

Commercial Building Disclosure program seminars September 2011

Responses to questions received

On 20, 22 and 29 September 2011, the Department of Climate Change and Energy Efficiency (DCCEE) held seminars in Melbourne, Sydney and Canberra respectively about the Commercial Building Disclosure program. The Canberra seminar was broadcast via the Internet.

A range of questions were raised during each seminar and from emails submitted via the Internet. Some minor editing of the questions has been undertaken to assist the reader. The names and contact details of those who submitted questions have been deleted. These questions have been grouped under similar themes and where appropriate a common response has been provided for similar questions.

Abbreviations

Act	<i>Building Energy Efficiency Disclosure Act 2010</i>
BEEC	Building Energy Efficiency Certificate
CBD	Commercial Building Disclosure
DCCEE	Australian Government Department of Climate Change and Energy Efficiency
OEH	NSW Office of Environment and Heritage

Disclaimer

The information and suggested solutions (the materials) contained in these responses is not legal advice and should not be taken to indicate the Australian Government's commitment to a particular course of action. Different solutions and outcomes may apply in individual circumstances. The Australian Government recommends that users exercise their own skill and care with respect to their use of the materials and that users carefully evaluate the accuracy, reliability, currency, completeness and relevance of the materials for their purposes. The Australian Government does not guarantee the accuracy, reliability, currency or completeness of, the materials, and assumes no legal liability or responsibility for the information contained in the materials. Appropriate independent and professional advice relevant to your own particular circumstances should be sought if you consider the materials could be potentially relevant to you.

Compliance

Question	Answer
<p>For the first 12 months of the program the Department provided a period of grace. From 1 November this year what will the department be doing?</p>	<p>The Australian Government has taken a staged approach to delivering the Commercial Building Disclosure program. From 1 November 2010 a 'transitional period' applied for the first year of the program, where a valid National Australian Built Environment Rating System (NABERS) Energy base or whole building rating could be disclosed. From 1 November 2011 a full Building Energy Efficiency Certificate (BEEC) is required. All current BEEC's are publicly displayed on the CBD website.</p> <p>Compliance for CBD program is being implemented in accordance with the CBD Education, Compliance and Enforcement Policy.</p>
<p>Since disclosure obligations commenced in 1 November 2010 it has been a requirement that buildings for sale or lease over 2000m² include a NABERS Energy rating in any advertisement. I have seen offices advertised without a NABERS rating – is this legal?</p>	<p>Yes, it has been a requirement to include a NABERS Energy rating in advertisements since 1 November 2010. The guidance note on advertising on the website outlines these requirements.</p> <p>However, it is possible that some of these advertisements may have been for buildings which are considered exceptions under the Building Energy Efficiency Disclosure Act 2010 (BEED Act) and there is no requirement to include a rating. Likewise for buildings which have been granted an exemption.</p> <p>If you think the advertisement may be in breach of the requirements under the CBD program, you are encouraged to report the matter to the CBD Team either through the CBD website on: http://cbd.gov.au/ContactCBD.aspx Or via email: Info@CBD.gov.au Or you may call the hotline on: 1800 020 131 All reports will be dealt with confidentially.</p>

Assessors

<p>What is the range of fees that assessors could charge? Is it a matter between the building owners and the assessors to negotiate?</p> <p>What would be the comparative cost between</p>	<p>The assessment fees are a matter between the building owners and the assessors to negotiate.</p> <p>The CBD program does not set fees for any assessments required under the Act. However, the fees vary from building to building, depending on the size, complexity and time taken to carry out the assessment. You should anticipate the cost to be</p>
--	---

<p>getting a NABERS assessment and a lighting assessment?</p>	<p>about half of the cost of a NABERS Energy assessment.</p> <p>Complexities within the building will determine the costs. The more information provided to the assessor about the building, will determine the time taken to complete the assessment.</p> <p>The Department recently engaged CBD Accredited Assessors to provide lighting assessment quotes for our buildings, and these varied substantially. It is recommended that you seek a range of quotes to make cost comparisons.</p>
<p>At the seminars last year the department advised that assessors could not use the CBD logo, but Nett Zero has one in their display.</p>	<p>Yes we did advise last year that the CBD logo could not be used, and that we were developing our position on this. CBD Accredited Assessors are now able to use the CBD Accredited Assessor logo and must comply with the guidelines of logo use, which are provided when they are accredited.</p>

