



# **Building Energy Efficiency Disclosure Act 2010**

**No. 67, 2010 as amended**

**Compilation start date:** 24 June 2014

**Includes amendments up to:** Act No. 31, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Building Energy Efficiency Disclosure Act 2010* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions and amendments**

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

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# An Act to promote the disclosure of information about the energy efficiency of buildings, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Building Energy Efficiency Disclosure Act 2010*.

### 2 Commencement

- (1) Each provision of this Act 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 June 2010
2. Sections 3 to 72	1 July 2010.	1 July 2010

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Definitions

In this Act:

**accredited assessor** means a person who is accredited as an assessor under Division 1 of Part 3, but does not include a person whose accreditation has been suspended or revoked.

**auditing authority** means a person or body appointed as an auditing authority under section 33.

**auditor** means a person appointed as an auditor under section 34.

**building energy efficiency certificate** has the meaning given by section 13.

**civil penalty order** means an order under section 53.

**civil penalty provision** has the meaning given by section 51.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**Court** means:

- (a) the Federal Court of Australia; or
- (b) the Federal Circuit Court of Australia.

**current:**

- (a) a building energy efficiency certificate for a building or an area of a building is **current** for the period specified in subsection 13(4); and
- (b) an energy efficiency rating for a building or an area of a building is **current** as specified in subsection 16(2).

**disclosure affected area of a building** means an area that is:

- (a) used or capable of being used as an office; and
- (b) of a kind determined by the Minister under subsection 10(2) to be disclosure affected.

**disclosure affected building** means a building that is:

- (a) used or capable of being used as an office; and



(b) of a kind determined by the Minister under subsection 10(1) to be disclosure affected.

**energy efficiency disclosure obligation** means an obligation under section 11, subsection 12(6) or section 15.

**inviting an offer to lease**, in relation to a building or an area of a building, has a meaning affected by section 5.

**inviting an offer to purchase**, in relation to a building, has a meaning affected by section 4.

**inviting an offer to sublease**, in relation to a building or an area of a building, has a meaning affected by section 5.

**issuing authority** means a person or body recognised as an issuing authority under subsection 13(7).

**monitoring powers** has the meaning given by section 37.

**monitoring warrant** is a warrant issued under section 47.

**offer to let**, in relation to a building or an area of a building, has a meaning affected by section 5.

**offer to sell**, in relation to a building, has a meaning affected by section 4.

**offer to sublet**, in relation to a building or an area of a building, has a meaning affected by section 5.

**person assisting** an auditor has the meaning given by section 38.

**registered**, in relation to a building energy efficiency certificate, means registered on the Building Energy Efficiency Register.

**reviewable decision** has the meaning given by section 67.

**Secretary** means the Secretary of the Department.

**valid**:

(a) a building energy efficiency certificate for a building is **valid** in the circumstances specified in subsection 13(5); and

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- (b) a building energy efficiency certificate for an area of a building is *valid* in the circumstances specified in subsection 13(6); and
- (c) an energy efficiency rating for a building or an area of a building is *valid* as specified in subsection 16(2).

**4 Offering to sell and inviting offers to purchase a building**

*Offering to sell*

- (1) A person is taken to offer to sell a building if the person offers to enter into a contract under which a contingent obligation or right to sell the building would be created.
- (2) A person is taken to continue to offer to sell a building if the person continues to offer to enter into a contract under which a contingent obligation or right to sell the building would be created.

*Inviting offers to purchase*

- (3) A person is taken to invite an offer to purchase a building if the person invites an offer to enter into a contract under which a contingent obligation or right to purchase the building would be created.
- (4) A person is taken to continue to invite an offer to purchase a building if the person continues to invite an offer to enter into a contract under which a contingent obligation or right to purchase the building would be created.

**5 Offering to let or sublet and inviting offers to lease or sublease a building or an area of a building**

*Offering to let or sublet*

- (1) A person is taken to offer to let a building or an area of a building (a *space*) if the person offers to enter into a contract under which a contingent obligation or right to let the space would be created.

- (2) A person is taken to continue to offer to let a space if the person continues to offer to enter into a contract under which a contingent obligation or right to let the space would be created.
- (3) A person is taken to offer to sublet a space if the person offers to enter into a contract under which a contingent obligation or right to sublet the space would be created.
- (4) A person is taken to continue to offer to sublet a space if the person continues to offer to enter into a contract under which a contingent obligation or right to sublet the space would be created.

*Inviting offers to lease or sublease*

- (5) A person is taken to invite an offer to lease a space if the person invites an offer to enter into a contract under which a contingent obligation or right to lease the space would be created.
- (6) A person is taken to continue to invite an offer to lease a space if the person continues to invite an offer to enter into a contract under which a contingent obligation or right to lease the space would be created.
- (7) A person is taken to invite an offer to sublease a space if the person invites an offer to enter into a contract under which a contingent obligation or right to sublease the space would be created.
- (8) A person is taken to continue to invite an offer to sublease a space if the person continues to invite an offer to enter into a contract under which a contingent obligation or right to sublease the space would be created.

## **6 Further subleases**

To avoid doubt, where a person has taken a sublease of a disclosure affected building or a disclosure affected area of a building (a *disclosure affected space*), the person is subject to the energy efficiency disclosure obligations:

- (a) if the person offers or continues to offer to sublet the disclosure affected space—in the same way as a lessee would

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be subject to those obligations if the lessee offered or continued to offer to sublet the space; and

- (b) if the person invites offers or continues to invite offers to sublease the disclosure affected space—in the same way as a lessee would be subject to those obligations if the lessee invited or continued to invite offers to sublease the space.

**7 Relationship with State and Territory law**

This Act is not intended to displace or limit a law of a State or Territory imposing a disclosure obligation in relation to the sale, lease or sublease of a building or an area of a building, unless the law is directly inconsistent with this Act.

**8 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

**9 External Territories**

This Act extends to all the external Territories.

## **Part 2—Obligations to disclose energy efficiency information**

### **10 Buildings and areas of buildings affected by energy efficiency disclosure obligations**

- (1) The Minister may, by legislative instrument, determine that a specified kind of building is disclosure affected.
- (2) The Minister may, by legislative instrument, determine that a specified kind of area of a building is disclosure affected.

### **11 No sale, lease or sublease without a building energy efficiency certificate**

- (1) If a constitutional corporation owns a disclosure affected building, the corporation must not do any of the following unless a valid, current building energy efficiency certificate for the building is registered:
  - (a) offer, or continue to offer, to sell the building;
  - (b) invite offers, or continue to invite offers, to purchase the building;
  - (c) offer, or continue to offer, to let the building;
  - (d) invite offers, or continue to invite offers, to lease the building.

Civil penalty: 1,000 penalty units.

- (2) If a constitutional corporation leases a disclosure affected building, the corporation must not do any of the following unless a valid, current building energy efficiency certificate for the building is registered:
  - (a) offer, or continue to offer, to sublet the building;
  - (b) invite offers, or continue to invite offers, to sublease the building.

Civil penalty: 1,000 penalty units.

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- (3) If a constitutional corporation owns a building, the corporation must not do any of the following:
- (a) offer, or continue to offer, to let a disclosure affected area of the building;
  - (b) invite offers, or continue to invite offers, to lease a disclosure affected area of the building;

unless a valid, current building energy efficiency certificate for the area is registered.

Civil penalty: 1,000 penalty units.

- (4) If a constitutional corporation leases a disclosure affected area of a building, the corporation must not do any of the following unless a valid, current building energy efficiency certificate for the area is registered:

- (a) offer, or continue to offer, to sublet the area;
- (b) invite offers, or continue to invite offers, to sublease the area.

Civil penalty: 1,000 penalty units.

- (5) A constitutional corporation that contravenes a requirement of this section in relation to a continuing offer or a continuing invitation commits a separate contravention in respect of each day during which the person fails to comply with that requirement, including the day of the making of a relevant civil penalty order and any subsequent day.

