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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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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.

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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

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.
7

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

4 **10 Buildings and areas of buildings affected by energy efficiency**
5 **disclosure obligations**

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

10 **11 No sale, lease or sublease without a building energy efficiency**
11 **certificate**

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

22 Civil penalty: 1,000 penalty units.

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

30 Civil penalty: 1,000 penalty units.

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

23 **12 Rights of a prospective purchaser, lessee or sublessee**

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

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

1 owner to give the prospective lessee a copy of a valid, current
2 building energy efficiency certificate for the area that has been
3 registered.

4 (5) If:

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

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

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

22 Civil penalty:

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

25 **13 Building energy efficiency certificates**

- 26 (1) A *building energy efficiency certificate* for a building is a
27 certificate issued by an issuing authority and setting out:
28 (a) the energy efficiency rating for the building; and
29 (b) an assessment of the energy efficiency of the lighting for the
30 building that might reasonably be expected to remain if the
31 building is sold, let or sublet; and
32 (c) guidance of a kind determined by the Secretary by legislative
33 instrument on how energy efficiency might be improved.

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

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

10 **14 Building Energy Efficiency Register**

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

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

23 **15 Advertisements to include energy efficiency ratings**

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

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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

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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.
23

1 **Part 3—Accreditation of assessors**

2 **Division 1—Accreditation**

3 **24 Application for accreditation**

4 (1) A person may apply to the Secretary to become an accredited
5 assessor.

6 (2) The application must:

7 (a) be in writing in a form approved by the Secretary; and

8 (b) include information of the prescribed kind; and

9 (c) be accompanied by the prescribed fee.

10 **25 Accreditation of assessors**

11 (1) The Secretary must refuse to accredit a person as an assessor if:

12 (a) the person has been convicted of an offence against
13 Division 137 of the *Criminal Code* for the provision of false
14 or misleading information or documents in, or in connection
15 with, an application for a building energy efficiency
16 certificate; or

17 (b) 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 in, or in connection with, an audit
20 conducted under Part 4; or

21 (c) the Secretary is satisfied that the person has otherwise
22 provided false or misleading information in, or in connection
23 with, a rating of the energy efficiency of a building on which
24 another person might rely for any purpose; or

25 (d) the person has been convicted of an offence against
26 Division 137 of the *Criminal Code* for the provision of false
27 or misleading information in, or in connection with, an
28 application for accreditation or renewal of accreditation; or

29 (e) the person has not successfully completed the prescribed
30 training.

31 (2) The Secretary may refuse to accredit a person as an assessor if:

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

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

2 **28 Suspension of accreditation**

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

22 **29 Lift of suspension**

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

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

11 **30 Revocation of accreditation**

- 12 (1) The Secretary must revoke the accreditation of a person as an
13 assessor if:
14 (a) the person has been convicted of an offence against
15 Division 137 of the *Criminal Code* for the provision of false
16 or misleading information or documents in, or in connection
17 with, an application for a building energy efficiency
18 certificate; or
19 (b) the person has been convicted of an offence against
20 Division 137 of the *Criminal Code* for the provision of false
21 or misleading information in, or in connection with, an audit
22 conducted under Part 4; or
23 (c) the Secretary is satisfied that the person has otherwise
24 provided false or misleading information in, or in connection
25 with, a rating of the energy efficiency of a building on which
26 another person might rely for any purpose; or
27 (d) the person has been convicted of an offence against
28 Division 137 of the *Criminal Code* for the provision of false
29 or misleading information in, or in connection with, an
30 application for accreditation or renewal of accreditation.
- 31 (2) The Secretary may revoke the accreditation of a person as an
32 assessor in the following circumstances:
33 (a) the person has been found in proceedings for damages
34 brought under section 20 not to have properly applied the
35 assessment methods and standards determined under

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

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

2 **31 Register of Accredited Assessors**

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

5 (2) The Register is to contain:

6 (a) the name of each accredited assessor; and

7 (b) the registration number for each accredited assessor; and

8 (c) any other information that the Secretary considers relevant in
9 assisting a person in engaging an accredited assessor to
10 conduct an assessment of a building or an area for the
11 purposes of applying for a building energy efficiency
12 certificate.

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

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

16 **32 Offence—holding out to be an accredited assessor**

17 A person commits an offence if:

18 (a) the person (the *defendant*) makes a statement (whether
19 orally, in a document or in any other way); and

20 (b) the statement might reasonably lead another person to believe
21 that, at a particular time, the defendant is or was an
22 accredited assessor; and

23 (c) at that time, the defendant is not or was not an accredited
24 assessor.

