The Senate

Environment, Communications and the Arts Legislation Committee

Building Energy Efficiency Disclosure Bill 2010 [Provisions]

May 2010

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Recommendations

Recommendation 1

2.28 The committee recommends that the Department of Climate Change and Energy Efficiency continue to work with the relevant industry sectors and state authorities to ensure that the Building Energy Efficiency Certificates issued under the scheme contain information about a building's greenhouse gas emissions which is consistent with relevant commonwealth schemes, including the National Greenhouse and Energy Reporting Scheme.

Recommendation 2

2.35 The committee recommends that the government consider delaying the lighting measurement component of Building Energy Efficiency Certificates until the Department of Climate Change and Energy Efficiency has had sufficient time to develop, test and consult on the appropriate tool for measuring the efficiency of lighting.

Recommendation 3

2.41 The committee recommends that the government give consideration to whether the penalties proposed to be imposed by the Bill are appropriate.

Recommendation 4

2.54 The committee recommends that, subject to the recommendations contained in this report, the Senate pass the Building Energy Efficiency Disclosure Bill 2010.

Abbreviations

ABARE	Australian Bureau of Agriculture and Resource Economics
ABGR	Australian Building Greenhouse Rating
BEECs	Building Energy Efficiency Certificates
the Bill	Building Energy Efficiency Disclosure Bill 2010
CEO	Chief Executive Officer
COAG	Council of Australian Governments
the committee	Senate Environment, Communications and the Arts Legislation Committee
CO_2	Carbon Dioxide
CPRS	Carbon Pollution Reduction Scheme
the department	Department of Climate Change and Energy Efficiency
EEC	Energy Efficiency Council
EEO	Energy Efficiency Opportunities program
MCE	Ministerial Council on Energy
the Minister	Minister for Climate Change, Energy Efficiency and Water
NABERS	National Australian Built Environment Rating System
NGERS	National Greenhouse and Energy Reporting Scheme
RIS	Regulation Impact Statement

Chapter 1

Referral to the committee

1.1 On 18 March 2010 the Senate Selection of Bills Committee referred the provisions of the Building Energy Efficiency Disclosure Bill 2010 (the Bill) to the Senate Environment, Communications and the Arts Legislation Committee (the committee) for inquiry and report by 11 May 2010.[1]

1.2 On 24 March 2010, in accordance with usual practice, the committee advertised the inquiry in *The Australian*, calling for submissions by 6 April 2010. The committee also directly contacted a range of organisations inviting them to submit to the inquiry. The committee received five submissions, listed at Appendix 1.

1.3 The committee held a public hearing in Canberra on 12 April 2010. The participants are listed at Appendix 2.

1.4 The committee thanks those organisations and individuals that made contributions to the committee's inquiry.

Purpose of the Bill

1.5 The Bill proposes to require owners of large commercial office buildings to supply energy efficiency information about their buildings to potential lessees or purchasers. The driver behind the Bill is to provide commercial office market participants with credible energy efficiency information in order to:

> …help these parties to make better informed decisions and take full account of the economic costs and environmental impacts associated with operating the buildings they are intending to purchase or lease.[2]

1.6 The policy was originally proposed in December 2004 under stage one of the National Framework for Energy Efficiency—a joint initiative of the Commonwealth, State and Territory governments under the Ministerial Council on Energy (MCE).[3] Specifically, the MCE agreed that there should be:

> ...a nationally consistent legislated regime for mandatory disclosure of energy performance of…commercial buildings...[4]

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1 Senate Selection of Bills Committee, *Report No.6 of 2010*, 18 March 2010.

2 The Hon Greg Combet MP, Minister Assisting the Minister for Climate Change, Second Reading Speech, *House of Representatives Hansard*, 18 March 2010, p. 2928.

3 Regulation Impact Statement, p. iii.

4 Ministerial Council on Energy, *Statement on National Framework for Energy Efficiency: Overview Plan of State One Measures 2005-2007*, December 2004, at: www.ret.gov.au/Documents/mce/_documents/FINALFINAL0Dec04MCEStatementonNFEEOverview20050926160618.pdf (accessed 27 April 2010).

1.7 In July 2009, as part of the *National Partnership Agreement on Energy Efficiency*, the Council of Australian Governments (COAG) agreed to the implementation of national mandatory disclosure requirements for commercial buildings.[5] COAG decided that phase one of the agreement should apply to commercial office buildings over 2000 square metres in area and also cover commercial office buildings owned or leased by the Commonwealth, state and territory governments.[6]

1.8 In its submission the Energy Efficiency Council (EEC) highlighted the fact that the mandatory disclosure of commercial building energy efficiency also has support across the political spectrum:

> There is a strong justification for the Bill, and the Australian Labor Party, the Liberal Party and the Australian Greens have all committed to support the introduction of this type of scheme.[7]

1.9 Most of the witnesses that appeared before the committee commented on the significant economic and environmental benefits of improving the energy efficiency of commercial buildings. These benefits are discussed in detail below.

1.10 Ms Clare Walsh, Acting First Assistant Secretary, Renewables and Energy Efficiency Division, Department of Climate Change and Energy Efficiency, explained that government involvement is needed to encourage energy efficiency improvements in commercial office space because:

> …it is well recognised that there are market failures that prevent a carbon price flowing through to real action in some instances. In the building sector, the market failure is information asymmetry. There is a failure in the provision of information and in the split incentives between those who make decisions about energy efficiency of a building or its appliances and those who may or may not benefit as a result of those decisions. This measure complements the [Carbon Pollution Reduction Scheme] as it better ensures that price signals flow through clearly and directly to the market.[8]

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5 COAG, *National Partnership Agreement on Energy Efficiency*, www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/NP_energy_efficiency.pdf (accessed 30 April 2010).

6 COAG, *National Partnership Agreement on Energy Efficiency*, Attachment A, National Strategy on Energy Efficiency (Measures Table), p. 25, www.coag.gov.au/coag_meeting_outcomes/2009-07-02/docs/Energy_efficiency_measures_table.pdf (accessed 30 April 2010).

7 Energy Efficiency Council, *Submission 5*, p. 1.

8 Ms Clare Walsh, Acting First Assistant Secretary, Renewables and Energy Efficiency Division, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 22.

1.11 The EEC corroborated Ms Walsh's comments regarding market distortions and failures which 'impede energy efficiency' making government intervention necessary.[9] According to the EEC these market distortions and failures include:

- the fact that the incentives facing landlords, tenants and building managers with respect to energy efficiency 'are frequently not aligned, resulting in sub-optimal outcomes';
- the lack of information available to homeowners, companies and specialists which can 'entirely impede otherwise cost-effective energy efficiency';
- existing national electricity market rules and regulations which favour supply-side options (expansion of energy generation and infrastructure) over demand-side options (energy efficiency and distributed generation), and fail to reward energy efficiency;
- the cost of research and development minimising the financial benefits for early movers; and
- the failure to internalise the cost of carbon in the cost of energy.[10]

1.12 With respect to market failures, the Regulation Impact Statement (RIS) on the policy underpinning the Bill states that:

> Existing measures do not currently address these problems. The Carbon Pollution Reduction Scheme will assist in reflecting environmental costs of energy use, but will not necessarily address information failures and split incentives in the market.[11]

1.13 The RIS explored three options for addressing these market failures:

(a) mandatory disclosure of energy efficiency at the point of sale and lease;

(b) the development of an voluntary industry code of practice; or

(c) mandating minimum energy efficiency standards.[12]

1.14 The RIS ultimately recommended the first approach, concluding that it is the most cost effective option for addressing market failures.[13]

Australia's commercial office property market

1.15 While '[n]obody knows exactly how much [office] space there is in Australia'[14] the Property Council of Australia has estimated that there are

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9 Energy Efficiency Council. *Submission 5*, p. 4.

