

The Building Energy Efficiency Disclosure Bill amendments

In response to recent property industry concerns, the Federal Government has introduced some leniency into the Building Energy Efficiency Disclosure Bill 2010 (**BEED Bill**).

The BEED Bill is a key piece of legislation in the Federal Government's National Framework for Energy Efficiency which, along with other changes to the Building Code of Australia, are designed to reduce emissions in the built environment sector.

The commencement of the legislation for administrative purposes was 1 July 2010, however the disclosure requirements will only occur from a date yet to be fixed by Proclamation, likely to be in October 2010.

The BEED Bill requires disclosure of information about the energy efficiency of commercial office buildings with a net lettable area over 2000m² or more at the point of sale, lease and sublease.

The information is required to be disclosed in the form of a Building Energy Efficiency Certificate (**BEEC**) which will have three components:

- an energy efficiency star rating for the office building – see www.nabers.com.au (please note that NABERS Energy base building ratings are the subject of review due to the fact that the current rating bands do not set an equitable rating, and in particular disadvantage buildings in Victoria);
- information about the energy efficiency of the office lighting (after the first year of the scheme); and
- generic information about how the energy efficiency of the office may be improved.

The amendments to the Bill are designed to ensure a smoother transition into implementation by requiring less information from landlords during the first year of the scheme. There are three key proposed amendments:

1. Lighting energy efficiency amendment

The first change concerns the amendment to the requirements to provide assessments of a building's lighting energy efficiency. The lighting information is no longer required for the first year of the scheme, and is now only mandatory from the second year of implementation of the BEED regime.

2. Change in penalty regime

The second change to the legislation is the penalty regime. Under the old Bill, non-disclosure could attract a \$110,000 penalty for every day of contravention of the disclosure requirements. At this stage it is unclear by how much the penalty will be reduced, however, it is likely that each new day of a contravention after the initial contravention will incur a maximum penalty of \$11,000 per day.

In her speech at the Built Environment Meets Parliament Summit, on 16 June 2010, Minister for Climate Change Penny Wong said, 'We have listened to the building industry and considered carefully your views concerning ongoing penalties under the Bill. So in a spirit of cooperation, the Government will make amendments to the Bill to reduce the level of ongoing penalties.'

3. Exemptions for short term leases

The third major amendment to the Bill concerns exemptions for leases of 12 months or less. This amendment provides that disclosure is not required if an invitation to offer or an offer is made to let or sublet an applicable building if, at the time the invitation or offer is made, the term of the proposed lease or sublease is 12 months or less. In calculating the 12 month term, any options to extend the lease or sublease must be included, which is likely to mean that the 12 month exemption will have limited application in the industry.

Lavan Comment

The BEED Bill's regime is likely to commence in three months time and given this short time frame, we recommend that owners of commercial office buildings prepare for its implementation in the following way:

- obtain current NABERS ratings for applicable commercial office buildings;
- incorporate disclosure into the initial documentation of negotiations for the sale or lease of an applicable building or part of an applicable building, and ensure that the prospective purchaser or tenant has provided acknowledgement in writing that they have received a recognised NABERS rating at the commencement of those discussions;
- financiers should review their loan documentation as well as their conditions of drawdown to ensure that their borrowers comply with the disclosure scheme; and

- ensure that due diligence checklists for applicable buildings incorporate current NABERS rating status and if buildings do not have a current NABERS rating then prospective purchasers or tenants should ensure that they can contractually secure the information from the vendor or landlord to enable them to obtain a rating in future.

For further information on the requirements of the BEED Bill scheme, please contact Craig Wallace, Senior Associate on (08) 9288 6828 craig.wallace@lavanlegal.com.au or Clare Gleeson, Solicitor, on (08) 9288 6782 or clare.gleeson@lavanlegal.com.au.

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