

## **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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

### **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.<sup>4</sup>

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](http://www.nabers.com.au).

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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 met via existing systems and effort. Improved and meaningful consultation with industry will identify opportunities for harmonising BEEC requirements with 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.<sup>5</sup>

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?

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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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

## 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).<sup>9</sup>

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.<sup>10</sup>

### **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.<sup>11</sup>

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.<sup>12</sup>

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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.

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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.<sup>13</sup>

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.<sup>14</sup>

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.

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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**