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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Building Energy Efficiency Disclosure Bill 2010**

**No.     , 2010**

*(Climate Change, Energy Efficiency and Water)*

**A Bill for an Act to promote the disclosure of  
information about the energy efficiency of  
buildings, and for related purposes**



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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	2
3 Definitions .....	2
4 Offering to sell and inviting offers to purchase a building .....	4
5 Offering to let or sublet and inviting offers to lease or sublease a building or an area of a building .....	5
6 Further subleases .....	6
7 Relationship with State and Territory law .....	6
8 Act binds the Crown .....	6
9 External Territories .....	7
<b>Part 2—Obligations to disclose energy efficiency information</b>	8
10 Buildings and areas of buildings affected by energy efficiency disclosure obligations .....	8
11 No sale, lease or sublease without a building energy efficiency certificate .....	8
12 Rights of a prospective purchaser, lessee or sublessee .....	9
13 Building energy efficiency certificates .....	11
14 Building Energy Efficiency Register .....	13
15 Advertisements to include energy efficiency ratings .....	14
16 Energy efficiency ratings .....	16
17 Exemptions .....	16
18 Information gathering .....	17
19 Offences relating to information obtained or generated in applying for a certificate .....	19
20 Damages for failure to properly carry out assessments .....	20
21 Methods and standards of assessment .....	21
22 Application of energy efficiency disclosure obligations .....	22
23 Satisfying energy efficiency disclosure obligations during the transition period .....	22
<b>Part 3—Accreditation of assessors</b>	24
<b>Division 1—Accreditation</b>	24
24 Application for accreditation .....	24
25 Accreditation of assessors .....	24
26 Period of accreditation .....	26
27 Conditions of accreditation .....	26

---

<b>Division 2—Suspension and revocation of accreditation</b>	27
28    Suspension of accreditation .....	27
29    Lift of suspension .....	27
30    Revocation of accreditation .....	28
<b>Division 3—General provisions relating to accreditation</b>	30
31    Register of Accredited Assessors .....	30
32    Offence—holding out to be an accredited assessor .....	30
<b>Part 4—Auditing accredited assessors</b>	31
<b>Division 1—Appointment of auditing authority and auditors</b>	31
33    Auditing authority .....	31
34    Auditors .....	32
35    Identity cards .....	33
<b>Division 2—Powers of auditors</b>	35
36    Auditor may enter a building, an area of a building or an associated place by consent or under warrant .....	35
37    Monitoring powers of auditors .....	35
38    Persons assisting auditors .....	37
39    Auditor may ask questions and seek production of documents.....	38
<b>Division 3—Obligations of auditors</b>	40
40    Consent.....	40
41    Announcement before entry under warrant .....	40
42    Auditor to be in possession of warrant .....	41
43    Details of warrant etc. to be given to occupier .....	41
44    Compensation for damage to electronic equipment.....	41
<b>Division 4—Occupier’s rights and responsibilities</b>	43
45    Occupier entitled to observe execution of warrant .....	43
46    Occupier to provide auditor with facilities and assistance .....	43
<b>Division 5—Monitoring warrants</b>	44
47    Monitoring warrants .....	44
<b>Division 6—Powers of magistrates</b>	46
48    Powers of magistrates .....	46
<b>Part 5—Enforcement</b>	47
<b>Division 1—Obtaining information and documents</b>	47
49    Secretary may obtain information or documents .....	47
50    Failure to comply with a notice .....	47

---

---

<b>Division 2—Civil penalties</b>	49
51 Civil penalty provisions .....	49
52 Ancillary contravention of civil penalty provisions.....	49
53 Civil penalty orders .....	49
54 2 or more proceedings may be heard together .....	51
55 Contravening a civil penalty provision is not an offence.....	51
56 Civil evidence and procedure rules for civil penalty orders.....	51
57 Mistake of fact.....	51
<b>Division 3—Infringement notices</b>	53
58 When an infringement notice can be given.....	53
59 Matters to be included in an infringement notice.....	53
60 Extension of time to pay penalty .....	54
61 Withdrawal of an infringement notice .....	55
62 Effect of payment of penalty .....	57
63 Effect of this Division.....	57
64 Regulations.....	57
<b>Division 4—Other matters</b>	58
65 Energy Efficiency Non-disclosure Register.....	58
66 Evidentiary certificate relating to the Building Energy Efficiency Register .....	59
<b>Part 6—Miscellaneous</b>	60
67 Reviewable decisions .....	60
68 Internal review of certain decisions .....	61
69 Administrative review of certain decisions.....	61
70 Protection of information obtained or generated by issuing authorities, auditors etc.....	62
71 Delegations.....	63
72 Regulations.....	64



1     **A Bill for an Act to promote the disclosure of**  
2     **information about the energy efficiency of**  
3     **buildings, and for related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

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

1       **2 Commencement**

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

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<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.	
2. Sections 3 to 72	1 July 2010.	1 July 2010

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

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

13       **3 Definitions**

14              (1) In this Act:

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

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

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

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



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

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

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

5            ***Court*** means:

- 6            (a) the Federal Court of Australia; or  
7            (b) the Federal Magistrates Court.

8            ***current:***

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

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

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

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

- 19            (a) used or capable of being used as an office; and  
20            (b) of a kind determined by the Minister under subsection 10(1)  
21            to be disclosure affected.

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

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

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

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

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

- 1            **monitoring powers** has the meaning given by section 37.
- 2            **monitoring warrant** is a warrant issued under section 47.
- 3            **offer to let**, in relation to a building or an area of a building, has a  
4            meaning affected by section 5.
- 5            **offer to sell**, in relation to a building, has a meaning affected by  
6            section 4.
- 7            **offer to sublet**, in relation to a building or an area of a building, has  
8            a meaning affected by section 5.
- 9            **penalty unit** has the meaning given by section 4AA of the *Crimes*  
10           *Act 1914*.
- 11           **person assisting** an auditor has the meaning given by section 38.
- 12           **registered**, in relation to a building energy efficiency certificate,  
13           means registered on the Building Energy Efficiency Register.
- 14           **reviewable decision** has the meaning given by section 67.
- 15           **Secretary** means the Secretary of the Department.
- 16           **valid:**
- 17           (a) a building energy efficiency certificate for a building is **valid**  
18           in the circumstances specified in subsection 13(5); and
- 19           (b) a building energy efficiency certificate for an area of a  
20           building is **valid** in the circumstances specified in subsection  
21           13(6); and
- 22           (c) an energy efficiency rating for a building or an area of a  
23           building is **valid** as specified in subsection 16(2).

