



ASSOCIATION OF CONSULTING
ENGINEERS AUSTRALIA

MANDATORY ENERGY EFFICIENCY DISCLOSURE FOR COMMERCIAL BUILDINGS

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The ACEA's Submission in response to the Mandatory Disclosure of Commercial
Office Building Energy Efficiency - Consultation Regulation Document

ACEA SUBMISSION

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INTRODUCTION 2
 ABOUT THE ACEA2
EXECUTIVE SUMMARY..... 3
POLICY CONTEXT AND RATIONALE..... 4
PROPOSED MANDATORY DISCLOSURE SCHEME 5
 DISCLOSURE.....6
 COMPLIANCE7
 LIABILITY ISSUES7
 RATING AND ASSESSMENT TOOLS8
 ASSESSORS.....9

INTRODUCTION

ABOUT THE ACEA

The Association of Consulting Engineers Australia (ACEA) is an industry body representing the business interests of firms providing engineering, technology and management consultancy services.

There are over 260 firms, from large multidisciplinary corporations to small niche practices, across a range of engineering fields represented by the ACEA with a total of some 46,000 employees.

The ACEA presents a unified voice for the industry and supports the profession by upholding a professional code of ethics and enhancing the commercial environment in which firms operate through strong representation and influential lobbying activities. The ACEA also supports members in all aspects of their business including risk management, contractual issues, professional indemnity insurance, occupational health and safety, procurement practices, workplace/industrial relations, client relations, marketing, education, sustainability and business development.

EXECUTIVE SUMMARY

The ACEA supports the introduction of a mandatory energy efficiency disclosure scheme for commercial buildings in Australia.

As part of the Australian Sustainable Built Environment Council (ASBEC) Climate Change Task Group (CCTG) which commissioned *The Second Plank – Building a Low Carbon Economy with Energy Efficient Buildings*, the ACEA contend that the potential for greenhouse gas (GHG) reductions in Australia's building sector has been well investigated and outlined.

As noted within the Second Plank Report it is vital for government and the community at large to recognise the evidence showing the valuable role that demand side management and energy efficiency in the building sector can play in GHG abatement. The Second Plank research shows that better designed commercial and residential buildings provide some of the most affordable forms of GHG abatement in the economy.

Substantial investment in energy efficiency and initiatives to increase its uptake in the building sector will make the job of Australia moving to a low carbon future easier. It is now widely recognised that by transforming the building sector's energy efficiency profile, Australia can begin to see real gains in terms of carbon reduction.

Increasing energy efficiency in the building sector reduces the level of abatement required from other sectors in order for Australia to meet its emissions targets, essentially freeing resources such as labour and capital for which can be use by other industries. This is of particular benefit to emissions-intensive, trade exposed industries and strongly affected industries which were shown (in the Second Plank Report) to face lower reductions in real value added under a carbon pricing scheme.

Commercial building owners, developers, designers and facility managers all have a role to play in a successful mandatory disclosure scheme. The Government should seek to work with all stakeholders on not only the development of the Scheme, but its implementation and administration to ensure the desired results (ideally an uptake of energy efficiency improvements in the commercial building sector) are realised.

The ACEA views that the introduction of an Australian mandatory energy efficiency disclosure scheme has the potential to provide the foundation for building owners to invest in energy efficiency upgrades to existing building stock. An important measure of success for the Scheme will be the level to which it drives retro-fits and upgrades in Australia's existing buildings for the purpose of increased energy efficiency. Additionally, if rolled out successfully the Scheme should encourage better design, innovation and management of new commercial buildings.

The ACEA understand that the Australian Government has signalled its intent to progressively expand the coverage of this measure in future to additional building types, subject to further cost-benefit and regulatory impact assessment. The ACEA support the ongoing encouragement of all building owners to invest in energy efficiency improvements to existing buildings, and embrace sustainable design options for new buildings.

POLICY CONTEXT AND RATIONALE

The ACEA views that the policy context and rationale scoped within the Consultation Regulation Document is well outlined and sound. The ACEA note the references to the work completed by McKinsey and Garnaut as well as the research commissioned by ASBEC on the building sector's potential for GHG emission reductions.

Although the ACEA supports a strong incentive based approach to encourage building owners to invest in energy efficiency and reduce GHG emissions, we recognise that introducing a legislated or mandatory component has an important role to play in encouraging Australia's building sector to move towards energy efficiency measures.

Solutions to climate change and sustainability more broadly, are complex and may involve a range of measures working together to achieve the desired outcome. For Australia to have a sustainable social, environmental and economic future a broad range of factors must be considered and a broad range of stakeholders consulted to ensure that a variety of expertise and experience is utilised.

