

EXPLANATORY STATEMENT

Building Energy Efficiency Disclosure Act 2010 (the Act)

Building Energy Efficiency Disclosure Determination 2016
(the Determination)

The Act establishes the Commercial Building Disclosure (CBD) Programme, which requires the 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.

The Determination is made under sections 13, 13A, 15 and 21 of the Act. The Determination specifies:

- the manner in which energy efficiency ratings must be expressed in advertisements;
- the assessment methods and standards to be applied in working out the energy efficiency rating for a building;
- the assessment methods or standards to be applied in working out lighting energy efficiency for a building; and
- information to be set out in a building energy efficiency certificate.

The purpose of the Determination is to make minor technical amendments to enable the incorporation of the NABERS Energy rating rules for offices and the Commercial Building Disclosure (CBD) Tenancy Lighting Assessment (TLA) for Offices Rules, as in force from time to time. Incorporating documents that set out the relevant assessment methods and standards for the purposes of subsection 21(1) by reference from time to time is authorised under subsection 21(2) of the Act.

The Determination implements these amendments by repealing and replacing the *Buildings Energy Efficiency Disclosure Determination 2015*.

Consultation

Consultation was considered unnecessary because the purpose of the Determination is to make minor technical amendments to enable the incorporation of documents that set out the relevant assessment methods and standards determined under section 21 of the Act from time to time. The changes do not substantially alter existing arrangements.

Detailed description of provisions in the *Building Energy Efficiency Disclosure Determination 2016*

Clause 1 - Name of Determination

This is a formal clause setting out the name of the Determination as the *Building Energy Efficiency Disclosure Determination 2016*.

Clause 2 - Commencement

This provision sets out the commencement arrangements for the Determination.

Clause 3 - Repeal

This provision repeals the previous Determination, the *Building Energy Efficiency Disclosure Determination 2015*.

Clause 4 - Definitions

These provisions specify 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).

Clause 5 - Advertisements

These sections set 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 on each separate advertisement piece, 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

Subclause 6(1)(a) specifies that, for the purpose of sections 21(1)(a) of the Act, the assessment methods and standards for assessing a building are the NABERS Energy rating rules. As an alternative, subclause 6(1)(b) permits an assessor to rely on a pre-existing current NABERS rating in the circumstances set out in subclause 6(6) to 6(10).

When applying the NABERS Energy rating rules under subclause 6(1)(a), an accredited assessor must comply with subclauses 6(2), (3), (4) and (5).

Subclause 6(2) provides that accredited assessors must not take into account any purchases of GreenPower when applying the NABERS energy rating rules. The NABERS rules permit ratings to be improved by the purchase of renewable energy under the GreenPower program. Excluding these purchases prevents the distortion of energy ratings through the purchase of GreenPower to offset the actual emissions produced by a building or area of a building.

Subclause 6(3) provides that where an accredited assessor reasonably forms the opinion that works currently being undertaken on a building will affect the energy efficiency rating of the building, they are not to provide a rating for the building. This rule allows for the major refurbishment exemption in accordance with section 5B of the Regulations.

The NABERS tool rates buildings out of six stars in half star increments. Therefore, for subclause 6(3) to apply, the assessor must form the opinion that the works are likely to alter the NABERS rating by at least a single half-star increment. For example, works that would change a building rated at 3 stars under NABERS to 3.5 stars would be sufficient.

With respect to subclause 6(3), the use of the term 'undertaking' is intended to limit the operation of this clause to works that are actually physically taking place in a building. Consequently, the term 'undertaking' has been included with the intention that pre-construction planning and related activities are excluded from the meaning of works. The use of the term 'reasonably forms the opinion' has been included with the intention for it to be an objective test.

In addition, subclause 6(3) is intended to operate in conjunction with subclauses 5(4) and 6(4) of the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2015*. These provisions provide an exception from the disclosure obligations of the Act in certain circumstances where a major refurbishment has been completed.

