

ENERGY EFFICIENCY: 2011 – A REVOLUTION IN THE BUILDING INDUSTRY

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INTRODUCTION

Exciting new Federal Government energy efficiency initiatives will be added to the suite of green initiatives already in place, revolutionising the building industry's approach to energy efficiency. They include the extension of the already successful Green Building Fund to encompass not just existing commercial office buildings, but hotels and shopping centres which are currently NABERS rated.

CURRENT INITIATIVES

Commercial Mandatory Disclosure Obligations ("Commercial MDO")

Energy efficiency is the least-cost option for reducing greenhouse gas emissions and improving operational performance limits. The Federal Government has implemented the Commercial MDO under the *Building Energy Efficiency Disclosure Act 2010 (Cth)*. As mentioned in our March and August 2010 News Flashes, the Commercial MDO requires commercial buildings with a floor space of more than 2000 square meters to disclose the building's energy efficiency rating. A more detailed analysis of the MDO is available on request.

The Building Code of Australia 2010 ("BCA")

The BCA has undergone changes which will require all new domestic buildings and major renovations, undertaken from this year, to meet a six-star energy efficiency rating for the thermal performance of the building's shell. This BCA is independent of the domestic rating scheme discussed below.

NEW INITIATIVES

Domestic Mandatory Disclosure Obligations ("Domestic MDO")

The Domestic MDO will require all domestic property owners to disclose the energy efficiency ratings of their properties to potential buyers and tenants from 2012. The rating scheme was anticipated to start this year however, with stakeholder consultations only just under way, we believe it has now been postponed a year.

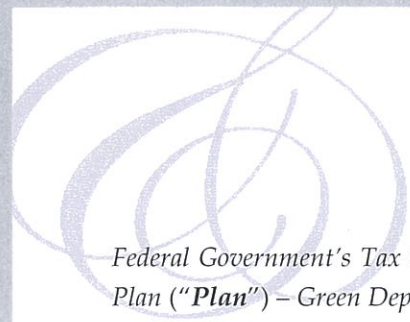
When implemented, landlords and vendors should command a premium price for domestic properties with high energy efficiency ratings.

The Centre for International Economics prepared a Regulation Impact Statement which estimates domestic homeowners and landlords can expect to spend around \$2000 on compliance with an average net saving of approximately \$8000 on overall energy costs.

A mandatory energy disclosure plan already exists in Queensland and the ACT and appears to be producing positive results. A 2008 report by the ACT's Department of the Environment, Water, Heritage and the Arts found homeowners could expect to see a 1.23 per cent premium per half-star rating, which is significant.

In defining and calculating an ACT property's energy efficiency rating, researchers considered design features including building fabric, orientation, window design, flooring, external walls, ceilings, skylights and glazing. The rating is independent of a property's size, meaning small and large houses can achieve the same score. These could be the likely metrics for the federal scheme too.

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Federal Government's Tax Breaks for Green Buildings Plan ("Plan") – Green Depreciation.

We believe our 2009/2010 predictions for the introduction of green depreciation will ring true with it to be introduced on 1 July this year under the Plan. The Plan was a Gillard Government election promise and is capped at \$1 billion.

In January 2011, the Federal Department of Climate Change and Energy Efficiency released a consultation paper on the Plan focussing on green depreciation ("*Consultation Paper*"). The Government hopes to introduce legislation in the first half of this year.

As mentioned in our March 2010 *News Flash* green depreciation will help stimulate the energy efficiency market – a market which has been slow to adapt and take advantage of available opportunities.

The Consultation Paper proposes eligible businesses may claim a bonus tax deduction of 50 per cent of the capital expenditure incurred in upgrading an existing two-star NABERS or lower commercial building into four-stars NABERS, or higher. It's likely a typical retrofit will include upgrades to common area lighting, heating, ventilation and air-conditioning, changes to building fabric including glazing and shading and monitoring and controlling these systems. Funding will only be available for significant energy-saving upgrades rather than incidental business-as-usual renovations.

Stakeholders have been concerned energy efficiency upgrade work hasn't been happening quickly enough due to split incentives between building owners and tenants. However, the release of the Consultation Paper brings hope of increased action. Indeed, with the capital investment needing to be incurred between 1 July 2011 and 30 June 2015 to be eligible, we expect supply constraints to be a major issue.

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Part 2A – Local Government Act 1993 NSW (Environmental Upgrade Agreements) ("*EUAs*").

On the 18 February 2011, an innovative voluntary financing mechanism, EUAs, was introduced in NSW to help commercial, industrial and certain strata building owners (i.e. the owner of the land) finance works improving the energy, water or environmental efficiency or sustainability of their existing buildings. EUAs are between the building owner, the relevant council and the financiers (NAB, Carbon Trust, and Eureka Funds Management). The council administers the loan and forwards the repayments to the financiers. The financiers' funding is secured by an environmental upgrade charge levied by the council on the land for the purposes of discharging the building owner's repayment obligations.

HOW CRISP LEGAL CAN HELP

Crisp Legal believes all these initiatives will bring enormous benefits to both the commercial, industrial and domestic sectors.

We are able to support you with:

- Ensuring your leases are compliant with the new legislative changes;
- Assisting in due diligence reviews to ensure compliance with Commercial MDO; and BCA requirements;
- Advice on the energy efficiency sector and new environment permit revenue streams;
- Depreciation/taxation issues through our specialist tax consultant;
- Structuring issues, for example, incorporating/operating an Energy Service Company ("*ESCO*");
- Advising on EUAs; and
- Drafting and negotiating contracts.

For advice contact Dermot Duncan or Glenn Crisp at Crisp Legal on (02) 9233 3144.

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