

TOPIC SUMMARY – Getting to know the CBD Program

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This topic summary provides a concise record of what was covered in Topic 1 of 'Introducing the Commercial Building Disclosure Program' in the Commercial Building Disclosure program module, as well as some legislative references for the requirements of the CBD program. The information and references are provided in this summary to assist assessors but are not intended to constitute a comprehensive resource as to an assessor's obligations under legislation. The assessor is solely responsible for ensuring that they are familiar with, and comply with, those obligations.

Commercial Building Disclosure: The Basics

What is CBD?

The Commercial Building Disclosure (CBD) program is a national program that has been developed by the Australian, State and Territory Governments as part of a broad package of measures in the National Strategy on Energy Efficiency to encourage building energy efficiency. The program is managed by the Commercial Building Disclosure Team in the Australian Government Department of Climate Change, Energy, the Environment and Water. The aim is to improve the energy efficiency of Australia's large office buildings and to ensure prospective buyers and tenants are informed.

The CBD program requires most sellers and lessors of office space of 1000 square metres (or more) to obtain a Building Energy Efficiency Certificate (BEEC) before the building goes on the market for sale, lease or sublease¹.

BEECs are valid for up to 12 months and include:

- The building's National Australian Built Environment Rating System (NABERS) Energy star rating;
- a tenancy lighting assessment of the relevant area of the building, and;
- general energy efficiency guidance.

Only CBD Accredited Assessors can apply for BEECs on behalf of building owners or lessors.

What does CBD do?

The CBD program provides the commercial office market with credible and consistent information about the relative energy efficiency of offices that are for sale or lease. This enables potential purchasers and lessees to consider energy efficiency as part of their decision-making processes and to make informed choices about the buildings they buy and lease.

More energy-efficient buildings are more attractive to buyers and tenants and offer greater investment performance. An informed market rewards better-performing buildings. It creates a strong market-

¹ Building Energy Efficiency Disclosure (BEED) Act 2010, sections 10–11

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based incentive for owners to improve their properties with cost-effective, energy-efficient upgrades that will increase their return on investment.

High rated offices yield better returns

The IPD/Department of Industry NABERS Office Energy Analysis for Quarter Ending September 2013 shows that Australian offices with a high NABERS Energy Rating, 4.5 to 6 stars, continue to deliver a higher investment return than offices with a low NABERS energy rating, 0–4 stars, on an annualised basis. As outlined in the [report](#), high rated offices not only yield better returns, they also have higher net operating income, lower capital expenditure, significantly longer weighted average lease expiry (WALE) terms and lower vacancy rates.

Key results include:

- Offices rated with high NABERS Energy ratings (4.5 to 6 star) delivered an annualised return of 9.8% to September 2013, which result in 152 basis points higher than low NABERS Energy rated offices.
- As at September 2013 high rated offices were found to have on average 10.8% higher rent and 18.1% higher for net operating income.
- The high NABERS Energy office market recorded a longer weighted average lease expiry (5 years) and lower vacancy rates (5%) than the low NABERS Office Energy rated market (4 years and 6.5%).

Disclosure requirements under CBD

The CBD program implements legislation that commenced in July 2010, with energy efficiency disclosure obligations commencing on 1 November 2010.

Legislation: The legal framework for the CBD program is provided by the Building Energy Efficiency Disclosure Act 2010 (BEED Act) and a number of instruments made under that Act:

- Building Energy Efficiency Disclosure Regulations 2010
- Building Energy Efficiency Disclosure Act 2010 – Proclamation
- Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2010 (No. 2)
- Building Energy Efficiency Disclosure Determination 2010.

These laws are the source of obligations and rights that assessors are required to understand in order to properly carry out their roles. The matters outlined in this training cannot override the legislated requirements. You can view these pieces of legislation on the CBD website.

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What are the disclosure requirements under CBD? Under the CBD program, prior to selling (a whole building) or (sub)leasing a disclosure affected office building or area of a building² (for more than 12 months), building owners and tenants that are constitutional corporations must disclose the energy efficiency of the building as follows:

1. Prior to offering the office space for sale, lease, or sublease, or inviting such offers, there must be a current Building Energy Efficiency Certificate (BEEC)³ on the Building Energy Efficiency Register⁴ on the CBD website.
2. They must include the NABERS Energy star rating for the building in any advertisement for the sale, lease or sublease of the building or area⁵.

What happens if you don't comply with a request to provide a BEEC to a constitutional corporation?

Civil penalties of up to \$313,000 for a body corporate and \$109,550 for an individual may be imposed by a Court for failing to provide a BEEC in accordance with a section 12 obligation. Alternatively, the Secretary of the Department of Climate Change, Energy, the Environment and Water may issue an infringement notice with a penalty of up to \$31,300 for a body corporate or \$10,955 for an individual.