10 Energy Efficiency Council, *Submission 5*, pp 4–5.

11 Regulation Impact Statement, p. iii.

12 Regulation Impact Statement, p. iv.

13 Regulation Impact Statement, p. iv.

14 Mr Peter Verwer, Chief Executive Officer, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 6.

over 21 million square metres of commercial office property[15] in major Australian business centres, in 3980 buildings.[16] Of this, around 19 million square metres are accounted for by 2170 buildings with net lettable areas greater than 2000 square metres.[17]

1.16 In other words, the scheme will achieve over 90 per cent coverage of commercial office space by area, but only apply to approximately 55 per cent of the total number of office buildings of greater than 2000 square metres.

1.17 The EEC estimates that commercial buildings (which includes commercial offices in addition to other commercial property such as retail and warehousing space) account for around 10 per cent of Australia's total greenhouse gas emissions.[18] The Department of Climate Change and Energy Efficiency (the department) informed the committee that:

> Research undertaken in 1999 found that offices were responsible for the largest proportion of greenhouse gas emissions from Australia's commercial building sector, accounting for approximately 27 per cent of emissions.[19]

1.18 This suggests that commercial office buildings contribute approximately 2.7 per cent of Australia's greenhouse gas emissions.

1.19 The RIS indicates that the commercial building energy use has 'experienced sustained growth in energy use in the 15 years to 2006', growing by 87 per cent during that period.[20] According to the National Australian Built Environment Rating System (NABERS) website, greenhouse gas emissions from Australia's commercial building sector are growing by 3–4 per cent per annum.[21]

Current energy efficiency information and performance

1.20 The RIS explains that there is scope for a greater number of office buildings to be rated for their energy efficiency performance:

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15 'Office property' is as defined by the NABERS Energy Protocol—a place in which business, clerical or professional activities are conducted. The spaces quoted also include spaces that support those working in an office such as meeting rooms, kitchens, storage and specialty areas such as child minding.

16 Property Council of Australia, *Office Market Report*, 2008, cited in Regulation Impact Statement, p. 2.

17 Property Council of Australia, *Office Market Report*, 2008, cited in Regulation Impact Statement, p. 2.

18 Energy Efficiency Council, *Submission 5*, p. 3.

19 Department of Climate Change and Energy Efficiency, answer to question on notice, question 8, 12 April 2010 (received 23 April 2010).

20 Regulation Impact Statement, p. 2.

21 NABERS website at: www.nabers.com.au/page.aspx?cid=533&site=2 (accessed 3 May 2010).

> …in Australia, while the proportion of rated stock is growing each year, a majority of buildings are currently not rated for energy efficiency. Those that are rated, are predominantly large and higher grade quality buildings (that is, Premium, A or B grade buildings)...[22]

1.21 The RIS states that approximately 13 per cent of properties between 2000 square meters and 5000 square metres, and 30 per cent of properties over 5000 square metres have had a NABERS assessment.[23]

1.22 However, even based on this limited information biased towards high end buildings, the RIS concluded that there is significant room for improvement in the energy efficiency of commercial office buildings in Australia:

> Assessment of a sample of reported NABERS Energy star ratings conducted between 2004 and 2008 found an average rating from 2.8 stars (without adjustments for green power) for a first assessment, and 3 stars for a second assessment [out of a possible 5 stars]. These figures were derived from averaging data from buildings which have been voluntarily rated under NABERS Energy. Industry best practice is currently defined as a rating of 3 stars under NABERS Energy. This was determined in 1999 when the scheme was established. However, a more recent survey of ratings indicates that a performance of 4 to 4.5 NABERS stars is a more accurate indication of 'best practice', with several buildings achieving this performance level. It is reasonable to estimate that industry (on average) is lagging at least one to one and a half stars behind current best practice – this equates to a 20 to 30 per cent lag in energy efficiency between the average building and industry best practice.[24]

Benefits of improved energy efficiency

1.23 As noted above, submitters and witnesses agreed that there are numerous benefits to improving the energy of commercial and other buildings. The committee heard that improving the energy efficiency of commercial buildings not only delivers environmental benefits, but can also result in significant financial savings for building owners and tenants.

Environmental benefits

1.24 Numerous witnesses expressed the view that improving energy efficiency is 'one of the fastest, most efficient and cost-effective ways of abating greenhouse gas emissions'.[25]

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22 Regulation Impact Statement, p. 3.

23 Regulation Impact Statement, p. 3.

24 Regulation Impact Statement, p. 3.

25 Mr Robin Mellon, Green Star Executive Director, Green Building Council of Australia, *Committee Hansard*, 12 April 2010, p. 2.

1.25 Mr Robert Murray-Leach, CEO of the EEC described the huge potential for energy efficiency to contribute to greenhouse gas reductions:

> Energy efficiency is the single biggest source of greenhouse gas abatement to 2020. That is often overlooked by a range of sources because, I suppose, it is not really the world's sexiest form of abatement; it does not involve cutting ribbons on major projects. But what it does deliver is major cost-effective greenhouse gas emission reductions.[26]

1.26 Mr Murray-Leach continued:

> [The Australia Bureau of Agriculture and Resource Economics] and the International Energy Agency believe that energy efficiency is the biggest opportunity to cut emissions in the energy sector to 2020, with the International Energy Agency estimating that 65 per cent of global cuts in emissions to 2020 will come from energy efficiency.[27]

1.27 Mr Ché Wall, Managing Director, WSP Lincolne Scott, co-founder of the Green Building Council of Australia, argued that:

> Australia should be at the forefront of global action to mitigate greenhouse gas emissions from the built environment through smart legislation as we already are through new green building design. Australia should have robust disclosure legislation which establishes a set of credible and meaningful year-on-year energy performance data by building type and open centre.[28]

Financial benefits

1.28 In addition to being a cost-effective means of reducing Australia's emissions, the committee also received evidence that improving the energy efficiency of commercial buildings can have financial benefits for building owners and tenants.

1.29 In terms of the size of possible savings, Mr Murray-Leach of the EEC told the committee that:

> We know that building owners can easily find savings of 20 to 40 per cent through energy efficiency investments and, in some cases, we have examples of buildings saving between 50 and 60 per cent through energy efficiency retrofit…The estimate from the Centre for International Economics is that energy efficiency in the building space would save the economy $38 billion per year by 2050. That is a combination of both direct

26 Mr Robert Murray-Leach, Chief Executive Officer, Energy Efficiency Council, *Committee Hansard*, 12 April 2010, p. 33.

27 Mr Robert Murray-Leach, Chief Executive Officer, Energy Efficiency Council, *Committee Hansard*, 12 April 2010, p. 33.

28 Mr Ché Wall, Managing Director, WSP Lincolne Scott, *Committee Hansard*, 12 April 2010, p. 14.

> savings from reduced energy use and displacing more expensive ways of cutting emissions.[29]

1.30 Mr Murray-Leach also summarised that 'in the commercial building space, for every tonne of emissions that we cut in the building sector we save $90.'[30]

1.31 Furthermore, the EEC provided evidence that '[i]n addition to being the largest source of emission abatement, energy efficiency is widely acknowledged as the most cost-effective form of abatement'.[31] This is demonstrated by the 'McKinsey curve', reproduced in the EEC's submission.[32] The curve shows the relative cost-effectiveness of carbon abatement measures, measuring the cost of each measure against potential reductions in emissions. Various methods of retrofitting existing commercial buildings to improve energy efficiency are found to have a negative financial cost (in other words a positive financial benefit) of between approximately $50 to $140 per tonne of CO_2 equivalent emission saved.[33] Therefore improving energy efficiency is shown to be either a low or negative cost option for carbon abatement.

1.32 Chapter 4 of the RIS contains an 'impact analysis', or cost-benefit analysis, of the proposed scheme, which compares the scheme's various costs to building owners and tenants to the direct and indirect benefits that may be achieved. The impact analysis found that the scheme would cost $18.7 million over 10 years,[34] and provide the following benefits:

> …direct benefits of the scheme are to those tenants and/or prospective buyers who are able to use the disclosed ratings to choose a premise with a higher energy efficiency rating — the benefits achieved are through savings for these parties of occupying higher rated premises.
>
> …indirect benefits of the scheme can be achieved through voluntary energy efficiency improvements, and associated greenhouse gas abatement, that may occur with a better informed marketplace.[35]

1.33 The impact analysis used a 'break-even analysis' and identified that the minimum amount of benefit required of the scheme to at least cover its total costs would be achieved if 3.9 per cent of transactions per year were influenced by mandatory disclosure.[36]

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29 Mr Robert Murray-Leach, *Committee Hansard*, 12 April 2010, p. 34.