#### 24           **4 Offering to sell and inviting offers to purchase a building**

##### 25           *Offering to sell*

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

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

4 *Inviting offers to purchase*

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

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

13 **5 Offering to let or sublet and inviting offers to lease or sublease a**  
14 **building or an area of a building**

15 *Offering to let or sublet*

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

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

- 22 (3) A person is taken to offer to sublet a space if the person offers to  
23 enter into a contract under which a contingent obligation or right to  
24 sublet the space would be created.

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

28 *Inviting offers to lease or sublease*

- 29 (5) A person is taken to invite an offer to lease a space if the person  
30 invites an offer to enter into a contract under which a contingent  
31 obligation or right to lease the space would be created.

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

## 12 **6 Further subleases**

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

- 17 (a) if the person offers or continues to offer to sublet the  
18 disclosure affected space—in the same way as a lessee would  
19 be subject to those obligations if the lessee offered or  
20 continued to offer to sublet the space; and
- 21 (b) if the person invites offers or continues to invite offers to  
22 sublease the disclosure affected space—in the same way as a  
23 lessee would be subject to those obligations if the lessee  
24 invited or continued to invite offers to sublease the space.

## 25 **7 Relationship with State and Territory law**

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

## 30 **8 Act binds the Crown**

- 31 (1) This Act binds the Crown in each of its capacities.

1           (2) This Act does not make the Crown liable to a pecuniary penalty or  
2           to be prosecuted for an offence.

3           (3) The protection in subsection (2) does not apply to an authority of  
4           the Crown.

5           **9 External Territories**

6           This Act extends to all the external Territories.

1

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

4

5 **10 Buildings and areas of buildings affected by energy efficiency**  
6 **disclosure obligations**

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

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

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

13 (1) If a constitutional corporation owns a disclosure affected building,  
14 the corporation must not do any of the following unless a valid,  
15 current building energy efficiency certificate for the building is  
16 registered:

17 (a) offer, or continue to offer, to sell the building;

18 (b) invite offers, or continue to invite offers, to purchase the  
19 building;

20 (c) offer, or continue to offer, to let the building;

21 (d) invite offers, or continue to invite offers, to lease the  
22 building.

23 Civil penalty: 1,000 penalty units.

24 (2) If a constitutional corporation leases a disclosure affected building,  
25 the corporation must not do any of the following unless a valid,  
26 current building energy efficiency certificate for the building is  
27 registered:

28 (a) offer, or continue to offer, to sublet the building;

29 (b) invite offers, or continue to invite offers, to sublease the  
30 building.

- 1                    Civil penalty:            1,000 penalty units.
- 2                    (3) If a constitutional corporation owns a building, the corporation  
 3                    must not do any of the following:
- 4                        (a) offer, or continue to offer, to let a disclosure affected area of  
 5                                       the building;
- 6                        (b) invite offers, or continue to invite offers, to lease a disclosure  
 7                                       affected area of the building;
- 8                    unless a valid, current building energy efficiency certificate for the  
 9                    area is registered.
- 10                  Civil penalty:            1,000 penalty units.
- 11                  (4) If a constitutional corporation leases a disclosure affected area of a  
 12                  building, the corporation must not do any of the following unless a  
 13                  valid, current building energy efficiency certificate for the area is  
 14                  registered:
- 15                      (a) offer, or continue to offer, to sublet the area;
- 16                      (b) invite offers, or continue to invite offers, to sublease the area.
- 17                  Civil penalty:            1,000 penalty units.
- 18                  (5) A constitutional corporation that contravenes a requirement of this  
 19                  section in relation to a continuing offer or a continuing invitation  
 20                  commits a separate contravention in respect of each day during  
 21                  which the person fails to comply with that requirement, including  
 22                  the day of the making of a relevant civil penalty order and any  
 23                  subsequent day.

24                  **12 Rights of a prospective purchaser, lessee or sublessee**

- 25                  (1) If:
- 26                      (a) a person (the *owner*) owns a disclosure affected building; and
- 27                      (b) the owner offers to sell the building, or invites offers to  
 28                                     purchase the building; and
- 29                      (c) a constitutional corporation (the *prospective purchaser*) has  
 30                                     an interest, in good faith, in accepting the offer or making an  
 31                                     offer in response to the invitation;
- 32                  the prospective purchaser may give notice in writing to the owner  
 33                  at any time while the offer or invitation continues, requiring the

Section 12

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- 1 owner to give the prospective purchaser a valid, current building  
2 energy efficiency certificate for the building that has been  
3 registered.
- 4 (2) If:
- 5 (a) a person (the *owner*) owns a disclosure affected building; and  
6 (b) the owner offers to let the building, or invites offers to lease  
7 the building; and  
8 (c) a constitutional corporation (the *prospective lessee*) has an  
9 interest, in good faith, in accepting the offer or making an  
10 offer in response to the invitation;
- 11 the prospective lessee may give notice in writing to the owner at  
12 any time while the offer or invitation continues, requiring the  
13 owner to give the prospective lessee a copy of a valid, current  
14 building energy efficiency certificate for the building that has been  
15 registered.
- 16 (3) If:
- 17 (a) a person (the *lessee*) leases a disclosure affected building;  
18 and  
19 (b) the lessee offers to sublet the building, or invites offers to  
20 sublease the building; and  
21 (c) a constitutional corporation (the *prospective sublessee*) has  
22 an interest, in good faith, in accepting the offer or making an  
23 offer in response to the invitation;
- 24 the prospective sublessee may give notice in writing to the lessee at  
25 any time while the offer or invitation continues, requiring the  
26 lessee to give the prospective sublessee a copy of a valid, current  
27 building energy efficiency certificate for the building that has been  
28 registered.
- 29 (4) If:
- 30 (a) a person (the *owner*) owns a building; and  
31 (b) the owner offers to let a disclosure affected area of the  
32 building, or invites offers to lease such an area; and  
33 (c) a constitutional corporation (the *prospective lessee*) has an  
34 interest, in good faith, in accepting the offer or making an  
35 offer in response to the invitation;



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

6 (5) If:

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

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

19 (6) If a person is, by notice given in accordance with this section,  
20 required to give another person a copy of a valid, current building  
21 energy efficiency certificate for a building or an area of a building  
22 that has been registered, the person must do so as soon as is  
23 reasonably practicable.

