



Building Energy Efficiency Disclosure Regulations 2010

Select Legislative Instrument No. 203, 2010

made under the

Building Energy Efficiency Disclosure Act 2010

Compilation No. 2

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Building Energy Efficiency Disclosure Regulations 2010* that shows the text of the law as amended and in force on 6 November 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name of Regulations

These Regulations are the *Building Energy Efficiency Disclosure Regulations 2010*.

3 Definitions

Note: A number of expressions used in these Regulations are defined in the Act, including the following:

- (a) accredited assessor;
- (b) building energy efficiency certificate;
- (c) current (in relation to a building energy efficiency certificate);
- (d) issuing authority;
- (e) lighting energy efficiency assessment.

In these Regulations:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

ACN has the meaning given by section 9 of the *Corporations Act 2001*.

Act means the *Building Energy Efficiency Disclosure Act 2010*.

ARBN has the meaning given by section 9 of the *Corporations Act 2001*.

disclosure provision means section 11, 12 or 15 of the Act.

major refurbishment, in relation to a building, has the meaning given by regulation 5B.

NSW Environment Agency means the New South Wales government agency or Department of State that manages the National Australian Built Environment Rating System (NABERS).

Note: NABERS is a system for measuring the environmental performance of buildings.

unsolicited offer, in relation to a building or an area of a building, has the meaning given by regulation 5A.

Part 3—Exemptions

5 Exemptions from disclosure provisions—applications

- (1) For paragraph 17 (2) (b) of the Act, an application for a building or an area of a building to be exempt from a disclosure provision or provisions must include the following information:
 - (a) the applicant's name, contact telephone number, postal and email address;
 - (b) for an applicant that is a corporation:
 - (i) its ABN; or
 - (ii) if the corporation does not have an ABN—its ACN; or
 - (iii) if the corporation does not have an ABN or ACN—its ARBN;
 - (c) if the applicant is claiming an exemption for a building—the address of the building;
 - (d) if the applicant is claiming an exemption for an area of a building:
 - (i) the address of the building; and
 - (ii) a description of the area of the building that is sufficient to identify the area;
 - (e) the disclosure provision or provisions from which the applicant is claiming the exemption;
 - (f) the nature of the applicant's interests in the building or the area of the building (for example, whether the applicant is an owner, lessee or sublessee);
 - (g) whether the application relates to the energy efficiency rating for the building;
 - (h) whether the application relates to the lighting energy efficiency assessment for the building or the area of the building;
 - (i) details of any steps taken by the applicant to comply with the disclosure provision or provisions, including timeframes within which compliance is to be achieved;
 - (j) the applicant's reasons for seeking the exemption;
 - (k) for an application relating to paragraph 17(3)(b) of the Act:
 - (i) an assessment by an accredited assessor, showing that the building or the area is non-assessable within the meaning of the Act; and
 - (ii) the name, contact telephone number, email address, registration number and place of business of the accredited assessor; and
 - (iii) whether the accredited assessor has complied with subregulation 9(3A) (about disclosing any conflict of interest);
 - (n) the name, contact telephone number and postal address of any other person who has interests in the building or the area of the building that is the subject of the application, or an area of the building that is not the subject of the application, if:
 - (i) those interests relate to the disclosure provision or provisions; and