25 Penalty: 60 penalty units.

26

1 **Part 4—Auditing accredited assessors**

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

4 **33 Auditing authority**

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

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

12 **34 Auditors**

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

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

5 **35 Identity cards**

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

7 *Form of identity card*

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

11 *Offence*

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

17 Penalty: 1 penalty unit.

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

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

20 *Defence—card lost or destroyed*

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

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

25 *Auditor must carry card*

- 26 (6) An auditor must carry his or her identity card at all times when
27 exercising powers as an auditor.
28

1 **Division 2—Powers of auditors**

2 **36 Auditor may enter a building, an area of a building or an**
3 **associated place by consent or under warrant**

4 (1) An auditor may exercise the powers under this section for the
5 purpose of determining whether an accredited assessor has
6 properly applied the assessment methods and standards determined
7 under section 21 for the purposes of working out a proposed
8 energy efficiency rating or performing an assessment of the energy
9 efficiency of lighting for a building or an area of a building.

10 (2) The auditor may:

11 (a) enter the building or area, and any place associated with the
12 building or area (an *associated place*); and

13 (b) exercise the monitoring powers set out in section 37.

14 (3) However, an auditor is not authorised to enter a building, an area or
15 an associated place unless:

16 (a) the occupier of the building, area or associated place has
17 consented to the entry and the auditor has shown his or her
18 identity card if required by the occupier; or

19 (b) the entry is made under a monitoring warrant.

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

23 **37 Monitoring powers of auditors**

24 (1) The following are the *monitoring powers* that an auditor may
25 exercise in relation to a building, an area or an associated place
26 under section 36:

27 (a) the power to observe any activity conducted in the building,
28 area or associated place;

29 (b) the power to inspect, or take measurements of, any thing in
30 the building, area or associated place;

31 (c) the power to make any still or moving image or any
32 recording of the building, area or associated place or any
33 thing in the building, area or associated place;

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

10 *Operating electronic equipment*

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

- 1 (a) answer any questions that are put by the auditor and that
2 relate to determining whether an accredited assessor has
3 properly applied the assessment methods and standards
4 determined under section 21; and
5 (b) produce any document that is requested by the auditor and
6 that relates to whether an accredited assessor has properly
7 applied the assessment methods and standards determined
8 under section 21.

9 *Entry under a monitoring warrant*

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

21 *Offence*

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

26 Penalty: 30 penalty units.

- 27 (4) An individual is not required to answer a question or produce a
28 document if the answer or document might tend to incriminate the
29 individual or expose the individual to a penalty.

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

32 Note: The defendant bears an evidential burden in relation to the matters in
33 subsections (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).
34

1 **Division 3—Obligations of auditors**

2 **40 Consent**

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

17 **41 Announcement before entry under warrant**

- 18 (1) An auditor must, before entering a building, an area or an
19 associated place under a monitoring warrant:
- 20 (a) announce that he or she is authorised to enter the building,
21 area or associated place; and
- 22 (b) show his or her identity card to the occupier of the building,
23 area or associated place, or to another person who apparently
24 represents the occupier, if the occupier or other person is
25 present in the building, area or associated place; and
- 26 (c) give any person in the building, area or associated place an
27 opportunity to allow entry to the building, area or associated
28 place.
- 29 (2) However, an auditor is not required to comply with subsection (1)
30 if he or she believes on reasonable grounds that immediate entry to
31 the building, area or associated place is required to ensure that the
32 effective execution of the warrant is not frustrated.

- 1 (3) If:
2 (a) an auditor does not comply with subsection (1) because of
3 subsection (2); and
4 (b) the occupier of the building, area or associated place, or
5 another person who apparently represents the occupier, is
6 present in the building, area or associated place;
7 the auditor must, as soon as practicable after entering the building,
8 area or associated place, show his or her identity card to the
9 occupier or other person.

10 **42 Auditor to be in possession of warrant**

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

14 **43 Details of warrant etc. to be given to occupier**

- 15 If:
16 (a) a monitoring warrant is being executed in relation to a
17 building, an area or an associated place; and
18 (b) the occupier of the building, area or associated place, or
19 another person who apparently represents the occupier, is
20 present in the building, area or associated place;
21 an auditor executing the warrant must, as soon as practicable:
22 (c) make a copy of the warrant available to the occupier or other
23 person (which need not include the signature of the
24 magistrate who issued it); and
25 (d) inform the occupier or other person of the rights and
26 responsibilities of the occupier or other person under
27 Division 4.

28 **44 Compensation for damage to electronic equipment**

- 29 (1) This section applies if:
30 (a) as a result of electronic equipment being operated as
31 mentioned in this Part:
32 (i) damage is caused to the equipment; or

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

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

2 **45 Occupier entitled to observe execution of warrant**

- 3 (1) If:
- 4 (a) a monitoring warrant is being executed in relation to a
- 5 building, an area or an associated place; 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 occupier or other person is entitled to observe the execution of
- 10 the warrant.
- 11 (2) The right to observe the execution of the warrant ceases if the
- 12 occupier or other person impedes that execution.
- 13 (3) This section does not prevent the execution of the warrant in 2 or
- 14 more areas at the same time.