24 Civil penalty:

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

### 27 **13 Building energy efficiency certificates**

28 (1) A *building energy efficiency certificate* for a building is a  
29 certificate issued by an issuing authority and setting out:

- 30 (a) the energy efficiency rating for the building; and  
31 (b) an assessment of the energy efficiency of the lighting for the  
32 building that might reasonably be expected to remain if the  
33 building is sold, let or sublet; and

Section 13

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- 1 (c) guidance of a kind determined by the Secretary by legislative  
2 instrument on how energy efficiency might be improved.
- 3 (2) A **building energy efficiency certificate** for an area of a building is  
4 a certificate issued by an issuing authority and setting out:
- 5 (a) the energy efficiency rating for the building in which the area  
6 is located; and
- 7 (b) an assessment of the energy efficiency of the lighting for the  
8 area that might reasonably be expected to remain if the area  
9 is let or sublet; and
- 10 (c) guidance of a kind determined by the Secretary by legislative  
11 instrument on how energy efficiency might be improved.
- 12 (3) Other information may be included in a building energy efficiency  
13 certificate if it is of a prescribed kind.
- 14 (4) A building energy efficiency certificate is **current** for a period of  
15 no more than 12 months specified in the certificate and beginning  
16 on the day on which the certificate is issued.
- 17 (5) A building energy efficiency certificate for a building is **valid** if the  
18 issuing authority that issued it is satisfied, based on an application  
19 by an accredited assessor or information provided by an auditing  
20 authority, that:
- 21 (a) the energy efficiency rating specified in the certificate for the  
22 building is that which, applying the assessment methods and  
23 standards determined under section 21, is appropriate for the  
24 building; and
- 25 (b) the assessment of the energy efficiency of the lighting for the  
26 building that might reasonably be expected to remain if the  
27 building is sold, let or sublet is that which, applying the  
28 assessment methods and standards determined under  
29 section 21, is appropriate for the building.
- 30 (6) A building energy efficiency certificate for an area of a building is  
31 **valid** if the issuing authority that issued it is satisfied, based on an  
32 application by an accredited assessor or information provided by  
33 an auditing authority, that:
- 34 (a) the energy efficiency rating specified in the certificate for the  
35 building in which the area is located is that which, applying

- 1 the assessment methods and standards determined under  
2 section 21, is appropriate for the building; and  
3 (b) the assessment of the energy efficiency of the lighting for the  
4 area that might reasonably be expected to remain if the area  
5 is let or sublet is that which, applying the assessment  
6 methods and standards determined under section 21, is  
7 appropriate for the area.
- 8 (7) The Secretary may, by instrument in writing, recognise a person or  
9 body as an issuing authority.
- 10 (8) An instrument made under subsection (7) is not a legislative  
11 instrument.

## 12 **14 Building Energy Efficiency Register**

- 13 (1) The Secretary is to maintain, or cause to be maintained, a register,  
14 to be known as the Building Energy Efficiency Register, in which  
15 the Secretary includes particulars of valid building energy  
16 efficiency certificates.
- 17 (2) The Register may include particulars of both current building  
18 energy efficiency certificates and those that are no longer current.
- 19 (3) The Secretary must delete, or cause to be deleted, the particulars of  
20 a building energy efficiency certificate from the Register if the  
21 Secretary is notified in writing by an auditing authority that:
- 22 (a) in the case of a building energy efficiency certificate for a  
23 building:
- 24 (i) the energy efficiency rating specified in the certificate  
25 for the building is not that which, applying the  
26 assessment methods and standards determined under  
27 section 21, is appropriate for the building; or
- 28 (ii) the assessment of the energy efficiency of the lighting  
29 for the building that might reasonably be expected to  
30 remain if the building is sold, let or sublet is not that  
31 which, applying the assessment methods and standards  
32 determined under section 21, is appropriate for the  
33 building; or

Section 15

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- 1 (b) in the case of a building energy efficiency certificate for an  
2 area of a building:
- 3 (i) the energy efficiency rating specified in the certificate  
4 for the building in which the area is located is not that  
5 which, applying the assessment methods and standards  
6 determined under section 21, is appropriate for the  
7 building; and
- 8 (ii) the assessment of the energy efficiency of the lighting  
9 for the area that might reasonably be expected to remain  
10 if the area is let or sublet is not that which, applying the  
11 assessment methods and standards determined under  
12 section 21, is appropriate for the area.
- 13 (4) If particulars of a building energy efficiency certificate for a  
14 building are deleted from the Register, the Secretary may notify  
15 any person who the Secretary reasonably believes is currently the  
16 owner of the building, or a lessee or sublessee of the building or an  
17 area of the building, of that fact.
- 18 (5) If particulars of a building energy efficiency certificate for an area  
19 of a building are deleted from the Register, the Secretary may  
20 notify any person who the Secretary reasonably believes is  
21 currently the lessee or sublessee of the area of that fact.
- 22 (6) The Register must be maintained by electronic means and be made  
23 available for inspection on the internet.
- 24 (7) The Register is not a legislative instrument.

25 **15 Advertisements to include energy efficiency ratings**

- 26 (1) If a constitutional corporation owns a disclosure affected building,  
27 the corporation must not advertise or continue to advertise the  
28 building for sale or lease unless:
- 29 (a) a valid, current energy efficiency rating for the building is  
30 included in the advertisement; and
- 31 (b) the rating is expressed in the advertisement in a manner  
32 determined by the Secretary by legislative instrument.
- 33 Civil penalty: 1,000 penalty units.

