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Mandatory Disclosure of Building Energy Efficiency



The Building Energy Efficiency Act, also known as the Commercial Building Disclosure Scheme, was recently passed into legislation, thereby enacting a major change in the way buildings will be sold or leased in the near future.

Details of the scheme can be found at www.cbd.gov.au. Clients are advised to seek expert legal advice regarding their individual circumstances, before the scheme commences in November 2010.

Did you know?

- Commercial buildings account for at least 10% of Australia's CO₂ emissions
- The average NABERS Energy rating of buildings in Australia is 2.5 stars
- Highly rated buildings are well placed to maintain rent and asset value

What is the Commercial Building Disclosure Scheme?

The scheme aims to ensure that credible and meaningful energy efficiency information is given to prospective purchasers and lessees of large commercial office space (>2,000 sqm).

It defines a disclosure-affected building or area as one with at least 2,000 sqm of net lettable area (NLA) and used for administrative, clerical, professional or similar information-based activities, including any support facilities. The term 'support facility' is defined in the Regulation.

The scheme's broad definition means that assets not typically or exclusively defined as office may be classified as disclosure-affected buildings. To meet its aim, the scheme requires disclosure-affected buildings to reveal their energy efficiency performance information at the point of sale, lease or sub-lease.

When will the scheme commence?

The scheme will commence in a transitional capacity from 1 November 2010 for 12 months; while full disclosure requirements will begin on 1 November 2011.

What needs to be disclosed?

The scheme requires the disclosure of a Building Energy Efficiency Certificate (BEEC), which comprises the following:

1. Energy efficiency rating

Base building NABERS Energy rating, or where this cannot be achieved, a whole of building rating

2. Tenancy lighting assessment

Accredited assessors will benchmark existing tenancy lighting (which will be passed on to the incoming tenant/owner) against best practice

3. Building energy efficiency guidance

This must include general advice to building owners/tenants on common energy efficiency opportunities in commercial office buildings

Transition period requirements (1 November 2010 – 31 October 2011)

During the transition period, a valid base building NABERS Energy rating, obtained on or before 31 October 2011 can be disclosed in lieu of the full BEEC. In the event a base building rating cannot be achieved, a whole of building rating will be required.

Full disclosure requirements (from 1 November 2011)

Once the transition period ends, all three elements of the BEEC must be disclosed.

Disclosure requirements	Transition Period from 1 November 2010	Full Disclosure Requirements from 1 November 2011
NABERS Energy rating	✓	✓
Tenancy lighting assessment	✗	✓
Energy efficiency guidance	✗	✓

Who is responsible for disclosing this information?

In regards to the sale or lease of a building, the owner is responsible. For a sub-lease, the sub-lessor is responsible. Sub-lessors must work with landlords – and in some cases with other tenants – to meet these requirements.

Penalties

Failure to comply with the scheme may result in severe fines. Jones Lang LaSalle recommends you seek specific advice on how penalties may affect your business.

Exceptions and Exemptions

A limited number of exemptions apply for genuine cases wherein disclosure requirements cannot be satisfied.

Exceptions (no action required)

New buildings (occupancy certificate <2 years old)

Strata title properties

Sale through shares, units, or partial interest

Short term lease (<12 months including options to extend)

Exemptions (granted at discretion of Government Department)

Police or security operations

Where NABERS rules cannot be applied

What does this mean?

For landlords

The energy efficiency of buildings will now be available for all to see. Owners of poorly performing assets will not have the option to withhold a building's rating from prospective buyers, lessees or the public.

Landlords may face pressure to reduce rents, or commit to building upgrades in poor performing buildings. In some cases this may accelerate building obsolescence.

Owners of highly performing assets will have an additional point of difference in attracting and retaining quality tenants and investors, and will be well placed to preserve rents and asset values. This may result in reduced vacancy risk, faster leasing, and reduced lease incentives.

For occupiers

Occupiers will no doubt welcome the ease of information that will be a flow-on benefit from the scheme. They will be able to compare options more easily based on their sustainability credentials and select assets that align with their energy and sustainability goals.

Occupiers will have a stronger negotiating position on lease terms and will be able to make informed decisions to help limit their carbon footprint and reduce operating costs while also saving on energy costs.

For investors

As with occupiers, investors will likely welcome the new disclosure requirements as they will allow them to understand the performance of assets and help them make informed investment decisions.

However, investors are incorporating sustainability into future-proofing appraisals of their portfolios and transactional due diligence assessments. Therefore, this may result in lower rated assets becoming harder to transact, resulting in reduced liquidity within portfolios.

Forward-looking investors will recognise the bottom-line benefits of highly efficient buildings and invest their capital accordingly.

What do I do now?

It is important that you start collecting the information required to complete your NABERS Energy rating for any disclosure-affected building. This includes the following:

- NLA floor space surveys completed to PCA 1997 method of measurement
- Hours of occupancy, including normal and after-hours operations (from the lease)
- Building location (postcode)
- Original consumption records of all energy accounts for the past 12 months (no estimated bills)
- Monthly tank reads for diesel tank
- Accurate electrical schematic of the site
- Records for after-hours heating, ventilation, and air-conditioning (HVAC) requests documented via e-mails, lease or Building Management and Controls Systems (BMCS) records
- HVAC operations and maintenance manual and drawings
- Information on the BMCS - functional descriptions, point lists etc
- Breakdown into functional spaces including location of any unusually high or low density uses
- Number of computers (required for tenancy or whole of building rating)
- Evidence of vacancy periods, including area and time of vacancy documented via leases
- Details on any non-commercial space (car parks, retail, gym) that is sub-metered out (must be documented, and meters must meet accuracy requirements)

Please visit www.cbd.gov.au or www.nabers.com for specific details.

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How can Jones Lang LaSalle assist?

Acting now is imperative not only to ensure compliance with the new scheme, but also to protect and enhance your building's value and market attractiveness. Jones Lang LaSalle offers a full range of energy and sustainability services, which can be tailored to your individual circumstances.

1. Obtain a NABERS Energy rating

Jones Lang LaSalle can assist in obtaining a NABERS Energy rating for your asset to ensure you comply with the scheme's requirements. This can best be achieved by starting early, as completing a NABERS Energy rating can be time consuming and complex, particularly if you have not had your building rated before.

NABERS Energy rating for your property. Our Energy and Sustainability Services team has extensive experience in improving the NABERS Energy rating in poorly performing assets via low or no-cost operating changes and developing more comprehensive upgrade programs.

2. Implement an energy efficiency improvement plan

As NABERS Energy ratings measure performance rather than diagnose problems, it is recommended that you obtain a more detailed/focussed audit to determine what can be done to improve performance and obtain a higher NABERS Energy rating. This is particularly relevant to pro-active owners and tenants who are focussed on a longer-term strategy.

Similarly, our team has a proven track record of managing high-performance buildings and can assist in ensuring your most prized and highly rated buildings maintain their status at the top of the market.

The Jones Lang LaSalle Energy and Sustainability Services team can assist in devising a comprehensive strategy for energy efficiency based on world-leading building management practices, which can make a real difference to the performance of your assets.

Jones Lang LaSalle can provide detailed advice on the key issues to be reviewed and recommend steps to lift the

For more information, please contact our mandatory disclosure specialists below:

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