Building Energy Efficiency Disclosure Act 2010

The Act provides for the establishment of a new national scheme for the disclosure of commercial office building energy efficiency, and will require the disclosure of information about the energy efficiency of large commercial office buildings at the point of sale, lease and sublease.

The disclosure requirements under the Commercial Building Disclosure program (CBD program) commenced on 1 November 2010.

Owners and lessors of commercial office space with a net lettable area of 2,000 m² or more, will be required to disclose energy efficiency information to prospective purchasers and tenants when the space is to be sold, leased or subleased.

The NABERS Energy star rating will need to be disclosed in any advertisement about the sale, lease or sublease of the office. The requirements for how star ratings must be disclosed in advertisements are specified in the Building Energy Efficiency Disclosure Determination 2010.

The information to be disclosed will be in the form of a building energy efficiency certificate (BEEC).

A BEEC will have three components: an energy efficiency star rating for the office building; information about the energy efficiency of the office lighting; and generic guidance on how the energy efficiency of the office may be improved.

BEECs will be accessible to potential purchasers and lessees via an online registry. The applicable energy efficiency star rating must be disclosed in any advertisement for the sale, lease or sublease of an office.

The scheme aims to provide the commercial office market with credible information about the relative energy efficiency of offices that are for sale, lease and sublease - enabling potential purchasers and lessees to consider energy efficiency as part of their decision making processes.

The requirements to disclose a Building Energy Efficiency Certificate (BEEC) commenced in the second year of the program (i.e. from 1 November 2011) and includes three components:

1. a NABERS Energy base building rating
2. tenancy lighting information
3. generic energy efficiency guidance.

BEECs will be issued by a recognised issuing authority.

Disclosure in advertising:
• Vendors, landlords and sub-landlords will also be required to disclose the building’s energy efficiency rating in any advertisement for the sale, lease or sub-lease of the building.
• The Bill does not propose that purchasers, tenants or sub-tenants can terminate sale contracts, leases or sub-leases if vendors, landlords or sub-landlords do not comply with the legislation. However, fines in excess of $100,000 can be levied for any breach of the above obligations.

BEECs will be issued by a recognised issuing authority, and will set out:

1. the energy efficiency rating for the building;
2. an assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet; and
3. guidance on how energy efficiency might be improved.

There are three primary obligations placed on owners:

1. An owner is precluded from offering to sell or lease a building (or part of a building) unless a valid and current Building Energy Efficiency Certificate (BEEC) has been registered for that building (or part of the building). This includes where the owner invites offers to purchase or lease the building, eg where the owner goes to tender or invites expressions of interest.
2. An owner is required to give a copy of the registered BEEC to a potential purchaser or tenant if requested expressly in writing by that purchaser or tenant.
3. The BEEC must be provided “as soon as is reasonably practicable” after the owner receives the written request.

The disclosure obligation does not automatically arise when the owner lists the property for sale or lease – it only arises upon receipt of the request from the potential purchaser or tenant.

In all advertisements for the sale or lease of a building (or part of a building) a valid "energy efficiency rating" will need to be clearly disclosed.

It is envisaged that the energy efficiency rating will be a NABERS Energy Rating, at least in the initial transitional period of the Scheme.

Each advertisement will give rise to a separate disclosure obligation eg if an owner fails to disclose the rating in three separate advertisements relating to the same property, there will be three separate infringements.

Any person who has a disclosure obligation can apply for an exemption. Applications must be in writing and accompanied by a fee.

Importantly, any liable entity must formally apply for and obtain exemption from the
Scheme administrator before the disclosure obligation arises. Entities cannot assess themselves as being exempt.

The Register

BEECs are valid for 12 months only, commencing from the date the certificate is issued.

The "Building Energy Efficiency Register" will be established as a central (federal) registry to register and hold records of all BEECs.

Only accredited assessors will be authorised to prepare and register a BEEC. It is envisaged that most accredited assessors will be sourced from the current pool of NABERS assessors. It is also likely that in order to achieve accreditation under the Scheme, NABERS assessors will need to undergo further training on the assessment of energy efficiency of lighting and the Scheme’s legislative framework.

After a transitionary period of 12 months, from 1 November 2011 a full valid Building Energy Efficiency Certificate (BEEC) is required in order to sell or lease/sub-lease a commercial building in excess of 2,000 square metres. This means that investment buildings with a significant number of tenancies will most likely require an annual Building Energy Efficiency Certificate to be undertaken in order to lease the premises.

The BEEC is maintained on an open register which is viewable by the public. Buildings which have an area of greater than 2,000 square metres, are used for administrative, clerical, professional or other information-based activities or includes support facilities for those activities are liable. This includes mixed use building where more than 75% by net lettable area of the building is being used as office space.

Disclosure is not required in new buildings where the certificate of occupancy is less than 2 years old, strata-titled buildings, short-term tenancies of less than 12 months or in the event of exercising an option to renew or extend an existing lease. Penalties for non-compliance by owners and managers can reach up to $110,000 for the first day and $11,000 for each subsequent day.

The recent “Building Better Returns” study by the API revealed the following key findings:

1. A green premium in value for office buildings was evident for the NABERS energy rating. This saw the 5 star NABERS energy rating delivering a 9% green premium in value and the 3-4.5 star NABERS energy ratings delivering a 2-3% green premium in value.

2. A clear link between enhanced green premiums in value with the higher rated NABERS energy rating categories.
3. Green premiums in value differed in specific office markets, being most evident in the Sydney suburban office market (8% green premium) and the Canberra office market (21% green premium) in the 5 star NABERS energy rating category. This compares with the lesser impact in the Sydney CBD office market (4% green premium).

4. Evidence of major discounts in value in the lower NABERS energy rating categories (less than 3 stars) for the Sydney CBD (10% discount in value) and Canberra (13% discount in value).

5. In the 5 star NABERS energy rating, the Canberra office market showed the largest green premium in value (21%), as well as the largest discount in value (13%) in the lowest NABERS energy ratings.

6. The Green Star rating showed a green premium in value of 12%.

7. Lesser impact was seen in the green premiums in rents for the NABERS energy ratings, with a 5% green premium in rents evident for the Green Star rating.

8. Major discounts in rents were evident in the lower NABERS energy ratings for the Sydney CBD (9% discount in rents) and Canberra (6% discount in rents).

9. In the 5 star NABERS energy rating, the Sydney CBD office market showed the largest green premium in rents (3%), as well as the largest discount in rents (9%) in the lowest NABERS energy rating.

10. Green premiums were also evident in reduced vacancy, reduced outgoings, reduced incentives and reduced yields, particularly at the higher rated NABERS energy categories.

11. These office market green premiums in values and rents for Green Star and the top 5 star NABERS energy rating are generally comparable to that seen in recent US green office building studies (eg: Eichholtz et al, 2010b). In-Situ Renewable Energy Generation

It is expected that the cost of consuming electricity will escalate in real terms by 10% over the next ten (10) years or so.

From a marketability point of view, such could have a significant impact on investment properties with larger heavily lit common property areas, such as shopping centres, portside container areas and so on. In these locations, consumption of electrical power is not directly funded by the tenant but rather the landlord.

The new Clean Energy Legislation is designed to make renewable energy generation more competitive in relation to fossil-fuel generated power. Whilst in the immediate
term such is unlikely to result in an economic return for renewables investment, in
the medium term it may result in heightened consideration for features relating to
the land such as preferred small property location on hills and ridges due to greater
proximity to wind and solar access to supplement conventional electrical supply.