- (6) Subsections (1) to (4) do not apply if:

- (a) an offer to let or sublet a building or an area of a building is made and, at the time the offer is made, a term of 12 months or less is proposed; and
- (b) at no time while the offer is continuing is a term of more than 12 months proposed.

- (7) Subsections (1) to (4) do not apply if:

- (a) an invitation to make offers to lease or sublease a building or an area of a building is made and, at the time the invitation is made, a term of 12 months or less is proposed; and
- (b) at no time while the invitation is continuing is a term of more than 12 months proposed.

- (8) In working out, for the purposes of subsections (6) and (7), whether the term proposed for a lease or sublease is a period of 12 months or less, include in the period any options to extend the lease or sublease.

## **12 Rights of a prospective purchaser, lessee or sublessee**

- (1) If:
- (a) a person (the *owner*) owns a disclosure affected building; and
  - (b) the owner offers to sell the building, or invites offers to purchase the building; and
  - (c) a constitutional corporation (the *prospective purchaser*) has an interest, in good faith, in accepting the offer or making an offer in response to the invitation;

the prospective purchaser may give notice in writing to the owner at any time while the offer or invitation continues, requiring the owner to give the prospective purchaser a valid, current building energy efficiency certificate for the building that has been registered.

- (2) If:
- (a) a person (the *owner*) owns a disclosure affected building; and
  - (b) the owner offers to let the building, or invites offers to lease the building; and
  - (c) a constitutional corporation (the *prospective lessee*) has an interest, in good faith, in accepting the offer or making an offer in response to the invitation;

the prospective lessee may give notice in writing to the owner at any time while the offer or invitation continues, requiring the owner to give the prospective lessee a copy of a valid, current building energy efficiency certificate for the building that has been registered.

- (3) If:
- (a) a person (the *lessee*) leases a disclosure affected building; and
  - (b) the lessee offers to sublet the building, or invites offers to sublease the building; and

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- (c) a constitutional corporation (the *prospective sublessee*) has an interest, in good faith, in accepting the offer or making an offer in response to the invitation;

the prospective sublessee may give notice in writing to the lessee at any time while the offer or invitation continues, requiring the lessee to give the prospective sublessee a copy of a valid, current building energy efficiency certificate for the building that has been registered.

- (4) If:

- (a) a person (the *owner*) owns a building; and
- (b) the owner offers to let a disclosure affected area of the building, or invites offers to lease such an area; and
- (c) a constitutional corporation (the *prospective lessee*) has an interest, in good faith, in accepting the offer or making an offer in response to the invitation;

the prospective lessee may give notice in writing to the owner at any time while the offer or invitation continues, requiring the owner to give the prospective lessee a copy of a valid, current building energy efficiency certificate for the area that has been registered.

- (5) If:

- (a) a person (the *lessee*) leases a disclosure affected area of a building; and
- (b) the lessee offers to sublet the area, or invites offers to sublease the area; and
- (c) a constitutional corporation (the *prospective sublessee*) has an interest, in good faith, in accepting the offer or making an offer in response to the invitation;

the prospective sublessee may give notice in writing to the lessee at any time while the offer or invitation continues, requiring the lessee to give the prospective sublessee a copy of a valid, current building energy efficiency certificate for the area that has been registered.

- (5A) Despite subsections (2) to (5), a person may not give notice in writing under any of those subsections if:



- (a) the term proposed for the lease or sublease at the time the offer or invitation is made is 12 months or less, including any options to extend the lease or sublease; and
  - (b) at no time while the offer or invitation is continuing is a term of more than 12 months proposed.
- (6) If a person is, by notice given in accordance with this section, required to give another person a copy of a valid, current building energy efficiency certificate for a building or an area of a building that has been registered, the person must do so as soon as is reasonably practicable.

Civil penalty:

- (a) for an individual—350 penalty units; and
- (b) for a body corporate—1,000 penalty units.

### **13 Building energy efficiency certificates**

- (1) A ***building energy efficiency certificate*** for a building is a certificate issued by an issuing authority and setting out:
  - (a) the energy efficiency rating for the building; and
  - (b) an assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet; and
  - (c) guidance of a kind determined by the Secretary by legislative instrument on how energy efficiency might be improved.
- (2) A ***building energy efficiency certificate*** for an area of a building is a certificate issued by an issuing authority and setting out:
  - (a) the energy efficiency rating for the building in which the area is located; and
  - (b) an assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the area is let or sublet; and
  - (c) guidance of a kind determined by the Secretary by legislative instrument on how energy efficiency might be improved.
- (3) Other information may be included in a building energy efficiency certificate if it is of a prescribed kind.

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- (4) A building energy efficiency certificate is **current** for a period of no more than 12 months specified in the certificate and beginning on the day on which the certificate is issued.
- (5) A building energy efficiency certificate for a building is **valid** if the issuing authority that issued it is satisfied, based on an application by an accredited assessor or information provided by an auditing authority, that:
  - (a) the energy efficiency rating specified in the certificate for the building is that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; and
  - (b) the assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet is that which, applying the assessment methods and standards determined under section 21, is appropriate for the building.
- (6) A building energy efficiency certificate for an area of a building is **valid** if the issuing authority that issued it is satisfied, based on an application by an accredited assessor or information provided by an auditing authority, that:
  - (a) the energy efficiency rating specified in the certificate for the building in which the area is located is that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; and
  - (b) the assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the area is let or sublet is that which, applying the assessment methods and standards determined under section 21, is appropriate for the area.
- (7) The Secretary may, by instrument in writing, recognise a person or body as an issuing authority.
- (7A) The Secretary must not recognise a person or body as an issuing authority unless the Secretary is satisfied that:
  - (a) the person or body has the competencies necessary to apply the assessment methods and standards determined under section 21 to decide whether energy efficiency ratings or

assessments of the energy efficiency of lighting are appropriate; and

- (b) the person or body has systems in place to ensure that building energy efficiency certificates are issued in good faith.
- (8) An instrument made under subsection (7) is not a legislative instrument.

#### **14 Building Energy Efficiency Register**

- (1) The Secretary is to maintain, or cause to be maintained, a register, to be known as the Building Energy Efficiency Register, in which the Secretary includes particulars of valid building energy efficiency certificates.
- (2) The Register may include particulars of both current building energy efficiency certificates and those that are no longer current.
- (3) The Secretary must delete, or cause to be deleted, the particulars of a building energy efficiency certificate from the Register if the Secretary is notified in writing by an auditing authority that:
  - (a) in the case of a building energy efficiency certificate for a building:
    - (i) the energy efficiency rating specified in the certificate for the building is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; or
    - (ii) the assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; or
  - (b) in the case of a building energy efficiency certificate for an area of a building:
    - (i) the energy efficiency rating specified in the certificate for the building in which the area is located is not that which, applying the assessment methods and standards

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- determined under section 21, is appropriate for the building; or
- (ii) the assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the area is let or sublet is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the area.
- (4) If particulars of a building energy efficiency certificate for a building are deleted from the Register, the Secretary may notify any person who the Secretary reasonably believes is currently the owner of the building, or a lessee or sublessee of the building or an area of the building, of that fact.
- (5) If particulars of a building energy efficiency certificate for an area of a building are deleted from the Register, the Secretary may notify any person who the Secretary reasonably believes is currently the lessee or sublessee of the area of that fact.
- (6) The Register must be maintained by electronic means and be made available for inspection on the internet.
- (7) The Register is not a legislative instrument.

**15 Advertisements to include energy efficiency ratings**

- (1) If a constitutional corporation owns a disclosure affected building, the corporation must not advertise or continue to advertise the building for sale or lease unless:
- (a) a valid, current energy efficiency rating for the building is included in the advertisement; and
- (b) the rating is expressed in the advertisement in a manner determined by the Secretary by legislative instrument.