Lighting assessment

<p>If a building's tenant has a 'make good' clause in their lease that requires them to restore a more energy efficient lighting system to the building at the end of a lease, can an assessor take the more energy efficient system into consideration when he/she is conducting their lighting assessment?</p>	<p>The Assessor generally should assess the lighting system present on the day of the assessment.</p> <p>However, the Department will accept the assessment of the proposed system provided they are ready and installed within 3 months of the assessments.</p>
<p>Why is there a separate tool for lighting and not using the NABERS assessment rules?</p>	<p>The <i>NABERS Energy and Water for offices: Rules for collecting and using data for performance ratings</i> does not have the capacity to measure lighting performance. A lighting assessment is a significant extra measure/indicator of a building's energy performance. The BEED Act recognises this and prescribes that a BEEC has to include both NABERS Energy rating and Lighting Assessment components.</p>
<p>What is the Department's expected timeframe for processing a Lighting Assessment application?</p>	<p>Currently the Department is processing lighting assessment applications in around 6-9 business days. However, timeframes may vary depending on the complexity of the Assessment (i.e. how many floors the building has) and whether the Assessor has completed the application correctly.</p>

<p>How long it takes to process a BEEC application?</p>	<p>The Department has been processing BEEC applications in around 1-5 days of receipt of the application.</p> <p>If the building does not have a NABERS Energy rating and/or lighting assessment, the building owner should allow at least 4-6 weeks, from the initial engagement of a NABERS and/or CBD assessor, through to receiving the rating from the NSW Office of Environment and Heritage or a certified lighting assessment from DCCEE.</p>
<p>Do new buildings require lighting assessment?</p>	<p>No - New buildings are not disclosure affected. Newly constructed buildings and buildings that have undergone a “major refurbishment” where the certificate of occupancy (or equivalent) is less than 2 years old do not have to provide a BEEC.</p>
<p>A large tenant is reaching the end of their lease, and the owner proposes to update or make changes. What are the disclosure obligations?</p>	<p>There are a number of scenarios involved with leasing where the disclosure obligations will be triggered. For example, if there is an extension of an existing lease there are no disclosure obligations, provided the lease terms remain the same. For further explanation refer to the guidance note on “Treatment of Certain Property Transactions for the Purposes of the BEED Act”</p>
<p>Would the specification sheet from the manufacturer be a more accurate method to establish the wattage of a LED lamp as opposed to actually measuring it in place?</p>	<p>Either method is acceptable however; the first choice would be to use the data sheet as this is the easiest method, rather than trying to measure the lamp fitting.</p> <p>For all other lamps there are a number of acceptable methods for gathering wattage, from data sheets to measurement. The Assessors are guided through a series of methods for gathering this information.</p>

Building Energy Efficiency Certificate (BEEC)

<p>What happens if part of the BEEC expires when the building is still for sale?</p>	<p>After 1 November 2011, a building owner or lessor must have a valid BEEC while ever the building or area of the building is for sale or lease.</p> <p>A BEEC will be issued and remain current until the expiry of either the NABERS Energy rating or the lighting assessment, whichever is first. For example, if the NABERS Energy rating is valid until 23 September 2012 and the lighting assessment is valid until 14 March 2013, then the approved BEEC expires on 23 September 2012.</p>
--	--

	<p>DCCEE maintains only one BEEC per building. However, there may be circumstances when BEECs and NABERS ratings expire at different times or when owners/lessors need to update a BEEC to sell or lease parts of a building not previously covered.</p> <p>Building owners/lessors can use their existing NABERS or lighting assessment ratings to get an updated BEEC (in other words, there can be a ‘rolling’ BEEC per building).</p> <p>Other examples are provided in Table 1 of the Guidance note on BEECs.</p>
--	--