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

8 Civil penalty: 1,000 penalty units.

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

16 Civil penalty: 1,000 penalty units.

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

24 Civil penalty: 1,000 penalty units.

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

1       **16 Energy efficiency ratings**

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

8       **17 Exemptions**

9                   *Application for exemption*

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

17                   *Granting an exemption*

- 18                   (3) The Secretary may grant an exemption from an energy efficiency  
19                   disclosure obligation:  
20                   (a) if the building, or the area of the building, in relation to  
21                   which the obligation would otherwise apply is used for police  
22                   or security operations; or  
23                   (b) if, because of the characteristics of the building or the area of  
24                   the building in relation to which the obligation would  
25                   otherwise apply, it is not possible to assign an energy  
26                   efficiency rating to the building, or assess the energy  
27                   efficiency of lighting of the building or the area of the  
28                   building in accordance with assessment methods and  
29                   standards determined under section 21; or  
30                   (c) in a case of any other class prescribed by the regulations.

- 1 (4) The Secretary must give notice in writing of the Secretary's  
2 decision to the applicant.

3 *Varying or revoking an exemption*

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

7 **18 Information gathering**

- 8 (1) This section applies if:  
9 (a) a person asks an accredited assessor to assess a building or an  
10 area of a building for the purposes of applying for a building  
11 energy efficiency certificate for the building or area; and  
12 (b) the person does so in order to satisfy an energy efficiency  
13 disclosure obligation.
- 14 (2) The accredited assessor may by notice in writing require an owner,  
15 lessee or sublessee of the building or area to give the assessor  
16 information that is:  
17 (a) necessary for the purposes of the assessment; and  
18 (b) of a kind specified in the notice;  
19 if the assessor reasonably believes that the person possesses the  
20 information.
- 21 (3) A notice given under subsection (2) must specify a period of no  
22 less than 14 days within which the information must be given to  
23 the accredited assessor.
- 24 (4) The accredited assessor may by notice in writing require an owner,  
25 lessee or sublessee of the building or area of a building to give the  
26 assessor access to a place in or associated with the building or area  
27 if access to the place is necessary for the purposes of the  
28 assessment and the assessor reasonably believes that the person  
29 either occupies or controls access to the place.
- 30 (5) A notice given under subsection (4) must specify the day and time  
31 on which access by the accredited assessor is required. However,  
32 the day and time on which access is required under the notice must  
33 be reasonable.

Section 18

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*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.



- 1 (11) The Secretary must give notice in writing of the Secretary's  
2 decision to the applicant.

3 *Varying or revoking an exemption*

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

## 7 **19 Offences relating to information obtained or generated in** 8 **applying for a certificate**

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

20 Penalty: Imprisonment for 2 years.

- 21 (2) Subsection (1) does not apply if:  
22 (a) the information is copied, recorded, used or disclosed for the  
23 purposes of obtaining a building energy efficiency certificate;  
24 or  
25 (b) the information is copied, recorded, used or disclosed in, or  
26 in connection with, an audit conducted under Part 4; or  
27 (c) the information is copied, recorded, used or disclosed in  
28 circumstances in which the conduct is permitted, either  
29 expressly or by implication, under this Act; or  
30 (d) the information is copied, recorded, used or disclosed for the  
31 purposes of proceedings for an offence against section 137.1  
32 or 137.2 of the *Criminal Code* (false or misleading  
33 information or documents) that relates to this Act; or

Section 20

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- 1 (e) the information is copied, recorded, used or disclosed for the  
2 purposes of proceedings for an offence against section 149.1  
3 of the *Criminal Code* (obstruction of Commonwealth public  
4 officials) that relates to this Act; or  
5 (f) the information is copied, recorded, used or disclosed with  
6 the consent of:  
7 (i) in the case of information given in response to a notice  
8 given or purportedly given under subsection 18(2)—the  
9 person who gave the information; and  
10 (ii) in the case of information otherwise obtained for the  
11 purposes of obtaining a building energy efficiency  
12 certificate—the person from whom the information was  
13 obtained; and  
14 (iii) in the case of information generated for the purposes of  
15 obtaining a building energy efficiency certificate—the  
16 person on whose behalf the accredited assessor made an  
17 application for the certificate; or  
18 (g) the information is already publicly available.

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

21 **20 Damages for failure to properly carry out assessments**

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

- 1 (a) work out the proposed energy efficiency rating for the  
2 building by applying the assessment methods and standards  
3 determined under section 21; and  
4 (b) assess the energy efficiency of the lighting for the area that  
5 might reasonably be expected to remain if the area is let or  
6 sublet by applying the assessment methods and standards  
7 determined under section 21; and  
8 (c) comply with the assessor's conditions of accreditation.
- 9 (3) If one of the following persons suffers damage as a result of a  
10 failure to comply with a duty under this section, the person may  
11 recover damages for any loss suffered as a result of that failure in a  
12 Court:
- 13 (a) if the certificate is sought for a disclosure affected building:  
14 (i) the owner of the building; and  
15 (ii) if all or part of the building is let—the lessor and lessee  
16 under the lease; and  
17 (iii) if all or part of the building is sublet—the sublessor and  
18 sublessee under the sublease;
- 19 (b) if the rating or certificate is sought for a disclosure affected  
20 area of a building:  
21 (i) the owner of the building; and  
22 (ii) the lessor and lessee under a lease of the area; and  
23 (iii) if the area is sublet—the sublessor and sublessee under  
24 the sublease.

## 25 **21 Methods and standards of assessment**

- 26 (1) The Secretary may, by legislative instrument, determine:  
27 (a) the assessment methods and standards to be applied in  
28 working out the energy efficiency rating for a building; and  
29 (b) the assessment methods and standards to be applied in  
30 assessing the energy efficiency of lighting for a building that  
31 might reasonably be expected to remain if the building is  
32 sold, let or sublet; and  
33 (c) the assessment methods and standards to be applied in  
34 assessing the energy efficiency of lighting for an area of a

Section 22

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1 building that might reasonably be expected to remain if the  
2 area is let or sublet.

3 (2) Without limiting subsection (1), the Secretary may determine an  
4 assessment method or standard by applying, adopting or  
5 incorporating, with or without modification, any matter contained  
6 in any other instrument or writing as in force at a particular time or  
7 as in force from time to time.