Embracing change is also a complex issue because social and environmental factors need to be balanced against economic factors, at both the macro and micro level. Policy solutions need to be carefully formulated to support market driven change that will minimise the negative impact on industry and households in the short term.

The ACEA takes the position that the Australian Government should seek to incentivise households and industry rather than simply offering compensation to ease the transition to a low carbon future. There is little chance of the required behavioural change occurring if communities are offered compensation as a means of coping with climate mitigation activities.

The ACEA maintains that a mandatory disclosure scheme coupled with an incentives program to encourage and support Australian businesses to invest in new and more sustainable ways to operate will have a significant impact on Australia's emissions profile.

A mandatory disclosure scheme has the potential to be the catalyst that mobilises investment in low or zero carbon energy technology and sustainable building design with confidence. To encourage these investments, the Australian Government must now consider bringing forward incentives to encourage energy efficiency implementation.

Once the mandatory disclosure scheme is in place, the ACEA is of the view that Governments' (Commonwealth and State) should already have incentives available such as an accelerated depreciation scheme for green building retrofits. Accelerated depreciation rates (of double the depreciation rates normally applied to investment in plant fixtures and fittings) could be provided to investors in buildings or building improvements which meet specified environmental and energy efficiency standards. The Second Plank Report highlights three policies that if adopted, have the ability to reduce the emissions profile of Australia's building sector significantly.

The ACEA contends that a mandatory disclosure scheme without subsequent initiatives put into place may have little impact on reducing the building sectors uptake of energy efficiency improvements.

PROPOSED MANDATORY DISCLOSURE SCHEME

The ACEA supports the overall framework of the proposed mandatory energy efficiency disclosure scheme - that is, the Building Energy Efficiency Certificate (BEEC), coupled with an Energy Efficiency Assessment Report (EEAR), disclosed through three different means.

The ACEA views that there are four key areas which require some further consideration: spaces less than 2000 m² in size, green power, water and non-office lettable areas.

Spaces less than 2000 m² in size

The ACEA notes that the decision to set the minimum threshold at 2000 m² net lettable area (NLA) is the result of assessing the costs associated with a mandatory disclosure scheme (within the Consultation Regulation Impact Statement), over 10 years against two thresholds for property size (2000 m² and 5000 m²).

The ACEA understand that the scheme will not exclude the voluntary participation of owners leasing or selling spaces less than 2000 m² in size. The Consultation Regulation Impact Statement uncovered that the cost to government and business relating to the subsequent proposed mandatory disclosure scheme will total 14.3 million over 10 years. The costs to business and government relating to a scheme which includes spaces less than 2000 m² in size will undoubtedly be greater, and the ACEA notes that due to current economic conditions this may be an unfeasible approach at this present time.

The Australian Government has signalled its intent to progressively expand the coverage of this measure in future to additional building types, subject to further cost-benefit and regulatory impact assessment.¹ The ACEA support the ongoing encouragement of all building owners to invest in energy efficiency and view that there is a potential for the scheme to widen its coverage in the near future.

The ACEA contend that the next round of cost-benefit and regulatory impact modelling should include spaces below 2000 m². Compiling an investigation of the economic and environmental viability of a mandatory disclosure scheme for a variety of smaller spaces should be a priority for the Government subsequent to the Scheme's implementation.

Green Power

The ACEA agree with the proposal for new buildings to be required to prove their National Australian Building Energy Rating Scheme (NABERS) energy performance without assistance from Green Power. This will undoubtedly act to accelerate delivery of energy efficient building stock in the industry.

Excluding green energy in the calculation of NABERS rating for new buildings will presumably put more emphasis on the efficiency of the building itself, which should be recognised as an important objective of the proposed Scheme.

The ACEA contends that it is satisfactory for existing buildings to procure an accredited 'Green Power' product to offset greenhouse emissions and to secure a higher NABERS Energy rating.

It is important that the use of green power is limited to existing buildings where the minimisation of energy demand would have significant capital costs. However once the mandatory scheme is in place, the ACEA perceives there to be a clear avenue through which incentives can be introduced to encourage existing building owners to upgrade their buildings to be more energy efficient.

¹ Mandatory Disclosure of Commercial Office Building Energy Efficiency - Consultation Regulation Document 2008. Pg 10

The ACEA believes that it should be clearly noted on every BEEC whether the rating was determined with green power considered, or excluded.

Water

The ACEA views there should be consideration given to the possible inclusion of water energy efficiency measurement, either at the Scheme's commencement or in the future.

There are instances in which a building can use more water to inturn reduce electricity use. Increasing water in centralised fluid-based systems for example to move heat around the building, can use less electricity but an increased amount of water. These systems are fairly common in office buildings.² This raises questions relating to the level of effectiveness that an energy efficiency scheme can have without including water management.

