

## **EXPLANATORY STATEMENT**

### *Building Energy Efficiency Disclosure Act 2010*

#### *Building Energy Efficiency Disclosure Determination 2010* (the Determination)

The *Building Energy Efficiency Disclosure Act 2010* (the Act) establishes a scheme for public disclosure of energy efficiency information relating to large commercial office spaces. The scheme is intended to enable prospective purchasers and tenants to access consistent and accurate energy efficiency information about office spaces, to better inform sale and leasing decisions.

Sections 11, 12 and 15 of the Act impose disclosure obligations on certain owners and lessors of 'disclosure affected buildings' and 'disclosure affected areas of buildings'. Broadly, owners and lessors are required to disclose energy efficiency information to prospective purchasers and lessees (including sublessees), by:

- having a valid and current building energy efficiency certificate (BEEC) registered on the Building Energy Efficiency Register at the time of offering a building (or area) for sale, lease or sublease; and
- including an energy efficiency 'star rating' in any sale, lease or sublease advertisement.

The Determination relates to a number of aspects of these obligations that are contained in sections 13, 15 and 21 of the Act.

Section 13 of the Act sets out the requirements that a certificate must satisfy in order to constitute a BEEC for the purposes of the Act. Amongst other things, paragraph 13(1)(c) provides that a BEEC must contain guidance of a kind determined by the Secretary on how energy efficiency might be improved. The Determination specifies the guidance information for the purposes of paragraph 13(1)(c).

Section 13 also requires that a certificate contain an energy efficiency rating for the building, and an assessment of the energy efficiency of the lighting for the building (or area of the building) that might reasonably be expected to remain if the building is sold, let or sublet. The energy efficiency rating and lighting assessment must be made in accordance with methods and standards determined by the Secretary under section 21 of the Act. The Determination determines these assessment methods and standards, except for those relating to the lighting assessment, as the assessment methods and standards are yet to be finalised. Once finalised, the Determination will be amended to include reference to the lighting assessment methods and standards.

Section 15 of the Act sets out the circumstances in which an energy efficiency rating must be included in an advertisement. The section also provides that an obligation to include a rating in an advertisement will only be satisfied if the rating is expressed in the advertisement in a manner determined by the Secretary. The Determination sets

out the manner in which the ratings must be expressed in advertisements for the purposes of section 15.

Details of the content of the Determination are set out in the Attachment.

The Determination has been prepared following substantial industry consultation undertaken between December 2007 and June 2010. This included the delivery of information seminars in each capital city, the release of consultation documents, and the engagement of key stakeholders through workshops and advisory committees.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## ATTACHMENT

### Details of the *Building Energy Efficiency Disclosure 2010*

#### Clause 1 - Name of Determination

This is a formal clause setting out the name of the Determination.

#### Clause 2 - Commencement

The Determination commences on the commencement of section 3 of the Act. Section 3 of the Act commenced on 1 July 2010 (see section 2 of the Act). This means that the Determination operates with retrospective effect.

This retrospective operation will be consistent with section 12(2) of the *Legislative Instruments Act 2003*. This is because the disclosure obligation provisions in the Act in sections 11, 12 and 15, do not commence until the implementation day fixed by Proclamation, by virtue of section 22 of the Act. The proposed implementation day is 1 November 2010. Consistently with this, none of the provisions of the Determination operate to:

- affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration so as to disadvantage that person; or
- impose liabilities on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

#### Clause 3 - Definitions

This clause specifies the meaning of a number of terms used in the Determination, the majority of which are relevant to the methods and standards determined under section 21 of the Act (see clause 6).

A number of these terms are defined with reference to the content of other documents as in force from time to time. Incorporating material of this kind by reference is authorised for this purpose by subsection 21(2) of the Act and section 14 of the *Legislative Instruments Act 2003*. These terms relate to the NABERS Energy rating tool for offices. NABERS Energy is the National Australian Built Environment Rating System for Energy, administered by the NSW Department of Environment, Climate Change and Water. The NABERS Energy rating tool benchmarks the actual operational energy use of existing commercial office buildings and awards a star rating from zero to five. The documents incorporated by reference in clause 3 are accessible on the NABERS Energy website: [www.nabers.com.au](http://www.nabers.com.au).

#### Clause 4 - Guidance material for certificates

This clause determines the guidance material that must be included in a certificate under paragraphs 13(1)(c) and 13(2)(c). Schedule 1 to the Determination contains the guidance material that must be included in all BEECs.

The guidance material provides information for owners and tenants about how energy efficiency in buildings and areas of buildings might be improved. There is no legal obligation on owners or tenants to implement any of the measures identified in the guidance. The guidance is necessarily general in nature, and is designed to encourage building owners and tenants to explore options for increasing the energy efficiency of their office buildings and areas, and to seek appropriate professional advice on cost effectiveness and implementation.

#### Clause 5 - Advertisements

This clause sets out the manner in which an energy efficiency rating must be expressed in an advertisement in order to comply with the disclosure obligations in section 15 of the Act.

The energy efficiency rating that is contained in the relevant BEEC (which will be either a whole number or a half-number, for example 3 or 3.5) must be expressed in the advertisement followed by the text '-star NABERS Energy rating', for example:

- 3-star NABERS Energy rating; or
- 3.5-star NABERS Energy rating.

The rating must be prominently displayed in the advertisement so that it is clearly visible, using font that is the same size or larger than the majority of the other text contained in the advertisement.

#### Clause 6 - Methods and standards of assessment: energy ratings

This clause determines that the assessment methods and standards in the NABERS Energy rating rules are to be used for energy efficiency ratings under the Act, with one variation. That is that any purchases of electricity under the GreenPower program are to be disregarded for the purpose of working out an energy efficiency rating. (The NABERS Energy rating rules allow for GreenPower purchases to be factored into the rating.) The rationale behind this variation is to have ratings reflect the actual energy efficiency of the building or area being assessed. This change will prevent the distortion of energy ratings through the purchase of GreenPower to offset the actual emissions produced by a building or area of a building which is not energy efficient.

Clause 3 of the Determination (Definitions) includes a link to these rules on the NABERS website: [www.nabers.com.au](http://www.nabers.com.au).

The clause also provides that the energy efficiency rating for the building must be the base building rating rather than the whole building rating, unless it is not possible to do so because of the nature of the utility metering in the building. The base building rating relates to the greenhouse gas emissions associated with the energy consumed in supplying building central services to office lettable and common spaces including for common area lighting and power, lifts and escalators, and air conditioning and ventilation. The whole building rating, by comparison, relates to greenhouse gas emissions associated with the energy used by office tenancies and base building services to office lettable areas and common spaces. This should include all energy

supplied to the building for the operation of the building and the occupants of office space.