- (ii) the person is affected by the disclosure provision or provisions; and
 - (iii) in the applicant's opinion, the person may be of assistance to the Secretary in determining the application; and
 - (iv) the person provides his or her consent to having his or her personal details included in the application;
- (na) if a person mentioned in paragraph (n) is a corporation:
- (i) the corporation's ABN; or
 - (ii) if the corporation does not have an ABN—its ACN; or
 - (iii) if the corporation does not have an ABN or ACN—its ARBN;
- (o) if information about a person is provided under paragraph (n) or (na)—that the person consents to the information being provided;
- (p) for an application on the basis of an unsolicited offer in relation to a building or an area of a building—the information covered by subregulation (2);
- (q) for an application on the basis of a major refurbishment of a building:
- (i) an assessment by an accredited assessor, showing that the refurbishment is a major refurbishment; and
 - (ii) whether the accredited assessor has complied with subregulation 9(3A) (about disclosing any conflict of interest).
- (2) For paragraph (1)(p), this subregulation covers the following information:
- (a) evidence, in the form of a written statement by the offer recipient, verifying that the offer was an unsolicited offer;
 - (b) evidence, in the form of a written statement by the offer maker, verifying that the offer maker consents to waive the right, for the period during which the exemption is in force, to be given a current building energy efficiency certificate for the building or the area.
- Note 1: See section 12 of the Act.
- Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for giving false or misleading information or documents.
- (3) For paragraph 17(2)(c) of the Act, a fee of \$350 is prescribed in relation to an application other than an application on the basis of an unsolicited offer.

5A Exemptions from disclosure provisions—unsolicited offers

Unsolicited offer

- (1) An **unsolicited offer** is made to an owner or a lessee of a building or an area of a building (the **offer recipient**) in relation to a building or an area of a building if:
- (a) a person starts negotiations with the offer recipient with a view to making an offer to enter into a contract under which a contingent obligation or right to purchase, lease or sublease the building or the area of the building would be created; and
 - (b) as a result of the negotiations, an offer mentioned in paragraph (a) is made by one of the following persons (the **offer maker**):
 - (i) the person who started the negotiations;

Regulation 5A

- (ii) a representative of that person;
- (iii) an entity set up in order to make the offer; and
- (c) the offer is the only offer to result from the negotiations; and
- (d) during the 6 months before the offer is made, the offer recipient has not:
 - (i) made any offer to sell, let or sublet the building or the area; or
 - (ii) invited any offer to purchase, lease or sublease the building or the area; or
 - (iii) advertised the building or the area for sale, lease or sublease.

Note: For offering to sell, let or sublet a building or an area, or inviting an offer to purchase, lease or sublease a building or an area, see sections 4 and 5 of the Act.

Grant of exemption

- (2) For paragraph 17(3)(c) of the Act, the circumstances are that the Secretary is satisfied that:
 - (a) an unsolicited offer has been made in relation to a building or an area of a building; and
 - (b) the exemption would facilitate further negotiations between the offer maker and the offer recipient; and
 - (c) during the 6 months before the application for the exemption is made, the offer recipient has not been granted an exemption on the basis of an unsolicited offer in relation to the building or the area to which the application relates.

Period for which exemption is in force

- (3) An exemption on the basis of an unsolicited offer in relation to a building or an area of a building is in force from the day the exemption is granted until the earliest of the following times:
 - (a) the end of the period of no more than 12 months that is specified by the Secretary in the exemption;
 - (b) the entry of the offer recipient and the offer maker into the contract to which the unsolicited offer relates;
 - (c) the termination of the negotiations to which the exemption relates without the entry into the contract;
 - (d) the start of negotiations to purchase, lease or sublease the building or the area between the offer recipient and someone other than the offer maker;
 - (e) immediately before the building or the area is advertised for sale, lease or sublease.

Extension of exemption

- (4) The Secretary may extend an exemption on the basis of an unsolicited offer for a further 12 months if the offer recipient gives the Secretary a written statement verifying that the negotiations to which the exemption relates are continuing.

5B Exemptions from disclosure provisions—major refurbishments*Major refurbishment*

- (1) A **major refurbishment**, in relation to a building, is a refurbishment of the building that, according to an assessment by an accredited assessor, will alter the base building rating of the building by at least half a star.
- (2) The assessment must be based on the rules contained in the document titled *NABERS Energy and Water for offices: Rules for collecting and using data*, version 3.0, dated February 2013 and published by the NSW Environment Agency.

Note: *NABERS Energy and Water for offices: Rules for collecting and using data* could in 2015 be viewed on the NABERS website (<http://www.nabers.gov.au>).

