



Legal Update



Changes to Commercial Building Disclosure

Recent changes to the Australian Government's national Commercial Building Disclosure (CBD) program will soon require more vendors and lessors of commercial office spaces to make pre-market disclosure of energy efficiency ratings to prospective purchasers and lessees.

From 1 July 2017, the CBD program will apply to office spaces of 1,000m² or greater, a minimum threshold down from 2,000m² previously. This means that a greater number of future sellers and lessors, as well as selling and leasing agents, should note the requirements of the *Building Energy Efficiency Disclosure Act* ('BEED Act').

Compliance with the BEED Act is achieved by obtaining a Building Energy Efficiency Certificate issued by a CBD Accredited Assessor, before the property is made available for sale or lease. The Certificate is valid for 12 months, and should be made available to all potential purchasers and/or lessees upon request. The NABERS energy efficiency star rating, included in the Certificate, must be displayed on all marketing material for the property.

The BEE Certificate is comprised of two main energy assessments:

- lighting energy efficiency and
- the NABERS energy rating.

The property owner will need to provide utility use and charge information for assessment. The NABERS rating (National Australian Built Environment Rating System), nationally administered by the NSW Office of Environment and Heritage, assesses energy efficiency, water usage, waste management and indoor environment quality, to produce a six-star rating scale intended to improve the accessibility and comparability of energy use data for buyers and tenants.

The scheme does provide for a number of exceptions:

1. Premises for sale or lease of areas less than 1,000m².
2. Strata-titled buildings, mixed-use buildings with office space comprising less than 75% of net lettable area (although this is an interim exception for future revision).
3. New buildings yet to receive a certificate of occupancy or with a certificate issued within the previous two years, and significantly refurbished buildings with a new certificate of occupancy issued within the previous two years.
4. Property transfers effected by the sale of shares or units.
5. Leases for an option-inclusive term of 12 months or less.

It is also possible to apply for a discretionary exemption in relation to:

1. a building that has been significantly refurbished and a new certificate of occupancy is yet to be issued,
2. buildings of which all or part is used for police or security operations,

and where the characteristics of the building are such that a NABERS rating cannot be practically assigned.

The outstanding question is whether the disclosure obligations will apply to a property that is not covered by the CBD program and listed for sale or lease before 1 July 2017, and continues to be on the market and does attract disclosure obligations after 1 July 2017. A cautionary approach would have the owner and agent seek a CBD assessment as soon as practical in anticipation of 1 July.

For more specific advice concerning energy efficiency disclosure obligations for commercial premises, feel free to contact Paul McHugh (paulm@tml.com.au).

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