

Mandatory Disclosure of Commercial Office Building Energy Efficiency

**Department of Environment,
Water, Heritage and the Arts**

FMA Australia Response



27 February 2009

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Commercial Building Energy Efficiency Team
Department of Environment, Water, Heritage and the Arts
GPO Box 787
Canberra ACT 2601

Dear Commercial Building Energy Efficiency Team

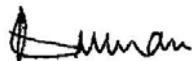
I commend to you the Facility Management Association of Australia's (FMA Australia) response to DEWHA's Consultation RD and Consultation RIS regarding Mandatory Disclosure of Commercial Office Building Energy Efficiency.

FMA Australia is the peak industry body for the facilities management industry, which contributed \$13.9 billion in GDP and equivalent full-time jobs for more than 180,000 Australians in 2005-2006.

FMA Australia is committed to equipping our members with appropriate education and training to ensure the development and implementation of best practice management to achieve maximum energy efficiency from the built environment.

We look forward to having further discussions on the issues raised in our response.

Yours faithfully
FMA Australia



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Background

About FMA Australia

The Facility Management Association of Australia (FMA Australia) represents professionals involved in the strategic and operational management of facilities for public and private sector organisations throughout Australia, as well as those professionals who support the industry through the provision of products and services. FMA Australia is the peak industry body for the facilities management industry.

FMA Australia is a member of the Australian Construction Industry Forum, Australian Sustainable Built Environment Council, and has completed projects in conjunction with the CRC for Construction Innovation in accordance with the now-completed Facilities Management Action Agenda.

Facilities management professionals exert significant control and influence over energy consumption in the majority of Australia's commercial buildings. Accordingly, the facilities management industry has the potential to make a substantial contribution to the reduction of greenhouse emissions from the commercial building sector – helping Australia to meet its carbon emission reduction targets.

The Facilities Management Industry

The facilities management industry directly accounted for \$8.2 billion of gross value added, \$8.4 billion of GDP, and the (full time equivalent) employment of about 112,000 persons in 2005-06. This represents 0.9%, 0.9% and 1.3% respectively of the gross value added, GDP and employment totals for the Australian economy. In addition, the facilities management industry indirectly contributed \$5.4 billion of value added and \$5.5 billion of GDP, and accounted for indirect (full time equivalent) employment of 68,000 persons. Combining the direct and indirect contributions, in 2005-06 the facilities management industry contributed \$13.6 billion of value added, \$13.9 billion in GDP, and

(full time equivalent) employment of more than 180,000 persons, representing 2.1% of Australian employment (Access Economics 2007).

Facilities management is the holistic management of a building (facility) primarily during the operational phase of its existence. In particular, facility managers are responsible for such things as building-related repairs and maintenance; servicing and maintenance of lifts; control, maintenance and safety of air-conditioning, heating and ventilation systems; lighting; fire safety systems; gardening and landscaping; cleaning; and security. A facility manager may operate in-house, on-site, be outsourced, or operate at a strategic level over a number of separate facilities.

The Extent of the Problem

A report prepared by the Centre for International Economics for the Australian Sustainable Built Environment Council (ASBEC) in 2007 found that emissions from commercial office buildings alone account for 10% of Australia's net greenhouse gas emissions.

Consequently, there is a significant abatement opportunity to be realised by improving operational energy efficiency in the commercial office building sector.

There is already considerable interest in improved energy efficiency in the commercial office building sector, with many organisations voluntarily implementing energy-saving initiatives. The proposed introduction of the Carbon Pollution Reduction Scheme (CPRS) by the Commonwealth in 2010 will increase the cost of energy (though to what extent remains to be seen), thus providing a further incentive for the sector to find ways of reducing consumption.

A Mandatory Scheme

FMA Australia notes the Consultation Regulation Document (CRD) recommends the implementation of a mandatory scheme for the disclosure of commercial office building energy efficiency at the point of sale, lease or sub-lease, where a building has a net lettable area (NLA) of >2000m² (or any part of such a building that is >2000m² NLA is sold, leased or sub-leased).

As stated in our March 2008 submission on the Concept Report, FMA Australia does not, in principle, believe a system of mandatory disclosure is the best vehicle for improving energy efficiency in Australia's commercial office buildings.

There is a very real danger that the compliance costs engendered by a mandatory scheme will draw financial resources away from the implementation of energy-saving measures and instead direct them toward reporting requirements.

