

New Construction – Guidance Note

This Guidance Note addresses how the disclosure obligations under the [Building Energy Efficiency Disclosure Act 2010](#) (the **BEED Act**) may apply to new buildings. It includes examples of how the disclosure obligations apply to buildings at different stages of new build, from planning to completion, to assist owners, lessors or sublessors to understand their obligations.

Legal context: The BEED Act

Under the BEED Act, certain commercial buildings and areas of buildings that are used, or capable of being used, as an office are affected by energy efficiency disclosure obligations. The BEED Act requires the disclosure of a building's energy efficiency information to the market when this space is offered for sale or lease.

Corporations that own or lease a '**disclosure affected**' building or area ('**building owners**') must:

- obtain a Building Energy Efficiency Certificate (**BEEC**) before selling, letting or subletting the building or area of the building, or offering or inviting offers to do so;
- disclose a National Australian Built Environment Rating System (**NABERS**) Energy star rating (as set out in the BEEC) in advertisements for the building or area of the building; and
- provide all prospective commercial purchasers, lessees or sublessees with a copy of the current, registered BEEC as soon as reasonably practical or upon written request.

Together, these are the '**disclosure obligations**' under the BEED Act. Only a CBD accredited assessor (**Assessor**) can apply the assessment methods to obtain the energy ratings necessary to apply for a BEEC under the Commercial Building Disclosure (**CBD**) program.

In certain circumstances, a person may apply for an exemption to the application of the disclosure obligations, including, as discussed below, where a new build is concerned.

New construction and disclosure obligations

Depending on the stage of the project, a new office building may be:

- **disclosure affected** and subject to the disclosure obligations. In some circumstances, an exemption from the obligations may be sought.
- **not disclosure affected**, and will not require a BEEC or an exemption.

In summary:

- A construction is considered 'underway' when the contracts for construction or equipment supply have been executed.
- While the construction of a new building is underway, the building is not disclosure affected.
- Once construction is *completed*, the office building will automatically not be disclosure affected for up to two years from the date of issue of a certificate of occupancy (or equivalent). If a certificate of occupancy or equivalent is not issued, the building will not fall within this category and will be subject to the disclosure obligations in the BEED Act.
- Once the construction works are complete, exemptions can be sought for other reasons such as where an office building has been fully vacant for more than 12 months and a NABERS Energy rating cannot be completed.

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For more information about disclosure obligations, including when a building (or area of a building) is disclosure affected, and other possible exemptions from these obligations, please refer to the relevant Guidance Notes available on the [CBD Program website](#).

Construction is complete

After a new office building construction has been completed, the building is not disclosure affected for two years from the date the certificate of occupancy (or equivalent) is issued. If there are staged certificates for different areas of the building, the building is not disclosure affected from the date the last certificate was issued.

Once the certificate of occupancy (or equivalent) is more than two years old, the building will become disclosure affected. It will require a BEEC or an exemption if it is offered for sale, lease or sublease.

However, if the nature of the works is such that no new certificate of occupancy is issued when the project is complete, the building remains disclosure affected. The conditions for issuing a certificate of occupancy vary between jurisdictions.

After a new build is complete: What if your building is still not eligible for a NABERS Energy Rating?

In some circumstances, a new building might be disclosure affected but not eligible for a NABERS rating necessary to obtain a BEEC. Under the NABERS Rules, if your building is newly built, it will only be eligible for a rating when one of the following requirements is met (whichever occurs first):

- the entire building is fit for occupation and is 75% occupied; **or**
- it has been two years since the certificate of occupancy (or state-based equivalent) was issued.

In other words,

- once the occupancy increases above 75% after the completion of construction, the building will be eligible for a NABERS Energy Rating even if the occupancy certificate is less than two years old.
- once the certificate of occupancy is more than two years old, the building will be eligible for a NABERS Energy Rating regardless of whether the occupancy rate is less than 75%.

