

Building Energy Efficiency Disclosure Amendment Act 2015

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The imminent commencement of the *Building Energy Efficiency Disclosure Amendment Act 2015* (Cth) (the *BEED Amending Act*) on 1 July 2015 signals the introduction of numerous revisions to the efficiency focussed *Building Energy Efficiency Disclosure Act 2010* (Cth) (the *BEED Act*).

In this article, we look at the key changes to be introduced by the BEED Amending Act.

What is the BEED Amending Act intended to do?

The main thrust of the BEED Amending Act is to reduce the regulatory burdens placed on building owners and landlords. In particular, it aims to simplify the certification process for the Commercial Building Disclosure program now operating under the BEED Act.

What are the current disclosure obligations under the BEED Act?

At present, the Commercial Building Disclosure program requires building owners and landlords to disclose energy efficiency information in the form of a Building Energy Efficiency Certificate (a BEEC) where:

- An owner or landlord is selling, letting or subletting a building, or an area of a building, with a net lettable area of over 2000m²;
- At least 75% of that net lettable area is used as office space; and
- There is no applicable special exemption from the disclosure program under the current BEED Act.

If the criteria are satisfied, the BEED Act requires that information about the energy efficiency of the premises must be advertised or provided to prospective buyers or tenants before offers of sale or lease are made or entertained.

This obligation is intended to ensure that prospective buyers and tenants are able to take into account the costs and other factors associated with the energy efficiency of the premises when making a purchase or leasing decision.

How will the BEED Amending Act achieve its goal?

Reduction of disclosure obligations

Under the BEED Amending Act, building owners and landlords will not be required to disclose energy efficiency information in the form of a BEEC for particular transactions as follows:

- **Unsolicited offers to sell or lease:**
 - In contrast with the current BEED Act, a building owner or landlord will no longer be required to comply with disclosure obligations if they receive an unsolicited offer to sell or lease the premises. However, there currently exists ambiguity about what constitutes an unsolicited offer. Until this ambiguity is resolved, building owners and landlords may potentially risk neglecting their obligations under the BEED Act if they do not obtain a BEEC.

- **Wholly owned subsidiaries:**

- Transactions between wholly owned subsidiaries (or inter-company transfers) are now also excluded from the disclosure obligations under the BEED Act. The main reason for this exemption is to facilitate more efficient sale and lease transactions between parties that are likely to already be privy to details about the energy efficiency of premises.

- **New building owners:**

- New building owners will be exempt from disclosure obligations where a valid BEEC already exists for premises. This exemption operates to ensure that new owners or landlords will not be required to pay for application fees or costly assessments if a BEEC is already in place.

Changes to BEEC requirements

The BEED Amending Act also introduces a number of changes to BEEC formalities.

A building owner or landlord will now be allowed to apply for a BEEC with a commencement date that is later than the date of issue. This change allows building owners or landlords to be issued with a fresh BEEC before the expiration of an existing BEEC.

The BEED Amending Act also abolishes the requirement that a BEEC must include six pages of standard energy efficiency guidance text. That guidance text is instead to be accessible by prospective buyers or tenants online.

For further information or discussion, please contact HopgoodGanim Lawyers' [Property](#) team.

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