30 Mr Robert Murray-Leach, Chief Executive Officer, Energy Efficiency Council, *Committee Hansard*, 12 April 2010, p. 33.

31 Energy Efficiency Council, *Submission 5*, p. 2.

32 Energy Efficiency Council, *Submission 5*, p. 3.

33 Energy Efficiency Council, *Submission 5*, p. 3. For example retrofitting improved HVAC, lighting, elevators and appliances, and insulation.

34 Regulation Impact Statement, p. 33.

35 Regulation Impact Statement, p. v.

36 Regulation Impact Statement, p. 39.

Outline of the Bill

1.34 The Bill proposes to create a legal requirement for owners of commercial office buildings with net lettable areas of over 2000 square metres to obtain certain energy performance information about the building, and disclose that information to prospective purchasers and tenants.

1.35 The key provisions of the Bill set out:

- its scope and application;
- details of the 'building energy efficiency certificates', which are the manner in which information is to be given to prospective purchasers and lessees; and
- assessment standards and the accreditation and audit of assessors.

Scope and application

1.36 Subclause 10(1) provides that:

> The Minister may, by legislative instrument, determine that a specified kind of building is disclosure affected.[37]

1.37 'Disclosure affected building' is defined in clause 3 to be restricted to buildings that are 'used or capable of being used as an office'.[38]

1.38 The Explanatory Memorandum states that it is expected that the Minister's legislative instrument will determine that 'buildings and areas of buildings will be disclosure affected if they exceed the minimum size threshold of 2000 square metres in net lettable area.'[39]

1.39 The department also informed the committee that the scheme will apply to government buildings whenever government is transacting with a constitutional corporation, which is the majority of government transactions.[40]

1.40 The Explanatory Memorandum also notes that the Minister's instrument will detail the type of buildings affected by the legislation. Officers from the department explained that the Minister needs the power to exclude certain offices that cannot be rated by the methodology set out in the scheme—such as strata titled offices.[41]

1.41 Mr Verwer, CEO of the Property Council of Australia pointed out that 'the Bill leaves a lot to subordinate legislation', and also expressed concern about the lack

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37 Building Energy Efficiency Disclosure Bill 2010, subclause 10(1).

38 Building Energy Efficiency Disclosure Bill 2010, subclause 3(1).

39 Explanatory Memorandum, p. 76.

40 Department of Climate Change and Energy Efficiency, answer to question on notice, question 14, 12 April 2010 (received 23 April 2010).

41 Mr Mark Davis, Director, Commercial Building Performance Team, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 23.

of definition of 'office building' in the Bill.[42] Mr Verwer argued that 'there is a definition of "office" under the building code and that is the one that should be used'.[43]

1.42 The Explanatory Memorandum explains that:

> …there are several definitions for office buildings used by government and industry. One of the most common is the definition in the Building Code of Australia, which is used to identify the design and construction standards applying to that particular building type. However, none of the existing definitions are universally applied and directly correlate to the requirements of the scheme.[44]

1.43 Accordingly:

> …further details are required within a legislative instrument to ensure that the scheme is applied to specific building types for which a building energy efficiency rating can be assessed.[45]

1.44 The Explanatory Memorandum states that it is necessary to leave much of the detail of the scheme to subordinate instruments because:

> Use of a legislative instrument provides some flexibility where there is a need to make changes to this definition to account for technical issues.[46]

1.45 On this issue, Ms Clare Walsh, Acting First Assistant Secretary, Renewables and Energy Efficiency Division, Department of Climate Change and Energy Efficiency, informed the committee that:

> It provides administrative simplicity for the legislation, but any changes would not be taken arbitrarily by the secretary or the department. It would be undertaken as part of an ongoing consultation process. So there would not be just an arbitrary change without consultation.[47]

Building Energy Efficiency Certificates

1.46 Part 2 of the Bill establishes the requirement for, and contents of Building Energy Efficiency Certificates (BEECs).

1.47 Clause 11 provides that it is an offence to sell or lease a 'disclosure affected building' without a BEEC. Clause 12 provides that a prospective purchaser, lessee or sublessee has the right to request a BEEC from the building owner. Under Clause 15,

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42 Mr Peter Verwer, *Committee Hansard,* 12 April 2010, p. 9.

43 Mr Peter Verwer, *Committee Hansard,* 12 April 2010, p. 9.

44 Explanatory Memorandum, p. 76.

45 Explanatory Memorandum, p. 76.

46 Explanatory Memorandum, p. 76.

47 Ms Clare Walsh, *Committee Hansard,* 12 April 2010, p. 28.

advertisements for the sale or lease of a building must include the building's energy efficiency rating (which is one component of the BEEC).

1.48 Subclause 13(1) proposes that BEECs will contain three parts, respectively detailing:

- the energy efficiency rating for the building;
- an assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet; and
- guidance on how energy efficiency might be improved.[48]

1.49 Clause 21 provides that the secretary of the department has the power to determine the specific methods and standards that will apply to each part of an assessment.

Energy efficiency rating

1.50 The base energy efficiency rating of the building is proposed to indicate the 'core components' of the building.[49] This includes factors within a landlord's control, such as heating and cooling, lifts and insulation.[50]

1.51 The Explanatory Memorandum states:

> The assessment methods and standards will apply the protocols of the National Australian Built Environment Rating System for energy efficiency, also known as NABERS Energy.[51]

1.52 The NABERS Energy rating system, which is one part of the NABERS rating system, encompasses the former industry standard Australian Building Greenhouse Rating (ABGR) scheme for energy and greenhouse efficiency. The NABERS tool was developed by the (then) Commonwealth Department of Environment and Heritage. However it is administered and managed by the New South Wales Department of Environment, Climate Change and Water.[52]

1.53 The operation and development of the NABERS rating system is overseen by the NABERS National Steering Committee which is comprised of representatives from Commonwealth, state and territory governments, with the Australian Sustainable

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48 Building Energy Efficiency Disclosure Bill 2010, subclause 13(1).

49 Mr Gene McGlynn, Assistant Secretary, Building and Government Energy Efficiency Branch, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 28.

50 NABERS, 'About NABERS for Offices', www.nabers.com.au/page.aspx?code=ABOUTUS&site=2 (accessed 29 April 2010).

51 Explanatory Memorandum, p. 78.

52 NABERS, 'Frequently Asked Questions', www.nabers.com.au/faqs.aspx?site=1 (accessed 29 April 2010).

Built Environment Council as an observer. The NABERS system is available accross Australia, with accredited assessors in every state and territory.[53]

1.54 The NABERS website describes the benefits of the NABERS rating system:

> [NABERS] is specifically tailored for existing buildings, and…measures relevant impacts during the operational phase of buildings. This approach has a number of benefits, including:
>
> - NABERS provides a rating of the things that a building owner/operator can reasonably assume responsibility for, rather than items that were decided possibly by another party many years ago and cannot be easily changed; and
> - As NABERS is based on actual measured performance rather than on prescriptive design parameters, it is complementary to expert design tools and design-based ratings systems. [54]

1.55 One of the key issues raised during the committee's inquiry was whether the NABERS rating system is the most appropriate tool for the scheme. This issue is discussed in chapter 2.