Subclause 6(4) and 6(5) of the Determination are intended to operate in conjunction. Under subclause 6(4), metering is deemed inadequate when tenancy energy use is not able to be distinguished from base building energy rating. This would result in a non-representative figure of the base building energy use. Such a situation would require an assessor to only then conduct a whole building rating. Under subclause 6(5), if calculating a base building rating will result in a non-representative figure as under subsection (4), an accredited assessor must work out the whole building rating for the building.

The NABERS Energy rating rules enable three ratings to be produced:

- A base building rating, which 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;
- A tenancy rating, which relates to the greenhouse gas emissions associated with the energy consumed by a tenant in a premises, excluding the energy associated with supplying building central services; and
- A whole building rating, which relates to greenhouse gas emissions associated with the energy used by office tenancies and base building services. This should include all energy supplied to the building for the operation of the building and the occupants.

Subclause 6(6) provides that an accredited assessor may rely on a NABERS rating produced previously by a different NABERS assessor. The ability of an accredited assessor to rely on a previous NABERS rating is limited to certified NABERS ratings. The ability of an accredited assessor to rely on a previously certified rating under subclause 6(6) is limited by subclauses 6(7) to 6(10).

Subclause 6(7) incorporates the rule set out in subclause 6(2) to ratings used under 6(6). This requires the accredited assessor to disregard any use of GreenPower in a rating previously produced.

Subclause 6(8) applies the rules in subclauses 6(4) and (5) to ratings obtained under subclause 6(6). Specifically, clause 6(8)(b) limits the use of a previously certified whole building rating where there is no currently certified base building rating and it is not possible for the accredited assessor to perform a base building rating for the reasons set out under subclause 6(4).

Subclause 6(9) applies the rule in subclause 6(3) to ratings obtained under subclause 6(6). The effect of this subsection is that accredited assessors cannot rely on a previously issued certified NABERS rating if, since the rating was obtained, works that are likely to effect the energy rating of the building have commenced. This provision only applies where works are currently ongoing. Subclause 6(10), discussed below, will apply once the works cease.

Subclause 6(10) provides that an accredited assessor cannot use a previously issued certified NABERS rating under subclause 6(6) if the assessor reasonably comes to the opinion that since the rating was obtained the building has undergone works which are likely to have changed the NABERS rating. This change to the rating must be by at least half a star.

Where subclause 6(9) or 6(10) applies, a new rating or exemption must be obtained if the building is disclosure affected.

Clause 7 - Methods and standards of assessment: lighting

This provision specifies that the assessment methods and standards for assessing the lighting energy efficiency of a building or an area of a building are the *CBD Tenancy Lighting Assessment for Office Rules*.

Subclause 7(1)(a) provides that, for the purpose of sections 21(1)(b) and 21(1)(c) of the Act, the methodology to be used by accredited assessors is the Tenancy Lighting Assessment rules. As an alternative, subclause 7(1)(b) permits an assessor to rely on a pre-existing current Tenancy Lighting Assessment in the circumstances set out in subclause 7(2).

Clause 8– Information included in certificates

In accordance with section 13A of the Act, clause 8 sets out the the information which must be included in a BEEC.

With respect to subclause 8(a), section 13(1) of the Act defines the terms ‘issue day’ and ‘start day’, which were additions to the Act resulting from the *Building Energy Efficiency Disclosure Amendment Act 2015*. It is intended that the ‘start day’ be the date on which the BEEC commences. This date may be the same date as the ‘issue day’ or be a later specified date.

NABERS is able to produce two types of NABERS Energy Ratings, one that takes into account GreenPower purchases and the other which does not. Under subclause 8(m), the NABERS Energy Rating that does not account for GreenPower purchases is the one to be included on the BEEC.

Statement of Compatibility with Human Rights

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

Building Energy Efficiency Disclosure Determination 2016

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 *Building Energy Efficiency Disclosure Determination 2016* determines the manner in which energy efficiency ratings must be expressed in advertisements; the assessment methods and standards to be applied in working out the energy efficiency rating for a building; the assessment method and standards to perform a lighting energy efficiency assessment for a building or area of a building; and information to be set out in a building energy efficiency certificate.

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 Acting Secretary of the Department of the Environment and Energy,
Rhondda Dickson**