Where a new building is not eligible for a NABERS rating, an exemption may be sought to the disclosure obligations on this basis.

Once a building becomes eligible for a NABERS Energy Rating, an assessor must begin collecting 12 months of data for the building (the 'Rating Period'). You will also need to allow time to prepare and process the NABERS rating; NABERS Assessors are allowed up to four months to submit their application. An exemption may be granted to cover the Rating Period and submission time. The longest exemption is 12 months. However, multiple exemptions may be granted if it is not yet possible to complete a NABERS rating.

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Example 1 – 75% occupancy maintained throughout two years following issue of a Certificate of Occupancy (COO)

AAA Offices is a newly built and received a certificate of occupancy. The building is not disclosure affected for two years. AAA has acquired an occupancy rate above 75% when the building was within the two year non-disclosure period triggered by COO. This means that the building is eligible for a NABERS rating immediately and can begin gathering the required rating data at any time. Once the certificate of occupancy is more than two years old, the building will become disclosure-affected and a BEEC or exemption will be required if the building is offered for sale, lease or sublease. AAA organises an Assessor to complete the NABERS rating and BEEC application **before** the second anniversary of completion, noting that NABERS allows up to four months for an Assessor to lodge a rating application. By starting early, AAA is able to have the BEEC application approved as soon as the building becomes disclosure affected.

In this example, as the building is eligible to gather NABERS Energy data at any time, AAA could also opt to voluntarily submit a BEEC application earlier in the non-disclosure period.

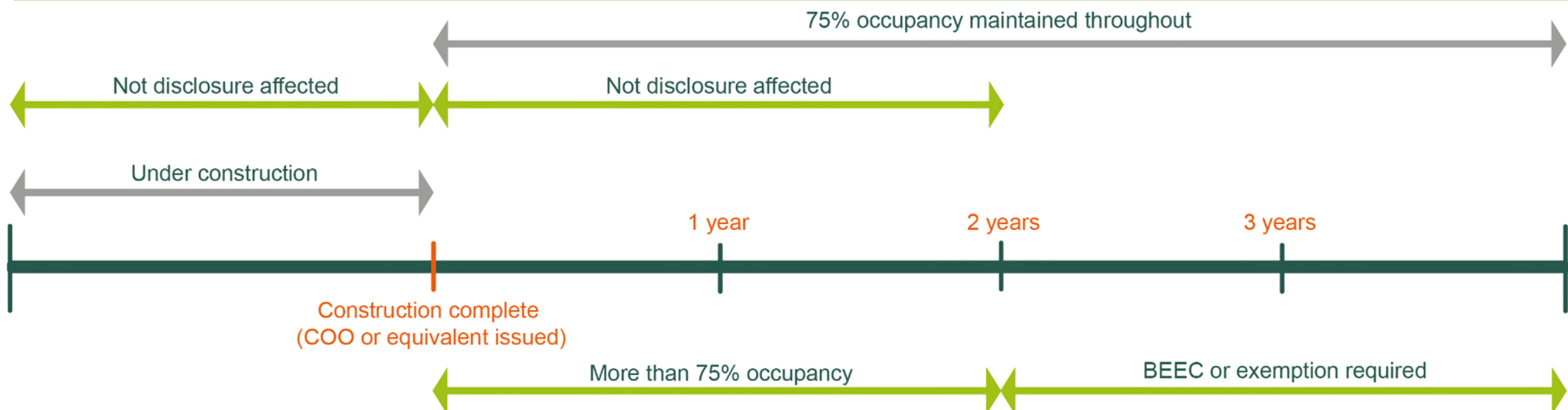


Figure 1: 75% Occupancy maintained throughout two years following issue of a Certificate of Occupancy (COO)

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Example 2 – No Certificate of Occupancy is issued and 75% occupancy reached within two years of project completion

No Certificate of Occupancy is issued on completion of construction for a new building. Therefore, the building is immediately disclosure affected.

