

COMMERCIAL BUILDING DISCLOSURE (CBD) PROGRAM

Established by the *Building Energy Efficiency Disclosure Act 2010* (the Act), the Commercial Building Disclosure (CBD) program is a national program designed to improve the energy efficiency of Australia's large office buildings. The program sets out to achieve this by imposing energy efficiency disclosure obligations on owners and tenants of office buildings at the point of sale or lease. It is hoped that this will be an incentive for building owners to improve the energy efficiency of their buildings and will make it easier for prospective buyers and tenants to make energy efficient purchase and leasing decisions.

Introduction

From 1 November 2010, the CBD program applies to:

- (a) sales, leases and subleases of office buildings with a net lettable area of at least 2,000 square metres; and
- (b) leases and subleases of parts of office buildings involving a net lettable area of at least 2,000 square metres.

In summary, a "constitutional corporation" must not sell, lease or sublet a disclosure affected office building or office area unless it has registered a valid Building Energy Efficiency Certificate (BEEC).

Until 31 October 2011, there is a transition period where a valid National Australian Built Environment Rating System (NABERS) base or whole building rating can be disclosed in place of a full BEEC.

A constitutional corporation includes any foreign corporation and any Australian registered company. Parts of the legislation also extend its operation to individuals who are owners or lessors of disclosure affected buildings or areas.

Advertising

A constitutional corporation that wishes to sell, lease or sublease a disclosure affected building or area must include the energy efficiency star rating from the BEEC. How this disclosure is made is also prescribed by a statutory determination.

Rating

The starting point is to obtain a NABERS rating for a building if it falls within the scope of the CBD program. The government's website: www.cbd.gov.au provides contact details for all accredited assessors.

The NABERS rating is an essential element of a BEEC.

From 1 November 2011, a full BEEC will need to be disclosed and must be publicly accessible on the online Building Energy Efficiency Register, and include:

- (a) a NABERS Energy star rating for the building;

- (b) an assessment of tenancy lighting in the area of the building that is being sold or leased; and
- (c) a general energy efficiency guide.

Exceptions

In certain circumstances, owners and lessors will not be required to comply with the disclosure obligations in the Act. These exceptions are available where:

- (a) the total office space comprises less than 75 per cent of the building by net lettable area;
- (b) the building is either new or subject to major refurbishment and a certificate of occupancy has either not been issued or was issued less than 2 years prior; or
- (c) the building is held under strata title.

In addition, the following transactions do not give rise to a disclosure obligation, even if the relevant office space is a disclosure affected building:

- (a) the sale of a building through the sale of shares or units or the sale of a partial interest in a building; or
- (b) the lease or sublease is for a term of 12 months or less (including any option to extend).

Penalties

The court may impose civil penalties of up to \$110,000 for the first day and \$11,000 for each subsequent day for each breach of a disclosure obligation. Alternatively, the Secretary of the 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.

Further Information

If you would like further information, the government website: www.cbd.gov.au provides a detailed explanation and the ability to search for building energy efficiency certificates for office buildings to which the program applies.

If you have a specific query, please do not hesitate to call us on 9422 8999 or email us on contact@youngandconnell.com.au.

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Disclaimer:

This document contains a summary of relevant information or an opinion which is current at the date of publication. This document is not intended to constitute legal advice and does not take into account individual facts and circumstances. The reader must not rely on this document as advice.

External links:

The website: www.cbd.gov.au is not under the control of Young & Connell. This link is provided for convenience. Young & Connell is not responsible for the content, changes or updates of this site.