The ACEA believes that the aspects relating to water efficiency should be considered prior to the Scheme's commencement. The ACEA recognise that there may need to be significant work conducted in this area in order to include water management and efficiency in the disclosure scheme, and as to not delay the introduction of the Scheme, water could be considered as a 'phase two' approach.

When considering building energy efficiency assessment, there is a need for always having a holistic approach to assessing the structures' energy efficiency components. If the proposed Scheme and subsequent assessment of buildings is not rigorous enough, it is unlikely to achieve the desired outcomes of increasing the energy efficiency (over time) of Australia's commercial building sector.

Non-office Net Lettable Areas

The aspect of non-office net lettable areas attributed to a building raises questions of consistency in disclosure. The ACEA believes that a detailed assumptions list and an explanation for the treatment of non-office Net lettable area should be included within the EEAR. There is also the potential for this to be noted on the BEEC to further strengthen the Scheme's integrity and consistency.

Considerations around non-office net lettable areas are particularly needed when base buildings have car parking spaces/large car park facilities. There are issues around consistency in this area, for example one building may be assessed with the car park's energy included and another with the energy excluded.

To ensure uniformity, the ACEA is of the view that a list of exemptions and assumptions should be included within the EEAR and on the BECC.

DISCLOSURE

The three types or points of disclosure relating to the proposed Scheme (advertising, point of lease, sub lease or sale and providing the BEEC & EEAR to a central registry) will ensure the information is provided and disclosed through the correct avenues and to the appropriate stakeholders.

The ACEA is of the view that in order to make the Scheme work as an incentive which increases the uptake of energy efficiency improvements in the commercial building sector, the registry should be publically available for review and analysis. This can encourage building owners to maintain a good portfolio of energy efficient buildings or at least move towards acquiring more energy efficient buildings in the future.

² Ambrose, M. "Regulatory requirements, measures and assessments methods and tools for energy efficiency in commercial buildings"<http://www.yourbuilding.org/display/yb/Regulatory+requirements%2C+measures+and+assessments+methods+and+tools+for+energy+efficiency+in+commercial+buildings>

The Consultation Regulation Document lists the optional information that may be contained within a valid BEEC may include “any offsets including Green Power, including the impact of such offsets on the greenhouse performance rating of the building.”³

The ACEA contend that this type of *additional information* should be standard on all BECC’s to distinguish between the efficiency of the building itself and the type of energy being used in the building.

The ACEA is of the view that in addition to what is already proposed for disclosure on the BEEC, there should also be a list of all (or the main) exclusions, assumptions and rulings used to achieve the rating.

COMPLIANCE

The ACEA views that the compliance provisions set out within the Consultation Regulation Document are clearly articulated and simple to administer. The four civil penalty options, used in combination should act as a deterrent for the broad range of building owners which will be covered under the Scheme; from major asset holders to single building owners.

It is not intended that there be specific criminal penalties for building owners who seek to deliberately avoid or incorrectly disclose information, rather civil penalties are favoured by the proposed Scheme. The ACEA contends that this is satisfactory, however to add an additional incentive for compliance the ACEA view that the inclusion of a supplementary mechanism which would name any person or entity which had not complied with the disclosure requirements could be published on a publicly available website. This has the potential to create a strong deterrent for non-compliance and should be introduced from the Scheme’s commencement.

The ACEA contends that it is important for assessors to be protected from building owners who supply false information. The assessor should be protected, through contractual caveats and the regulations from civil/criminal penalties in the event that a building owner provides false or misleading information.

Compliance and liability issues must be carefully considered and monitored throughout the duration of the Scheme, as these will underpin the Schemes integrity and ultimately its success.

It is important that the legislation specifically and explicitly places an obligation on building owners and tenants to provide the relevant information to an accredited assessor.

LIABILITY ISSUES

The ACEA warns against placing excessive liability on assessors as this may result in high insurance premiums across the industry. Liability must remain with the person providing the information for assessment.

The ACEA’s members are subject to a Code of Ethics⁴ which establishes the standards, including the Standards of Conduct, to be adopted and adhered to by all member firms and their staff as part of their working habits and relationships with clients, colleagues and the community generally.

³ Mandatory Disclosure of Commercial Office Building Energy Efficiency - Consultation Regulation Document 2008

⁴ The Association of Consulting Engineers Australia website. Direct link: <http://www.acea.com.au/downloads/180-CodeofEthicsNov03.pdf>

The ACEA's members are bound by a common commitment to promote technology based intellectual consulting services for the built and/or natural environment and facilitate its practice for the common good.