Lighting

1.56 The second part of a BEEC relates to lighting. Officers from the department explained that after the base energy efficiency of the building, lighting is the 'next most important element' in terms of energy usage.[55] Mr Mark Davis, Director, Commercial Building Performance Team, Department of Climate Change and Energy Efficiency, stated:

> In terms of total energy used by a building, you can basically split it fifty-fifty between the base building and the tenancy. We are capturing the base building through the star rating; that is the first component of the Building Energy Efficiency Certificate. As to the second component, the tenancy: of the total energy use, the lighting is the predominant factor.[56]

1.57 At the time of the committee's public hearing, the precise tool for determining the energy efficiency of a building's lighting had not been resolved.[57] The committee understands that the government was, at that stage, in the process of consulting with industry on the proposed lighting tool. During the public hearing, Mr Peter Verwer,

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53 NABERS, 'Frequently Asked Questions', www.nabers.com.au/faqs.aspx?site=1 (accessed 29 April 2010).

54 NABERS, 'Frequently Asked Questions', www.nabers.com.au/faqs.aspx?site=1 (accessed 29 April 2010).

55 Mr Gene McGlynn, Assistant Secretary, Building and Government Energy Efficiency Branch, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 29.

56 Mr Mark Davis, *Committee Hansard*, 12 April 2010, p. 29.

57 Mr Peter Verwer, CEO, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 8.

CEO of the Property Council of Australia, expressed concerns about the government's proposed system for measuring lighting.[58] These concerns are discussed in chapter 2.

Guidance on improvements

1.58 The third aspect of a BEEC is proposed to be guidance on how the energy efficiency performance of a building might be improved. The Bill specifies that the kind of guidance included in a BEEC will be 'determined by the secretary by legislative instrument.'[59]

1.59 The Explanatory Memorandum states:

> It is expected that the guidance will be generic and designed to initiate investigation of specific improvements that may be carried out on a particular area of a building.[60]

Assessments and assessors

1.60 Only accredited assessors may perform assessments of a building's energy efficiency under the scheme. Part 3 of the Bill sets out how assessors may apply to the department to become accredited for the purposes of the scheme, and those persons who are not eligible to become assessors.[61] Clause 27 provides that the regulations may prescribe conditions of accreditation.

1.61 Assessors may be suspended for failing to carry out proper assessments,[62] and it is an offence for a person to falsely hold themselves out to be an accredited assessor.[63]

1.62 The Bill also provides for the auditing of assessors by an 'auditing authority', which is appointed by the secretary of the department. The auditing authority will be responsible for ensuring that:

(a) accredited assessors properly apply the assessment methods and standards determined by the Secretary; and

(b) assessments are not influenced by any conflict of interest.[64]

1.63 Auditors are required to have relevant skills and experience, and to carry identity cards issued by the department.[65] Auditors have the power to enter premises

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58 Mr Peter Verwer, CEO, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 8.

59 Building Energy Efficiency Disclosure Bill 2010, paragraph 13(1)(c).

60 Explanatory Memorandum, p. 78.

61 Building Energy Efficiency Disclosure Bill 2010, clauses 24 and 25.

62 Building Energy Efficiency Disclosure Bill 2010, Part 2, Division 2.

63 Building Energy Efficiency Disclosure Bill 2010, clause 32.

64 Building Energy Efficiency Disclosure Bill, clause 33.

65 Building Energy Efficiency Disclosure Bill, clauses 34 and 35.

with consent, or a warrant, observe activities carried out in the building, monitor accredited assessors and require assessors to produce documents.[66]

1.64 Auditors also have certain obligations, such as informing building owners and seeking their consent. These are set out in Division 3 of Part 4 of the Bill.

66 Building Energy Efficiency Disclosure Bill, Part 4, Division 2.

Chapter 2

Key issues

2.1 Throughout the inquiry it was evident that the mandatory disclosure of commercial building energy efficiency information is a policy that enjoys widespread support. Despite raising reservations with specific aspects of the scheme, all witnesses expressed their in-principle support. The key concerns with the Bill related to:

- the use of the NABERS rating system;
- development of the tenancy lighting tool;
- penalties; and
- the training of assessors.

Widespread support

2.2 As noted above, the scheme has the support of the Federal, state and territory governments, as indicated by the July 2009 COAG agreement underpinning the proposed scheme. The scheme also has support across the political spectrum.

2.3 Mandatory disclosure is widely considered to be an appropriate method of addressing existing information asymmetry between building owners and prospective buyers and lessees within the industry. Even critics of the Bill supported the concept of mandatory disclosure. For example, Mr Peter Verwer, CEO of the Property Council of Australia, who was perhaps the scheme's harshest critic, commented:

> …we agree with the virtues of creating a more informed marketplace and that mandatory disclosure has a role in achieving this goal.[1]

2.4 Mr Ché Wall, Managing Director of WSP Lincolne Scott, agreed:

> Australia should have a robust disclosure scheme that will complement existing policies and schemes, improve market information and inform future policy-making. It should be a fair, simple and efficient scheme. Ultimately it will provide a meaningful incentive for business to operate buildings efficiently and help to transition the market to a low-carbon future.[2]

2.5 And Mr Robert Murray-Leach, CEO of the EEC, stated that '[m]andatory disclosure is one of a number of key [energy efficiency] policies'.[3]

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1 Mr Peter Verwer, *Committee Hansard*, 12 April 2010, p. 6.

2 Mr Ché Wall, *Committee Hansard*, 12 April 2010, p. 14.

3 Mr Robert Murray-Leach, *Committee Hansard*, 12 April 2010, p. 34.

2.6 The second reading speech by the Minister Assisting the Minister for Climate Change, the Hon Greg Combet MP, indicates a 'broad level of support for the scheme.'[4] The department echoed this sentiment, stating:

> Of the 41 written submissions made during the consultation process…five expressed opposition to the scheme…three expressed neutrality towards the scheme and the remainder expressed qualified support for the scheme…
>
> Submissions supporting the scheme generally recognise its value in raising awareness of energy efficiency and providing information at a salient time.[5]

NABERS as the appropriate rating tool

2.7 Several submissions questioned whether the NABERS tool (described in chapter 1) is the most appropriate mechanism to use to rate buildings under the scheme.

2.8 While clause 21 of the Bill does not prescribe the use of the NABERS tool, the Explanatory Memorandum and evidence from the department make it clear that the NABERS Energy tool will be used to determine the base energy rating in the first section of BEECs:

> In practice, and for the foreseeable future, it is anticipated that the legislative instrument would state the energy efficiency rating of a building as the energy efficiency rating of a base building that is determined by NABERS Energy.[6]

2.9 Concerns about the use of NABERS were raised primarily by the Property Council of Australia[7] and in the joint submission from Lend Lease, WSP Lincolne Scott and Built Ecology (hereafter referred to as 'Lend Lease').[8]

2.10 Mr Peter Verwer, CEO of the Property Council of Australia, whilst recognising that NABERS is currently under review, argued that NABERS needs to be 'overhauled'.[9] The Property Council's submission cited inconsistent allocation of ratings between different states as one area where the current NABERS tool could be improved:

> Victorian buildings suffer an effective penalty of up to one Star compared to NSW—this means that a 3 Star building in Sydney may only achieve a 2 Star NABERS rating in Melbourne.

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4 The Hon Greg Combet MP, Minister Assisting the Minister for Climate Change, Second Reading Speech, *House of Representatives Hansard*, 18 March 2010, p. 2928.

5 Department of Climate Change and Energy Efficiency, answer to question on notice, question 6, 12 April 2010 (received 23 April 2010).

6 Explanatory Memorandum, p. 86.

7 Property Council of Australia, *Submission 4*, p. 2.

8 Lend Lease, WSP Lincolne Scott and Built Ecology, *Submission 3*, pp 11–12.

9 Mr Peter Verwer, CEO, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 6.

> While this flaw might be overlooked if investors only compared homogenous markets, the reality is that multiple geographical markets are often considered before investment decisions are made.[10]

2.11 While giving evidence Mr Verwer acknowledged that:

> If we could be confident that the NABERS methodology had been fixed up, we would be relatively happy [with the Bill].[11]

2.12 The NABERS Energy rating system for offices was originally launched in 1999, as the Australian Building Greenhouse Rating Scheme. The committee understands that the NABERS Energy rating system is currently under review with a view to addressing technical flaws and stakeholder concerns with the system. While the review is confidential at this stage, the committee understands that the proposed changes to NABERS are intended to be released for consultation over the coming months.

