

ALERT

11 OCTOBER 2011

Building Energy Efficiency Disclosure Act 2010

The BEED Act (**Act**) was passed by the Commonwealth parliament as part of the National Strategy on Energy Efficiency released by federal, state and territory governments in July 2009.

The Act sets out the requirements and obligations regarding the disclosure of energy efficiency of commercial buildings.

From 1 November 2011, vendors and lessors of office space of 2,000 m² or more will be required to obtain and disclose an up to date energy efficiency rating.

Buildings affected

The Act, implemented through the Commercial Building Disclosure program (**CBD**), applies to:

- building owners selling an office building with net lettable area (which is measured in accordance with the Property Council of Australia method of measurement) of 2,000 m² or more;
- building owners leasing office space of 2,000 m² or more; and
- tenants who are subletting part of their premises with a net lettable area of 2,000 m² or more.

Disclosure requirements

If a building or an area of a building is disclosure affected, and you are selling the building, leasing the building, or leasing an area of a building that is disclosure affected, then you are required to obtain and register a Building Energy Efficiency Certificate (**BEEC**).

A BEEC includes the following information:

1. a NABERS energy star rating for the building (it is important to note that the NABERS rating system has now been extended to six (6) stars);
2. an assessment of tenancy lighting in the area of the building that is being sold or leased; and
3. general energy efficiency guidance.

In order to comply with the disclosure obligations under the Act, building owners and lessors can meet their obligations by:

1. obtaining and disclosing an up to date energy efficiency rating through a BEEC; and
2. including the NABERS energy efficiency rating in any advertisement for the sale, lease or sublease of the office (the rating must be



displayed prominently within an advertisement so that it is clearly visible, is not obscured, and the number and the text included in the rating is at least as large as the majority of the text contained in the advertisement.

Exemptions

Certain exemptions are available under the Act, and an owner or a lessor who considers that their building or area would be eligible for an exemption, is entitled to submit an application for an exemption under section 17 of the Act. An application for an exemption must be made to the Secretary of the Department of Climate Change and Energy Efficiency along with a \$350 application fee.

Some examples of exemptions include where the building or the area of the building is used for:

- police or security operations; or
- if, because of the characteristics of the building or the area of the building in relation to which the obligation would apply, it is not possible to assign an energy efficiency rating to the building, or assess the efficiency of lighting of the building or the area of the building, in accordance with the assessment methods and standards determined under the Act.

The BEEC

A BEEC can only be applied for and obtained by a commercial building disclosure accredited assessor.

There is no fee for applying for a BEEC; however the building owner or lessor will be responsible for the fees to the accredited assessor.

The BEEC will be issued and remain current until the expiry of either the

NABERS energy rating or the lighting assessment, whichever is the first (a NABERS energy rating is usually given for 12 months).

Increase value and level of demand by improving energy ratings

The Australian Property Institute has recently released a report: 'Building Better Returns, A Study of the Financial Performance of Green Office Buildings in Australia'.

The report was based on using a portfolio of green star and NABERS rating office buildings in Sydney and Canberra and benchmarking these buildings against a portfolio of non green office buildings in similar markets.

The report showed 'a clear link between enhanced green premiums in value with the higher rated NABERS energy rating categories'.

Consequence of non disclosure

The Act imposes civil penalties on corporations and individuals who fail to comply with the requirements under the Act, including significant monetary penalties for each day that a disclosure affected building or disclosure affected area of a building is offered for sale or lease without a BEEC.

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