

### Organising advertising for commercial office space of 2,000m<sup>2</sup> or more?

If so, you need to know about the *Building Energy Efficiency Disclosure Act 2010* (the Act), which imposes mandatory disclosure obligations of energy efficiency for many commercial buildings. The Act, implemented through the Commercial Building Disclosure (CBD) program, forms part of a package of measures to encourage building energy efficiency developed by the Australian, state and territory governments. CBD is a national program to improve the energy efficiency of Australia's largest office buildings.

Under the Act, most sellers or lessors of office space of 2,000 square metres or more will be required to obtain and disclose an up-to-date energy efficiency rating.

Mandatory disclosure obligations started on 1 November 2010, with a 12 month transition period to 31 October 2011. During the transition period, building owners and lessors will need to disclose a valid NABERS Energy\* star rating when offering for sale, lease or sublease, commercial office space with a net lettable area of 2,000 square metres or more. The NABERS Energy rating must be a base or whole\*\* building rating (excluding GreenPower), registered on the CBD program's publicly accessible website and included in any advertising.

\* National Australian Built Environment Rating System for energy efficiency.

\*\* A whole building rating also covers the tenanted space and is disclosed when there is inadequate metering to obtain a base building rating.

### What does this mean for advertising?

During and after the transition period, all advertising\*\*\* for affected office space must include a NABERS Energy rating. Advertising includes banners on buildings, foyers and perimeter fences, and advertising in newspapers, brochures, magazines and Internet sites.

The NABERS Energy rating must be expressed by:

- using the rating from 0 to 5 worked out for the building under the NABERS Energy rating rules, disregarding the effect of the purchase of electricity under the GreenPower program
- adding the words '-star NABERS Energy rating' after the number. For example:
  - 4.5-star NABERS Energy rating
  - 3-star NABERS Energy rating
  - 0-star NABERS Energy rating.

Every advertisement must include the energy rating as outlined above and ensure that the rating is displayed prominently so that:

- it is clearly visible
- it is not obscured
- the number and the text are at least as large as the majority of the text contained in the advertisement.

An additional NABERS Energy rating, inclusive of GreenPower, may be included as long as it is not more prominent than the required NABERS Energy rating.

A NABERS Energy Commitment Agreement rating cannot be disclosed in advertising **instead of** an officially certified NABERS Energy rating. A building owner may choose to include a Commitment Agreement rating **in addition to** the certified rating on advertising, but this is not a legal requirement.

\*\*\* Refer to section 15 of the Act and section 5 of the *Building Energy Efficiency Disclosure Determination 2010*, accessible via the CBD website.

## What if a NABERS Energy rating is not included in an advertisement?

Civil penalties of up to \$110,000 for the first day and \$11,000 for each subsequent day may be imposed by a Court for each breach of a disclosure obligation. Alternatively, the Australian Government 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.

## Can we proceed with advertising the building if we are waiting for a NABERS rating?

Even where the preliminary NABERS rating is a '0', the advertising cannot proceed until the rating is a 'recognised rating' issued by an 'issuing authority' i.e. a NABERS Energy rating issued by the NSW Department of Environment, Climate Change and Water. An issuing authority is referred to in sections 13(7) and section 23 (2) of the Act. Once you have received the NABERS certificate you will then be able to include the NABERS rating in the advertisement.

## Can an exemption be obtained?

It is possible to apply for an exemption from the requirement to display a NABERS Energy rating in limited circumstances\*\*\*\*. If an exemption is granted under the Act, there is no requirement for advertising to indicate a building is exempt.

Details of disclosure affected offices that have been granted an exemption from a disclosure obligation on the grounds that a rating cannot be assigned will be listed on the exemptions page of the CBD website. Further information about exemptions is available on the CBD website.

\*\*\*\* See section 17 of the Act.

## Examples

The following examples<sup>^</sup> of commercial property advertising demonstrate how the NABERS Energy ratings must be disclosed. The Department may include additional examples in the future.

