

New Mandatory Obligations on Building Owners Commencing 1 July 2010

From 1 July 2010, the Commonwealth Government is introducing a scheme of mandatory disclosure of the energy efficiency of commercial office buildings initially for buildings over 2,000m².

Under the new law, corporations will have to register a Building Energy Efficiency Certificate (BEEC) whenever they sell, lease or offer to sell or lease a building (or part of a building) with a net lettable area (NLA) of 2,000m² or more. The BEEC will contain:

1. the National Australian Built Environment (NABERS) energy star rating of the building;
2. an assessment of the energy efficiency of the lighting; and
3. guidance on how energy efficiency can be improved.

The scheme was introduced through the *Building Energy Efficiency Disclosure Bill 2010 (Cth)* (the Bill). The Senate's *Environment, Communications and the Arts Committee* (the Committee) reported on the Bill on 12 May 2010.

During the Committee's review industry raised some concerns, including that penalties of up to \$110,000 were excessive.

The Committee recommended Parliament pass the Bill subject to the following:

- **the Government to ensure that BEEC's contain information about a building's greenhouse gas emissions which is consistent with relevant Commonwealth schemes, including the National Greenhouse and Energy Reporting (NGERS) Scheme.**
- **delay the lighting measurement component of the BEEC to allow time for it to be properly developed and tested; and**
- **consider whether proposed penalties are appropriate.**

A NABERS energy rating assesses the building use data from 12 consecutive months and can take some time to produce. Building owners should prepare for compliance now. The laws are expected to commence 1 July 2010, with disclosure requirements likely to begin around October 2010. The Bill is still being debated during June with the sitting period ending on 26 June 2010. There may well be significant changes to the Bill if passed and the Bill may not be passed at all.

Government Grants to Improve Energy Efficiency

The ACT Government introduced a grants program (Tune Up Canberra) on 31 March 2010 to pay 50% of costs up to \$108,000 to improve the energy efficiency of office buildings with 1,500m² gross floor area or more.

Recently under the Commonwealth Government's similar Green Building Fund scheme, \$73 million was granted over 6 rounds. In round 5, \$2,570,880.40 was offered to 5 ACT building owners, with each grant well over the maximum \$108,000 available under Tune Up Canberra. The \$2 million offered by the ACT Government may not stretch very far by comparison, and it is hoped that funding will be increased in the future to achieve more significant results.

At a residential level, anyone interested in renovating to achieve greater efficiency should visit www.livinggreener.gov.au for information about government assistance and rebates available.

A New Type of Lease – The Green Lease

Continuing the trend towards greener buildings is the evolution of the 'green lease'. Green leases incorporate environmental principles into commercial leases and typically:

- set environmental performance targets;
- place obligations on the tenant in relation to energy use, waste management and fitout;
- place obligations on the landlord such as to recycle waste, monitor air conditioning and ensure the building meets certain efficiency standards; and
- specify dispute resolution mechanisms and/or provide financial incentives or disincentives to encourage compliance.

There is currently no prescriptive legislation imposing sustainability standards on landlords or tenants, however market forces and forward thinking are driving large corporations and Government to adopt a green approach. Your leases and building Contracts can also assist you in achieving additional Green Star credits with appropriate wording in place. We recommend you consider whether your documents appropriately reflect your building's status and the obligations between landlords and tenants. A Green Lease makes good business sense and can help those tenants who have the motivation but lack the resources for implementing sustainability within their workplace.

More Stringent Efficiency Standards for New Buildings

New residential buildings will have to be built to a 6 star rating, and energy efficiency requirements for new

commercial buildings will be significantly increased after changes to Section J of Volume 1 of the BCA introduced on 1 May 2010. Although the new standards are not compulsory nationally until 2011, the ACT Government has introduced them from 1 May 2010, with transitional provisions to apply to certain applications in the approval system by 1 July 2010.

The BCA amendments include a new objective for Part J, now being to reduce greenhouse gas emissions rather than simply improving energy efficiency. Other changes include a requirement that energy used for heating buildings comes from energy efficient sources; minimisation of air flow and loss of conditioned air; more stringent measures in relation to lighting; increased glazing requirements for homes and increased standards of efficiency for air conditioning units.

Delayed implementation of Codification

Introduction of the controversial codification of CUC has been delayed to some time later this year, due to concerns that the design of the system would be rushed and appropriate transitional provisions not put in place. The new commencement date is yet to be determined.

The current proposal provides that codification will replace the current valuation system with a system of codified values based on a rolling three-year average of market values in each suburb for similar property uses. It will result in increased charges in most cases. Developers should lodge any development application as soon as possible so that they are assessed under the current system.

Asbestos Management Audit

Building owner's obligations to inspect, maintain and responsibly manage asbestos in buildings introduced through Part 3.4 of the Dangerous Substances (General) Regulation have now come into effect for industrial premises and will take effect for community and recreational premises on 1 September 2010. As most of you would be aware, the obligations have been in place for multi-storey commercial and single-storey commercial buildings since September 2008 and September 2009 respectively.

Penalties for non compliance attract maximum fines of \$3,300 for individuals and \$16,500 for corporations. Work Cover began conducting an audit of non-residential premises in the ACT on 1 March 2010. While they have indicated a willingness to cooperate with building owners to ensure compliance, building owners should be wary of the significant fines which could be issued.

To begin the process of compliance if you have not already done so, contact a licensed asbestos assessor to inspect your premises. A complete list of licensed assessors is available on the ACTPLA website.

For more information, please contact:

Susan Proctor, Managing Partner susan.proctor@bradleyallen.com.au	(02) 6274 0953
John Bradley, Partner john.bradley@bradleyallen.com.au	(02) 6274 0930
Lorraine White, Associate lorraine.white@bradleyallen.com.au	(02) 6274 0938
George Kordis, Associate george.kordis@bradleyallen.com.au	(02) 6274 0808
Sally Fleming, Lawyer sally.fleming@bradleyallen.com.au	(02) 6274 0927
Martin Searles, Lawyer martin.searles@bradleyallen.com.au	(02) 6274 0813

INVITATION

Complete Technology Integrations Pty Ltd in conjunction with mySmart Pty Ltd would like to extend an invitation to an Executive Breakfast to discuss the issues of Green Star Buildings, NABERS ratings and your responsibilities in this crucial aspect of the development of the Built Environment. The companies would like to discuss offers and options to assist meeting these requirements.

Speakers at the event are:

Dr Paul Bannister CEO, Exergy Consulting Pty Ltd
"Green Star and NABERS - how they fit together, why it's important"

Mr Patrick Callioni CEO, Enterprise Intelligence Pty Ltd
"Government and NABERS - is it a Government problem?"

Ms Susan Proctor Managing Partner, Bradley Allen Lawyers
"Legal View for Building Owners - current and coming obligations"

Mr Peter Garrett CEO, mySmart Pty Ltd
"Building automation - bridging the capability gap"

The event is to be held at:

"The Eye", Canberra Business Event Centre

Regatta Point

Canberra

Date: 10 June 2010

Time: 0730 (Registration) 0800 - 0930 (Presentation)

RSVP: Ms Rowena Flynn (rowena.flynn@mysmart.com.au) by
12 noon Tuesday 8 June 2010