2.13 Lend Lease's principal concern with NABERS related to its incompatibility with other mechanisms to report energy and greenhouse performance. Lend Lease argued that the use of the NABERS scheme will not provide meaningful information to contribute to existing policies and schemes, such as the National Greenhouse and Energy Reporting Scheme (NGERS) and the Energy Efficiency Opportunities (EEO) program, as the information it gathers is not complementary with those schemes.[12]

2.14 The department informed the committee that contrary to the concerns expressed by Lend Lease:

> The information provided for disclosure is aimed at allowing meaningful comparisons of building energy efficiency performance. Data required under the Bill can be used to calculate information for NGERS, EEO or other purposes. This information could also be of value in a trading scheme.[13]

2.15 Mr Mark Davis, Director, Commercial Building Performance Team, Department of Climate Change and Energy Efficiency, pointed out that there is scope within the scheme for improving the NABERS tool, as NABERS is not set out as the required tool within the Bill itself.[14]

2.16 The Explanatory Memorandum confirms the possibility of the scheme adopting other appropriate methods and standards:

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10 Property Council of Australia, *Submission 4*, p. 2.

11 Mr Peter Verwer, CEO, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 8.

12 Lend Lease, WSP Lincolne Scott and Built Ecology, *Submission 3*, p. 12.

13 Department of Climate Change and Energy Efficiency, answer to question on notice, question 3, 12 April 2010 (received 23 April 2010).

14 Mr Mark Davis, *Committee Hansard*, 12 April 2010, p. 23.

> It should be noted that the recognition of the use of the NABERS Energy tool in the legislative instrument enables the scheme to recognise other appropriate methods and standards in the future. This approach was recommended by industry during the consultation process as a means of promoting greater innovation and competition among building rating tools...[T]he decision to recognise other methods and standards will be based on rigorous analysis, and will be subject to further industry and government consultation.[15]

2.17 Other organisations were supportive of the adoption of the NABERS tool. The EEC, for example, expressed strong support for the use of NABERS. Mr Murray-Leach, the CEO of the EEC argued that this support reflected industry acceptance of the tool:

> We are very strongly supportive as an industry of NABERS as a rating technology…We certainly think there is room for ongoing improvement of the rating tool. But that can be captured within the NABERS tool itself…
>
> NABERS is very well accepted by the rating industry and by the energy efficiency industry. We do not, as an industry, focus too heavily on the actual rating; we are more interested in improving the performance of buildings. But it is a relatively accurate method. It is relatively cost-effective. It is well accepted by building owners, and it is well accepted by energy efficiency experts.[16]

2.18 Mr Verwer, CEO of the Property Council of Australia, also told the committee of significant uptake of the NABERS assessment tool:

> ...we believe there has been a strong take-up. This is where we do disagree slightly with Bovis Lend Lease and WSP Lincolne Scott, despite the fact that they are world leaders in this area. There are something like 9 million square metres on the NABERS database of buildings which do have a rating, and that is a big chunk of space.[17]

2.19 In this regard the department noted that:

> The Bill will ensure a growing, publicly available database of NABERS ratings. The current NABERS Energy ratings database is the most comprehensive set of non-residential building energy use information in Australia and is widely used for research and policy development purposes.[18]

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15 Explanatory Memorandum, p. 86.

16 Mr Robert Murray-Leach, Chief Executive Officer, Energy Efficiency Council, *Committee Hansard*, 12 April 2010, p. 36.

17 Mr Peter Verwer, CEO, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 7.

18 Department of Climate Change and Energy Efficiency, answer to question on notice, question 3, 12 April 2010 (received 23 April 2010).

2.20 The widespread acceptance and use of NABERS within the commercial building sector is supported by information contained in the RIS:

> The NABERS Energy assessment tool is the most extensively used rating tool in the commercial office property market in Australia...
>
> Among office tenants, research suggests that 61 per cent have some level of awareness of NABERS (Colliers International 2008). A recent survey of building owners found that 26 per cent of organisations were reporting using NABERS (then ABGR) ratings (Jones Lang LaSalle 2008).[19]

2.21 Further, the RIS explains that the Commonwealth, New South Wales, Victorian, Western Australian, South Australian and Australian Capital Territory governments have adopted NABERS Energy targets in their procurement policies for office accommodation.[20]

Committee view

2.22 The committee acknowledges the criticisms of certain stakeholders of NABERS tool including its incompatibility with the NGERS framework and the 'room for ongoing improvement'. However, given its broad level of acceptance within the sector and its ability to compare actual 'base building' energy performance, the committee is of the view that NABERS Energy should be adopted as the energy efficiency star rating tool for the mandatory disclosure scheme. The committee notes that the Bill has inbuilt mechanisms to enable improvements to be made to the NABERS tool based on consultation with industry. The committee also notes the NABERS review currently underway, which intends to address many of the issues with the scheme raised by the industry prior to the introduction of the Bill.

2.23 The NABERS ratings tool allows potential purchasers or lessees to make comparisons between measured building performance, without the influence of the particular operational traits of the most recent occupant. NGERS data, on the other hand, would give information on the carbon footprint of a building but with the behavioural and operational characteristics of most recent occupant embedded in the data. The inclusion of NGERS consistent data would therefore provide a direct link into the national emissions reporting scheme and also into a future carbon trading scheme.

2.24 The committee is of the view that the government should consider including both the NABERS star rating and some level of NGERS consistent data in the Building Energy Efficiency Certificate.

2.25 The committee understands that there will be little or no cost involved in this approach. Many potential vendors and lessors are already, or soon will be, subject to

19 Regulation Impact Statement, pp 2–3.

20 Regulation Impact Statement, p. 2.

the NGERS reporting requirements.[21] The committee notes that many of the leading players in the commercial building sector, such as Lend Lease, Mirvac and Centro, are already listed on the National Greenhouse and Energy Register.[22] These organisations are therefore likely to have NGERS compliant information available for inclusion in a BEEC for a particular office building. For organisations that currently are not required to, or do not of their own volition collect emissions information, the committee notes evidence from Lend Lease that '[t]he collection and reporting of credible and meaningful energy efficiency information is possible for all non-residential buildings and at very low cost.'[23]

2.26 The potential benefits that would flow from including NGERS-consistent information in a BEEC are two fold. First, it would inform potential purchasers and lessees of the carbon footprint of an office space, albeit with the operational impacts of the most recent occupant embedded in the data. Second, it would prepare the broader commercial market for the future introduction of a carbon trading scheme and help to transition the market to a low carbon future.

2.27 The committee notes that there are several provisions in the Bill under which the government could require or permit NGERS data to be included in a BEEC.[24] The Explanatory Memorandum expressly recognises that it may be desirable for additional information to be included in BEECs, and lists the examples of on-site renewable or low-emissions energy sources, green power usage, and past years' energy efficiency ratings.[25] As a result, the Bill already contains sufficient flexibility to enable BEECs to include NGERS-consistent information about a building's greenhouse gas emissions, and would not require amendment to achieve consistency with NGERS.

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21 Information about the NGERS corporate group and facility thresholds can be found at www.climatechange.gov.au/en/government/initiatives/national-greenhouse-energy-reporting/business-need-to-report.aspx (accessed 3 May 2010). The NGERS corporate group threshold will decrease from 125 kilo tonnes (kt) of greenhouse gas emissions for the 2008–09 reporting period, to 87.5kt and then 50kt for the 2009–10 and 2010–11 reporting periods respectively (all expressed on CO_2 equivalent basis).

22 See www.climatechange.gov.au/government/initiatives/national-greenhouse-energy-reporting/~/media/publications/greenhouse-report/national-greenhouse-energy-register-pdf.ashx (accessed 3 May 2010).

