



## Mandatory Energy Efficiency Disclosure in Commercial Buildings

*The long awaited and soon to be upon us legislation requiring mandatory disclosure of energy efficiency in commercial buildings has been introduced into the Federal Parliament. The **Building Energy Efficiency Disclosure Bill 2010** is, subject to its passage through the Parliament and Royal Assent being given, expected to be operative in an administrative sense on and from 1 July 2010 with the disclosure obligations expected to apply from October 2010.*

The Bill is to apply to disclosure affected buildings and areas of buildings of a specified kind determined by legislative instrument. It is expected that the legislation will apply to commercial offices with an area of at least 2,000 square metres and that strata titled offices will be excluded.

The Bill provides that it is an offence to offer to sell, lease or sublet a disclosure affected building unless a current building energy efficiency certificate (BEEC) for the building is registered. A civil penalty of up to one thousand penalty units is applicable for breach and the offences are continuing offences in the sense that there is a separate contravention giving rise to a separate penalty in respect of each day during which the building owner fails to comply. Currently, a penalty unit equals \$110.

The Bill also provides that advertisements advertising a disclosure affected building for sale, lease or sublease must include a valid current energy efficiency rating expressed in a manner determined by legislative instrument. Once again there is a civil penalty of up to one thousand penalty units applicable and this is also a continuing offence.

As the Bill, if passed, will be passed under the corporations power of the Constitution, it will apply only to building owners who are constitutional corporations. However if a prospective purchaser, tenant or subtenant is a constitutional corporation but the building owner is not, then the prospective purchaser, tenant or subtenant may require the building owner to comply. Civil penalties will apply for breach.

The Bill does not extend to the effective change of ownership of a building by the transfer of shares or units nor does it extend to the sale of a partial interest in a property.

A BEEC in respect of a disclosure affected building is to be issued by an issuing authority and must set out:

- The energy efficiency rating for the building;
- 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;
- Guidance of a kind determined by legislative instrument on how energy efficiency might be improved. A BEEC will be current for no more than twelve months.

A Building Energy Efficiency Register is to be established and maintained electronically and is to be made available for inspection on the internet.

A BEEC is to be prepared by an accredited assessor who will have wide powers under the legislation requiring an owner, lessee or sub lessee of a building to provide information and to allow access for the purposes of collating information required for the preparation of the BEEC. Once again there are civil penalties of up to two hundred penalty units for an individual and five hundred penalty units for a company. In line with other civil penalties under the Act the offences will be continuing offences.



According to the Explanatory Memorandum accompanying the Bill, the average cost of providing a BEEC is estimated to be around \$6,000.00 rising to \$15,000.00 for more complex buildings.

Any person who makes improper use of information obtained for the purposes of preparing or obtaining a BEEC is liable to a criminal penalty of imprisonment for up to two years. This is to guard against the misuse of commercially sensitive information (e.g. lease documents) which may need to be disclosed during the information gathering process required to assign an energy efficiency rating to a building.

The Bill contemplates that methods and standards of assessment will be determined and published under legislative instrument. It is expected that the National Australian Built Environment Rating System (NABERS) will be adopted for this purpose. All assessments must be carried out by applying the assessment methods and standards so determined and accredited assessors may be liable to an owner, tenant or subtenant for damages if they fail to properly carry out the assessment.

The Bill also has extensive provisions in it relating to the accreditation of assessors and auditing of accredited assessors.

Interestingly, other than the requirement to include a valid current energy efficiency rating in advertisements, there is no other obligation under the Bill for disclosure of the BEEC. Accordingly, “disclosure” seems to be limited to registration of the BEEC on the register. However the energy efficiency rating which must be disclosed in the advertisement is that which is specified in a BEEC for the relevant building. Therefore the BEEC must exist before the advertisement is placed.

The Bill also contemplates the establishment of a “shame file” which is a separate register upon which will be published a list of building owners who have, on at least two occasions within 12 months, failed to comply with the legislation.

We shall monitor progress of the Bill through the Parliament and publish regular updates on our website.

Should you have any questions or would like further advice, please contact:

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