Furthermore, there is nothing that currently prevents potential purchasers or tenants from seeking information on a building's energy efficiency as part of the normal due-diligence procedures associated with a major investment. Given that many organisations are voluntarily embracing responsible energy use as part of their broader commitment to the environment, we question whether a mandatory scheme will produce net benefits, taking into account the associated costs.

In FMA Australia's view, it would be far more preferable to have funding directed towards practical measures that will improve energy efficiency instead of seeing resources devoted to meeting a compliance burden.

Commencement of Mandatory Disclosure

If the policy of mandatory disclosure is to be pursued, then it is in the interests of all industry players to ensure that the rating and reporting requirements are as efficient and low-cost as possible. This may require the scheme to operate on a voluntary basis initially, to allow for appropriate testing and adjustment of systems.

The introduction of a system of mandatory disclosure will require building owners, tenants and facility managers to familiarise themselves with a new reporting regime. It will also require the development of systems for the collection and collation of data and the implementation of administrative policies to ensure that all requirements of the scheme are complied with.

All these activities will impose additional costs on businesses and in many instances will require some training/educational activities for facility managers, given that facility managers are often responsible for the collection and collation of data pertaining to energy consumption in commercial office buildings. They will be required to familiarise themselves with the scheme's requirements and make adjustments to their own daily practices to ensure compliance.

Accordingly, FMA Australia strongly recommends that the scheme's initial operation should be on a voluntary basis. This will allow time to ensure the scheme's reporting methods work effectively (and to make appropriate adjustments if this is not the case), which would result in lower compliance costs for industry once the scheme becomes mandatory.

Use of NABERS Energy as Rating Tool

FMA Australia notes the CRD recommends adopting NABERS Energy for the purposes of the mandatory disclosure scheme, in preference to the Green Star rating tool.

While both systems have their limitations, on the whole FMA Australia agrees with the CRD's finding that of the two, NABERS Energy is the better option for a mandatory scheme. Using this system will mean that data is based on actual building performance, rather than predicted performance. This will provide prospective purchasers and/or tenants with greater certainty than the Green Star tool.

However, as FMA Australia suggested in its submission on the Concept Report, we would again emphasise the desirability of developing a single, national rating tool that allows a building to be rated both against other buildings *and* against the building's own design potential.

This form of rating system would clearly demonstrate the efficiency a building was capable of achieving, as well as documenting actual performance. This would not only enhance the quality of information being provided to prospective owners/tenants, but would also be of value to existing building occupants in terms of identifying and indeed improving their energy efficiency performance.

Cost of obtaining a NABERS Energy assessment

FMA Australia is concerned that the Consultation RIS has underestimated the cost to building owners of obtaining a NABERS Energy rating once mandatory disclosure comes into effect.

The commencement of a mandatory scheme will produce a large increase in demand for NABERS assessments. This will drive up the cost of assessments, as there are a limited number of accredited NABERS assessors operating in the marketplace. Given that assessors are able to determine their own price for conducting NABERS Energy assessments, there is a risk that the price of obtaining a NABERS Energy rating will increase exponentially.

Given that the mandatory scheme as currently proposed relies heavily on building owners being able to obtain NABERS Energy ratings, some

consideration must be given to providing incentives that will encourage more individuals to seek accreditation as NABERS Energy assessors. This may help to alleviate some of the capacity pressures in the market and help keep compliance costs in-check.

Water and Waste Efficiency Issues

Given the purpose of a mandatory disclosure scheme is to encourage purchasers/tenants to incorporate consideration of energy efficiency in their decision-making process, due consideration should also be given to adopting a more holistic view of efficiency.

NABERS has ratings systems for measuring water efficiency and waste efficiency, as well as energy efficiency. Given that these tools are now available in the marketplace, why should NABERS ratings for water and waste not be incorporated into a mandatory disclosure scheme? If it is the Commonwealth's intention to proceed with a mandatory disclosure scheme, it would make sense to introduce complementary disclosure requirements for water and waste now, rather than imposing additional compliance costs on building owners at a later date.

Point of Disclosure

The CRD recommends a building's current NABERS Energy star rating be disclosed in any advertising regarding the sale or lease of a building and that a building owner/agent be required to provide prospective purchasers or tenants with a valid Building Energy Efficiency Certificate (BECC) and an Energy Efficiency Assessment Report (EEAR). Further, it is recommended that building owners disclose a valid BECC and EEAR to a central registry within 30 days of advertising a property for sale or lease.

