



# Building Energy Efficiency Disclosure Regulations 2010<sup>1</sup>

**Select Legislative Instrument 2010 No. 203**

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Building Energy Efficiency Disclosure Act 2010*.

Dated 8 July 2010

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

GREG COMBET  
Minister for Defence Materiel and Science for the Minister for  
Climate Change, Energy Efficiency and Water

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## Part 1 Preliminary

### 1 Name of Regulations

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

### 2 Commencement

These Regulations commence on the commencement of section 3 of the *Building Energy Efficiency Disclosure Act 2010*.

### 3 Definitions

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*.

**base building rating** has the meaning given by the NABERS Energy rating rules.

**Commercial Building Disclosure Program Module** means a course designed to provide competency in understanding and applying the provisions of the Act, these Regulations, and legislative instruments under the Act that relate to an accredited assessor's responsibilities.

**GreenPower program** means the program known as the National GreenPower Accreditation Program, which is a joint initiative of agencies of the governments of New South Wales, Victoria, Queensland, Western Australia, South Australia and the Australian Capital Territory.

**hours of occupancy**, for a building or an area of a building, has the same meaning as in the NABERS Energy rating rules.

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***NABERS Energy rating rules*** means the document *Rules for collecting and using data: NABERS Energy and Water for offices*, dated 1 July 2010 and published by the NSW Environment Department, as in force from time to time.

*Note* The document titled *Rules for collecting and using data: NABERS Energy and Water for offices* is available from the NSW Environment Department's website at <http://www.nabers.com.au>.

***National Australian Built Environment Rating System, or NABERS***, means a performance-based rating system, managed by the NSW Environment Department, that measures existing buildings' environmental performance during operation.

***net lettable area***, for a building or an area of a building, has the same meaning as in the document *Method of Measurement for Lettable Area*, dated March 1997, published by the Property Council of Australia Limited, as in force at the commencement of these Regulations.

*Note* The document titled *Method of Measurement for Lettable Area* is available from the Property Council of Australia Limited's website at <http://www.propertyoz.com.au>.

***NSW Environment Department*** means the Department of State of New South Wales that administers the *Protection of the Environment Administration Act 1991* (NSW).

***rated areas*** has the meaning given by the NABERS Energy rating rules.

***rating period*** has the meaning given by the NABERS Energy rating rules.

***whole building rating*** has the meaning given by the NABERS Energy rating rules.

*Note* Several other words and expressions used in these Regulations have the meaning they have in the Act, for example:

- accredited assessor
- building energy efficiency certificate
- energy efficiency disclosure obligation
- issuing authority
- recognised rating
- transition period.

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## Part 2                      Building energy efficiency certificates

### 4                      Information included in certificates

For subsection 13 (3) of the Act, a building energy efficiency certificate must include the following information:

- (a) the date the certificate was issued;
- (b) the date the certificate ceases to be current under subsection 13 (4) of the Act;
- (c) a unique identifying number for the certificate;
- (d) the name of the owner of the building;
- (e) if the building has a name — the building name;
- (f) the street address of the building;
- (g) if the certificate is for the building — the net lettable area of the building;
- (h) if the certificate is for an area of the building — the net lettable area of the area of the building;
- (i) the hours of occupancy for the building determined under the NABERS Energy rating rules;
- (j) whether the energy efficiency rating for the building is a base building rating or a whole building rating;
- (k) the energy consumption of the building, measured in megajoules, per year;
- (l) the greenhouse gas emissions generated by the building:
  - (i) emitted from rated areas for the rating period covered by the energy efficiency rating, measured in kg of carbon dioxide per year; and
  - (ii) not including the effect of any electricity purchased for the building or area under the GreenPower program;
- (m) if electricity has been purchased for the building, or an area of the building, under the GreenPower program — an energy efficiency rating for the building that takes into account the effect of any electricity purchased under the GreenPower program, calculated using the NABERS Energy rating rules;

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- (n) the greenhouse gas emissions generated by the building during a year, because of the energy consumed, per square metre of the building;
- (o) the name of the assessor;
- (p) the registration number of the assessor.

*Note* Subsection 13 (4) of the Act provides that a building energy efficiency certificate is current for no more than 12 months from the date of its issue.

## **Part 3 Exemptions**

### **5 Exemption from energy efficiency disclosure obligation**

- (1) For paragraph 17 (2) (b) of the Act, an application for exemption from an energy efficiency disclosure obligation 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 obligation 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, giving rise to the disclosure obligation (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 assessment of the energy efficiency of the lighting for the building, or the area of the building, that might reasonably be expected to remain if the building is sold, let or sublet;

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- (i) details of any steps taken by the applicant to comply with the disclosure obligation, including timeframes within which compliance is to be achieved;
- (j) the applicant's reasons for seeking the exemption;
- (k) if the application relates to paragraph 17 (3) (b) of the Act — a supporting statement from an accredited assessor that verifies that it is not possible, using the methods and standards determined under section 21 of the Act, to:
  - (i) assign an energy efficiency rating to the building, or the area of the building, for which an exemption is being claimed; or
  - (ii) assess the energy efficiency of lighting of the building, or the area of the building, for which an exemption is being claimed;
- (l) for an accredited assessor making a supporting statement — the assessor's name, contact telephone number, email address, registration number, and the address of the assessor's place of business;
- (m) whether the accredited assessor has complied with subregulation 9 (3) (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 obligation; and
  - (ii) the person is affected by the disclosure obligation; 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;
- (o) if the applicant includes information about a person under paragraph (n) — whether the person has given his or her consent to the information being provided.



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- (2) Subregulation (1) applies to an application for exemption from an energy efficiency disclosure obligation that is made during the transition period, but modified so that:
  - (a) each reference to “accredited assessor” is a reference to “issuing authority assessor”; and
  - (b) each reference to “energy efficiency rating” is a reference to “recognised rating”.
- (3) For paragraph 17 (2) (c) of the Act, the prescribed fee is \$350.

