EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Climate Change
and Energy Efficiency

Building Energy Efficiency Disclosure Act 2010

Building Energy Efficiency Disclosure (Disclosure Affected Buildings)
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' 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.

Subsection 10(1) of the Act provides that the Minister may, by legislative instrument, determine that a specified kind of building is disclosure affected. Subsection 10(2) provides that the Minister may, by legislative instrument, determine that a specified kind of area of a building is disclosure affected.

The Determination specifies the kinds of buildings that are disclosure affected, and the kinds of areas of buildings that are disclosure affected. 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 (Disclosure Affected Buildings) Determination 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 clauses 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 that are relevant to identifying whether a particular building or area of a building is disclosure affected (see clauses 4 and 5).


Clause 4 - Disclosure affected buildings

This clause specifies, for the purposes of subsection 10(1) of the Act, the kinds of buildings that are disclosure affected.

A building is disclosure affected if:

a) the following criteria are met:
   - the building has a net lettable area of 2000 square metres (the term 'net lettable area' is defined in clause 3); and
• the net lettable area is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities that are located in that area. This is intended to encompass the types of activities that would usually take place in a commercial office space. Support facilities for these activities, such as employee break-out areas, restrooms and the like, must be included when calculating the net lettable area. In the case of a mixed use building, the building itself is unlikely to be a disclosure affected building if the net lettable area is not solely for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities that are located in that area. In such cases, only the areas of the building which are for administrative, clerical, professional or similar information-based activities and related support facilities may be subject to the obligations affecting disclosure affected areas, if the conditions under clause 5 are met;

and

b) neither of the following two exceptions apply:
• the building is held under a strata title system. This is because of the considerable difficulty that is likely to be encountered in assessing the energy efficiency of strata titled offices at this time. It is intended that this exception be reviewed when an appropriate assessment methodology becomes available; or
• the building is a new construction, and the certificate of occupancy (however described in each jurisdiction) for the building was issued less than two years ago. As soon as the two year period has ended, the building will become disclosure affected (unless it is held under strata title).

Clause 5 - Disclosure affected areas of a building

This clause specifies, for the purposes of subsection 10(2) of the Act, the kinds of areas of buildings that are disclosure affected.

An area of a building is disclosure affected if:

a) the following criteria are met:
• the area has a net lettable area of 2000 square metres. The term 'net lettable area' is defined in clause 3; and
• the area is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities that are located in that area. This is intended to encompass the types of activities that would usually take place in a commercial office building. Support facilities for these activities, such as employee break-out areas, restrooms and the like, must be included when calculating the net lettable area.

and

b) neither of the following two exceptions apply:
• **the area is held under a strata title system.** This is because of the considerable difficulty that is likely to be encountered in assessing the energy efficiency of strata titled offices at this time. It is intended that this exception be reviewed when an appropriate assessment methodology becomes available; or

• **the area is contained in a building which is a new construction, and the certificate of occupancy (however described in each jurisdiction) for the building was issued less than two years ago.** As soon as the two year period has ended, the building will become disclosure affected (unless it is held under strata title).