

Building Energy Efficiency Disclosure Act 2010 - More Disclosure Obligations!

The Building Energy Efficiency Disclosure Act 2010 commenced on 1 July 2010 and was implemented in November 2010 with a transition period of 12 months. Given that this transition period is fast reaching its end, it seems appropriate to revisit the nature of the obligations that this legislation imposes on landowners in their roles as lessors and sellers.

This Act applies to sellers and lessors (being corporations), of buildings used or capable of being used as an office. Under the Act most sellers or lessors of office space of 2,000 square metres or more will be required to obtain and disclose an up-to-date energy efficiency rating.

Disclosure Requirements

Sellers and lessors will be required to register a Building Energy Efficiency Certificate **prior** to offering to sell or lease the building or inviting offers to sell or lease the building. Prospective buyers and lessees will be able to obtain a copy of the Certificate via an online Register.

The following is required to be disclosed in the Certificate:

- The energy efficiency rating for the building;
- An assessment of the energy efficiency of any lighting that is expected to remain if the building is sold, let or sublet; and
- Guidance on how the energy efficiency of the building may be improved.

The Certificate will be valid for 12 months from its issue.

Advertisements for the sale or lease of the building (or any part of it) must include the energy efficiency rating of the building.

There is a maximum penalty of \$110,000.00 for failing to register a Certificate or failing to provide an energy efficiency rating in an advertisement.

Exemptions

A seller or lessor will be exempt from compliance with the requirements of this Act for the following:

- Newly constructed office buildings (and areas within such buildings) for which the certificate of occupancy is less than 2 years old; and
- Strata-titled offices (note: this class of exemption will be reviewed if an appropriate methodology becomes available).

The following transactions do **not** give rise to a disclosure obligation:

- The sale of a building through the sale of shares or units or the sale of a partial interest in a building; and
- Short-term leases and subleases of 12 months or less (including any option to extend). For example, a six month lease with an option to extend for another six months would

not trigger a disclosure requirement. However a six month lease with an option to extend for 12 months would trigger a disclosure requirement.

An application may be made for an exemption from disclosure obligations under the Act where:

- A building or area is used for police or security operations; or
- An energy efficiency rating cannot be assigned because of the characteristics of the office.

Transition Period

During the transition period a NABERS (National Australian Built Environment Rating System) rating or other such current rating issued by such a recognised issuing authority, may be used.

For assistance with all your property needs, email info@msslayers.com.au or visit our website www.msslayers.com.au. Alternatively, contact the professional team at our Gold Coast or Brisbane office.



Gold Coast Office

9 Ouyan St
Bundall QLD 4217
PO Box 9073 GCMC QLD 9726
T +61 7 5597 8888
F +61 7 5597 8899

Brisbane Office

Level 10, 410 Queen Street
Brisbane QLD 4000
PO Box 3246 Brisbane QLD 4001
T +61 7 3229 6099
F +61 7 3226 9001

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