However, as occupancy remains below 75%, the building is not immediately eligible for a NABERS rating, based on the current (January 2020) NABERS Rules. An exemption is sought and obtained for the maximum duration of 12 months.

Eight months after the completion of works for new building, the building achieves 75% occupancy and the NABERS Rating Period for data collection begins. However, it takes a further four months for the NABERS rating application to be certified. The building owner seeks and obtains a third, shorter, exemption cover the final months of the NABERS Rating Period for data gathering and the four month lodgement period.

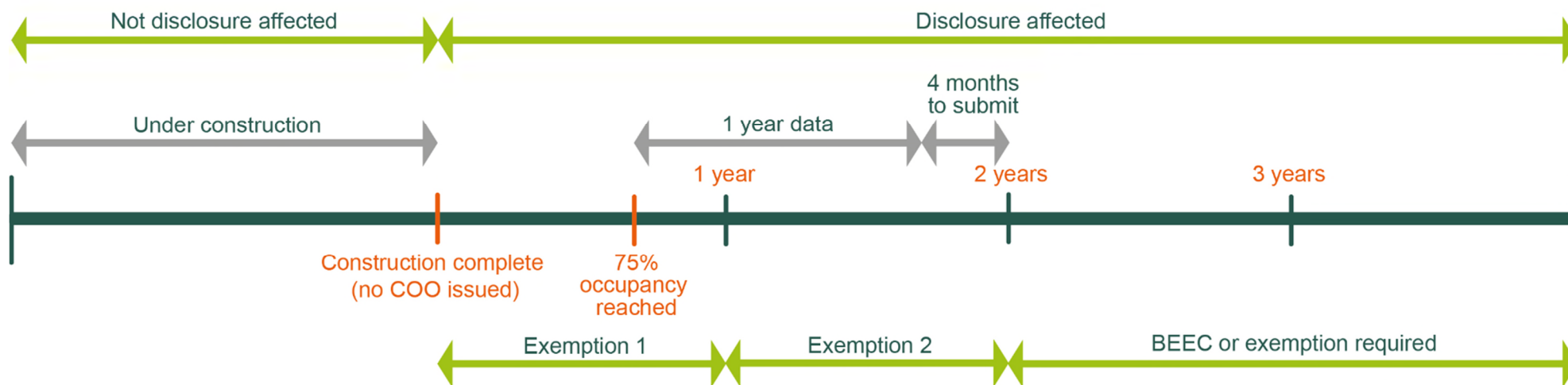


Figure 2: No Certificate of Occupancy and building occupancy reaches 75% within two years of project completion

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Example 3 – No Certificate of Occupancy issued and occupancy below 75% throughout

No Certificate of Occupancy is issued on completion of construction for a new building. Therefore, the building is immediately disclosure affected.

The building remains less than 75% occupied after completion of construction for the new building, meaning the building is not eligible for a NABERS rating based on the current (January 2020) NABERS Rules. On completion of construction, an exemption is sought and obtained for the maximum duration of 12 months. An additional four month exemption is granted to lodge application for NABERS rating. Once the exemption expires, the building will need a BEEC or another exemption (on different grounds) if it is offered for sale, lease or sublease. Buildings with low levels of occupancy, even less than 75% occupancy, may be required to obtain a BEEC.

