

New disclosure obligations for refurbished buildings

Change to major refurbishments

Previously, the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination* (Minister's Determination) provided that buildings were not disclosure affected if they were undergoing or had undergone a major refurbishment and a certificate of occupancy would be issued or had been issued in the past two years.

As a result, a building owner had to determine when the major refurbishment commenced which caused it to not be disclosure affected.

Industry representatives have advised the Department that these provisions have caused some uncertainty about whether a building that is undergoing a refurbishment is disclosure affected or not. In some jurisdictions it is unclear if a certificate of occupancy will be issued following works, and in others a new certificate of occupancy is never issued.

Changes have been made to the Minister's and Secretary's Determinations to clarify the disclosure obligations of buildings undergoing a major refurbishment. These came into effect on 11 August 2011.

What happens when the refurbishment has been completed?

Where a major refurbishment has been completed, and a certificate of occupancy (or equivalent) has been issued by local authorities, the building will not be disclosure affected for two years from the date of issue of the certificate i.e. it is considered an *exception*.

To be considered an exception, a major refurbishment means a refurbishment that effects the energy efficiency rating of the base building. It is expected that this would involve substantial changes to the fabric, plant or equipment of the building which would alter a base building rating by at least half a NABERS star, higher or lower.

Changes in an energy efficiency rating brought about without physical alteration of a building, such as changes in staff behaviour or operating hours are not considered a major refurbishment.

Building owners seeking to rely on an exception should be able to provide evidence to the Department on request indicating both the nature of the changes and the impact on the energy efficiency of the base building.

No action is required by the owner or lessor to obtain an exception.

What happens where no certificate of occupancy is issued?

If no certificate of occupancy is issued by the local authority upon completion of the major refurbishment, building owners and lessees will need to apply for an *exemption* under section 17(3)(b) of the *Building Energy Efficiency Disclosure Act 2010* (the Act) until they have sufficient energy data to produce a valid rating. The length of time in which an exemption will be available will depend on the circumstances of the building, but is likely to be available for 12 months after the building obtains 75 per cent occupancy.

How do I get an exemption because of a major refurbishment?

Amendments also made to the Secretary's Determination (*Building Energy Efficiency Disclosure Determination*) will resolve the uncertainty and jurisdictional differences, by allowing building owners who are undertaking works to apply for an exemption.

The Secretary's Determination specifies the NABERS Energy rating rules¹ as the methods and standards of assessment for the rating of the energy efficiency of a building for the purposes of applying for a Building Energy Efficiency Certificate (BEEC). In some circumstances, the NABERS Energy rating rules do provide for a building to be held as unrateable. The amendments to the Secretary's determination will mean that during a major refurbishment, a building is also not able to be rated for the purposes of getting a NABERS Energy for Offices rating for a BEEC. Where a building or area of a building cannot be rated, an exemption may be applied for under section 17 of the Act.

In order to apply for an exemption from disclosure requirements because of a major refurbishment, a building owner will need to engage a CBD Accredited Assessor² to examine the work being undertaken and support the application for an exemption.

The accredited assessor will need to reasonably form the opinion that work currently being undertaken on a building will affect the energy efficiency rating of the building. If the accredited assessor reasonably forms this opinion, then, for the duration of the works, the building must be held as 'unrateable' applying the NABERS Energy rating rules as amended by the Secretary's Determination.

Works likely to effect the energy efficiency rating of the building are works that are likely to result in an altered NABERS rating. The NABERS tool rates buildings on a scale of half star increments. Therefore, for this provision 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 from a NABERS 3 stars rating to a 3.5 stars rating would be sufficient.

The use of the term 'undertaking' in the Secretary's Determination is intended to limit the operation of this provision to works that are actually physically taking place in a building and therefore exclude pre-construction planning and related activities such as obtaining approvals or drawing up plans.

If you need to apply for an exemption because of a major refurbishment, you will need to apply in writing on the prescribed form (which can be found on the website at www.cbd.gov.au) and pay the prescribed fee of \$350 (GST free).

¹ *Rules for collecting and using data: NABERS Energy and Water for offices*, dated 1 July 2010

² An accredited NABERS assessor can be engaged until the end of the transition period, 31 October 2011

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The *Building Energy Efficiency Disclosure Act 2010* imposes mandatory disclosure obligations of energy efficiency for many commercial buildings. It is part of a package of measures to encourage building energy efficiency developed under the *National Strategy on Energy Efficiency* by the Australian, state and territory governments. The Act, implemented through the Commercial Building Disclosure (CBD) program, is administered by the Australian Government Department of Climate Change and Energy Efficiency.

For more information visit www.cbd.gov.au