Civil penalty: 1,000 penalty units.

- (2) If a constitutional corporation leases a disclosure affected building, the corporation must not advertise or continue to advertise the building for sublease unless:
- (a) a valid, current energy efficiency rating for the building is included in the advertisement; and

- (b) the rating is expressed in the advertisement in a manner determined by the Secretary by legislative instrument.

Civil penalty: 1,000 penalty units.

- (3) If a constitutional corporation owns a building, the corporation must not advertise or continue to advertise a disclosure affected area of the building for lease unless:
  - (a) a valid, current energy efficiency rating for the building is included in the advertisement; and
  - (b) the rating is expressed in the advertisement in a manner determined by the Secretary by legislative instrument.

Civil penalty: 1,000 penalty units.

- (4) If a constitutional corporation leases a disclosure affected area of a building, the corporation must not advertise or continue to advertise the area for sublease unless:
  - (a) a valid, current energy efficiency rating for the building is included in the advertisement; and
  - (b) the rating is expressed in the advertisement in a manner determined by the Secretary by legislative instrument.

Civil penalty: 1,000 penalty units.

- (5) A constitutional corporation that contravenes a requirement of this section in relation to a continuing advertisement commits a separate contravention in respect of each day during which the person fails to comply with that requirement, including the day of the making of a relevant civil penalty order and any subsequent day.
- (6) Subsections (1) to (4) do not apply if:
  - (a) a constitutional corporation advertises or continues to advertise a building or an area of a building for lease or sublease; and
  - (b) the term proposed for the lease or sublease in the advertisement is 12 months or less, including any options to extend the lease or sublease; and

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- (c) at no time while the advertisement is continuing is a term of more than 12 months proposed.

## 16 Energy efficiency ratings

- (1) The *energy efficiency rating* for a building is the energy efficiency rating specified in a building energy efficiency certificate for the building.
- (2) The energy efficiency rating for the building is *valid* and *current* if the building energy efficiency certificate for the building is valid and current.

## 17 Exemptions

### *Application for exemption*

- (1) A person who would otherwise be subject to an energy efficiency disclosure obligation may apply to the Secretary for an exemption from that obligation.
- (2) The application must:
  - (a) be in writing in a form approved by the Secretary; and
  - (b) include information of a prescribed kind; and
  - (c) be accompanied by the prescribed fee.

### *Granting an exemption*

- (3) The Secretary may grant an exemption from an energy efficiency disclosure obligation:
  - (a) if the building, or the area of the building, in relation to which the obligation would otherwise apply is used for police or security operations; or
  - (b) if, because of the characteristics of the building or the area of the building in relation to which the obligation would otherwise apply, it is not possible to assign an energy efficiency rating to the building, or assess the energy efficiency of lighting of the building or the area of the building in accordance with assessment methods and standards determined under section 21; or

- (c) in a case of any other class prescribed by the regulations.
- (4) The Secretary must give notice in writing of the Secretary's decision to the applicant.

*Varying or revoking an exemption*

- (5) The Secretary may, by notice in writing given to the person to whom an exemption under subsection (3) relates, vary or revoke the exemption. The notice is not a legislative instrument.

## **18 Information gathering**

- (1) This section applies if:
  - (a) a person asks an accredited assessor to assess a building or an area of a building for the purposes of applying for a building energy efficiency certificate for the building or area; and
  - (b) the person does so in order to satisfy an energy efficiency disclosure obligation.
- (2) The accredited assessor may by notice in writing require an owner, lessee or sublessee of the building or area to give the assessor information that is:
  - (a) necessary for the purposes of the assessment; and
  - (b) of a kind specified in the notice;if the assessor reasonably believes that the person possesses the information.
- (3) A notice given under subsection (2) must specify a period of no less than 14 days within which the information must be given to the accredited assessor.
- (4) The accredited assessor may by notice in writing require an owner, lessee or sublessee of the building or area of a building to give the assessor access to a place in or associated with the building or area if access to the place is necessary for the purposes of the assessment and the assessor reasonably believes that the person either occupies or controls access to the place.
- (5) A notice given under subsection (4) must specify the day and time on which access by the accredited assessor is required. However,

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the day and time on which access is required under the notice must be reasonable.

*Civil penalty provision*

- (6) A person to whom notice is given in accordance with this section must comply with the notice.

Civil penalty:

- (a) for an individual—200 penalty units; and
  - (b) for a body corporate—500 penalty units.
- (7) A person who contravenes subsection (6) commits a separate contravention of that subsection in respect of:
- (a) where the person fails to give information within the period specified in the notice—each day after the end of that period during which the failure continues, including a day of the making of a relevant civil penalty order and any subsequent day; and
  - (b) where the person fails to give access at a day and time on which access is required under the notice—each day after the day specified, including a day of the making of a relevant civil penalty order and any subsequent day.

*Exemption*

- (8) An owner, lessee or sublessee of a building or an area of a building may apply to the Secretary for an exemption from this section.
- (9) The application must:
- (a) be in writing in a form approved by the Secretary; and
  - (b) include information of a prescribed kind; and
  - (c) be accompanied by the prescribed fee.
- (10) The Secretary may grant an exemption from this section in relation to:
- (a) access to a building specified in the exemption; or
  - (b) access to an area of a building specified in the exemption; or
  - (c) access to an area associated with the building specified in the exemption; or



- (d) access to a building or an area of a building on a day or at a time specified in the exemption; or
  - (e) a class of information specified in the exemption.
- (11) The Secretary must give notice in writing of the Secretary's decision to the applicant.

*Varying or revoking an exemption*

- (12) The Secretary may, by notice in writing given to the person to whom an exemption under subsection (10) relates, vary or revoke the exemption. The notice is not a legislative instrument.

### **19 Offences relating to information obtained or generated in applying for a certificate**

- (1) A person commits an offence if:
- (a) the person:
    - (i) is given information in response to a notice given or purportedly given under subsection 18(2); or
    - (ii) otherwise obtains or generates information for the purposes of obtaining a building energy efficiency certificate; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any person.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if:
- (a) the information is copied, recorded, used or disclosed for the purposes of obtaining a building energy efficiency certificate; or
  - (b) the information is copied, recorded, used or disclosed in, or in connection with, an audit conducted under Part 4; or
  - (c) the information is copied, recorded, used or disclosed in circumstances in which the conduct is permitted, either expressly or by implication, under this Act; or

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- (d) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to this Act; or
- (e) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials) that relates to this Act; or
- (f) the information is copied, recorded, used or disclosed with the consent of:
  - (i) in the case of information given in response to a notice given or purportedly given under subsection 18(2)—the person who gave the information; and
  - (ii) in the case of information otherwise obtained for the purposes of obtaining a building energy efficiency certificate—the person from whom the information was obtained; and
  - (iii) in the case of information generated for the purposes of obtaining a building energy efficiency certificate—the person on whose behalf the accredited assessor made an application for the certificate; or
- (g) the information is already publicly available.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## 20 Damages for failure to properly carry out assessments

- (1) An accredited assessor who carries out an assessment of a disclosure affected building for the purposes of applying for a building energy efficiency certificate must, in doing so:
  - (a) work out the proposed energy efficiency rating for the building by applying the assessment methods and standards determined under section 21; and
  - (b) assess the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet by applying the assessment methods and standards determined under section 21; and
  - (c) comply with the assessor's conditions of accreditation.