Grant of exemption

- (3) For paragraph 17(3)(c) of the Act, the circumstances are that the Secretary is satisfied that:
 - (a) if the application for an exemption relates to a building—a major refurbishment of the building is underway; or
 - (b) if the application relates to an area of a building—a major refurbishment of the building in which the area is located is underway.

Period for which exemption is in force

- (4) An exemption on the basis of a major refurbishment is in force for 12 months from the day the exemption is granted.

Part 4—Assessors

7 Accreditation of assessors—applications

- (1) For paragraph 24 (2) (b) of the Act, an application must include:
 - (a) the applicant's name, date of birth, contact telephone number and the address of the applicant's place of business; and
 - (b) if the applicant has a registration number that has been issued by the NSW Environment Agency on successful completion of the training mentioned in regulation 8—that registration number; and
 - (c) if the applicant is employed—the employer's name, details of the position held by the applicant, and the address of the employer's place of business; and
 - (d) if the applicant is employed and the employer is a corporation:
 - (i) the corporation's ABN; or
 - (ii) if the corporation does not have an ABN—its ACN; or
 - (iii) if the corporation does not have an ABN or ACN—its ARBN; and
 - (e) details of indemnity certificates or any other documents evidencing any professional or public liability insurance that the applicant holds; and
 - (f) details of documents showing the applicant has successfully completed the training mentioned in regulation 8; and
 - (g) details of whether the applicant has been convicted of an offence mentioned in subsection 25 (1) of the Act.
- (2) For paragraph 24 (2) (c) of the Act, the prescribed fee is \$350.

8 Accreditation of assessors—training

- (1) For paragraph 25(1)(e) of the Act, this regulation prescribes training for assessors.
- (2) The training may be provided by:
 - (a) the Department; or
 - (b) the NSW Environment Agency; or
 - (c) another provider approved by the Secretary under subregulation (4).
- (3) The training must consist of modules on:
 - (a) the responsibilities of an accredited assessor under the Act, these Regulations and other legislative instruments under the Act; and
 - (b) performing lighting energy efficiency assessments.
- (4) For paragraph (2)(c), the Secretary may approve a provider of training for assessors.
- (5) An approval under subregulation (4) is not a legislative instrument.

9 Conditions of accreditation

- (1) For subsection 27 (1) of the Act, this regulation prescribes conditions that are imposed on the accreditation of all assessors.
- (2) An assessor must:
 - (a) be covered by professional indemnity insurance that is adequate to cover claims arising out of assessments the assessor carries out under the Act; and
 - (b) be covered by public liability insurance of at least \$10 million in relation to his or her functions as an accredited assessor.
- (3) An assessor must, at the time the assessor applies to an issuing authority for a building energy efficiency certificate, disclose in writing to the authority any material interest the assessor has in the issue of the certificate if that interest could conflict with the proper performance of his or her functions as an accredited assessor.
- (3A) An assessor must, when providing an assessment in relation to an application for an exemption under section 17 of the Act, disclose in writing to the Secretary any material interest the assessor has in the issue of the application if that interest could conflict with the proper performance of his or her functions as an accredited assessor.
- (4) Subregulations (3) and (3A) apply to interests:
 - (a) whether or not pecuniary; and
 - (b) whether acquired before or after the assessor's accreditation.
- (5) An assessor must identify himself or herself to an owner, lessee or sublessee of a building or an area of a building before accessing the building, the area or an area associated with the building:
 - (a) under subsection 18 (4) of the Act; or
 - (b) for the purpose of performing any other function under the Act or these Regulations.
- (6) For subregulation (5), the assessor must identify himself or herself by providing the registration number assigned to the assessor under subsection 31 (2) of the Act.
- (7) An assessor must complete any further professional development requested in writing by the Secretary.
- (8) An assessor must be:
 - (a) registered as a NABERS accredited assessor in relation to the energy efficiency of offices by the NSW Environment Agency; or
 - (b) appointed as a NABERS auditor by the NSW Environment Agency.