FMA Australia welcomes any initiative that provides potential purchases and tenants with credible information about a building's energy performance. To that end, it is important to ensure that information supplied to any central

registry is accurate and based on information supplied by an accredited assessor.

However, it should be noted there is a potential problem regarding the disclosure of tenancy rating information at the point of sale or lease.

While building design and equipment play a large role in determining the energy efficiency of a commercial office building, tenant behaviour is also an important factor. Some tenants are meticulous in their management of energy use, whereas others are not as proactive. This will in turn affect the consumption data that goes into determining a tenancy's NABERS Energy rating.

If a tenant that has been focussed on efficient energy management practices leaves a tenancy, the contribution their behaviour has made to the tenancy's NABERS Energy rating is removed. Accordingly, an incoming tenant may believe they are occupying space of a certain NABERS rating, only to find that their tenancy is operating below the advertised standard, because their business has different energy requirements or management practices.

Some consideration needs to be given to ensuring that incoming tenants are aware that tenant behaviour is an important factor in establishing and maintaining a tenancy's NABERS Energy rating. Otherwise there is a risk that tenants will claim to have been misled by building owners/facility managers/estate agents, which may engender all manner of legal disputes and significantly undermine confidence in the scheme.

Consistent with this view, FMA Australia agrees with the proposal in the Consultation RD to exclude performance gains achieved through the purchase of Green Power from NABERS Energy star ratings. This will prevent owners/tenants from 'padding' their building's rating by relying on gains from Green Power. It further means that purchasers/tenants will not subsequently find their building performs below the advertised standard should they elect not to purchase Green Power upon occupation of a building.

Publicity of non-compliance

The CRD makes reference to the possibility of a ‘supplementary publicity mechanism’ being used as means of ensuring compliance – by naming on a public website those persons or entities that fail to meet the scheme’s requirements.

FMA Australia suggests much greater detail needs to be provided about the nature and maintenance of a non-compliance register. There are dangers inherent in a “name and shame” approach to compliance, particularly in the early phase of a scheme where participants may not be fully aware of their obligations, or may inadvertently overlook some paperwork in the course of a building’s sale or lease (which is in itself a complex process).

It would be a disappointing outcome if a scheme designed to encourage energy efficiency instead became “just more red tape”, which saw people cooperate not out of any desire to improve energy efficiency and contribute to reductions in GHG emissions, but simply to avoid having their name placed on a government list.

Liability Issues

Given that there will be a massive increase in the number of NABERS Energy assessments being sought as a result of the mandatory scheme, it is imperative that buyers, sellers and tenants have confidence in the integrity of the NABERS Energy rating system.

The introduction of a mandatory disclosure scheme will impose additional responsibilities on building owners/agents. In many cases, responsibility for the collection of energy data will be passed to facility managers, who will have to work with NABERS Energy assessors to compile the material required for an assessment to be conducted.

Facility managers have a large number of tasks that must be fulfilled in the course of their day-to-day duties. Given that many facility managers are responsible for the smooth operation of commercial office buildings housing multiple tenants, they cannot reasonably be expected to personally attest to the accuracy of data provided, nor can they be responsible for undertaking quality control on the work performed by NABERS Energy assessors.

Accordingly, FMA Australia agrees with the proposal to assign responsibility for quality control to NABERS Energy assessors.

With increasing demand for NABERS assessments as a result of mandatory disclosure, it is in the interests of assessors to ensure they are providing their customers with accurate assessments. Given their experience, most assessors are also in an excellent position to recognise if a building owner is providing them with incomplete or misleading information, in an attempt to obtain a higher NABERS rating.

Conclusion

While FMA Australia is supportive of any initiative that aims to improve energy efficiency in the commercial office building sector, we remain concerned that a mandatory scheme will result in financial resources being shifted away from innovation towards regulatory compliance.

Whilst NABERS Energy is the best option of all available tools for measuring a commercial office building's energy efficiency, it is far from perfect in that it fails to measure a building's energy efficiency against its potential. Active consideration needs to be given to developing an energy rating scheme that permits comparison of performance against a building's own design potential, as well as against outcomes in other buildings.

Finally, FMA Australia would urge that the scheme initially operate on a trial-basis, to allow participants to familiarise themselves with their obligations prior to the introduction of penalties for failing to meet the scheme's requirements.

The success of any scheme ultimately depends on the confidence that users have in its integrity. It will be essential to ensure that those affected by the operation of the mandatory disclosure scheme are confident that the information being provided by NABERS Energy assessors accurately reflects the performance of their building.

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