

Exemption Application – Guidance Note

Under subsection 17(1) of the *Building Energy Efficiency Disclosure Act 2010* (BEED Act), a person who would otherwise be subject to an energy efficiency disclosure obligation under section 11, 12, or 15 of the BEED Act may apply to the Secretary for an exemption from that disclosure obligation. Broadly they include:

Section 11 states that there can be no sale, lease or sublease without a Building Energy Efficiency Certificate (BEEC)

Section 12 describes the rights of a prospective purchaser, lessee or sublessee to ask for a BEEC from a building owner or lessor prior to the transaction

Section 15 states that building owners must include energy efficiency ratings in their advertisements for buildings offered for sale, lease, or sub lease.

When can you seek an exemption?

If you are a building, owner, or lessor you can seek an exemption under section 11, 12, or 15 of the BEED Act if:




- a) the building/area is used for police or security operations
- b) the building is non-assessable
- c) a major refurbishment of the building is underway
- d) an unsolicited offer has been made, separate guidance for that type of exemption can be found [here](#).

Do I need to use the CBD application exemption form?

Yes, under subsection 17(2) of the BEED Act, application for an exemption must be submitted in the approved form, including any prescribed information, and must be accompanied by the prescribed \$415 application fee. This fee is payable whether the exemption is granted or not granted.

Who can complete the exemption application?

The exemption can be completed by:

-  a building owner, lessee or lessor who is seeking the exemption under sections 11, 12 or 15 of the BEED Act
-  a CBD Accredited Assessor may be engaged by the building owner or lessor as an agent to complete the application form, the Assessor can either use the form or submit the application through the CBD Assessor Portal, but
-  only an accredited CBD Accredited Assessor is permitted to complete an Assessor Supporting Statement, and can be commissioned to do so by nominating their details in 'Part F'.

The form includes Parts A, B, C, D, E and F. Details on how to complete the individual parts are listed on the next page.



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➤ Part A: Applicant Details

Please include your/the Applicant's name or the corporation name (if the building is owned by a corporation).

If you are applying on behalf of a corporation, you must also include the corporation's ABN, ACN, or ARBN. If the corporation name does not match the corporation's ABN, ACN or ARBN, the application may be returned.

➤ Part B: Building Details

If you are claiming an exemption for a building, please include the address of the building.

However, if you are claiming an exemption for an area of a building, please be sure to include the address of the building, and a description of the area of the building that is sufficient to identify the area.

For our purposes, details about the Net Lettable Area of the building are sufficient.

If the building has been exempted previously, please provide the date that the previous exemption was granted e.g. date of letter.

➤ Part C: Reasons for exemption

In Part C, you are required to indicate a reason for seeking an exemption.

You can seek an exemption from a disclosure obligation under the following circumstances:

- Where a **building or area of the building is used for police or security operations** and an energy efficiency rating cannot be assigned due to the security classification of the office
 - ⇒ *For example, if a police or security agency occupies a building owned by a constitutional corporation required to meet a disclosure obligation, and an assessment is not possible due to the sensitive nature of the facility, then an exemption under this class may be granted (see Section 17 of the BEED Act for more information). The applicant will have to provide written evidence that the building is being used for these purposes from the police or security operation.*
- Where the building, or area of the building is **non-assessable**
 - ⇒ *For example, a building is non-assessable if it is not possible to work out an energy efficiency rating for the building, or perform a lighting energy efficiency assessment for the building, because of the characteristics of the building. An area of a building is non-assessable if it is not possible to work out an energy efficiency rating for the building in which the area is located, or perform a lighting energy efficiency assessment for the area, because of the characteristics of the building or the area.*
- Where a **major refurbishment** of a building is underway
 - ⇒ *For example, a major refurbishment will occur if, according to a CBD Accredited Assessor, the refurbishment will alter the base building NABERS energy rating of the building by half a star.*

In addition to providing reasons for an exemption, you must also indicate which section you are seeking to be exempt from (i.e. sections 11, 12 or 15), and outline the steps you have taken to comply with the disclosure obligations.



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Steps taken by building owner/lessor to comply with the BEED Act disclosure obligations

As a building owner/lessor, you need to provide necessary evidence to satisfy the Secretary that you have made reasonable effort to comply with the energy efficiency disclosure obligation of the building as per the BEED Act. Your steps could include:

- contacting previous owners for past energy consumption bills
- previous tenancy or sale agreement as evidence for an unoccupied building
- lease/contract documents, including timeframes for future sale/lease for an unoccupied building (if available)
- engaged a CBD Accredited Assessor to undertake the assessments
- attach relevant supporting documents.

If an Assessor is engaged, the supporting documents (see the following section below) must also include detailed information about the Assessor including the Assessor's full name and CBD accreditation number.

➤ Part D: Payment Details

The application fee for an exemption of \$415 (GST free) is payable regardless of whether or not your application is successful. Payment can be made either by electronic funds transfer, credit card or cheque. If you are paying by electronic funds transfer, ensure the building address (not the building name) is in the payment description field so that the payment can be identified correctly when received. Failure to provide the correct details may result in your application being delayed or not processed. Please remember the application processing doesn't commence until the application and payment has been made.

If paying by credit card, please provide the details required on the credit card payment form. The form is available [here](#).

If you are paying by cheque, we recommend that you attach the cheque to your application form. Cheques are subject to standard banking clearance timeframes.

➤ Part E: Declaration and Signature

You will need to sign the declaration that the information you have provided in the application is true and correct. You will also need to be aware that the Department may need to copy, record, and use or disclose information in the application to ensure compliance with the BEED Act.

Exemption applications can also be audited under subsection 34(3)(a)(iii)&(iv) of the BEED Act. It is important to retain all information in relation to an exemption application for a period of 7 years.