8 **22 Application of energy efficiency disclosure obligations**

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

26 **23 Satisfying energy efficiency disclosure obligations during the**  
27 **transition period**

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

- 1 (2) During the transition period, a valid, current building energy  
2 efficiency certificate for a building, or an area of a building, is  
3 taken to be registered if:
- 4 (a) a rating of the energy efficiency of the building has been  
5 issued before the start of the transition period; and
  - 6 (b) the rating was issued by a person or body that is recognised  
7 as an issuing authority at the start of the transition period; and
  - 8 (c) the issuing authority is satisfied that the rating is appropriate  
9 for the building, based on assessment methods and standards  
10 substantially similar to those determined under section 21 as  
11 in force at the start of the transition period; and
  - 12 (d) the rating has not expired; and
  - 13 (e) the rating is included in a register maintained by the issuing  
14 authority by electronic means and available for inspection on  
15 the internet.
- 16 (3) A rating mentioned in paragraph (2)(a) is taken to expire on the  
17 expiry date stated on the rating.
- 18 (4) If a valid, current building energy certificate for a building, or an  
19 area of a building, is taken to be registered under subsection (2),  
20 the rating mentioned in paragraph (2)(a) is taken to be a valid,  
21 current energy efficiency rating for the purposes of section 15 until  
22 the rating expires.

1

## 2 Part 3—Accreditation of assessors

2

### 3 Division 1—Accreditation

3

#### 4 24 Application for accreditation

4

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

#### 11 25 Accreditation of assessors

11

- 12 (1) The Secretary must refuse to accredit a person as an assessor if:
- 13 (a) the person has been convicted of an offence against  
14 Division 137 of the *Criminal Code* for the provision of false  
15 or misleading information or documents in, or in connection  
16 with, an application for a building energy efficiency  
17 certificate; or
- 18 (b) the person has been convicted of an offence against  
19 Division 137 of the *Criminal Code* for the provision of false  
20 or misleading information in, or in connection with, an audit  
21 conducted under Part 4; or
- 22 (c) the Secretary is satisfied that the person has otherwise  
23 provided false or misleading information in, or in connection  
24 with, a rating of the energy efficiency of a building on which  
25 another person might rely for any purpose; or
- 26 (d) the person has been convicted of an offence against  
27 Division 137 of the *Criminal Code* for the provision of false  
28 or misleading information in, or in connection with, an  
29 application for accreditation or renewal of accreditation; or
- 30 (e) the person has not successfully completed the prescribed  
31 training.

31

- 1                   (2) The Secretary may refuse to accredit a person as an assessor if:  
2                   (a) in a case where the person has previously been accredited as  
3                   an assessor:  
4                   (i) the person has been found in proceedings for damages  
5                   brought under section 20 not to have properly applied  
6                   the assessment methods and standards determined under  
7                   section 21 for the purposes of working out a proposed  
8                   energy efficiency rating or performing an assessment of  
9                   the energy efficiency of lighting for a building or an  
10                  area of a building; or  
11                  (ii) the Secretary is otherwise reasonably satisfied that the  
12                  person has not properly applied the assessment methods  
13                  and standards determined under section 21 for the  
14                  purposes of working out a proposed energy efficiency  
15                  rating or performing an assessment of the energy  
16                  efficiency of lighting for a building or an area of a  
17                  building; or  
18                  (iii) the person has failed to comply with a condition of  
19                  accreditation; or  
20                  (b) in any case:  
21                  (i) the Secretary is satisfied that the person needs to  
22                  undertake further training before the person can  
23                  properly apply the assessment methods and standards  
24                  determined under section 21 and the person has not  
25                  successfully completed that training; or  
26                  (ii) the Secretary is satisfied that the person does not have  
27                  the qualifications or experience necessary to properly  
28                  apply the assessment methods and standards determined  
29                  under section 21; or  
30                  (c) the Secretary is satisfied that the person will not be able to  
31                  satisfy a condition of accreditation prescribed under  
32                  subsection 27(1) that is relevant to the person.
- 33                   (3) Otherwise, the Secretary must accredit the person.
- 34                   (4) The Secretary must notify the person in writing of the Secretary's  
35                   decision on the application.

1       **26 Period of accreditation**

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

4       **27 Conditions of accreditation**

5                       (1) The regulations may prescribe conditions to be imposed on the  
6                       accreditation of all or a specified class of assessors.

7                       (2) The Secretary may impose additional conditions on the  
8                       accreditation of an assessor.

9                       (3) Without limiting subsection (2), those conditions may include:

10                      (a) a condition that the assessor is to perform one or more  
11                      assessments applying the assessment methods and standards  
12                      determined under section 21 under the supervision of an  
13                      auditor; and

14                      (b) a condition that the assessor is to undertake specified further  
15                      training while accredited.

16                      (4) The Secretary may, at any time, vary or revoke a condition  
17                      imposed under subsection (2).

18                      (5) The Secretary must notify a person in writing of any condition  
19                      imposed under subsection (2) on the person's accreditation as an  
20                      assessor, and the variation or revocation of such a condition.

21                      (6) A notice given under subsection (5) is not a legislative instrument.



1

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

3 **28 Suspension of accreditation**

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

23 **29 Lift of suspension**

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

**Part 3** Accreditation of assessors

**Division 2** Suspension and revocation of accreditation

**Section 30**

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

14 **30 Revocation of accreditation**

- 15 (1) The Secretary must revoke the accreditation of a person as an  
16 assessor if:  
17 (a) the person has been convicted of an offence against  
18 Division 137 of the *Criminal Code* for the provision of false  
19 or misleading information or documents in, or in connection  
20 with, an application for a building energy efficiency  
21 certificate; or  
22 (b) the person has been convicted of an offence against  
23 Division 137 of the *Criminal Code* for the provision of false  
24 or misleading information in, or in connection with, an audit  
25 conducted under Part 4; or  
26 (c) the Secretary is satisfied that the person has otherwise  
27 provided false or misleading information in, or in connection  
28 with, a rating of the energy efficiency of a building on which  
29 another person might rely for any purpose; or  
30 (d) the person has been convicted of an offence against  
31 Division 137 of the *Criminal Code* for the provision of false  
32 or misleading information in, or in connection with, an  
33 application for accreditation or renewal of accreditation.
- 34 (2) The Secretary may revoke the accreditation of a person as an  
35 assessor in the following circumstances:

- 1                   (a) the person has been found in proceedings for damages  
2                   brought under section 20 not to have properly applied the  
3                   assessment methods and standards determined under  
4                   section 21 for the purposes of working out an energy  
5                   efficiency rating or an assessment of the energy efficiency of  
6                   lighting for a building or an area of a building;  
7                   (b) the Secretary is otherwise reasonably satisfied that the person  
8                   has not properly applied the assessment methods and  
9                   standards determined under section 21 for the purposes of  
10                  working out an energy efficiency rating or an assessment of  
11                  the energy efficiency of lighting for a building or an area of a  
12                  building;  
13                  (c) the person has failed to comply with a condition of the  
14                  person's accreditation.
- 15           (3) The Secretary must notify a person in writing of a decision to  
16           revoke the person's accreditation.