23 Lend Lease, WSP Lincolne Scott and Built Ecology, *Submission 3*, p. 5.

24 See for example Building Energy Efficiency Disclosure Bill, paragraph 21(1)(a); and subclause 13(3).

25 Explanatory Memorandum, p. 79.

Recommendation 1

2.28 The committee recommends that the Department of Climate Change and Energy Efficiency continue to work with the relevant industry sectors and state authorities to ensure that the Building Energy Efficiency Certificates issued under the scheme contain information about a building's greenhouse gas emissions which is consistent with relevant commonwealth schemes, including the National Greenhouse and Energy Reporting Scheme.

Development of tenancy lighting tool

2.29 During the committee's public hearing, the Property Council of Australia expressed concern regarding the stage of development of part two of BEECs—which relates to measuring the efficiency of a building's lighting systems. Mr Peter Verwer, CEO of the Property Council of Australia, commented that the tool for measuring the efficiency of lighting under the scheme has not yet been finalised or tested.[26]

2.30 In answers to questions on notice, the Property Council reiterated its concerns regarding the lighting tool:

> Above all, the marketplace holds grave concerns about the practicality of the draft [lighting] tool, which will involve physical inspections of floors… In short, the [lighting] tool will involve greater cost and effort than NABERS itself.
>
> This will inevitably impede the industry's logistical capacity to comply with the Bill's disclosure requirements.[27]

2.31 The Property Council also highlighted that the cost-benefit analysis of the scheme included in the RIS did not include the costs of industry compliance with the proposed lighting tool, as the tool has not yet been finalised.[28]

2.32 The department responded to the Property Council's concerns regarding the timing of the release of the lighting tool:

> Finalisation of the tenancy lighting assessment, including on-site testing, is due to be completed in May [2010]. Training is scheduled to be provided from July [2010]. This allows sufficient time for tenancy lighting assessments to be carried out prior to the commencement date of disclosure obligations (anticipated to be around October 2010).[29]

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26 Mr Peter Verwer, Chief Executive Officer, Property Council of Australia, *Committee Hansard*, 12 April 2010, p. 8.

27 Property Council of Australia, answer to question on notice, 12 April 2010 (received 29 April 2010) p. 2.

28 Property Council of Australia, answer to question on notice, 12 April 2010 (received 29 April 2010) p. 2.

29 Department of Climate Change and Energy Efficiency, answer to question on notice, question 3, 12 April 2010 (received 23 April 2010).

Committee view

2.33 Given the importance of measuring lighting efficiency (see discussion at paragraph 1.56 in chapter 1), the committee considers that this should remain a central element of BEECs.

2.34 In order for the tenancy lighting aspect of scheme to operate effectively, the tool used to measure lighting must be one that has been properly tested and developed in consultation with stakeholders. The committee further highlights the importance of assessors having adequate time to be trained in using the new lighting tool, and the government having time to respond to feedback from stakeholders and assessors on initial use of the tool.

Recommendation 2

2.35 The committee recommends that the government consider delaying the lighting measurement component of Building Energy Efficiency Certificates until the Department of Climate Change and Energy Efficiency has had sufficient time to develop, test and consult on the appropriate tool for measuring the efficiency of lighting.

Penalties

2.36 The Property Council of Australia also expressed concern with the penalties that the Bill proposes to impose on building owners who fail to comply with the disclosure provisions of the Bill.

2.37 Clauses 11 and 12 provide that a building owner who offers to sell or lease a disclosure affected building without a registered BEEC will be liable for a civil penalty of up to 1000 penalty units. Subclause 11(5) specified that:

> A constitutional corporation that contravenes a requirement of this section in relation to a continuing offer or a continuing invitation commits a separate contravention in respect of each day during which the person fails to comply with that requirement…

2.38 This equates to a penalty of up to $110 000[30] per day for a building owner advertising a disclosure affected building without a registered BEEC.

2.39 The Property Council of Australia submitted that these penalties 'are utterly inconsistent with the nature of the offences'.[31]

> To put this in perspective, other offences with the same penalty level include passport forgery and major pollution incidents.[32]

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30 Attorney-General's Department, *Penalty Unit Conversion Table*, at: www.ag.gov.au/www/agd/agd.nsf/page/Publications_FramingCommonwealthoffences,civilpenaltiesandenforcementpowers-Penaltyunitconversiontable (accessed 4 May 2010).

31 Property Council of Australia, *Submission 4*, p. 3.

2.40 The committee urges the government to examine the penalties proposed to be imposed by the Bill, and consider whether the level of the penalties is appropriate.

Recommendation 3

2.41 The committee recommends that the government give consideration to whether the penalties proposed to be imposed by the Bill are appropriate.

Assessors

2.42 Witnesses raised concerns about of the expertise and number of assessors required under the scheme.

Assessor expertise

2.43 Mr Ché Wall, Managing Director, WSP Lincolne Scott, noted:

> Any form of energy efficiency reporting on upgrades on behalf of the assessors I would also be concerned about, given the technical skill level they are aiming at for the assessors in this program.[33]

2.44 Mr Wall argued that there is potential within the scheme for assessors to make subjective assessments. He further argued that the varying degrees of quality amongst assessors could lead to an inconsistent standard of assessments, thereby creating distortions in the market.[34] Mr Wall commented:

> My experience—and I speak on behalf of WSP Lincolne Scott—is that when we have had assessments under the scheme before we have had some very different subjective advice from different assessors which has materially impacted on the ratings, so one would expect that there needs to be a significant improvement in process there too.[35]

2.45 The department informed the committee that:

> Assessors will be required to undertake the existing NABERS training in addition to modules on tenancy lighting assessments and the legislative requirements of the building energy efficiency disclosure scheme.[36]

2.46 The committee understands that the NABERS training program is a well-established training program run through the NSW Department of Environment,

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32 Property Council of Australia, *Submission 4*, p. 4.

33 Mr Ché Wall, Managing Director, WSP Lincolne Scott, *Committee Hansard*, 12 April 2010, p. 16.

34 Mr Ché Wall, Managing Director, WSP Lincolne Scott, *Committee Hansard*, 12 April 2010, p. 20.

35 Mr Ché Wall, Managing Director, WSP Lincolne Scott, *Committee Hansard*, 12 April 2010, p. 20.

36 Department of Climate Change and Energy Efficiency, answer to question on notice, question 31, 12 April 2010 (received 23 April 2010).

Climate Change and Water.[37] Notwithstanding this, the committee urges the government to proactively ensure that the training received by assessors under the scheme is consistent, high quality and thorough.

Number of assessors required

2.47 Mr Peter Verwer, CEO of the Property Council of Australia, also questioned whether the demand for assessments created by the scheme could be fulfilled by the number of assessors proposed to be accredited.[38]

2.48 The department informed the committee that there are presently 585 accredited NABERS assessors. Based on the RIS, the department concluded that this pool of assessors would be adequate:

> The Regulation Impact Statement estimates that around 300 to 350 offices will be required to disclose their energy efficiency in the first year of the scheme. On this basis, there would appear to be a sufficient number of existing accredited NABERS assessors.[39]

2.49 Based on the Property Council of Australia's estimate that 14 per cent of commercial office property over 2000 square metres in area are sold or leased each year,[40] combined with its estimate that there are approximately 2170 buildings in Australian major centres with lettable areas of over 2000 square metres,[41] the department's figure seems to be a reasonable reflection of the number of offices that will be impacted by the Bill annually. Accordingly, the committee does not at this stage share the Property Council's concerns. However, the committee considers it would be prudent for the government to monitor the situation closely and to act quickly if a shortage of assessors becomes apparent.

Conclusions

2.50 The mandatory energy reporting scheme for commercial office buildings proposed by the Building Energy Efficiency Bill 2010 is the result of substantial consultation with the commercial property and energy efficiency industries. The Bill implements the Commonwealth's obligations under agreements between the Commonwealth, states and territories, and has widespread support.

2.51 The committee is of the view that the Bill contains sufficient flexibility for any issues with rating systems and BEECs to be addressed as necessary, and urges the

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37 NABERS, 'Frequently Asked Questions', www.nabers.com.au/faqs.aspx?site=1 (accessed 29 April 2010).

38 Mr Peter Verwer, *Committee Hansard*, 12 April 2010, p. 8.

39 Department of Climate Change and Energy Efficiency, answer to question on notice, question 29, 12 April 2010 (received 23 April 2010).

