

# CBD Legislative Changes - Guidance

## How will the legislation change from 1 July 2015?

The Commercial Building Disclosure (CBD) program administers the *Building Energy Efficiency Disclosure Act 2010* (the Act). Subordinate pieces of legislation that support the Act include the *Building Energy Efficiency Disclosure Regulations* (the Regulation), the *Building Energy Efficiency Disclosure (Disclosure Affected Buildings) Determination 2011* (Ministerial Determination) and the *Building Energy Efficiency Determination 2011* (Secretarial Determination).

Amendments made to the Act have required many consequential changes to the subordinate legislation. These amendments vary from improving administrative arrangements to streamlining regulatory obligations for business. All of these changes will come into force on 1 July 2015.

This guidance note will help to explain the impact of some of the major changes on the CBD program operations for assessors, applicants, real estate agents and property lawyers.

## Exemptions: New Unsolicited Offer Exemption Category

A new exemption category for unsolicited offers will be introduced from 1 July 2015, as per **section 5A** of the amended Regulations.

Due to the unilateral nature of an unsolicited offer transaction, energy efficiency information is unlikely to influence a decision to purchase or lease. Therefore, this type of non-market transaction should be exempt from disclosure.

Please see the 'Unsolicited Offer Guidance Note' for further information about the application of this new provision.

## Exemptions: Major Refurbishments Underway

Prior to 1 July, buildings undergoing major refurbishments which would affect the building's energy efficiency rating were exempt from disclosure due to a modification of the NABERS Energy Rating rules (Secretarial Determination **section 7(3)**).

This has now been formalised as an exemption category in **section 5B** of the new Regulations.

There will be no change in operations or the application process from this amendment. Requirements for this exemption application are listed in **section 5(1)(p)** of the new Regulations, along with the updated **section 17** of the amended Act. The ongoing major refurbishments will still need to alter the NABERS rating by at least half a star to trigger the disclosure exemption.



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## Exemptions: Non-Assessable Buildings

A formalised category of exemption has also been introduced in **section 17(3)(b)** of the updated Act for buildings that have characteristics which deem them 'non-assessable', as per **sections 17(7) and(8)**. This has been included to simply clarify previous legal ambiguity for such scenarios.

Again, there will be no change in operations or the application process from this amendment. Requirements for this exemption application are also listed in **section 5(1)(k)** of the new Regulations and section 17 of the amended Act.

## Exemptions: Other Changes

There are several other changes to the exemption process, as listed below.

### ➤ Pre-existing Exemptions

From 1 July 2015, current exemptions will be able to be transferred to new owners and sub-lessors upon application without the need to reapply or pay the application fee (**section 17(5)** of the Act). There will be no longer be a need to pay twice for the same exemption.

### ➤ Listing Exemptions on the Register

Exemptions will also now be listed on the [Building Energy Efficiency Register](#), per **section 14(2)** of the Act. This will allow potential buyers and lessees to see if a building being advertised without a Building Energy Efficiency Certificate (BEEC) has a legitimate reason for doing so.

### ➤ Declaration of Conflict of Interest

Under **section 9(3A)** of the Regulations, assessors will now be required to declare conflict of interest when making an assessment in relation to any exemption category from **section 17** of the Act.

## Auditors: Changes to Auditing

Auditors, from 1 July 2015, will now be able to audit all exemption applications per **section 34(3)** of the Act.

Under the same section, auditors will also be able to audit energy efficiency ratings and lighting energy efficiency assessments provided by, or approved by, an auditing authority. This will allow for the audit of ratings which are conducted by NABERS-only assessors who are not accredited under the CBD program.



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## **Auditing Authorities: Providing Assessments**

Under **section 33(2)** of the Act, auditing authorities (including the NABERS National Administrator) will be able to provide or approve ratings and assessments directly to the CBD team.

Practically, this will allow the CBD team to use assessments and ratings done by a NABERS-only assessor, who is not actually CBD accredited. This will ensure the rating information provided for inclusion on a BEEC is correct. It will also make the system more administratively efficient.

## **Assessors: Training Flexibility & NABERS-Only Accreditation**

### ➤ Training Flexibility

Under the amendments made to **regulation 8**, the Department will now be able to provide Tenancy Lighting Assessment training, along with the NABERS team.

This will provide greater flexibility for training and assessor accreditation by allowing for a range of providers to be appointed to deliver training for the accreditation of CBD assessors.

### ➤ NABERS-Only Accreditation

For the purposes of defining a CBD assessor, an assessor can be either a NABERS accredited assessor or a NABERS auditor. This is simply a legal clarification of **regulation 9**.

## **Assessors: Direct Information Gathering Power**

Under the amended **section 18(2)** of the Act, assessors are no able to directly demand information via a formal notice from an owner, lessee, or sub-lessee for purposes of assessment.

Assessors will now have the ability to request the Secretary to require the person to provide that information.

## **Exception: Wholly-Owned Subsidiaries**

The new **section 5A** of the Act will allow transactions between wholly-owned subsidiaries to be excluded from disclosure provisions.



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Such transitions are deemed non-market transactions as energy efficiency information would not influence the decision making process. This amendment will help to reduce the regulatory burden on industry.

## **Breach: Infringement Notice Time Limit**

From 1 July 2015, a person must write to the Secretary for the withdrawal of an infringement notice within 28 days of that notice being given (**section 61(1)** of the Act). Prior to the amendments, there was no time limit, meaning infringement cases could not be closed off.

## **BEEC: Standard Energy Efficiency Guidance**

Prior to the amendments, standard energy efficiency guidance information used be included as part of a BEEC. However, the provision in the Act requiring this has been removed and it is no longer required.

This information will now be provided online through a live and interactive format. This will allow the CBD team to provide the most relevant and targeted energy efficiency information.

## **BEEC: Start Day & Issue Day**

The new term of 'start day', along with 'issue day', has been included in the Act in the new **subsection 13(1)**. 'Start day', the date to now be included on a BEEC, can be either the same as the date of issue or a date later than the 'issue day'. This will mean it will now be easier to proactively maintain current BEECs within a property portfolio. BEECs with a 'start day' later than the date of issue will enable buildings owners to utilise the full 12 month validity period when maintaining BEECs annually.



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*This document is not exhaustive and does not discuss all of the legislative changes. Please seek independent legal advice if you have further queries about how these changes may affect you.*

