



Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015

Select Legislative Instrument No. 104, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 25 June 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Ian Macfarlane
Minister for Industry and Science

OPC60275 - B

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1 Name

This is the *Building Energy Efficiency Disclosure Amendment (Unsolicited Offers and Other Measures) Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2015.	1 July 2015

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Building Energy Efficiency Disclosure Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Building Energy Efficiency Disclosure Regulations 2010

1 Regulation 3 (heading)

Repeal the heading, substitute:

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.

2 Regulation 3

Repeal the following definitions:

- (a) definition of *base building rating*;
- (b) definition of *Commercial Building Disclosure Program Module*.

3 Regulation 3

Insert:

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

4 Regulation 3

Repeal the following definitions:

- (a) definition of *GreenPower program*;
- (b) definition of *hours of occupancy*.

5 Regulation 3

Insert:

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

6 Regulation 3

Repeal the following definitions:

- (a) definition of *NABERS Energy rating rules*;
- (b) definition of *National Australian Built Environment Rating System*;
- (c) definition of *net lettable area*.

7 Regulation 3

Insert:

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.

8 Regulation 3

Repeal the following definitions:

- (a) definition of *NSW Environment Department*;
- (b) definition of *rated areas*;
- (c) definition of *rating period*.

9 Regulation 3

Insert:

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

10 Regulation 3 (definition of whole building rating)

Repeal the definition.

11 Regulation 3 (note)

Repeal the note.

12 Part 2

Repeal the Part.

13 Regulation 5 (heading)

Repeal the heading, substitute:

5 Exemptions from disclosure provisions—applications

14 Subregulation 5(1)

Omit “exemption from an energy efficiency disclosure obligation”, substitute “a building or an area of a building to be exempt from a disclosure provision or provisions”.

15 Paragraph 5(1)(e)

Omit “disclosure obligation”, substitute “disclosure provision or provisions”.

16 Paragraph 5(1)(f)

Omit “, or the area of the building, giving rise to the disclosure obligation”, substitute “or the area of the building”.

17 Paragraph 5(1)(h)

Repeal the paragraph, substitute:

- (h) whether the application relates to the lighting energy efficiency assessment for the building or the area of the building;

18 Paragraph 5(1)(i)

Omit “disclosure obligation”, substitute “disclosure provision or provisions”.

19 Paragraphs 5(1)(k) to (m)

Repeal the paragraphs, substitute:

- (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);

20 Subparagraphs 5(1)(n)(i) and (ii)

Omit “disclosure obligation”, substitute “disclosure provision or provisions”.

21 After paragraph 5(1)(n)

Insert:

- (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;

22 Paragraph 5(1)(o)

Repeal the paragraph, substitute:

- (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).

23 Subregulation 5(2)

Repeal the subregulation, substitute:

- (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.

24 Subregulation 5(3)

Repeal the subregulation, substitute:

- (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.

25 After regulation 5

Insert:

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;
 - (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

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- (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.

26 Regulation 6

Repeal the regulation.

27 Regulation 7 (heading)

Repeal the heading, substitute:

7 Accreditation of assessors—applications

28 Paragraph 7(1)(b)

Omit “Department”, substitute “Agency”.

29 Regulation 8

Repeal the regulation, substitute:

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.

30 After subregulation 9(3)

Insert:

- (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.

31 Subregulation 9(4)

Omit “Subregulation (3) applies”, substitute “Subregulations (3) and (3A) apply”.

32 Subregulations 9(7) to (9)

Repeal the subregulations, substitute:

- (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.

33 At the end of the Regulations

Add:

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.