

Disclosure Legislation

Raises Legal Considerations for Commercial Office Transactions in the Northern Territory

*Gene McGlynn,
Assistant Secretary,
Building and Government Energy Efficiency Branch,
Australian Government Department of Climate Change and Energy Efficiency*

Energy efficiency is now a legal consideration when leasing or selling commercial offices spaces of 2,000 square metres or more.

The new national Commercial Building Disclosure (CBD) program was established in mid-2010 when the *Building Energy Efficiency Disclosure Act 2010* was passed by Parliament. Disclosure obligations under the program commence on 1 November 2010.

The commercial building sector is responsible for approximately 10 per cent of Australia's greenhouse gas emissions - generating around 60 million tonnes of greenhouse gas emissions in 2006.

There are more than 21 million square metres of commercial office space in Australia's cities spread across nearly 4,000 buildings. It is expected that more than half those buildings will be required to provide energy efficiency information when

sold, leased or subleased.

The CBD program has been developed by the Australian, state and territory governments, as part of a broad package of measures to encourage building energy efficiency. It is managed by the Australian Government Department of Climate Change and Energy Efficiency.

The program is designed to improve the energy efficiency of Australia's large office buildings. Under the CBD program, most sellers or lessors of office space of 2,000 square metres or more will be required to obtain and disclose an up-to-date energy efficiency rating.

The start date for disclosure is 1 November 2010, with a 12 month transition period to 31 October 2011. During the transition period, building owners and lessors will need to disclose a valid NABERS Energy¹ star rating when offering for

sale, lease or sublease commercial office space with a net lettable area of 2,000 square metres or more.

The NABERS Energy rating must be a base or whole building rating, registered on the CBD program's publicly accessible website, and included in any advertising.

After the transition period, from 1 November 2011, building owners and lessors selling, leasing or subleasing commercial office space of 2,000 square metres or more will need a valid Building Energy Efficiency Certificate. These Certificates will include a NABERS Energy star rating, information about the energy efficiency of tenancy lighting, and general energy efficiency guidance.

Owners and lessors should ensure that sales and letting agency agreements, building management agreements and agreements to sell or lease a disclosure affected building, or disclosure affected area



COMMERCIAL BUILDING DISCLOSURE

A National Energy Efficiency Program



of a building, adequately address the requirements of the legislation for their circumstances. This includes provisions to allow access for energy efficiency improvements to be made and for audits to be conducted on premises.

Owners and lessors who don't comply with the Act risk delays in the sale or lease of the building if they are not ready for mandatory disclosure.

If they proceed without disclosure, they risk a fine or prosecution. Civil penalties of up to \$110,000 for the first day and \$11,000 for each subsequent day may be imposed by a Court for each breach of a disclosure obligation. Alternatively, the Australian Government Department of Climate Change and Energy Efficiency can issue an infringement notice of up to \$11,000 for the first day and \$1,100 for each subsequent day of non-compliance.

The first step to comply with the CBD program is to get a NABERS Energy rating done. It can take several months to get a building's first NABERS Energy rating, and it requires access to 12 months worth of energy use data.

While many higher grade office buildings have been NABERS Energy rated, numerous other commercial buildings have not yet been rated.

All building owners and lessors are encouraged to familiarise themselves with the NABERS

Energy rating process now and start preparing well in advance of any planned sale or lease.

NABERS Energy ratings are valid for 12 months and the required information only needs to be disclosed at the point of sale, lease or sublease to potential buyers or tenants.

The Act sets out certain categories of exemptions from the requirements of the CBD program. Affected parties may apply for exemptions in situations where a building is used for police or security operations or where it is not possible to obtain a valid NABERS Energy rating or tenancy lighting assessment. New office buildings that are less than two years old, strata titled offices and offices offered for short-term lease of up to 12 months are not affected by the program.

Disclosing energy efficiency creates a more informed market that rewards better performing buildings and stimulates greater investment in energy efficiency, as buyers and tenants demand buildings that are more efficient.

As well as saving on energy bills, greener offices can be more comfortable to work in, improve staff wellbeing and productivity; reduce sick leave and support green building industry jobs.

More details about the CBD program are at www.cbd.gov.au. ●

Footnotes

1. National Australian Built Environment Rating System for energy efficiency.

What are the important dates?

July 2010	Act commences – no disclosure obligation
1 November 2010	Implementation date – disclosure obligation commences for affected offices offered for sale, lease or sublease
	Transition period begins – NABERS Energy ratings are to be disclosed
Mid-2011	BEECs can be obtained
31 October 2011	Transition period ends
1 November 2011	Full BEECs are to be disclosed from this date onwards