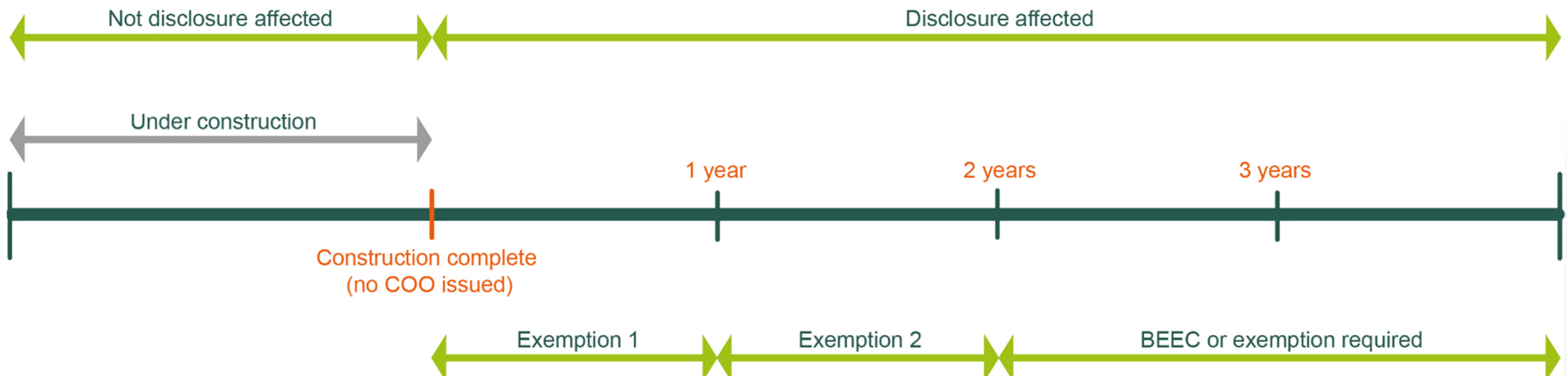


Figure 3: Multiple exemptions, no Certificate of Occupancy (COO) and building occupancy less than 75% throughout

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Example 4 – Certificate of Occupancy issued and 75% occupancy reached within two years

Building Enterprise Pty Ltd obtains a certificate of occupancy. The building automatically enters the two year non-disclosure period. Occupancy reaches 75% when the certificate of occupancy is 18 months old and data gathering for the NABERS Energy rating begins. The building becomes disclosure affected six months later, when the certificate of occupancy is two years old.

The NABERS rating cannot be obtained until an Assessor has collected twelve months data (at the end of the Rating Period) and then applied for a NABERS Rating (up to four months). This occurs six to ten months after the building becomes disclosure affected. When the building becomes disclosure affected, the owners apply for and receive a ten-month exemption as the building is non-assessable until the NABERS Rating can be finalised.

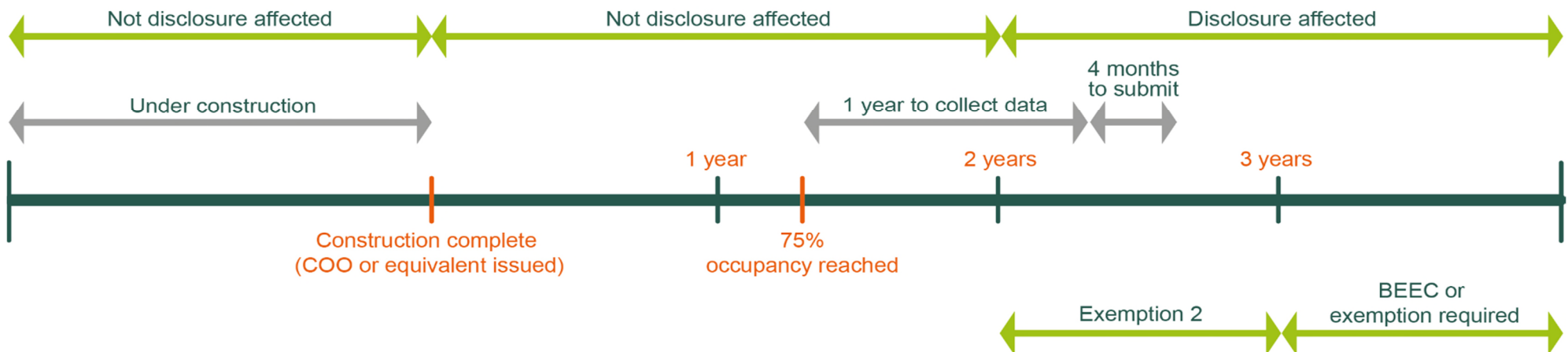


Figure 4: Certificate of Occupancy issued and 75% occupancy reached within two years