### **^ Disclaimer**

Material in this document is made available on the understanding that the Commonwealth is not providing professional advice and should not be taken to indicate the Commonwealth's commitment to a particular course of action. Different solutions and outcomes may apply in individual circumstances. Before relying on any material contained in this document, readers should obtain professional advice suitable to their particular circumstances. While reasonable efforts have been made to ensure the accuracy, correctness or reliability of the material contained in this document, the Commonwealth does not accept responsibility for the accuracy or completeness of the contents, and expressly disclaims liability for any loss, however caused and whether due to negligence or otherwise, arising directly or indirectly from the use of, or reliance on, this Guidance Note or the information contained in it, by any person. The information in this document provides general guidance concerning the energy efficiency commercial building disclosure obligations imposed under the *Building Energy Efficiency Disclosure Act 2010* (the Act). **This Guidance Note does not affect your legal obligations as set out in the Act.**

**Building signage and newspaper style advertising**



**FOR SALE** Smith-Jones  
Real Estate

**Let's do a deal**

- Up to 5,500m<sup>2</sup>
- Flexible fitted out space
- Basement car parking
- 2.5-star NABERS Energy rating

PHONE 00 1234 5678  
[www.example1.com.au](http://www.example1.com.au)  
Ground floor, 1-2 Example St, Example City



**FOR SALE** Smith-Jones  
Real Estate

**Let's do a deal**

- Up to 5,500m<sup>2</sup>
- Flexible fitted out space
- Basement car parking

2.5-star NABERS Energy rating

PHONE 00 1234 5678  
[www.example1.com.au](http://www.example1.com.au)  
Ground floor, 1-2 Example St, Example City

Rating must not be smaller than the majority of the text.

**Building signage and newspaper style advertising (continued)**



**FOR SALE** Smith-Jones Real Estate

**12-18 North St, City**

- 2,000m<sup>2</sup>
- Parking available
- 2.5-star NABERS Energy rating
- Commitment agreement of 4.5-star NABERS Energy rating

PHONE 00 1234 5678  
[www.example1.com.au](http://www.example1.com.au)  
Ground floor, 1-2 Example St, Example City



**FOR SALE** Smith-Jones Real Estate

**12-18 North St, City**

- 2,000m<sup>2</sup>
- Parking available
- Commitment agreement of 4.5-star NABERS Energy rating

PHONE 00 1234 5678  
[www.example1.com.au](http://www.example1.com.au)  
Ground floor, 1-2 Example St, Example City

Displaying a NABERS Commitment agreement rating only does not meet CBD legislation.

**Building banner style advertising**



Smith-Jones Real Estate  
**Now Leasing**

2.5-star NABERS Energy rating  
Phone John Smith 0012 345 678



Smith-Jones Real Estate  
**Now Leasing**

Phone John Smith 0012 345 678

Rating must be included in all advertising.

**Internet style advertising**



Smith-Jones Real Estate	
<b>Property Summary</b>	
<b>Address:</b>	12-18 North St, City
<b>Category:</b>	Offices
<b>Contract type:</b>	For lease
<b>Floor area:</b>	4,500m <sup>2</sup>
<b>Energy efficiency rating:</b>	0-star NABERS Energy rating
<b>Parking:</b>	Secure basement parking
<b>Listing agent:</b>	John Smith 00 1234 5678



Smith-Jones Real Estate	
<b>Property Summary</b>	
<b>Address:</b>	12-18 North St, City
<b>Category:</b>	Offices
<b>Contract type:</b>	For lease
<b>Floor area:</b>	4,500m <sup>2</sup>
<b>Energy efficiency rating:</b>	Pending
<b>Parking:</b>	Secure basement parking
<b>Listing agent:</b>	John Smith 00 1234 5678

Owners and lessors who proceed without disclosure risk fine or prosecution.

The *Building Energy Efficiency Disclosure Act 2010* imposes mandatory disclosure obligations of energy efficiency for many commercial buildings. It is part of a package of measures to encourage building energy efficiency developed under the *National Strategy on Energy Efficiency* by the Australian, state and territory governments. The Act, implemented through the Commercial Building Disclosure (CBD) program, is administered by the Australian Government Department of Climate Change and Energy Efficiency.

For more information visit [www.cbd.gov.au](http://www.cbd.gov.au)