- (2) An accredited assessor who carries out an assessment of a disclosure affected area of a building for the purposes of applying for a building energy efficiency certificate must, in doing so:
  - (a) work out the proposed energy efficiency rating for the building by applying the assessment methods and standards determined under section 21; and
  - (b) assess the energy efficiency of the lighting for the area that might reasonably be expected to remain if the area is let or sublet by applying the assessment methods and standards determined under section 21; and
  - (c) comply with the assessor's conditions of accreditation.
- (3) If one of the following persons suffers damage as a result of a failure to comply with a duty under this section, the person may recover damages for any loss suffered as a result of that failure in a Court:
  - (a) if the certificate is sought for a disclosure affected building:
    - (i) the owner of the building; and
    - (ii) if all or part of the building is let—the lessor and lessee under the lease; and
    - (iii) if all or part of the building is sublet—the sublessor and sublessee under the sublease;
  - (b) if the rating or certificate is sought for a disclosure affected area of a building:
    - (i) the owner of the building; and
    - (ii) the lessor and lessee under a lease of the area; and
    - (iii) if the area is sublet—the sublessor and sublessee under the sublease.

## **21 Methods and standards of assessment**

- (1) The Secretary may, by legislative instrument, determine:
    - (a) the assessment methods and standards to be applied in working out the energy efficiency rating for a building; and
    - (b) the assessment methods and standards to be applied in assessing the energy efficiency of lighting for a building that might reasonably be expected to remain if the building is sold, let or sublet; and
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- (c) the assessment methods and standards to be applied in assessing the energy efficiency of lighting for an area of a building that might reasonably be expected to remain if the area is let or sublet.
- (2) Without limiting subsection (1), the Secretary may determine an assessment method or standard by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force at a particular time or as in force from time to time.

**22 Application of energy efficiency disclosure obligations**

- (1) Sections 11 and 12 apply to:
  - (a) offers to sell a building; and
  - (b) invitations for offers to purchase a building; and
  - (c) offers to let a building or an area of a building; and
  - (d) invitations for offers to lease a building or an area of a building; and
  - (e) offers to sublet a building or an area of a building; and
  - (f) invitations for offers to sublease a building or an area of a building;that are made or continue to be made on or after the implementation day.
- (2) Section 15 applies to advertisements that are either first published or continue to be published on or after the implementation day.
- (3) The ***implementation day*** is a day fixed by Proclamation.
- (4) However, if the implementation day does not fall by Proclamation within a period of 6 months beginning on the day this Act commences, it falls on the day after the end of that period.

**23 Satisfying energy efficiency disclosure obligations during the transition period**

- (1) The ***transition period*** is a period of 12 months beginning on the implementation day.

- (2) A rating of the energy efficiency of a building is a ***recognised rating*** if:
- (a) the rating is issued before or during the transition period; and
  - (b) the rating is issued by a person or body that is recognised as an issuing authority at the start of the transition period.

*Energy efficiency disclosure obligations may be satisfied by a recognised rating*

- (3) A requirement under section 11 that a valid, current building energy efficiency certificate be registered for a building when a thing is done, is satisfied if a recognised rating for the building that is valid and current is registered for the building when the thing is done.
- (4) A requirement under section 11 that a valid, current building energy efficiency certificate be registered for an area of a building when a thing is done, is satisfied if a recognised rating for the building that is valid and current is registered for the building when the thing is done.
- (5) A person satisfies the requirement in subsection 12(6) to give another person a copy of a valid, current building energy efficiency certificate for a building that has been registered, if the person required to give the certificate gives the other person a copy of a valid, current recognised rating for the building that has been registered.
- (6) A person satisfies the requirement in subsection 12(6) to give another person a copy of a valid, current building energy efficiency certificate for an area of a building that has been registered, if the person required to give the certificate gives the other person a copy of a valid, current recognised rating for the building that has been registered.
- (7) A requirement under section 15 that a valid, current energy efficiency rating for a building be included in an advertisement is satisfied if a recognised rating for the building that is valid and current is included in the advertisement.

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- (8) A requirement under section 15 that a valid, current energy efficiency rating for the building in which an area occurs be included in an advertisement is satisfied if a recognised rating for the building that is valid and current is included in the advertisement.

*Valid recognised ratings*

- (9) A recognised rating for a building is **valid** if the person or body who issued it is satisfied that the rating of the energy efficiency of the building specified in the recognised rating is appropriate, based on assessment methods and standards substantially similar to those determined under paragraph 21(1)(a) as in force:
- (a) in the case of a recognised rating issued before the start of the transition period—at the start of the transition period; and
  - (b) in the case of a recognised rating issued during the transition period—at the time the rating is issued.

*Current recognised ratings*

- (10) A recognised rating is **current** from the time it is issued until the earlier of the following:
- (a) the expiry of the rating, as stated on the rating;
  - (b) the end of the transition period.

*Registered recognised ratings*

- (11) A recognised rating is **registered** if:
- (a) it is included in a register maintained by the person or body who issued it by electronic means; and
  - (b) the register is available for inspection on the internet.

**23A Information gathering during the transition period**

- (1) This section applies if a person, before or during the transition period, asks an issuing authority assessor to assess a building for the purposes of applying for a recognised rating for the building in order to satisfy an energy efficiency disclosure obligation.

- (2) An **issuing authority assessor** is a person accredited by an issuing authority to perform assessments of buildings for the purposes of applying for recognised ratings.
- (3) The issuing authority assessor has the same powers under section 18 for the purposes of the assessment as an accredited assessor would have under that section for the purposes of an assessment mentioned in that section.
- (4) Section 18 applies in relation to a notice given by an issuing authority assessor in reliance on subsection (3) of this section, and a person to whom such a notice is given, in the same way as it applies in relation to a notice given by an accredited assessor, and a person to whom such a notice is given, under section 18.
- (5) An owner, lessee or sublessee of a building or an area of a building may apply to the Secretary for an exemption from section 18, as it applies as a result of this section. The application must be in accordance with subsection 18(9).
- (6) The Secretary may grant an exemption from section 18, as it applies as a result of this section, in relation to a matter mentioned in subsection 18(10). An exemption under this subsection is taken to be granted under subsection 18(10).
- (7) Section 19 does not apply in relation to information given to an issuing authority assessor in compliance with a notice given by the assessor in reliance on subsection (3) of this section.

## Part 3—Accreditation of assessors

### Division 1—Accreditation

#### 24 Application for accreditation

- (1) A person may apply to the Secretary to become an accredited assessor.
- (2) The application must:
  - (a) be in writing in a form approved by the Secretary; and
  - (b) include information of the prescribed kind; and
  - (c) be accompanied by the prescribed fee.

#### 25 Accreditation of assessors

- (1) The Secretary must refuse to accredit a person as an assessor if:
  - (a) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information or documents in, or in connection with, an application for a building energy efficiency certificate; or
  - (b) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information in, or in connection with, an audit conducted under Part 4; or
  - (c) the Secretary is satisfied that the person has otherwise provided false or misleading information in, or in connection with, a rating of the energy efficiency of a building on which another person might rely for any purpose; or
  - (d) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information in, or in connection with, an application for accreditation or renewal of accreditation; or
  - (e) the person has not successfully completed the prescribed training.



- (2) The Secretary may refuse to accredit a person as an assessor if:
- (a) in a case where the person has previously been accredited as an assessor:
    - (i) the person has been found in proceedings for damages brought under section 20 not to have properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating or performing an assessment of the energy efficiency of lighting for a building or an area of a building; or
    - (ii) the Secretary is otherwise reasonably satisfied that the person has not properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating or performing an assessment of the energy efficiency of lighting for a building or an area of a building; or
    - (iii) the person has failed to comply with a condition of accreditation; or
  - (b) in any case:
    - (i) the Secretary is satisfied that the person needs to undertake further training before the person can properly apply the assessment methods and standards determined under section 21 and the person has not successfully completed that training; or
    - (ii) the Secretary is satisfied that the person does not have the qualifications or experience necessary to properly apply the assessment methods and standards determined under section 21; or
  - (c) the Secretary is satisfied that the person will not be able to satisfy a condition of accreditation prescribed under subsection 27(1) that is relevant to the person.
- (3) Otherwise, the Secretary must accredit the person.
- (4) The Secretary must notify the person in writing of the Secretary's decision on the application.