Part 5—Identity cards

10 Identity cards

For paragraph 35 (2) (a) of the Act, an identity card issued to an auditor must be in a form that contains the following:

- (a) the full name of the auditor;
- (b) the signature of the auditor;
- (c) a unique card number;
- (d) the date the card was issued;
- (e) a statement that the person to whom the card is issued is appointed as an auditor by the Secretary under section 34 of the Act;
- (f) a statement that the person to whom the card is issued is:
 - (i) an APS employee; or
 - (ii) a member of the civil or public service of a State or Territory; or
 - (iii) a person engaged by the Commonwealth as an auditor under contract or otherwise.

Note 1: Paragraph 35 (2) (b) of the Act provides that an identity card issued to an auditor must contain a recent photograph of the auditor.

Note 2: Subsection 34 (1) of the Act provides for who the Secretary may appoint as an auditor.

Part 6—Indexation of fees

11 Indexation of fees

- (1) In this regulation:

CPI number means the All Groups Consumer Price Index number (that is, the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

earlier CPI number, for a financial year, means the CPI number for the last March quarter before the beginning of the financial year.

latest CPI number, for a financial year, means the CPI number for the last March quarter before the end of the financial year.

relevant financial year means a financial year beginning after 30 June 2011.

- (2) If, in a relevant financial year, the latest CPI number is greater than the earlier CPI number, a fee under these Regulations is taken to increase, on 1 July of the next financial year, in accordance with the following formula:

$$\frac{\text{fee} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

- (3) If a fee increased under subregulation (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, the amount is to be rounded down.

Part 8—Transitional provisions

18 Amendments made by the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015*

- (1) The amendments of these Regulations made by Schedule 1 to the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015* apply in relation to the following applications:
 - (a) an application for an exemption from a disclosure provision or provisions made on or after the commencement of that Schedule;
 - (b) an application to become an accredited assessor, whether the application was made before, on or after the commencement of that Schedule.
- (2) The amendments of these Regulations made by Schedule 1 to the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015* apply in relation to a person who is an accredited assessor, whether the person's accreditation as an assessor occurred before, on or after the commencement of that Schedule.

Note: Schedule 1 to the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015* commences on 1 July 2015.

19 Amendments made by the *Regulatory Powers Legislation Amendment (Standardisation Reform) Regulations 2018*

Part 7 of this instrument, as in force immediately before the commencement of this regulation, continues to apply on and after that commencement in relation to alleged contraventions of civil penalty provisions occurring before the commencement of Schedule 3 to the *Regulatory Powers (Standardisation Reform) Act 2017*.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

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ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
203, 2010	13 July 2010 (F2010L01955)	1 July 2010 (r 2)	
104, 2015	29 June 2015 (F2015L00965)	1 July 2015 (s 2(1) item 1)	—

Name	Registration	Commencement	Application, saving and transitional provisions
Regulatory Powers Legislation Amendment (Standardisation Reform) Regulations 2018	12 June 2018 (F2018L00754)	Sch 2: 6 Nov 2018 (s 2(1) item 3)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 2	rep LA s 48D
r 3	am No 104, 2015
Part 2	rep No 104, 2015
r 4	rep No 104, 2015
Part 3	
r 5	am No 104, 2015
r 5A	ad No 104, 2015
r 5B.....	ad No 104, 2015
r 6	rep No 104, 2015
Part 4	
r 7	am No 104, 2015
r 8	rs No 104, 2015
r 9	am No 104, 2015
Part 7	rep F2018L00754
r 12	rep F2018L00754
r 13	rep F2018L00754
r 14	rep F2018L00754
r 15	rep F2018L00754
r 16	rep F2018L00754
r 17	rep F2018L00754
Part 8	
Part 8	ad No 104, 2015
r 18	ad No 104, 2015
r 19	ad F2018L00754