40 Property Council of Australia, *Submission 4a*, p. 4.

41 Regulation Impact Statement, p. 2, quoting Property Council of Australia, *Office Market Report*, 2008.

government to engage in ongoing consultations with industry to ensure the needs of property owners, tenants and purchasers are being adequately met by the scheme.

2.52 The committee also urges the government to consider including a measure of greenhouse gas emissions per square metre of office space in BEECs, which is consistent with the NGERS.

2.53 The committee further advises the government to monitor the training and numbers of assessors on an ongoing basis to ensure that assessors are suitably qualified and experienced to produce meaningful and accurate assessments.

Recommendation 4

2.54 The committee recommends that, subject to the recommendations contained in this report, the Senate pass the Building Energy Efficiency Disclosure Bill 2010.

Senator Anne McEwen
Chair

Coalition Senators' Additional Comments

There is widespread support for encouraging energy efficient buildings. To that end, there is also support for mandatory disclosure of information about commercial building energy efficiency.

Coalition Senators note that mandatory disclosure of commercial building energy efficiency was proposed by the Coalition in December 2004 under the Stage One implementation plan of the National Framework for Energy Efficiency—a joint initiative of the Commonwealth, State and Territory governments under the Ministerial Council on Energy.

Submissions to the Senate inquiry supported the principle of mandatory disclosure. However stakeholders are sceptical about the Bill's ability to meet its principle of increasing energy efficient buildings through creating a more informed marketplace.

Coalition Senators have concerns about: the lack of industry consultation, technical flaws in the National Australian Built Environment Rating System (NABERS); the inclusion of a tenancy lighting tool; the development of supporting technical tools and availability of assessors; timeframes and the extent of details of the regime to be specified by Regulation.

Scope of the Bill—Threshold

The Bill imposes mandatory reporting obligations on properties with a net lettable area (NLA) of greater than 2000 square metres, rather than the 5000 square metres threshold announced in Labor's election policy. This change extends to and imposes a mandatory reporting burden on second tier and smaller property owners, who would have been exempt had Labor kept its election promise.

The government claims that COAG 'pressured' it into this change, under the threat of states pursuing their own schemes.

The Property Council estimates there are 1174 buildings with NLA of greater than 5000 square metres, accounting for 16 million square metres of floor space. 2170 buildings have a NLA of greater than 2000 square meters, accounting for a further 19 million square metres.

Reducing the threshold area from 5000 square metres to 2000 square metres subjects a further 996 buildings (or 84 per cent more buildings) to the Bill.

Asked how the 2,000 square metres threshold was determined, the Department stated:

> The Regulation Impact Statement (RIS) examined both a 2,000 and 5,000 square metre threshold. It was determined that the additional benefits of

> applying a 2,000 square metre threshold would likely outweigh the additional costs.[1]

Coalition Senators remain to be convinced.

The Property Council of Australia argues there will be extensive compliance costs for building owners.

> But what is clear from this methodology which is going to be used to determine the information to be disclosed in advertising for tenancies, for leasing practices, is that the work required to comply with this is bigger than getting a NABERS rating, because every floor of every building is going to require an assessment which involves somebody physically inspecting each one of those floors and making an assessment about what sort of lighting it is—not just the light but the ballasts as well—recording all of that and then making calculations as to what the energy intensity is, adding it all up and revealing it in the advertisement as well as putting it onto the master database.[2]

Coalition Senators note that there will be significant compliance costs for building owners in completing a BEEC.

> Estimates indicate that for an average sized disclosure affected building a Building Energy Efficiency Certificate will cost around $6,000. For larger and more complex buildings, the cost may be over $10,000.[3]

National Australian Built Environment Rating System (NABERS)

The Regulation Impact Statement is premised in the use of NABERS as the building evaluation tool.

The NABERS tool was originally developed by the Australian Department of Environment and Heritage (DEH). The NSW Department of Environment, Climate Change and Water (formerly Department of Energy, Utilities and Sustainability) was selected by DEH as the successful tenderer to proceed with the commercialisation of NABERS, with the contract for NABERS commercialisation signed in March 2005.[4]

Under the management of the NSW government, the development and application of the NABERS tool has been primarily undertaken through the prism of NSW conditions, with assumption-based adaptations for other states, territories and regions.

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1 Department of Climate Change and Energy Efficiency, answer to question on notice, 12 April 2010, question 10 (received 23 April 2010).

2 Mr Peter Verwer, Property Council of Australia, *Committee Hansard,* 12 April 2010, p. 6.

3 Department of Climate Change and Energy Efficiency, answer to question on notice, 12 April 2010, question 26 (received 23 April 2010).

4 NABERS website: www.nabers.com.au.

Adaptations included to enable the national use of the NABERS tool remain contentious, with known deficiencies that result in properties in different states being assessed differently and unreliable assessments.

The government undertook to have these flaws addressed prior to mandating the use of NABERS but this hasn't occurred. There are other market-recognised tools that can provide meaningful information but the Bill does not provide for the use of approved 'equivalent' tools.

If NABERS is to be the Bill's energy efficiency star rating tool, the Bill should not proceed until the government consults with industry, to fix NABERS' flaws.

Beyond NABERS, there are other market-recognised tools that can provide meaningful information to prospective purchasers and lessees that are not accommodated as the Bill does not provide for the use of approved 'equivalent' tools. Nor does the Bill align with self assessment and disclosure duties under current related government programs like NGERS (National Greenhouse and Energy Reporting Scheme) and EEO (Energy Efficiency Opportunities).

Coalition Senators believe that greater effort is required in better aligning the BEEC scheme with existing market-recognised and government reporting tools so as to avoid unnecessary and costly additional data collection and reporting regulatory obligations where policy objectives can be meet via existing systems and effort. Improved and meaningful consultation with industry will identify opportunities for harmonising BEEC requirements will current and related reporting systems.

Tenancy Lighting Tool

Coalition Senators note paragraphs 2.29–2.34 of the Chair's report. Based upon the concerns reflected therein, Coalition Senators consider that any lighting measurement component should be abandoned, unless and until it has been developed and tested so as to garner sufficient industry confidence.

Content of BEECs – Guidance as to how to improve efficiency

The Bill enables the Departmental Secretary, by legislative instrument to issue energy efficiency guidelines which will form part of every BEEC. A generic, 'one size fits all' set of suggestions about how to improve a building's efficiency could expect market forces on sellers to undertake 'efficiency upgrades' on buildings, which may not be required. It risks distorting the market, resulting in unnecessary or counterproductive building 'efficiency upgrades'.

> **Mr Davis**—This is the generic guidance that forms part of every building energy efficiency certificate.
>
> **Senator FISHER**—How generic will that be? Exactly that?
>
> **Mr Davis**—That is correct. It could be useful to all buildings.
>
> **Senator FISHER**—What is the point of having that as part of each and every certificate if it is proposed to be generic—a one size fits all and you

> pick from it the bits you reckon suit your building? Why bother having that in every certificate to be issued each and every time a subject building is sold or leased?
>
> **Mr Davis**—The purpose is to provide generic guidance to the building owner or purchaser. It initiates consideration of how the building could be upgraded and, hopefully, it would instigate further investigation.[5]

Coalition Senators are not convinced that generic energy efficiency guidelines should form part of every BEEC.

Regulations and subordinate instruments

The Senate inquiry has identified stakeholder concerns about terms and language used in that Bill that require clarification to make them meaningful and relevant to established industry terminology.

Uncertainty about details of the scheme yet to be finalised through regulations and subordinate instruments adds to stakeholder concerns about the significant and cumulative penalties for non-compliance, even where third party action or inaction may give rise to the risk of penalties.

Witnesses expressed concerns that the Bill only provides a broad frame work for the scheme and leaves much of the important detail to be developed through regulations and subordinate instruments.

For example, the Bill fails to clearly identify which buildings will be captured by the new scheme. It also fails to identify the specific information to be disclosed in a BEEC, how and on what basis exemptions will be granted and the manner of accrediting assessors.