**26 Period of accreditation**

The Secretary may accredit a person as an assessor for a period of no less than 12 months and no more than 3 years.

**27 Conditions of accreditation**

- (1) The regulations may prescribe conditions to be imposed on the accreditation of all or a specified class of assessors.
- (2) The Secretary may impose additional conditions on the accreditation of an assessor.
- (3) Without limiting subsection (2), those conditions may include:
  - (a) a condition that the assessor is to perform one or more assessments applying the assessment methods and standards determined under section 21 under the supervision of an auditor; and
  - (b) a condition that the assessor is to undertake specified further training while accredited.
- (4) The Secretary may, at any time, vary or revoke a condition imposed under subsection (2).
- (5) The Secretary must notify a person in writing of any condition imposed under subsection (2) on the person's accreditation as an assessor, and the variation or revocation of such a condition.
- (6) A notice given under subsection (5) is not a legislative instrument.

## **Division 2—Suspension and revocation of accreditation**

### **28 Suspension of accreditation**

- (1) The Secretary may suspend the accreditation of a person as an assessor if:
  - (a) the person has been found in proceedings for damages brought under section 20 not to have properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating or performing an assessment of the energy efficiency of lighting for a building or an area of a building; or
  - (b) the Secretary is otherwise reasonably satisfied that the person has not properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating or performing an assessment of the energy efficiency of lighting for a building or an area of a building; or
  - (c) the person has failed to comply with a condition of accreditation.
- (2) The Secretary must notify a person in writing of a decision to suspend the person's accreditation

### **29 Lift of suspension**

- (1) The Secretary may lift the suspension of the accreditation of a person if the Secretary is satisfied that:
  - (a) the issues that resulted in accreditation being suspended have been addressed; and
  - (b) any other action necessary to ensure the person will properly apply the assessment methods and standards determined under section 21 and comply with the conditions of accreditation has been or will be taken.

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- (2) If the accreditation of a person expires before a suspension of that accreditation is lifted, the Secretary may waive all or a specified part of:
  - (a) the requirement under paragraph 24(2)(b) to produce information on the application by the person for accreditation; and
  - (b) the requirement under paragraph 24(2)(c) to pay a fee on the application by the person for accreditation.
- (3) The Secretary must notify a person in writing of:
  - (a) a decision to lift the suspension of the person's accreditation; and
  - (b) a decision to waive all or part of a requirement under paragraph 24(2)(b) or (c).

**30 Revocation of accreditation**

- (1) The Secretary must revoke the accreditation of a person as an assessor if:
    - (a) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information or documents in, or in connection with, an application for a building energy efficiency certificate; or
    - (b) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information in, or in connection with, an audit conducted under Part 4; or
    - (c) the Secretary is satisfied that the person has otherwise provided false or misleading information in, or in connection with, a rating of the energy efficiency of a building on which another person might rely for any purpose; or
    - (d) the person has been convicted of an offence against Division 137 of the *Criminal Code* for the provision of false or misleading information in, or in connection with, an application for accreditation or renewal of accreditation.
  - (2) The Secretary may revoke the accreditation of a person as an assessor in the following circumstances:
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- (a) the person has been found in proceedings for damages brought under section 20 not to have properly applied the assessment methods and standards determined under section 21 for the purposes of working out an energy efficiency rating or an assessment of the energy efficiency of lighting for a building or an area of a building;
  - (b) the Secretary is otherwise reasonably satisfied that the person has not properly applied the assessment methods and standards determined under section 21 for the purposes of working out an energy efficiency rating or an assessment of the energy efficiency of lighting for a building or an area of a building;
  - (c) the person has failed to comply with a condition of the person's accreditation.
- (3) The Secretary must notify a person in writing of a decision to revoke the person's accreditation.

## **Division 3—General provisions relating to accreditation**

### **31 Register of Accredited Assessors**

- (1) The Secretary must maintain, or cause to be maintained, a register, to be known as the Register of Accredited Assessors.
- (2) The Register is to contain:
  - (a) the name of each accredited assessor; and
  - (b) the registration number for each accredited assessor; and
  - (c) any other information that the Secretary considers relevant in assisting a person in engaging an accredited assessor to conduct an assessment of a building or an area for the purposes of applying for a building energy efficiency certificate.
- (3) The Register must be maintained by electronic means and be available for inspection on the internet.
- (4) The Register is not a legislative instrument.

### **32 Offence—holding out to be an accredited assessor**

A person commits an offence if:

- (a) the person (the *defendant*) makes a statement (whether orally, in a document or in any other way); and
- (b) the statement might reasonably lead another person to believe that, at a particular time, the defendant is or was an accredited assessor; and
- (c) at that time, the defendant is not or was not an accredited assessor.

Penalty: 60 penalty units.

## **Part 4—Auditing accredited assessors**

### **Division 1—Appointment of auditing authority and auditors**

#### **33 Auditing authority**

- (1) The Secretary may, by written instrument, appoint a person or body as an auditing authority.
- (2) The function of an auditing authority is to direct auditors in performing their work to ensure that:
  - (a) accredited assessors properly apply the assessment methods and standards determined under section 21 in carrying out assessments for the purposes of applying for building energy efficiency certificates; and
  - (b) the assessments are not influenced by any conflict of interest.
- (3) An auditing authority must perform its functions in accordance with any policies notified to the auditing authority in writing by the Secretary.
- (4) An auditing authority must notify the Secretary in writing as soon as is reasonably practicable if it becomes apparent as a result of an audit of an assessment carried out by an accredited assessor that:
  - (a) in relation to a building for which a building energy efficiency certificate is current:
    - (i) the energy efficiency rating specified in the certificate for the building is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; or
    - (ii) the assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; and

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- (b) in relation to an area of a building for which a building energy efficiency certificate is current:
  - (i) the energy efficiency rating specified in the certificate for the building in which the area is located is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the building; or
  - (ii) the assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the building is let or sublet is not that which, applying the assessment methods and standards determined under section 21, is appropriate for the area.
- (5) A policy made under subsection (3) is not a legislative instrument.

**34 Auditors**

- (1) The Secretary may, by written instrument, appoint any of the following persons as an auditor:
  - (a) an APS employee;
  - (b) a member of the civil or public service of a State or Territory;
  - (c) a person engaged by the Commonwealth as an auditor under contract or otherwise.
- (2) The Secretary may only appoint a person as an auditor if the Secretary is satisfied that the person has the skills and experience necessary to perform the functions described in subsection (3).
- (3) The functions of an auditor are to:
  - (a) conduct audits of:
    - (i) assessments carried out by accredited assessors for the purposes of applying for building energy efficiency certificates; and
    - (ii) the documentation and record keeping of accredited assessors in relation to those assessments; and
  - (b) supervise such assessments to ensure that:
    - (i) the assessment methods and standards determined under section 21 are properly applied; and
    - (ii) assessments are properly documented; and



- (iii) records of assessments are properly kept.
- (4) An auditor must perform his or her functions in accordance with any directions given by an auditing authority.
- (5) If a direction is given in writing, the direction is not a legislative instrument.

### **35 Identity cards**

- (1) The Secretary must issue an identity card to an auditor.

#### *Form of identity card*

- (2) The identity card must:
  - (a) be in the form prescribed by the regulations; and
  - (b) contain a recent photograph of the auditor.

#### *Offence*

- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an auditor; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Defence—card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**Part 4** Auditing accredited assessors

**Division 1** Appointment of auditing authority and auditors

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*Auditor must carry card*

- (6) An auditor must carry his or her identity card at all times when exercising powers as an auditor.