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

3 **31 Register of Accredited Assessors**

4 (1) The Secretary must maintain, or cause to be maintained, a register,  
5 to be known as the Register of Accredited Assessors.

6 (2) The Register is to contain:

- 7 (a) the name of each accredited assessor; and  
8 (b) the registration number for each accredited assessor; and  
9 (c) any other information that the Secretary considers relevant in  
10 assisting a person in engaging an accredited assessor to  
11 conduct an assessment of a building or an area for the  
12 purposes of applying for a building energy efficiency  
13 certificate.

14 (3) The Register must be maintained by electronic means and be  
15 available for inspection on the internet.

16 (4) The Register is not a legislative instrument.

17 **32 Offence—holding out to be an accredited assessor**

18 A person commits an offence if:

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

26 Penalty: 60 penalty units.

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2 **Part 4—Auditing accredited assessors**

3 **Division 1—Appointment of auditing authority and**  
4 **auditors**

5 **33 Auditing authority**

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

**Part 4** Auditing accredited assessors

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

**Section 34**

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

14 **34 Auditors**

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

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

6 **35 Identity cards**

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

8 *Form of identity card*

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

12 *Offence*

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

18 Penalty: 1 penalty unit.

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

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

21 *Defence—card lost or destroyed*

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

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

**Part 4** Auditing accredited assessors

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

**Section 35**

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1

*Auditor must carry card*

2

(6) An auditor must carry his or her identity card at all times when

3

exercising powers as an auditor.



1

2 **Division 2—Powers of auditors**

3 **36 Auditor may enter a building, an area of a building or an**  
4 **associated place by consent or under warrant**

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

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

24 **37 Monitoring powers of auditors**

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

**Part 4** Auditing accredited assessors

**Division 2** Powers of auditors

**Section 37**

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

13 *Operating electronic equipment*

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

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

### 10 **38 Persons assisting auditors**

11 *Auditors may be assisted by other persons*

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

17 *Powers of a person assisting the auditor*

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

1       **39 Auditor may ask questions and seek production of documents**

2                       *Entry with consent*

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

14                      *Entry under a monitoring warrant*

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

26                      *Offence*

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

31                      Penalty: 30 penalty units.

1 (4) An individual is not required to answer a question or produce a  
2 document if the answer or document might tend to incriminate the  
3 individual or expose the individual to a penalty.

4 (5) Subsection (3) does not apply to the extent that the person is not  
5 capable of complying with the requirement.

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

1

2 **Division 3—Obligations of auditors**

3 **40 Consent**

4 (1) An auditor must, before obtaining the consent of an occupier of a  
5 building, an area or an associated place for the purposes of  
6 paragraph 36(3)(a), inform the occupier that the occupier may  
7 refuse consent.

8 (2) A consent has no effect unless the consent is voluntary.

9 (3) A consent may be expressed to be limited to entry during a  
10 particular period. If so, the consent has effect for that period unless  
11 the consent is withdrawn before the end of that period.

12 (4) A consent that is not limited as mentioned in subsection (3) has  
13 effect until the consent is withdrawn.

14 (5) If an auditor entered a building, an area or an associated place  
15 because of the consent of the occupier, the auditor and any person  
16 assisting the auditor must leave the building, area or associated  
17 place if the consent ceases to have effect.

18 **41 Announcement before entry under warrant**

19 (1) An auditor must, before entering a building, an area or an  
20 associated place under a monitoring warrant:

21 (a) announce that he or she is authorised to enter the building,  
22 area or associated place; and

23 (b) show his or her identity card to the occupier of the building,  
24 area or associated place, or to another person who apparently  
25 represents the occupier, if the occupier or other person is  
26 present in the building, area or associated place; and

27 (c) give any person in the building, area or associated place an  
28 opportunity to allow entry to the building, area or associated  
29 place.

30 (2) However, an auditor is not required to comply with subsection (1)  
31 if he or she believes on reasonable grounds that immediate entry to

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

3 (3) If:

4 (a) an auditor does not comply with subsection (1) because of  
5 subsection (2); and

6 (b) the occupier of the building, area or associated place, or  
7 another person who apparently represents the occupier, is  
8 present in the building, area or associated place;

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

## 12 **42 Auditor to be in possession of warrant**

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

## 16 **43 Details of warrant etc. to be given to occupier**

17 If:

18 (a) a monitoring warrant is being executed in relation to a  
19 building, an area or an associated place; and

20 (b) the occupier of the building, area or associated place, or  
21 another person who apparently represents the occupier, is  
22 present in the building, area or associated place;

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

24 (c) make a copy of the warrant available to the occupier or other  
25 person (which need not include the signature of the  
26 magistrate who issued it); and

27 (d) inform the occupier or other person of the rights and  
28 responsibilities of the occupier or other person under  
29 Division 4.

## 30 **44 Compensation for damage to electronic equipment**

31 (1) This section applies if:

**Part 4** Auditing accredited assessors

**Division 3** Obligations of auditors

**Section 44**

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



1

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

3 **45 Occupier entitled to observe execution of warrant**

4 (1) If:

5 (a) a monitoring warrant is being executed in relation to a  
6 building, an area or an associated place; and

7 (b) the occupier of the building, area or associated place, or  
8 another person who apparently represents the occupier, is  
9 present in the building, area or associated place;

10 the occupier or other person is entitled to observe the execution of  
11 the warrant.

12 (2) The right to observe the execution of the warrant ceases if the  
13 occupier or other person impedes that execution.

14 (3) This section does not prevent the execution of the warrant in 2 or  
15 more areas at the same time.