**6 Exemption from requirement to provide information or access**

- (1) For paragraph 18 (9) (b) of the Act, an application for an exemption from section 18 of the Act must include the following information:
  - (a) the applicant’s name, contact telephone number and postal 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) 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);
  - (d) if the applicant is claiming an exemption from a requirement relating to a building — the address of the building;
  - (e) if the applicant is claiming an exemption from a requirement relating to 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 it;
  - (f) any steps taken by the applicant to comply with section 18 of the Act, including timeframes within which compliance is to be achieved;

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- (g) the applicant's reasons for seeking the exemption;
  - (h) the name, contact telephone number and email 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 obligation; and
    - (ii) the person is affected by the disclosure obligation; 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;
  - (i) if the applicant includes information about a person under paragraph (h) — whether the person has given his or her consent to the information being provided.
- (2) For paragraph 18 (9) (c) of the Act, the prescribed fee is \$350.

## **Part 4 Assessors**

### **7 Accreditation of assessors**

- (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 Department 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 Training of assessors**

- (1) For paragraph 25 (1) (e) of the Act, the training specified in subregulation (2) is prescribed.

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- (2) For subregulation (1), the training, provided by the NSW Environment Department, is:
- (a) the course known as the Introduction to NABERS Seminar; and
  - (b) the course known as the Accredited Assessor Training Course, in relation to:
    - (i) the National Australian Built Environment Rating System for Energy Efficiency for Offices (***NABERS Energy for Offices***); and
    - (ii) the National Australian Built Environment Rating System for Tenancy Lighting Assessment for Offices; and
  - (c) the course known as the Commercial Building Disclosure Program Module.
- (3) The training must require:
- (a) a pass in the NABERS Energy for Offices theory examination of the Accredited Assessor Training Course; and
  - (b) completion of the practical training component of that course.
- (4) For the practical training component, the training must require:
- (a) a person undertaking the training to perform, under the supervision of a NABERS supervisor, one or more assessments (as required by the supervisor) of the energy efficiency of a building, or an area of a building, applying the methods and standards determined under section 21 of the Act; and
  - (b) the NABERS supervisor to certify that the person has passed one or more (as required by the supervisor) of the assessments.

*Note* Information about the Introduction to NABERS Seminar and the Accredited Assessor Training Course is available on the NABERS website at <http://www.nabers.com.au>.

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- (5) In this regulation:

*NABERS supervisor* means a person appointed by the NSW Environment Department to supervise assessments done by persons undertaking the training mentioned in subregulation (2).

**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.
- (4) Subregulation (3) applies 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.

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- (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, while accredited, must complete any further professional development that the NSW Environment Department:
- (a) develops for maintaining and updating the skills of accredited assessors; and
  - (b) requests, in writing, the assessor to complete.
- (8) An assessor must:
- (a) be registered as a NABERS Accredited Assessor by the NSW Environment Department within 2 months after the date the person is accredited under section 25 of the Act; and
  - (b) must remain registered while accredited under the Act.
- (9) In this regulation:
- NABERS Accredited Assessor*** means a person who:
- (a) has successfully completed the training mentioned in regulation 8; and
  - (b) is registered as a NABERS Accredited Assessor by the NSW Environment Department.

## **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.

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**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 7                      Infringement notices**

### **Division 1                      Contents of notice**

#### **12                      Infringement notices — contents of notice**

- (1) This regulation applies to an infringement notice for a contravention of a civil penalty provision in section 11 or 15 of the Act.
- (2) For paragraph 59 (1) (p) of the Act, the notice must state that, if the contravention continues beyond a date, or dates, specified in the notice, a fresh liability will arise even if the notice is paid.

### **Division 2                      Other provisions for infringement notices**

#### **13                      Other provisions for infringement notices**

For section 64 of the Act, this Division makes further provision in relation to infringement notices.

#### **14                      Method of service of infringement notices**

- (1) For subsection 58 (1) of the Act, an infringement notice may be given to an individual:
  - (a) personally or by post; or
  - (b) by leaving the notice:
    - (i) at the last known place of residence or business of the person; and
    - (ii) with a person, apparently over the age of 16 years, who appears to live or work at the place.
- (2) An infringement notice may be given to a corporation:
  - (a) by leaving it at, or by sending it by post to, the address of the head office, a registered office or a principal office, of the corporation; or

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- (b) by giving it, at an office mentioned in paragraph (a), to someone who is, or who the person giving the notice reasonably believes is, an officer or employee of the corporation.

**15            Infringement notices — evidentiary certificates**

- (1) The Secretary may sign a certificate that states any of the following in relation to an infringement notice served on a person:
  - (a) that the infringement notice penalty specified in the infringement notice was not paid by the person within the time specified in the notice;
  - (b) that the Secretary granted, or refused to grant, an extension of time to the person to pay the infringement notice;
  - (c) that the infringement notice was not paid by the person within the period specified in the extension;
  - (d) that the infringement notice was withdrawn under subsection 61 (1) of the Act on a day specified in the certificate.
- (2) In proceedings for the contravention of a civil penalty provision mentioned in an infringement notice, a certificate signed by the Secretary in accordance with subregulation (1) is evidence of the matters specified in the certificate.
- (3) A certificate that purports to be signed by the Secretary is taken to have been signed by the Secretary unless the contrary is proved.

**16            Payment of infringement notice penalty — cheques**

If a person pays an infringement penalty by cheque, payment is not taken to have been made until the cheque has been honoured on presentation.

**17            Payment by instalment**

The Secretary may agree, in writing, to accept payment of an infringement notice penalty by instalments.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.