## **Division 2—Powers of auditors**

### **36 Auditor may enter a building, an area of a building or an associated place by consent or under warrant**

- (1) An auditor may exercise the powers under this section for the purpose of determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating or performing an assessment of the energy efficiency of lighting for a building or an area of a building.
- (2) The auditor may:
  - (a) enter the building or area, and any place associated with the building or area (an *associated place*); and
  - (b) exercise the monitoring powers set out in section 37.
- (3) However, an auditor is not authorised to enter a building, an area or an associated place unless:
  - (a) the occupier of the building, area or associated place has consented to the entry and the auditor has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.

Note: If entry to a building, an area or an associated place is with the occupier's consent, the auditor must leave the building, area or associated place if the consent ceases to have effect: see section 40.

### **37 Monitoring powers of auditors**

- (1) The following are the *monitoring powers* that an auditor may exercise in relation to a building, an area or an associated place under section 36:
  - (a) the power to observe any activity conducted in the building, area or associated place;
  - (b) the power to inspect, or take measurements of, any thing in the building, area or associated place;

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- (c) the power to make any still or moving image or any recording of the building, area or associated place or any thing in the building, area or associated place;
- (d) the power to inspect any document in the building, area or associated place;
- (e) the power to take extracts from, or make copies of, any such document;
- (f) the power to take into the building, area or associated place such equipment and materials as the auditor requires for the purpose of exercising powers in relation to the building, area or associated place;
- (g) the powers set out in subsections (2) and (3).

*Operating electronic equipment*

- (2) The **monitoring powers** include the power to operate electronic equipment in the building, area or associated place to see whether:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is in the building, area or associated place; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21.
- (3) The **monitoring powers** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
  - (a) the power to operate electronic equipment in the building, area or associated place to put the information in documentary form and remove the documents so produced from the building, area or associated place;
  - (b) the power to operate electronic equipment in the building, area or associated place to transfer the information to a disk, tape or other storage device that:
    - (i) is brought to the building, area or associated place for the exercise of the power; or

- (ii) is in the building, area or associated place and the use of which for that purpose has been agreed in writing by the occupier of the building, area or associated place;  
and remove the disk, tape or other storage device from the building, area or associated place.
- (4) An auditor may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

### **38 Persons assisting auditors**

*Auditors may be assisted by other persons*

- (1) An auditor may, in entering a building, an area or an associated place under section 36 and in exercising monitoring powers in relation to the building, area or associated place, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the auditor.

*Powers of a person assisting the auditor*

- (2) A person assisting the auditor may:
  - (a) enter the building, area or associated place; and
  - (b) exercise monitoring powers in relation to the building, area or associated place, but only in accordance with a direction given to the person by the auditor.
- (3) A power exercised by a person assisting the auditor as mentioned in subsection (2) is taken for all purposes to have been exercised by the auditor.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

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**39 Auditor may ask questions and seek production of documents**

*Entry with consent*

- (1) If an auditor is authorised to enter a building, an area or an associated place because the occupier has consented to the entry, the auditor may ask the occupier to:
  - (a) answer any questions that are put by the auditor and that relate to determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21; and
  - (b) produce any document that is requested by the auditor and that relates to whether an accredited assessor has properly applied the assessment methods and standards determined under section 21.

*Entry under a monitoring warrant*

- (2) If an auditor is authorised to enter a building, an area or an associated place by a monitoring warrant, the auditor may require any person in the building, area or associated place to:
  - (a) answer any questions that are put by the auditor and that relate to determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21; and
  - (b) produce any document that is requested by the auditor and that relates to whether an accredited assessor has properly applied the assessment methods and standards determined under section 21.

*Offence*

- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

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- (4) An individual is not required to answer a question or produce a document if the answer or document might tend to incriminate the individual or expose the individual to a penalty.
- (5) Subsection (3) does not apply to the extent that the person is not capable of complying with the requirement.

Note: The defendant bears an evidential burden in relation to the matters in subsections (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

## **Division 3—Obligations of auditors**

### **40 Consent**

- (1) An auditor must, before obtaining the consent of an occupier of a building, an area or an associated place for the purposes of paragraph 36(3)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an auditor entered a building, an area or an associated place because of the consent of the occupier, the auditor and any person assisting the auditor must leave the building, area or associated place if the consent ceases to have effect.

### **41 Announcement before entry under warrant**

- (1) An auditor must, before entering a building, an area or an associated place under a monitoring warrant:
  - (a) announce that he or she is authorised to enter the building, area or associated place; and
  - (b) show his or her identity card to the occupier of the building, area or associated place, or to another person who apparently represents the occupier, if the occupier or other person is present in the building, area or associated place; and
  - (c) give any person in the building, area or associated place an opportunity to allow entry to the building, area or associated place.
- (2) However, an auditor is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to



the building, area or associated place is required to ensure that the effective execution of the warrant is not frustrated.

(3) If:

- (a) an auditor does not comply with subsection (1) because of subsection (2); and
- (b) the occupier of the building, area or associated place, or another person who apparently represents the occupier, is present in the building, area or associated place;

the auditor must, as soon as practicable after entering the building, area or associated place, show his or her identity card to the occupier or other person.

#### **42 Auditor to be in possession of warrant**

If a monitoring warrant is being executed in relation to the building, area or associated place, an auditor executing the warrant must be in possession of the warrant or a copy of the warrant.

#### **43 Details of warrant etc. to be given to occupier**

If:

- (a) a monitoring warrant is being executed in relation to a building, an area or an associated place; and
- (b) the occupier of the building, area or associated place, or another person who apparently represents the occupier, is present in the building, area or associated place;

an auditor executing the warrant must, as soon as practicable:

- (c) make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it); and
- (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 4.

#### **44 Compensation for damage to electronic equipment**

(1) This section applies if:

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- (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the building, area or associated place, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) In this section:
- damage**, in relation to data, includes damage by erasure of data or addition of other data.

## **Division 4—Occupier's rights and responsibilities**

### **45 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a monitoring warrant is being executed in relation to a building, an area or an associated place; and
  - (b) the occupier of the building, area or associated place, or another person who apparently represents the occupier, is present in the building, area or associated place;the occupier or other person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas at the same time.

### **46 Occupier to provide auditor with facilities and assistance**

- (1) The occupier of a building, an area or an associated place to which a monitoring warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an auditor executing the warrant; and
  - (b) any person assisting the auditor;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

## Division 5—Monitoring warrants

### 47 Monitoring warrants

#### *Application for warrant*

- (1) An auditor may apply to a magistrate for a warrant under this section in relation to a building, an area of a building or any place associated with a building or an area of a building (an ***associated place***).

#### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more auditors should have access to the building, area or associated place for the purpose of determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy efficiency rating for the building or performing an assessment of the energy efficiency of lighting for the building or an area of the building.
- (3) However, the magistrate must not issue the warrant unless the auditor or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the building, area or associated place to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state that the warrant is issued for the purpose of determining whether an accredited assessor has properly applied the assessment methods and standards determined under section 21 for the purposes of working out a proposed energy

- efficiency rating for the building or performing an assessment of the energy efficiency of lighting for the building or an area of the building; and
- (d) authorise one or more auditors (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the building, area or associated place; and
    - (ii) to exercise the powers set out in Division 2 in relation to the building, area or associated place; and
  - (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

## Division 6—Powers of magistrates

### 48 Powers of magistrates

*Powers conferred personally*

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

*Powers need not be accepted*

- (2) The magistrate need not accept the power conferred.