16 **46 Occupier to provide auditor with facilities and assistance**

17 (1) The occupier of a building, an area or an associated place to which  
18 a monitoring warrant relates, or another person who apparently  
19 represents the occupier, must provide:

20 (a) an auditor executing the warrant; and

21 (b) any person assisting the auditor;

22 with all reasonable facilities and assistance for the effective  
23 exercise of their powers.

24 (2) A person commits an offence if:

25 (a) the person is subject to subsection (1); and

26 (b) the person fails to comply with that subsection.

27 Penalty: 30 penalty units.

1

2 **Division 5—Monitoring warrants**

3 **47 Monitoring warrants**

4 *Application for warrant*

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

9 *Issue of warrant*

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

24 *Content of warrant*

- 25 (4) The warrant must:  
26 (a) describe the building, area or associated place to which the  
27 warrant relates; and  
28 (b) state that the warrant is issued under this section; and  
29 (c) state that the warrant is issued for the purpose of determining  
30 whether an accredited assessor has properly applied the  
31 assessment methods and standards determined under

- 1 section 21 for the purposes of working out a proposed energy  
2 efficiency rating for the building or performing an  
3 assessment of the energy efficiency of lighting for the  
4 building or an area of the building; and  
5 (d) authorise one or more auditors (whether or not named in the  
6 warrant) from time to time while the warrant remains in  
7 force:  
8 (i) to enter the building, area or associated place; and  
9 (ii) to exercise the powers set out in Division 2 in relation to  
10 the building, area or associated place; and  
11 (e) state whether the entry is authorised to be made at any time  
12 of the day or during specified hours of the day; and  
13 (f) specify the day (not more than 6 months after the issue of the  
14 warrant) on which the warrant ceases to be in force.

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2 **Division 6—Powers of magistrates**

3 **48 Powers of magistrates**

4 *Powers conferred personally*

5 (1) A power conferred on a magistrate by this Part is conferred on the  
6 magistrate:

- 7 (a) in a personal capacity; and  
8 (b) not as a court or a member of a court.

9 *Powers need not be accepted*

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

11 *Powers to be exercised in accordance with an agreement*

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

16 *Protection and immunity*

17 (4) A magistrate exercising a power conferred by this Part has the  
18 same protection and immunity as if he or she were exercising the  
19 power:

- 20 (a) as the court of which the magistrate is a member; or  
21 (b) as a member of the court of which the magistrate is a  
22 member.

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2 **Part 5—Enforcement**

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

4 **49 Secretary may obtain information or documents**

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

18 **50 Failure to comply with a notice**

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

**Part 5** Enforcement  
**Division 1** Obtaining information and documents  
**Section 50**

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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*).

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2 **Division 2—Civil penalties**

3 **51 Civil penalty provisions**

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

8 **52 Ancillary contravention of civil penalty provisions**

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

19 *Civil penalty*

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

23 **53 Civil penalty orders**

24 *Application for order*

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

1                                    *Court may order person to pay pecuniary penalty*

2                                    (2) If the Court is satisfied that the person has contravened a civil  
3                                    penalty provision, the Court may order the person to pay the  
4                                    Commonwealth a pecuniary penalty.

5                                    (3) An order under subsection (2) is to be known as a ***civil penalty***  
6                                    ***order***.

7                                    *Determining amount of pecuniary penalty*

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

19                                    *Maximum pecuniary penalty*

20                                    (5) The pecuniary penalty must not exceed the relevant amount  
21                                    specified for the provision.

22                                    *Continuing and multiple contraventions*

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



1                                    *Conduct contravening more than one civil penalty provision*

- 2                    (7) If conduct constitutes a contravention of 2 or more civil penalty  
3                    provisions, proceedings may be instituted under this section against  
4                    a person in relation to the contravention of any one or more of  
5                    those provisions. However, the person is not liable to a pecuniary  
6                    penalty under this section in respect of more than one civil penalty  
7                    provision for the same conduct.

8                                    *Civil enforcement of penalty*

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

14                    **54 2 or more proceedings may be heard together**

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

17                    **55 Contravening a civil penalty provision is not an offence**

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

19                    **56 Civil evidence and procedure rules for civil penalty orders**

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

22                    **57 Mistake of fact**

- 23                    (1) A person is not liable to have a civil penalty order made against the  
24                    person for a contravention of a civil penalty provision if:  
25                    (a) at or before the time of the conduct constituting the  
26                    contravention, the person:  
27                    (i) considered whether or not facts existed; and  
28                    (ii) was under a mistaken but reasonable belief about those  
29                    facts; and

**Part 5** Enforcement  
**Division 2** Civil penalties  
**Section 57**

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- 1                                   (b) had those facts existed, the conduct would not have  
2                                   constituted a contravention of the civil penalty provision.
- 3                   (2) For the purposes of subsection (1), a person may be regarded as  
4                   having considered whether or not facts existed if:
- 5                                   (a) the person had considered, on a previous occasion, whether  
6                                   those facts existed in the circumstances surrounding that  
7                                   occasion; and
- 8                                   (b) the person honestly and reasonably believed that the  
9                                   circumstances surrounding the present occasion were the  
10                                  same, or substantially the same, as those surrounding the  
11                                  previous occasion.
- 12                   (3) A person who wishes to rely on subsection (1) or (2) in  
13                   proceedings for a civil penalty order bears an evidential burden in  
14                   relation to that matter.