A constitutional corporation is a corporation to which paragraph 51(xx.) of the Constitution applies, namely foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

When you need to provide a BEEC – even if you are not a constitutional corporation

When a building owner, lessor or sub lessor is not a constitutional corporation, there is not automatic obligation to have a BEEC when selling, leasing or subleasing a disclosure affected building or area of a building. However, under section 12 of the [Building Energy Efficiency Disclosure Act 2010](#), a constitutional corporation with a good faith interest in buying, leasing or subleasing a disclosure affected office can ask the owner or lessor to provide a valid BEEC. The request must be in writing (which can include email), and may be made at any time while the owner, lessor or sub lessor is offering or inviting offers for the sale, lease or sublease of a disclosure affected building or area of a building.

Anyone who is offering a disclosure affected building or area of a building for sale, lease or sublease and who receives such a request from a constitutional corporation, has the legal obligation to register

² Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2010 (No.2), clauses 5–6.

³ BEED Act 2010, section 13

⁴ BEED Act 2010, section 14

⁵ BEED Act 2010, sections 15–16; Building Energy Efficiency Disclosure Determination 2010, clause 5.

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a valid, current BEEC and to provide a copy to the constitutional corporation, unless an exception or exemption applies. This obligation applies to such entities as individuals, trusts, partnerships and governments.

What is a BEEC?

When issued, the Building Energy Efficiency Certificate ([BEEC](#)) will include three components:

1. The NABERS Energy star rating for the building, **excluding** GreenPower⁶;
2. An assessment of the energy efficiency of the tenancy lighting in the area of the building that is being sold, leased or subleased⁷; and
3. Generic guidance⁸ on how the energy efficiency of a building might be improved.

Responsibilities and roles

Which buildings are affected by CBD disclosure requirements?

CBD only applies to **certain commercial buildings** although NABERS ratings are available for a much larger group of commercial buildings. Take a look at the table below to see **which types of buildings** are – and are not – **disclosure-affected** under the legislation.

<i>What is affected</i>	<i>What is not affected</i>
Most office spaces of 1,000 m ² or more	Office space less than 1,000 m ² Hotels Shopping centres Homes Hospitals Schools Other types of commercial spaces that are not offices

⁶ BEED Determination 2010, clause 6

⁷ The assessment methods and standards for the lighting are the CBD Tenancy Lighting Assessment for Offices Rules.

⁸ This guidance is not specific to the building being assessed by the BEEC. It is general guidance for both building owners and tenants that is already provided in the BEED Determination 2010 (Schedule 1). Each BEEC will include the same general guidance.

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An office space is an area used for administrative, clerical, professional, or similar information-based activities, and includes any support facilities for the activities that are located in the area. The area of office space is the net lettable area according to the Property Council of Australia's Method of Measurement for Lettable Area (1997)⁹.

A building or area of a building is not disclosure-affected if:

1. 75% or less of the space in the building by area is for office use, including any support facilities;
2. It is new or has had a major refurbishment and its certificate of occupancy (however described) is less than 2 years old; or
3. It is held under a strata title system.

Exemptions may be granted from the disclosure obligations for some disclosure-affected buildings in certain circumstances. Exemptions are covered in Topic 3.

What do your clients need to do?

It is your client's responsibility to determine whether they have a disclosure obligation and if so, to ensure that they obtain and register a current BEEC and include the NABERS Energy star rating in any advertisements.

Where your client does have a disclosure obligation, there are several things they can do to facilitate an assessment:

1. Plan ahead: Plan ahead and allow time to obtain a BEEC before leases expire or sales processes, including advertising, are initiated. BEECs can take several months to obtain, but are valid for 12 months. Clients with high tenant turnover may like to consider maintaining a BEEC at all times.
2. Organise records: Gather and keep the information required for the NABERS Energy ratings and Tenancy Lighting Assessments.
3. Provide information: Respond to the assessor's requests for information and access to the building required in order to perform an assessment.
4. Arrange access: Advise facility managers and tenants that the assessor requires access to the building for some of the work and may need information from them to complete the assessments.

⁹ BEED (Disclosure Affected Buildings) Determination 2010 (No.2), clause 4

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What is the assessor's role?

For the CBD program, assessors must be formally accredited under the BEED Act¹⁰ in order to carry out the role of an Accredited Assessor.

CBD Accredited Assessors have an important role in applying for BEECs and conducting Tenancy Lighting Assessments to the standards required by the legislation. CBD Accredited Assessors, along with NABERS Accredited Assessors, may also carry out NABERS Energy ratings.

In recognising this role, the legislative framework provides CBD Accredited Assessors with certain powers to obtain information and building access for the purposes of conducting assessments required to meet disclosure obligations under the legislation.

The legislation also provides for quality control of the assessment standards and for penalties if the standards are breached, especially if that results in losses to parties involved in the sale or lease of the office space that was assessed. Further information about the roles and responsibilities of CBD Accredited Assessors is provided in Topics 3 and 4.

Additional resources

Additional information on the CBD program and the above topics is available on the [CBD website](http://www.cbd.gov.au) (www.cbd.gov.au).

[Forms and templates](#) are available from the website's Resources area. An [FAQ page](#) is also available and provides answers to specific questions about different areas of the CBD program.

The [Building Energy Efficiency Disclosure \(BEED\) Act](#) and instruments made under the BEED Act can be viewed from the [CBD website](#).

¹⁰ BEED Act 2010, sections 24–32