*Powers to be exercised in accordance with an agreement*

- (3) The magistrate must not exercise a power conferred by this Part unless the conferral of the power is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

*Protection and immunity*

- (4) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## **Part 5—Enforcement**

### **Division 1—Obtaining information and documents**

#### **49 Secretary may obtain information or documents**

- (1) If the Secretary reasonably believes that a person has:
  - (a) knowledge of information; or
  - (b) custody or control of documents;relating to whether a civil penalty provision has been complied with, the Secretary may give a written notice to the person requiring the person to provide the information or produce the documents to the Secretary.
- (2) The notice must specify:
  - (a) the period within which the person must comply with the notice; and
  - (b) the manner in which the person must comply with the notice.
- (3) The specified period mentioned in paragraph (2)(a) must end at least 14 days after the notice is given.

#### **50 Failure to comply with a notice**

- (1) A person commits an offence if the person fails to comply with a notice given under section 49.  
  
Penalty: 30 penalty units.
- (2) An offence under subsection (1) is an offence of strict liability.  
  
Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) An individual is not required to provide the information or produce a document if the information or document might tend to incriminate the individual or expose the individual to a penalty.
- (4) Subsection (1) does not apply to the extent that the person is not capable of complying with the notice.

**Part 5** Enforcement

**Division 1** Obtaining information and documents

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Note: The defendant bears an evidential burden in relation to the matters in subsections (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).



## **Division 2—Civil penalties**

### **51 Civil penalty provisions**

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section).

### **52 Ancillary contravention of civil penalty provisions**

- (1) A person must not:
  - (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

#### *Civil penalty*

- (2) This Act applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

### **53 Civil penalty orders**

#### *Application for order*

- (1) Within 6 years of a person contravening a civil penalty provision, the Secretary may apply, on behalf of the Commonwealth, to a Court for an order that the person pay the Commonwealth a pecuniary penalty.

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*Court may order person to pay pecuniary penalty*

- (2) If the Court is satisfied that the person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (3) An order under subsection (2) is to be known as a ***civil penalty order***.

*Determining amount of pecuniary penalty*

- (4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a Court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities.

*Maximum pecuniary penalty*

- (5) Subject to subsections (5A) to (5D), the pecuniary penalty must not exceed the relevant amount specified for the provision.
- (5A) Where:
- (a) the contravention is of a requirement under section 11 in relation to a continuing offer or a continuing invitation; and
  - (b) the contravention is in respect of one or more days that fall after the first day on which the offer or invitation is made;
- the pecuniary penalty must not exceed 100 penalty units for each day that falls after the first day.
- (5B) Where:
- (a) the contravention is of a requirement under section 15 in relation to a continuing advertisement; and

(b) the contravention is in respect of one or more days that fall after the first day on which advertising began;  
the pecuniary penalty must not exceed 100 penalty units for each day that falls after the first day.

(5C) Where:

(a) the contravention is of a requirement under section 18 in relation to giving information within a period specified in a notice; and

(b) the contravention is in respect of one or more days that fall after the end of that period;

the pecuniary penalty must not exceed 20 penalty units for an individual and 50 penalty units for a body corporate for each day that falls after the end of that period.

(5D) Where:

(a) the contravention is of a requirement under section 18 in relation to giving access to a place at a day and time specified in a notice; and

(b) the contravention is in respect of one or more days that fall after the day specified;

the pecuniary penalty must not exceed 20 penalty units for an individual and 50 penalty units for a body corporate for each day that falls after the day specified.

*Continuing and multiple contraventions*

- (6) The Court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form or are part of a series of contraventions of the same or a similar character. However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

*Conduct contravening more than one civil penalty provision*

- (7) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this section against

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a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to a pecuniary penalty under this section in respect of more than one civil penalty provision for the same conduct.

*Civil enforcement of penalty*

- (8) The pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

**54 2 or more proceedings may be heard together**

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**55 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**56 Civil evidence and procedure rules for civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**57 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

### **Division 3—Infringement notices**

#### **58 When an infringement notice can be given**

- (1) If the Secretary has reasonable grounds to believe that a person has contravened a civil penalty provision, the Secretary may give the person an infringement notice relating to the contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
  - (a) 2 or more alleged contraventions of a civil penalty provision; and
  - (b) alleged contraventions of 2 or more civil penalty provisions.

#### **59 Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day on which the notice is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name of the person who is giving the notice; and
  - (e) give brief details of the alleged contravention of the civil penalty provision, including:
    - (i) the provision of this Act that was allegedly contravened; and
    - (ii) the maximum penalty that a Court could impose for the contravention; and
    - (iii) the day on which the civil penalty provision was allegedly contravened; and
  - (f) state the penalty that is payable under the notice; and
  - (g) give an explanation of how payment of the penalty is to be made; and
  - (h) state that, if the person pays the penalty within 28 days after the day the notice is given, civil proceedings will not be

- brought against the person under this Act in respect of the conduct to which the notice relates, unless the notice is withdrawn; and
- (i) state that payment of the penalty is not an admission of liability; and
  - (j) state how the Secretary may be contacted; and
  - (k) state that the person may apply to the Secretary to have the period in which to pay the penalty extended; and
  - (l) state that the person may choose not to pay the penalty and that, if the person does so, proceedings may be brought under this Act in relation to the alleged contravention; and
  - (m) set out how the notice can be withdrawn; and
  - (n) state that if the notice is withdrawn:
    - (i) any amount of penalty paid under the notice must be refunded; and
    - (ii) civil proceedings may be brought against the person in respect of the conduct to which the notice relates; and
  - (o) state that the person may make written representations to the Secretary seeking the withdrawal of the notice; and
  - (p) set out such other matters (if any) as are specified by the regulations.
- (2) For the purposes of paragraph (1)(f), the penalty to be stated in the notice for the alleged contravention of the civil penalty provision must not exceed an amount equal to one-tenth of the maximum penalty that a Court could impose on the person for that contravention.

## **60 Extension of time to pay penalty**

- (1) A person to whom an infringement notice has been given may apply to the Secretary for an extension of the period referred to in paragraph 59(1)(h).
- (2) If the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary may do so before or after the end of that period.

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- (3) If the Secretary extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 59(1)(h) is taken to be a reference to that period so extended.
- (4) If the Secretary does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 59(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 59(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the Secretary's decision not to extend.
- (5) The Secretary may extend the period more than once under subsection (2).

**61 Withdrawal of an infringement notice**

*Representations seeking withdrawal of notice*

- (1) A person to whom an infringement notice has been given may make written representations to the Secretary seeking the withdrawal of the notice.
- (2) Evidence or information that the person, or a representative of the person, gives to the Secretary in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

*Withdrawal of notice (whether or not representations have been made)*

- (3) The Secretary may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (4) When deciding whether or not to withdraw an infringement notice, the Secretary:



- (a) must take into account any written representations seeking the withdrawal that were given by the person to the Secretary; and
  - (b) may take into account the matters set out in subsection (5).
- (5) The matters which the Secretary may take into account are the following:
- (a) whether the person has previously been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision;
  - (b) the circumstances in which the civil penalty provision specified in the notice is alleged to have been contravened;
  - (c) whether the person has previously been given an infringement notice relating to a civil penalty provision of the same type as the civil penalty provision specified in the notice and in relation to which the person paid the penalty stated in the notice;
  - (d) any other matter the Secretary considers relevant.

*Notice of withdrawal*

- (6) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that civil proceedings may be brought against the person in respect of the conduct to which the infringement notice relates.

*Refund of penalty if infringement notice withdrawn*

- (7) If:
- (a) the Secretary withdraws the infringement notice; and
  - (b) the person has already paid the penalty stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

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**62 Effect of payment of penalty**

- (1) If an infringement notice relates to a contravention of a civil penalty provision and the person to whom the notice is given pays the penalty stated in the notice before the end of the period referred to in paragraph 59(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) civil proceedings in respect of the alleged contravention may not be brought against the person; and
  - (c) the person is not regarded as having admitted liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**63 Effect of this Division**

This Division does not:

- (a) require an infringement notice to be given to a person; or
- (b) affect the liability of a person to be subject to civil proceedings for the contravention of a civil penalty provision if:
  - (i) the person does not comply with an infringement notice given to the person; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person and is subsequently withdrawn; or
- (c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who has contravened a civil penalty provision.