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Example 5 – Occupancy remains below 75% two years after Certificate of Occupancy (COO)

Commercial Properties Pty Ltd receives a certificate of occupancy. The building automatically enters the two year non-disclosure period. Occupancy only reaches 60% during this period and therefore the building remains ineligible for a NABERS Rating. The building becomes disclosure affected when the certificate of occupancy is two years old. On the same day, the building becomes eligible to start the NABERS Rating data collection period.

The rating cannot be obtained until an Assessor has collected 12 months data and then applied for a NABERS Rating (up to 4 months). During the data gathering period, the building owner receives a 12 month exemption on the grounds that the building is not assessable. The building owner then applies for and receives a further four month exemption to cover the NABERS lodgement period. At the end of the third exemption, the BEEC is issued.

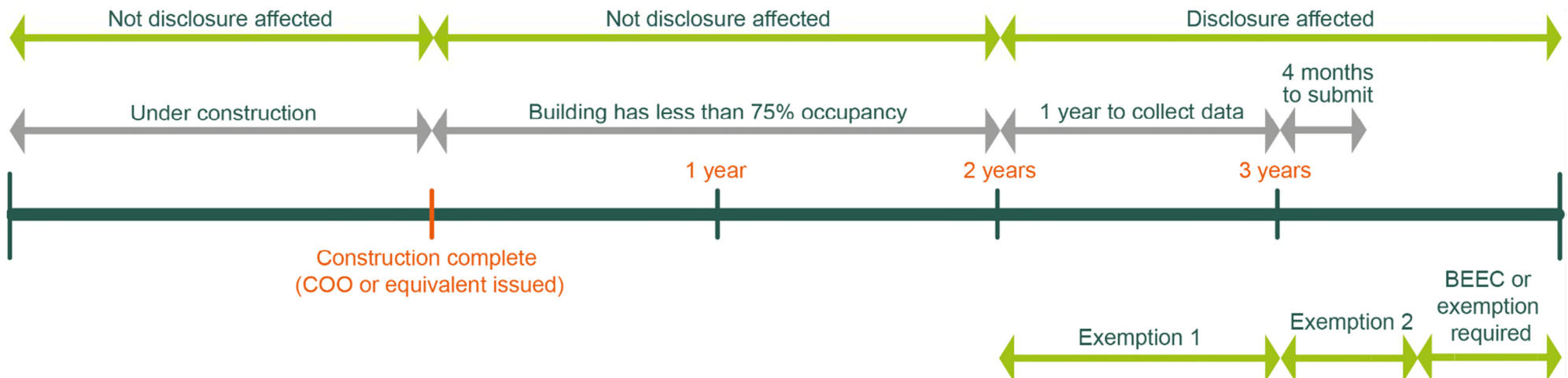


Figure 5: Occupancy remains below 75% for two years after Certificate of Occupancy issued

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Disclaimer

The information in this Guidance Note does not, and is not intended to, constitute legal advice on the obligations under the *Building Energy Efficiency Disclosure Act 2010* (the BEED Act) and should not be taken to indicate the Department's commitment to a particular course of action. Please see the Disclaimer on the Department's CBD Program website at <http://cbd.gov.au> for more information.

The Guidance Note provides guidance on how the disclosure obligations under the BEED Act may apply to buildings at different stages following the completion of construction works. The Department recommends that building owners, lessors and sub-lessors obtain their own independent legal advice if they are unsure about any obligations that they might have under the BEED Act.

Contact Us

For further information regarding the CBD Program, please see the CBD Program website at: <http://cbd.gov.au>. You can also contact the CBD Team during business hours on our toll free hotline 1800 020 131 or via email info@cbd.gov.au.

