

# **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Industry and Science

*Building Energy Efficiency Disclosure Act 2010* (the Act)

*Building Energy Efficiency Disclosure (Disclosure Affected Buildings)  
Determination 2015* (the Determination)

The Act establishes the Commercial Building Disclosure (CBD) Programme, which requires public disclosure of energy efficiency information relating to large commercial office spaces. The CBD Programme 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'. Owners and lessors of a disclosure affected building 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) for the building or area of the building registered on the Building Energy Efficiency Register at the time of offering a building (or area) for sale, lease or sublease; and
- if advertising the building for sale or lease, a rating expressed in a manner determined by the Secretary.

The *Building Energy Efficiency Disclosure Regulations 2010* (the Regulations) prescribe certain matters which are necessary or convenient for giving effect to the Act including, amongst other things:

- information that must be included in a BEEC; and
- information that must be included in an application for exemption from a requirement that a person provide information in respect of, or access to, a building area.

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 is made under section 10 of the Act. The purpose of the Determination is to specify the kinds of buildings that are disclosure affected and the kinds of areas of buildings that are disclosure affected.

Amendments have been made to the Act by the *Building Energy Efficiency Disclosure Amendment Act 2015*, and to the Regulations by the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015*. These amendments commence on 1 July 2015.

The amendments to the Regulations require consequential amendments to the Determination, namely to:

- amend the definition of ‘major refurbishment’ such that it has the meaning given to it in the Regulations; and
- insert a definition of ‘Regulations’.

The Determination implements these amendment by repealing and replacing the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2011*. These minor technical amendments are the only changes to the Determination.

Details of the content of the Determination and the associated amendments are set out in the Attachment. The Determination commences on 1 July 2015.

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

Consultation was considered unnecessary because the purpose of the Determination is simply to implement consequential amendments flowing from changes to the Regulations. The only changes to the Determination are to revise the term ‘major refurbishment’ to give it the meaning given to it in the Regulations, and to insert a definition of ‘Regulations’. These changes do not substantially alter existing arrangements.

## **ATTACHMENT**

### **Details of the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2015***

#### **Clause 1 - Name of Determination**

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

#### **Clause 2 - Commencement**

This provision provides for the Determination to commence on 1 July 2015.

#### **Clause 3 – Repeal**

This provision repeals the previous Determination, the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2011*.

#### **Clause 4 - Definitions**

This section 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 provisions 5 and 6).

The definition of ‘major refurbishment’ is the same as the meaning given to it in the *Building Energy Efficiency Disclosure Regulation 2010*.

#### **Clause 5 - Disclosure affected buildings**

This provision 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:
  - *at least 75% of the space in the building by net lettable area (or gross lettable area where net lettable area is not available) is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities.*
    - The terms ‘net lettable area’ and ‘gross lettable area’ are defined in clause 4. Net lettable area remains the preferred method for measuring floor space in a building. However, in some mixed use buildings such as combined office/warehouses, gross lettable area may be the industry standard for measurement. In this case, if net lettable area is not available, gross lettable area may be used instead.
    - The phrase ‘administrative, clerical, professional or similar information-based activities’ is intended to encompass all activities that would usually take place in a commercial office space.
    - The term ‘support facilities’ is defined in clause 4. Mixed use buildings where less than 75% of the space is dedicated to these activities are not disclosure affected; and
  - *the net lettable area (or gross lettable area where net lettable area is not available) of the space in the building that is for administrative, clerical,*

*professional or similar information-based activities, including any support facilities for those activities, is at least 2000 square metres.*

- This paragraph is intended to exclude smaller office buildings;

and

b) neither of the following three exceptions apply:

- *the building is new and a certificate of occupancy (however described) indicating that the building is safe for occupancy is required to be issued by a local authority under a law of a State or Territory in order for the building to be occupied and the certificate has not yet been issued or was issued less than 2 years before the day.*
  - This exception is intended to cover new constructions in relation to which a certificate of occupancy or equivalent requirement is required under a law of a State or Territory prior to the building being occupied. It is intended to except such buildings up to two years after the issue of the certificate; or
- *the building has had a major refurbishment and a certificate of occupancy (however described) indicating that the building is safe for occupancy was required to be issued by a local authority under a law of a State or Territory in order for the building to be occupied and the certificate was issued less than 2 years before the day.*
  - Major refurbishment is defined in clause 4. This exception is intended to cover major refurbishments in which a certificate of occupancy or equivalent authorisation is required under a law of a State or Territory prior to the building being occupied following the conclusion of the major refurbishment. It is only intended to exempt such buildings once the certificate of occupancy is issued.
  - Whilst a major refurbishment is currently being undertaken, entities to which a disclosure obligation applies, may be able to apply for an exemption under paragraph 17(3)(c) of the Act relating to section 5B of the *Building Energy Efficiency Disclosure Regulations 2010*. Once the major refurbishment is complete, this exception category will apply.
- *the building is held under a strata title system (however described).*
  - This exception recognises the 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 will be reviewed when an appropriate assessment methodology becomes available.

## **Clause 6 - Disclosure affected areas of a building**

This provision 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:
  - *at least 75% of the space in the building by net lettable area (or gross lettable area where net lettable area is not available) is for administrative, clerical,*

*professional or similar information-based activities, including any support facilities for those activities.*

- These criteria are the same as subclause 5(2). It gives effect to the intention that any building where less than 75% of the space is dedicated to usual commercial office activities is neither a disclosure affected building nor contains any disclosure affected areas; and
- *the net lettable area (or gross lettable area where net lettable area is not available) of the space in the building that is for administrative, clerical, professional or similar information-based activities, including any support facilities for those activities, is at least 2000 square metres.*
  - This paragraph is intended to exclude smaller office areas;

and

- b) neither of the following three exceptions apply:
- *the building in which it is located is new; and a certificate of occupancy (however described) indicating that the building is safe for occupancy is required to be issued by a local authority under a law of a State or Territory in order for the building to be occupied and the certificate has not yet been issued or was issued less than 2 years before the day.*
    - This exception is the same as in clause 5; or
  - *the building in which it is located has had a major refurbishment; and a certificate of occupancy (however described) indicating that the building is safe for occupancy was required to be issued by a local authority under a law of a State or Territory in order for the building to be occupied and the certificate was issued less than 2 years before the day.*
    - This exception is the same as in clause 5; or
  - *the building is held under a strata title system (however described).*
    - This exception is the same as in clause 5.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2015***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The amendments of the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2015* are necessary due to changes in the overarching *Building Energy Efficiency Disclosure Act 2015*. The only changes made are the addition of two new definitions to better clarify the provisions within the Determination.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Minister for Industry and Science, the Honourable Ian Macfarlane MP**