

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

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 Australia⁷ 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.

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:

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

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 NERS 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. NERS 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 NERS 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 NERS 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 CO₂ 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

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 000³⁰ 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

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,

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

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