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➤ Part F: Supporting statement by a CBD Accredited Assessor

For Building Owners/ Representatives:

This statement is to support an application for the exemption from an energy efficiency disclosure obligation under Section 17 of the *Building Energy Efficiency Disclosure Act 2010* (the BEED Act). This statement is made in accordance with section 5(1)(k)-(m) of the *Building Energy Efficiency Disclosure Regulations 2010* (the BEED Regulations).

Supporting statements must only be made by a CBD Accredited Assessor and submitted via the CBD Assessor Portal. If your exemption application requires a supporting statement then you must organise/commission a CBD Accredited Assessor – prior to CBD submission – and agree/ notify that Assessor that they will be required to complete a supporting statement. Only CBD Accredited Assessors have access to the CBD Assessor Portal. Supporting statements cannot be submitted by any other means.

CBD does not organise nor act as an intermediary between parties and CBD Accredited Assessors to make supporting statements. Failure to notify, contact and agree with a CBD Accredited Assessor to make a supporting statement prior to the exemption form submission to CBD will result in this exemption application not progressing until such arrangements have been made.

Please enter the details of the commissioned CBD Accredited Assessor. Upon receiving this exemption Application, CBD will notify the CBD Accredited Assessor – via the CBD Assessor Portal – that there is a supporting statement to make against this exemption application. When the supporting statement has been completed and submitted by the CBD Accredited Assessor, then the exemption application formally begins the processing stage.

It is important to note that the CBD system will transfer the details from exactly how they appear in this form into the Assessor Portal – CBD suggests that you check your application before submission – any inconsistencies will result in a request for this exemption form to be resubmitted to CBD.

For CBD Assessors:

An exemption application must include a supporting statement from a CBD Accredited Assessor detailing why an energy efficiency rating of the building or the area of the building cannot be undertaken for the purposes of the BEED Act.

The Assessor should inspect the building/tenancy to make a professional judgement on whether the building can be rated for the purposes of the BEED Act and provide a supporting statement which:

- Must identify whether the Assessor has complied with his or her conflict of interest obligations, and in particular, whether the Assessor has any material interest in the granting of the exemption if that interest could conflict with the proper performance of the Assessor's functions



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- Must verify and explain why the characteristics of the building/area (as applicable) mean that it is not possible, using the assessment methods and standards prescribed under section 21 of the Act, to:
 - assign an energy efficiency rating to the building
 - assess the energy efficiency of the lighting of the building, or the area of the building, for which an exemption is being claimed.
- Should set out the reasons for the assessment and include references to the applicable provisions in the assessment methods and standards (i.e. NABERS rules) described in the Building Energy Efficiency Disclosure Determination 2010
- Should include how and when the building owner may rectify the issues that are preventing the NABERS rating being finalised especially when it is a meter or data related reason
- Are to be submitted via the CBD Assessor Portal

The CBD Accredited Assessor will outline the reasons why it is not possible to assign a NABERS Energy rating against the main reasons available on the Assessor Portal being:

- Extended vacancy - either during or before the NABERS rating period, as well as following the completion of the exception period for a major refurbishment that has been finished and provided a certificate of occupancy or similar. This option doesn't require confirmation from the NABERS team to ensure it is correct
 - Please note: The 75% occupancy requirement to complete a NABERS rating, as defined in the current NABERS Rules (v3.0 section 3.6.1) **does not apply to existing buildings which have not undergone a major refurbishment.** In practice, this means that most buildings with significant vacancies can still complete a certified NABERS rating, and thus are not eligible for an exemption from disclosure requirements
- Major refurbishment still underway, where the Assessor must provide detailed information about how the extent of works being carried will impact the NABERS Energy rating for the building by half a star when completed. This option doesn't require written confirmation with the NABERS team
- Metering issues where data required to complete a NABERS Energy rating can't be collected and used due to the metering configuration or issues within the building. This option requires confirmation from the NABERS team to ensure the reason is correct and that a NABERS Energy rating can't be assigned
- Non-availability of data from the tenants or utilities requires confirmation from the Assessor that attempts were made to obtain the missing data. Requires confirmation from the NABERS team that a NABERS Energy rating can't be assigned to the building
- Any other reasons why the building can't be assigned a NABERS Energy rating (e.g. the building contains an educational facility), the Assessor will have to provide detailed information for this reason as well as confirmation from the NABERS team that a rating is not possible.

CBD Assessors should also include how and when the building owner may rectify the issues that are preventing the NABERS rating being finalised especially when it is a meter or data related reason.



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Have you answered all the questions and attached documentation?

Before submitting the form, please check that you have answered all of the questions, attached supporting statements and documentations (if relevant), included payment details and signed the declaration. You should also make a copy of the completed form for your records.

Submitting the application form

Submit the completed and signed form by email to: info@cbd.gov.au or by post to:

**Commercial Building Disclosure
Exemptions Administrator
Energy Division
Department of the Environment and Energy
PO Box 787
CANBERRA ACT 2601**

When to expect a response from the Department

The Department aims to process complete applications within 15 working days (21 calendar days) of receipt.

If an issue with the application arises, which may lead to a longer response time, the Department will advise you as soon as practicable. A decision to refuse your exemption is a reviewable decision under section 67 of the BEED Act 2010. You may apply for a review of this decision.

For information about how to apply for a review, contact the Commercial Building Disclosure team by email at info@cbd.gov.au.

Note: Building Owners and Real estate agents should not commence any advertising, or invite anyone to let or sell affected office space, prior to obtaining a BEEC or being granted an [exemption](#) by the Department. Commencing advertising or offering affected office space prior to this is a contravention of the BEED Act.