**64 Regulations**

The regulations may make further provision in relation to infringement notices.

## **Division 4—Other matters**

### **65 Energy Efficiency Non-disclosure Register**

- (1) The Secretary is to maintain, or cause to be maintained, a register, to be known as the Energy Efficiency Non-disclosure Register.
- (2) Where there are 2 or more instances of non-disclosure by a person in a period of 12 months, the Secretary must record the number of instances of non-disclosure by the person on the Register and the date on which each instance of non-disclosure occurred or began unless the Secretary exercises the discretion under subsection (4).
- (3) Each of the following is an *instance of non-disclosure* by a person:
  - (a) the person is given an infringement notice under Division 3;
  - (b) a Court makes a civil penalty order against the person for a contravention of section 11, subsection 12(6) or section 15.
- (4) The Secretary may withhold or delete an instance of non-disclosure from the Register if the Secretary is satisfied that the instance is not part of a continuing pattern of conduct demonstrating a disregard for the requirements of this Act in relation to the disclosure of building energy efficiency information.
- (5) The Secretary must remove, or cause to be removed, an instance of non-disclosure by a person from the Register if:
  - (a) the instance was included on the Register because the person was given an infringement notice and the notice is subsequently withdrawn; or
  - (b) the instance was included on the Register because a Court made a civil penalty order against the person and that order is overturned on appeal.
- (6) The Register must be maintained by electronic means and be made available for inspection on the internet.
- (7) The Register is not a legislative instrument.

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**66 Evidentiary certificate relating to the Building Energy Efficiency Register**

- (1) The Secretary may issue a written evidentiary certificate stating:
  - (a) whether or not a valid, current building energy efficiency certificate for a building or an area of a building was registered on a day specified; and
  - (b) the energy efficiency rating for the building or area that was specified in the certificate; and
  - (c) the assessment of the energy efficiency of lighting for the building or area that was specified in the certificate.
- (2) In any proceedings, an evidentiary certificate issued under subsection (1) is prima facie evidence of the matters stated in it.
- (3) A document purporting to be a certificate issued under subsection (1) must, unless the contrary is established, be taken to be such a certificate and to have been properly given.

## Part 6—Miscellaneous

### 67 Reviewable decisions

Each of the following decisions is a *reviewable decision*:

<b>Reviewable decisions</b>		
<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
1	To refuse to grant an exemption from an energy efficiency disclosure obligation	Subsection 17(3)
2	To revoke or vary the grant of an exemption from an energy efficiency disclosure obligation	Subsection 17(5)
3	To grant an exemption from section 18	Subsection 18(10)
4	To revoke or vary the grant of an exemption from section 18	Subsection 18(12)
5	To refuse to grant an exemption from section 18	Subsection 18(10)
6	To refuse to revoke or vary the grant of an exemption from section 18	Subsection 18(12)
7	To refuse to accredit a person as an assessor	Section 25
8	To impose additional conditions on the accreditation of an assessor	Subsection 27(2)
9	To vary or revoke a condition on the accreditation of an assessor	Subsection 27(4)
10	To suspend the accreditation of a person as an assessor	Subsection 28(1)
11	To refuse to lift the suspension of accreditation of a person as an assessor	Subsection 29(1)
12	To refuse to waive all or a specified part of the requirement under paragraph 24(2)(b) to produce information or under paragraph 24(2)(c) to pay a fee	Subsection 29(2)

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**Reviewable decisions**

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<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
13	To revoke the accreditation of a person as an assessor	Section 30

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**68 Internal review of certain decisions**

- (1) If a reviewable decision is made by a delegate of the Secretary, a person whose interests are affected by the decision may apply in writing to the Secretary for review of the decision.
- (2) An application for review of a decision must be made within:
  - (a) 28 days after the person is notified of the decision; or
  - (b) such longer period as the Secretary allows.
- (3) An application for review of a decision must:
  - (a) set out the reasons for making the application; and
  - (b) be in a form approved by the Secretary.
- (4) After receiving an application for review of a decision, the Secretary must review the decision and:
  - (a) affirm the decision under review; or
  - (b) vary the decision under review; or
  - (c) set aside the decision under review and make a decision in substitution for it.
- (5) A decision of the Secretary under subsection (4) takes effect:
  - (a) on a day, provided in the decision, that is after the decision was made; or
  - (b) if a day is not so provided—on the day on which the decision was made.

**69 Administrative review of certain decisions**

An application may be made to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a reviewable decision made by the Secretary personally;

(b) a decision of the Secretary under subsection 68(4).

**70 Protection of information obtained or generated by issuing authorities, auditors etc.**

- (1) A person commits an offence if:
- (a) the person:
    - (i) obtains or generates information in the course of making a decision whether to issue a building energy efficiency certificate; or
    - (ii) obtains or generates information in, or in connection with, an audit conducted under Part 4; or
    - (iii) obtains or generates information in the course of exercising powers or performing functions under this Act; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any person.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if:
- (a) the information is copied, recorded, used or disclosed for the purposes of issuing a building energy efficiency certificate; or
  - (b) the information is copied, recorded, used or disclosed in, or in connection with, an audit conducted under Part 4; or
  - (c) the information is copied, recorded, used or disclosed for the purposes of ensuring compliance with this Act; or
  - (d) the information is copied, recorded, used or disclosed in circumstances in which the conduct is permitted, either expressly or by implication, under this Act; or
  - (e) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to this Act; or

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- (f) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials) that relates to this Act; or
- (g) the information is copied, recorded, used or disclosed for the purposes of producing de-identified information for the purposes of research or planning; or
- (h) the information is already publicly available.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## 71 Delegations

- (1) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department any or all of the Secretary's powers or functions under this Act, other than the following:
  - (a) this power of delegation;
  - (b) the Secretary's power under paragraph 13(1)(c) (guidance on how energy efficiency might be improved);
  - (c) the Secretary's power under paragraph 13(2)(c) (guidance on how energy efficiency might be improved);
  - (d) the Secretary's power under subsection 13(7) (recognising an issuing authority);
  - (e) the Secretary's powers under section 15 (determining manner of advertisement);
  - (f) the Secretary's powers under section 21 (determining assessment methods and standards);
  - (g) the Secretary's power under subsection 33(1) (appointment of auditing authority);
  - (h) the Secretary's power under subsection 33(3) (policies for auditing authority);
  - (i) the Secretary's power under subsection 65(4) (withholding or deleting an instance of non-disclosure);
  - (j) the Secretary's power under subsection 66(1) (issue of evidentiary certificate);



- (k) the Secretary's power under subsection 68(4) (internal review of certain decisions).
- (2) The Secretary may, in writing, delegate to the issuing authority:
  - (a) the Secretary's powers under subsections 14(4) and (5); and
  - (b) any of the Secretary's powers and functions under Part 3.
- (3) In exercising powers or performing functions delegated under subsection (1) or (2), the delegate must comply with any directions of the Secretary.

## **72 Regulations**

- The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes  
Endnote 2—Abbreviation key  
Endnote 3—Legislation history  
Endnote 4—Amendment history  
Endnote 5—Uncommenced amendments  
Endnote 6—Modifications  
Endnote 7—Misdescribed amendments  
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote 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 the compiled law. The information includes commencement information for amending laws and details of 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 level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Building Energy Efficiency Disclosure Act 2010	67, 2010	28 June 2010	ss. 3–72: 1 July 2010 Remainder: Royal Assent	
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 60): 12 Apr 2013 ( <i>see s. 2(1)</i> )	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 10): 24 June 2014	—

**Endnotes**

Endnote 4—Amendment history

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**Endnote 4—Amendment history**

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s. 3 .....	am. No. 13, 2013; No 31, 2014

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**