The ACEA recognises that there must be appropriate mechanisms in place to identify and penalise a rogue assessor. The Consultation Regulation Document suggests that the accreditation body should have the ability to revoke or suspend accreditation in light of incompetence or malpractice. The ACEA views that a formalised process for investigating such claims must be set up prior to the Scheme's commencement. The ACEA is also of the view that the responsibility for any disciplinary actions or revoking of accreditation should rest with the Commonwealth department responsible for administering the Scheme and the appropriate Minister in charge of administering this legislation.

RATING AND ASSESSMENT TOOLS

The ACEA agrees that "NABERS Energy is at present the only widely recognised tool capable of determining the energy efficiency of an existing commercial office building in Australia (noting that the Concept Report discusses both Green Star and Sustainable Design Scorecard as possible alternatives to NABERS Energy)."⁵

The ACEA views that it is (as the Consultation Regulation Document notes) important to consider other appropriate tools which may become available over time and to not limit the introduction of these tools being considered for inclusion in the Scheme as they arise. The Act and Regulations should establish a procedure to provide for the possibility that other tools could become accredited and used under the Scheme.

As noted within the Consultation Regulation Document, not limiting new tools or improvements to NABERS could allow for the growth of private sector innovation to improve the way in which assessments are completed and carried out.

It is proposed that the core metrics for the Scheme will be incorporated within the Act and Regulations, identifying NABERS Energy as the only accredited assessment and rating tool for the purposes of this Scheme in the first instance.

Although it is agreed at this stage that NABERS is the only acceptable rating tool, there are several rulings that make the wholesale application within the Scheme hard to apply to some buildings. For example, there are inconsistencies in metering practices that can cause false readings. Issues of consistency are likely to arise at Scheme commencement and can be an issue throughout the Scheme's duration.

The ACEA proposes that to help ensure a better level of consistency, the New South Wales Department of Environment and Climate Change (NSW DECC) and the National Administrative Unit established to implement the Scheme should hold appropriate forums in regular intervals with industry to gather feedback and make the appropriate suggestions for updates to NABERS as required.

⁵ Mandatory Disclosure of Commercial Office Building Energy Efficiency - Consultation Regulation Document 2008 [NREE (2008), pp 12 – 13].

ASSESSORS

Assessor accreditation as outlined within the Consultation Regulation Document stipulates that an assessor needs to be trained and demonstrate competency over time in applying the NABERS Energy rating tool (or, in future, any other relevant tool) to produce a robust and accurate assessments.⁶

The Consultation Regulation Document also notes that assessors need to be accredited for the purposes of the proposed mandatory disclosure scheme, signifying an understanding of the requirements of the Scheme.

The ACEA contends that the premise and requirement for assessors to be technically competent will be an underpinning component of the Scheme's integrity and success.

It is important that the legislation provides for overall responsibility for accreditation under the Scheme to be retained by the National Administrative Unit that will be established to oversee the Scheme, but that it also provides for the responsibility to be delegated to suitable bodies.

The ACEA agrees that the NSW DECC is currently well placed to accredit persons as technically competent to administer the NABERS Energy assessment tool on behalf of the National Administrative Unit. The NSW DECC unit will undoubtedly require additional resources to increase the amount of training sessions for accreditation per year. This needs to be managed effectively to ensure assessors can be accredited in a timely manner.

It is important for the Government to note that assessors will be undergoing accreditation for a Government-led mandatory scheme; the cost of obtaining such accreditation should not be excessive to avoid these costs being passed onto building owners.

Accreditation criteria

The Consultation Regulation Document outlines that NABERS Energy assessors should be skilled in the management and operation of commercial office buildings, and ideally possess experience in energy efficiency projects with the technical ability to analyse and audit information such as energy consumption, size, occupancy levels and hours of operation.⁷

The ACEA view that the existing accreditation process for NABERS is sufficient – e.g. gaining accreditation requires two training sessions and a take home examination completed within one month of attending the training sessions. We view this is a clear mechanism for demonstrating competency. However the ACEA believes that some thought should be given to technical experts working in the energy area who are not accredited with NABERS.

Although NABERS testing and accreditation is sufficient, consideration by the Government on comparable international schemes is warranted to see if there are components that can also be included in a domestic scheme.

The ACEA views that the Consultation Regulation Document presents a clear case for not limiting the constant improvement of the mandatory energy efficiency disclosure scheme and its components. To ensure the best chance for the Scheme's success the ACEA reiterates that formal consultation with industry to gather feedback will be critical. This coupled with a willingness by Government to implement suggested changes and improvements to the Scheme will provide the best chance for a successful move toward energy efficiency in Australia's building sector.

⁶ Mandatory Disclosure of Commercial Office Building Energy Efficiency - Consultation Regulation Document 2008.

⁷ Mandatory Disclosure of Commercial Office Building Energy Efficiency - Consultation Regulation Document 2008.