly apparent that Mr Sterland was not across the detail of the Bill.

Paragraph 6.10 and 6.11: With regards to the assertion that there will be problems defining which types of office buildings should have different energy intensity thresholds. The Building Code of Australia clearly states how different types of buildings are identified. Refer, for example to section 2.3 'Building classifications' on pages 5-6 of the second supplementary submission from Lend Lease, WSP Lincolne Scott and Advanced Environmental. Note too that the 'neat division' referred to in paragraph 6.11 is made frequently. Each type of space needs an occupancy certificate from the local planning department, granted through a DA applicable to all fit outs. This is so issues of fire safety can be certified before people are allowed to occupy. Given the critical consideration of life safety, the separation of uses for carbon reporting purposes is far less onerous than already exists.

Paragraph 6.13-6.16: With regard to the assertion that there might be a single emission intensity cap for all office buildings. The Bill's Explanatory Memorandum clearly states "the Minister would then set an intensity cap for each building type, each year for 10 years, probably starting with the average intensity for a city or region. This would vary by city or region due to local climatic conditions impacting the average." Further, no evidence was presented to support the assertion that old buildings will emit "well above the baseline" while new buildings will emit "well below". Data collection may or may not lead to that conclusion in the future, but note that the scheme does not seek to relieve old buildings but to impose a price signal of sufficient magnitude to make it more attractive to upgrade the building. The assumption of the wealth of different owners being an important consideration suggests a misunderstanding of the ownership of Australia's existing building stock. This is not relevant consideration, whereas Heritage listing clearly is.

Paragraph 6.17: The meaning of this paragraph is unclear, but to try to clarify, the point that Property Council was trying to make was that if one estimated the median performance of buildings (which from the scatter graph they estimated at 128 Kg of CO<sub>2</sub> per square meter) it is apparent that while most buildings are clustered around the



median, there are some outliers that perform badly. The point of the graph seems to be to demonstrate that EBS would place an unfair impost on those inefficient buildings.

In giving evidence the Property Council acknowledged that there are other ways of calculating the median but asserted that these other methods don't make much difference. However, the Property Council took a CO<sub>2</sub>e/m<sup>2</sup>/building number and then averaged, rather than a total CO<sub>2</sub>e/total m<sup>2</sup> for the sector in question average, that is intended by the Bill. This makes a significant difference.

More importantly, however, the Property Council's thesis is based on outputs from NABERS Energy. These are not the emissions intensity figures proposed by the Bill. NABERS Energy distorts its reporting of CO<sub>2</sub> intensity per m<sup>2</sup> to 'correct' to externalities such as hours of use and numbers of computers in a workplace. They therefore bear no resemblance to the 'raw' CO<sub>2</sub>e emissions that are considered in the Bill and in the calculation on the cap.

The Property Council displayed both a poor understanding of the intent of Bill and a determined effort to undermine a reasonable consideration of the pros and cons. This came as some surprise given that many members of the Property Council would presumably benefit from the EBS.

### **Errors that appear throughout the Committee Report**

The words "commercial building" is understood by the sector to mean office buildings – nothing more. The scheme is intended to apply to 'non-residential' not just 'commercial' buildings.

The word 'baseline' should have been changed to 'cap'. Note that the word baseline does not appear in the Bill, the Explanatory Memorandum or my second reading speech.

In conclusion, it is clear that the argument against this Bill is in large part from individuals and organisations who wish to support the NABERS Energy rating tool and/or white certificate trading schemes. That is their prerogative. But it is the job of Governments, including Senate Legislation Committee's to navigate through all claims and counter claims and legislate in the long-term national interest. By producing a Committee report which fails to reflect the evidence submitted and by making recommendations which demonstrate a fundamental misunderstanding of the way the proposed scheme is intended to operate, the Committee has failed to meet this responsibility.

As a general comment the complete lack of engagement in the Bill's inquiry by both Government and Coalition senators is lamentable. The Inquiry analysis process and the drafting of the Committee Report has been a travesty that reflects very poorly on all members of the Committee and the Committee Chair, Senator Annette Hurley. The Australian public expects the Senate to exercise due diligence in considering such proposals and on this occasion the public has been let down. The failure to circulate my responses to the Committee Chair's Draft report meant that the other members of the Committee signed off on a report in ignorance of my responses to criticisms of a Bill which I have outlined above.

There was no considered response from either the Government or the Opposition, although the Chair has undertaken to provide her notes refuting my criticisms noted in this report. All in all there is no evidence that either Government or the Opposition have any significant interest in energy efficiency policy development in the area of non residential buildings. The Greens will continue to pursue this legislation until such measures are in place.

**Senator Christine Milne**