At the time of writing, regulations are not complete and the Department is not in a position to provide the estimated 20–30 pages of regulations and subordinate instruments that will be required.

The Department gave evidence about what would be contained within the regulations:

> **Mr Davis**—There will be information to be contained in applications for exemptions under clauses 17 and 18 of the bill, prescribed fees for exemptions under clauses 17 and 18, classes of exemption categories under subclause 17(3)(c), information contained in an application for accreditation under subclause 24(2)—
>
> **Senator FISHER**—And that is accreditation for what?

5 Mr Mark Davis, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 26.

> **Mr Davis**—To be an accredited assessor under the scheme. There will also be the prescribed fee for accreditation under subclause 24(2), the prescribed form of identity cards under subclause 35(2)—
>
> **Senator FISHER**—Is that for assessors' ID cards?
>
> **Mr Davis**—No, that is for auditors. There will also be additional matters that relate to infringement notices under subclause 59(1)(p) and clause 64.
>
> **Senator FISHER**—And what sort of information is that?
>
> **Mr Davis**—I would have to look up the bill to see.
>
> **Senator FISHER**—Mr McGlynn might assist with that while you move on to the next bit.
>
> **Mr Davis**—There will also be additional matters that relate to the bill under clause 72.
>
> **Senator FISHER**—Mr McGlynn, do you have the information about the additional information for exemption.
>
> **Mr McGlynn**—Subclause 59(1)(p) is:
>
> such other matters … as are specified by the regulations— in relation to infringement notices.[6]

And:

> **Mr Davis**—There is determination of conditions of accreditation under subclause 27(1).
>
> **Senator FISHER**—And that is accreditation of what or whom?
>
> **Mr Davis**—Accredited assessors.[7]

In addition in an answer to a question on notice:

> The Regulations, under subclause 25(e) of the Bill, are to prescribe the training to be undertaken by accredited assessors.[8]

Legislative Instrument

In addition to the regulations, a legislative instrument is to be made by the secretary.

> **Mr Davis**—It includes the methods and standards for assessment under clause 21, including the NABERS energy matrix, base building ratings, whole building ratings and tenancy lighting assessment guidelines.
>
> **Senator FISHER**—What else?

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6 Mr Mark Davis and Mr Gene McGlynn, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 25.

7 Mr Mark Davis, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2011, p. 25.

8 Department of Climate Change and Energy Efficiency, answer to question on notice, 12 April 2010, question 2 (received 23 April 2010).

> **Mr Davis**—It includes determination of the manner and display standards of energy efficiency ratings in advertisements under clause 15. It includes guidance on how to improve energy efficiency of buildings under subclauses 13(1)(c) and 13(2)(c). [9]

The Department of Climate Change and Energy Efficiency said:

> The Regulation and subordinate instruments are intended to be finalised prior to the Bill being considered by the Parliament during the Winter 2010 sitting period. [10]

Consultation

Coalition Senators are concerned about allegations of inadequate stakeholder consultation on this Bill.

In its supplementary submission, the Property Council of Australia stated:

> We believe that government officers involved in the development of the scheme have acted in good faith.
>
> However the consultation processes carried out have been sub optimal.[11]

The submission provided several examples of how consultation was below the standard they expected.

- the Property Council has been given access to many documents on a limited circulation basis, meaning they could not be widely tested by members – the draft tenant lighting tool is the latest example;
- a critical meeting regarding the development of the enabling legislation was confidential, so the proceedings could not be related to members;
- some documents have been provided with very little time for consultation: in one case a document relating to the energy efficiency guidance material was released on a Monday afternoon, with a Friday deadline for feedback; and
- the delay in finalising the tenancy rating tool is an example of a sub optimal engagement process.[12]

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9 Mr Mark Davis, Department of Climate Change and Energy Efficiency, *Committee Hansard*, 12 April 2010, p. 26.

10 Department of Climate Change and Energy Efficiency, answer to question on notice, 12 April 2010, question 37 (received 23 April 2010).

11 Property Council of Australia, answer to question on notice, 12 April 2010 (received 29 April 2010), p. 5.

12 Property Council of Australia, answer to question on notice, 12 April 2010 (received 29 April 2010), p. 6.

WSP Lincolne Scott Managing Director was questioned about what consultation with his company:

> **Senator FISHER**—To what extent have you been consulted about the bill?
>
> **Mr Wall**—We have not been directly consulted at all.[13]

This is concerning, given the legitimate concerns about fundamental provisions of the Bill.

Timeframes

Coalition Senators are troubled by the time frames for the commencement of the scheme.

To be able to benefit from the 'transition period', building owners must obtain a NABERS rating. There is considerable industry concern about the availability of adequately trained assessors and departmental resources to support the scheme's ambition of the industry being 'disclosure ready' by October 2010.

Delays in remedying flaws with NABERS and discomfort over the proposed tenancy lighting tool exacerbate these concerns.

The Department of Climate Change and Energy Efficiency is confident that time frames will enable accreditation of sufficient assessors for the scheme.

However in its supplementary submission, the Property Council of Australia stated:

> it is *logistically impossible* to achieve such goals within the proposed timeframe. [14]

Further stating:

- there are not enough assessors to deal with the current level of demand, let alone a new mandated scheme;
- all assessors will need to be reaccredited under the new scheme;
- zero assessors have any experience with the new tenant lighting tool – it cannot be used until assessors are appropriately trained; and
- the current backlog of assessments will only get worse as building owners try to refresh their ratings in time for the transition period.

13 Mr Ché Wall, Managing Director, WSP Lincolne Scott, *Committee Hansard*, 12 April 2010, p. 16.

14 Property Council of Australia, answer to question on notice, 12 April 2010 (received 29 April 2010), p. 1.

Conclusion

The Coalition instigated policy action on mandatory reporting of commercial building energy efficiency and the Rudd government promised to follow the Coalition's lead.

Coalition Senators have concerns about the lack of industry consultation, technical flaws in the National Australian Built Environment Rating System (NABERS); the inclusion of a tenancy lighting tool; the development of supporting technical tools and availability of assessors; timeframes and the extent of details of the regime to be specified by Regulation.

In summary, Coalition Senators conclude that the BEEC scheme is simply not ready to be rolled out and that the Department and industry is inadequately prepared to support the successful deployment of the flawed scheme in the timeframes proposed. The haste with which the BEEC scheme is being brought into the parliament seems to be driven by political timeframes rather than sound policy and program development considerations that would support the efficient and effective mandatory disclosure of information about commercial building energy efficiency.

Recommendation 1

The Coalition recommends that the government reconsider the Bill and engage in further consultation to address issues raised in this report.

Senator Mary Jo Fisher
Deputy Chair

Senator the Hon. Judith Troeth

Appendix 1

Submissions and Answers to questions taken on notice

Submissions

1 Green Building Council of Australia

2 Napier & Blakeley

3 Lend Lease Corporation, WPS Lincolne Scott & Built Ecology

4 Property Council of Australia

5 Energy Efficiency Council

Answers to questions taken on notice

Energy Efficiency Council (from public hearing, 12 April 2010, Canberra)

Property Council of Australia (from public hearing, 12 April 2010, Canberra)

Department of Climate Change and Energy Efficiency (from public hearing, 12 April 2010, Canberra)

Appendix 2

Public hearings

Monday, 12 April 2010 – Canberra

Green Building Council of Australia

Mr Robin Mellon, Green Star Executive Director

Property Council of Australia

Mr Peter Verwer, Chief Executive Officer

LendLease, WSP Lincolne Scott and Built Ecology

Mr Ché Wall, Managing Director, WSP Lincolne Scott

Department of Climate Change and Energy Efficiency

Ms Clare Walsh, A/g First Assistant Secretary, Renewables and Energy Efficiency Division

Mr Gene McGlynn, Assistant Secretary, Building & Government Energy Efficiency Branch

Mr Mark Davis, Director, Commercial Building Performance Team

Energy Efficiency Council

Mr Robert Murray-Leach, Chief Executive Officer