Leasing

<p>If a building owner is negotiating directly with an existing tenant for a renewal of a tenancy >2,000m², are they required to provide a NABERS rating?</p>	<p>There is no disclosure obligation if you are exercising an option on a lease to extend the lease and not change the terms of that option.</p> <p>If renewing, starting or renegotiating the terms of a lease, or changing the terms of a lease, it is advisable to seek legal advice.</p> <p>For further explanation about leasing arrangements refer to the guidance note on “Treatment of Certain Property Transactions for the Purposes of the BEED Act”</p>
<p>How will the Department know disclosure has occurred?</p>	<p>DCCEE has a compliance regime in place which monitors advertisements for buildings being sold or leased. Tenants and potential purchasers are aware of their rights and can contact the Department in confidence if they believe the building, or area of building, in question is subject to the Act and the disclosure obligations are not being fulfilled.</p> <p>If you think the advertisement may be in breach of the requirements under the CBD program, you are encouraged to report this matter to the CBD Team either through the CBD website on: http://cbd.gov.au/ContactCBD.aspx; Or via email: Info@CBD.gov.au; Or you may call the hotline on: 1800 020 131.</p> <p>All reports will be dealt with confidentially.</p>
<p>If a lease is written, for example 10 years + 10 years, is there a requirement for a</p>	<p>Short-term leases and subleases of 12 months or less (including any option to extend the lease or sublease) do not</p>

<p>NABERS rating to be provided at the time of renewal?</p>	<p>trigger disclosure requirements under the BEED Act.</p> <p>Other lease arrangements may make the lease subject to the disclosure obligations in the Act. For example, a six month lease with an option to extend for another six months would not trigger the disclosure obligations because the total proposed lease term would be 12 months or less. However, a six month lease with an option to extend for 12 months would trigger the disclosure obligations because the total proposed lease term would be more than 12 months.</p> <p>Given that extending a lease on different terms may attract the energy efficiency disclosure obligations, building owners and lessors with tenants approaching the end of their current lease or sublease in particular, may wish to prepare by registering a BEEC for their buildings. For further explanation about leasing arrangements refer to the Guidance notes / Resources CBD on “Treatment of Certain Property Transactions for the Purposes of the BEED Act”.</p>
<p>How do tenants wanting to sublease an area, undertake a NABERS rating for the whole building and do a lighting assessment for this area?</p>	<p>There is a provision within the Act to request that information is provided. Reasonable cooperation for access to all spaces within the building and the provision of energy data would be expected from the owner, as this would be beneficial for the owner as the tenant would be paying for this service. The tenant would work with the CBD Accredited Assessor and there are powers within the Act to request information if there is resistance from the owner, to enable the assessment to be completed.</p>

NABERS

<p>Could smaller buildings (i.e. less than 2,000m²) get a NABERS assessment?</p>	<p>Yes, although they have no obligations to disclose the energy rating under the BEED Act. Having a NABERS rating could be used as part of the marketing strategy for the buildings.</p>
---	---

Expansion of the program

<p>Are there any moves to lower the 2000 m²?</p>	<p>At this stage there are no moves to lower the threshold below 2000m².</p>
<p>Given the development of NABERS tools for retail, schools, hotels etc are there plans to develop the scheme to buildings beyond offices?</p>	<p>Under the National Strategy on Energy Efficiency, governments are considering expanding energy efficiency disclosure to other types of commercial buildings including hotels, retail centres, schools and hospitals. This will be subject to further regulatory impact assessment and consultation with industry to decide on appropriate rating tools and disclosure mechanisms.</p>

	<p>The Standing Committee on Energy (under the Ministerial Council on Energy) has agreed to defer consultation until 2012 which would result in Phase 2 being deferred until 2014, subject to the outcomes of the consultation process.</p>
--	---

Seminar presentations

<p>I am trying to use the webinar but I can see a painting and there is no sound but it says that it is live.</p>	<p>A recording of the Canberra seminar can be viewed via the following link: http://climate2011.webcastingsolutions.com.au/links.htm The recording will be available on this site until 5pm 28 October 2011.</p>
<p>Will the slides from the seminar be available?</p>	<p>To access the two presentations given at the seminars go to: http://www.cbd.gov.au/Presentations.aspx</p>