1

2 **Division 3—Infringement notices**

3 **58 When an infringement notice can be given**

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

14 **59 Matters to be included in an infringement notice**

- 15 (1) An infringement notice must:
- 16 (a) be identified by a unique number; and  
17 (b) state the day on which the notice is given; and  
18 (c) state the name of the person to whom the notice is given; and  
19 (d) state the name of the person who is giving the notice; and  
20 (e) give brief details of the alleged contravention of the civil  
21 penalty provision, including:
- 22 (i) the provision of this Act that was allegedly contravened;  
23 and  
24 (ii) the maximum penalty that a Court could impose for the  
25 contravention; and  
26 (iii) the day on which the civil penalty provision was  
27 allegedly contravened; and  
28 (f) state the penalty that is payable under the notice; and  
29 (g) give an explanation of how payment of the penalty is to be  
30 made; and

- 1 (h) state that, if the person pays the penalty within 28 days after  
2 the day the notice is given, civil proceedings will not be  
3 brought against the person under this Act in respect of the  
4 conduct to which the notice relates, unless the notice is  
5 withdrawn; and  
6 (i) state that payment of the penalty is not an admission of  
7 liability; and  
8 (j) state how the Secretary may be contacted; and  
9 (k) state that the person may apply to the Secretary to have the  
10 period in which to pay the penalty extended; and  
11 (l) state that the person may choose not to pay the penalty and  
12 that, if the person does so, proceedings may be brought under  
13 this Act in relation to the alleged contravention; and  
14 (m) set out how the notice can be withdrawn; and  
15 (n) state that if the notice is withdrawn:  
16 (i) any amount of penalty paid under the notice must be  
17 refunded; and  
18 (ii) civil proceedings may be brought against the person in  
19 respect of the conduct to which the notice relates; and  
20 (o) state that the person may make written representations to the  
21 Secretary seeking the withdrawal of the notice; and  
22 (p) set out such other matters (if any) as are specified by the  
23 regulations.
- 24 (2) For the purposes of paragraph (1)(f), the penalty to be stated in the  
25 notice for the alleged contravention of the civil penalty provision  
26 must not exceed an amount equal to one-tenth of the maximum  
27 penalty that a Court could impose on the person for that  
28 contravention.

29 **60 Extension of time to pay penalty**

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

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

## 15   **61 Withdrawal of an infringement notice**

### 16                   *Representations seeking withdrawal of notice*

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

### 26                   *Withdrawal of notice (whether or not representations have been* 27                   *made)*

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

**Part 5** Enforcement  
**Division 3** Infringement notices  
**Section 61**

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

18 *Notice of withdrawal*

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

28 *Refund of penalty if infringement notice withdrawn*

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

1       **62 Effect of payment of penalty**

2               (1) If an infringement notice relates to a contravention of a civil  
3               penalty provision and the person to whom the notice is given pays  
4               the penalty stated in the notice before the end of the period referred  
5               to in paragraph 59(1)(h):

- 6                   (a) any liability of the person for the alleged contravention is  
7                   discharged; and  
8                   (b) civil proceedings in respect of the alleged contravention may  
9                   not be brought against the person; and  
10                  (c) the person is not regarded as having admitted liability for the  
11                  alleged contravention.

12               (2) Subsection (1) does not apply if the notice has been withdrawn.

13       **63 Effect of this Division**

14               This Division does not:

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

28       **64 Regulations**

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

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2 **Division 4—Other matters**

3 **65 Energy Efficiency Non-disclosure Register**

4 (1) The Secretary is to maintain, or cause to be maintained, a register,  
5 to be known as the Energy Efficiency Non-disclosure Register.

6 (2) Where there are 2 or more instances of non-disclosure by a person  
7 in a period of 12 months, the Secretary must record the number of  
8 instances of non-disclosure by the person on the Register and the  
9 date on which each instance of non-disclosure occurred or began  
10 unless the Secretary exercises the discretion under subsection (4).

11 (3) Each of the following is an *instance of non-disclosure* by a  
12 person:

13 (a) the person is given an infringement notice under Division 3;

14 (b) a Court makes a civil penalty order against the person for a  
15 contravention of section 11, subsection 12(6) or section 15.

16 (4) The Secretary may withhold or delete an instance of non-disclosure  
17 from the Register if the Secretary is satisfied that the instance is not  
18 part of a continuing pattern of conduct demonstrating a disregard  
19 for the requirements of this Act in relation to the disclosure of  
20 building energy efficiency information.

21 (5) The Secretary must remove, or cause to be removed, an instance of  
22 non-disclosure by a person from the Register if:

23 (a) the instance was included on the Register because the person  
24 was given an infringement notice and the notice is  
25 subsequently withdrawn; or

26 (b) the instance was included on the Register because a Court  
27 made a civil penalty order against the person and that order is  
28 overturned on appeal.

29 (6) The Register must be maintained by electronic means and be made  
30 available for inspection on the internet.

31 (7) The Register is not a legislative instrument.



1     **66 Evidentiary certificate relating to the Building Energy Efficiency**  
2             **Register**

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

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## Part 6—Miscellaneous

### 67 Reviewable decisions

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

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<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	Subsection 29(2)

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**Reviewable decisions**

<b>Item</b>	<b>Decision</b>	<b>Provision under which decision is made</b>
	24(2)(c) to pay a fee	
13	To revoke the accreditation of a person as an assessor	Section 30

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**68 Internal review of certain decisions**

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

**69 Administrative review of certain decisions**

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

- 1 (a) a reviewable decision made by the Secretary personally;  
2 (b) a decision of the Secretary under subsection 68(4).

3 **70 Protection of information obtained or generated by issuing**  
4 **authorities, auditors etc.**

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

19 Penalty: Imprisonment for 2 years.

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

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

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

## 11 **71 Delegations**

- 12 (1) The Secretary may, in writing, delegate to an SES employee, or  
13 acting SES employee, in the Department any or all of the  
14 Secretary's powers or functions under this Act, other than the  
15 following:  
16 (a) this power of delegation;  
17 (b) the Secretary's power under paragraph 13(1)(c) (guidance on  
18 how energy efficiency might be improved);  
19 (c) the Secretary's power under paragraph 13(2)(c) (guidance on  
20 how energy efficiency might be improved);  
21 (d) the Secretary's power under subsection 13(7) (recognising an  
22 issuing authority);  
23 (e) the Secretary's powers under section 15 (determining manner  
24 of advertisement);  
25 (f) The Secretary's powers under section 21 (determining  
26 assessment methods and standards);  
27 (g) the Secretary's power under subsection 33(1) (appointment  
28 of auditing authority);  
29 (h) the Secretary's power under subsection 33(3) (policies for  
30 auditing authority);  
31 (i) the Secretary's power under subsection 65(4) (withholding or  
32 deleting an instance of non-disclosure);  
33 (j) the Secretary's power under subsection 66(1) (issue of  
34 evidentiary certificate);  
35 (k) the Secretary's power under subsection 68(4) (internal review  
36 of certain decisions).

**Section 72**

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

7                   **72 Regulations**

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