15 **46 Occupier to provide auditor with facilities and assistance**

- 16 (1) The occupier of a building, an area or an associated place to which
- 17 a monitoring warrant relates, or another person who apparently
- 18 represents the occupier, must provide:
- 19 (a) an auditor executing the warrant; and
- 20 (b) any person assisting the auditor;
- 21 with all reasonable facilities and assistance for the effective
- 22 exercise of their powers.
- 23 (2) A person commits an offence if:
- 24 (a) the person is subject to subsection (1); and
- 25 (b) the person fails to comply with that subsection.
- 26 Penalty: 30 penalty units.
- 27

1 **Division 5—Monitoring warrants**

2 **47 Monitoring warrants**

3 *Application for warrant*

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

8 *Issue of warrant*

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

23 *Content of warrant*

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

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

1 **Division 6—Powers of magistrates**

2 **48 Powers of magistrates**

3 *Powers conferred personally*

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

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

8 *Powers need not be accepted*

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

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

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

15 *Protection and immunity*

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

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

1 **Part 5—Enforcement**

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

3 **49 Secretary may obtain information or documents**

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

17 **50 Failure to comply with a notice**

- 18 (1) A person commits an offence if the person fails to comply with a
19 notice given under section 49.
- 20 Penalty: 30 penalty units.
- 21 (2) An offence under subsection (1) is an offence of strict liability.
22 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 23 (3) An individual is not required to provide the information or produce
24 a document if the information or document might tend to
25 incriminate the individual or expose the individual to a penalty.
- 26 (4) Subsection (1) does not apply to the extent that the person is not
27 capable of complying with the notice.
- 28 Note: The defendant bears an evidential burden in relation to the matters in
29 subsections (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

1 **Division 2—Civil penalties**

2 **51 Civil penalty provisions**

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

7 **52 Ancillary contravention of civil penalty provisions**

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

18 *Civil penalty*

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

22 **53 Civil penalty orders**

23 *Application for order*

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

- 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.
15

1 **Division 3—Infringement notices**

2 **58 When an infringement notice can be given**

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

13 **59 Matters to be included in an infringement notice**

- 14 (1) An infringement notice must:
- 15 (a) be identified by a unique number; and
16 (b) state the day on which the notice is given; and
17 (c) state the name of the person to whom the notice is given; and
18 (d) state the name of the person who is giving the notice; and
19 (e) give brief details of the alleged contravention of the civil
20 penalty provision, including:
21 (i) the provision of this Act that was allegedly contravened;
22 and
23 (ii) the maximum penalty that a Court could impose for the
24 contravention; and
25 (iii) the day on which the civil penalty provision was
26 allegedly contravened; and
27 (f) state the penalty that is payable under the notice; and
28 (g) give an explanation of how payment of the penalty is to be
29 made; and
30 (h) state that, if the person pays the penalty within 28 days after
31 the day the notice is given, civil proceedings will not be
32 brought against the person under this Act in respect of the

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

26 **60 Extension of time to pay penalty**

- 27 (1) A person to whom an infringement notice has been given may
28 apply to the Secretary for an extension of the period referred to in
29 paragraph 59(1)(h).
- 30 (2) If the application is made before the end of that period, the
31 Secretary may, in writing, extend that period. The Secretary may
32 do so before or after the end of that period.
- 33 (3) If the Secretary extends that period, a reference in this Division, or
34 in a notice or other instrument under this Division, to the period

1 referred to in paragraph 59(1)(h) is taken to be a reference to that
2 period so extended.

3 (4) If the Secretary does not extend that period, a reference in this
4 Division, or in a notice or other instrument under this Division, to
5 the period referred to in paragraph 59(1)(h) is taken to be a
6 reference to the period that ends on the later of the following days:

7 (a) the day that is the last day of the period referred to in
8 paragraph 59(1)(h);

9 (b) the day that is 7 days after the day the person was given
10 notice of the Secretary's decision not to extend.

11 (5) The Secretary may extend the period more than once under
12 subsection (2).

13 **61 Withdrawal of an infringement notice**

14 *Representations seeking withdrawal of notice*

15 (1) A person to whom an infringement notice has been given may
16 make written representations to the Secretary seeking the
17 withdrawal of the notice.

18 (2) Evidence or information that the person, or a representative of the
19 person, gives to the Secretary in the course of making
20 representations under subsection (1) is not admissible in evidence
21 against the person or representative in any proceedings (other than
22 proceedings for an offence based on the evidence or information
23 given being false or misleading).

24 *Withdrawal of notice (whether or not representations have been 25 made)*

26 (3) The Secretary may withdraw an infringement notice given to a
27 person (whether or not the person has made written representations
28 seeking the withdrawal).

29 (4) When deciding whether or not to withdraw an infringement notice,
30 the Secretary:

- 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.
31

1 **Division 4—Other matters**

2 **65 Energy Efficiency Non-disclosure Register**

- 3 (1) The Secretary is to maintain, or cause to be maintained, a register,
4 to be known as the Energy Efficiency Non-disclosure Register.
- 5 (2) Where there are 2 or more instances of non-disclosure by a person
6 in a period of 12 months, the Secretary must record the number of
7 instances of non-disclosure by the person on the Register and the
8 date on which each instance of non-disclosure occurred or began
9 unless the Secretary exercises the discretion under subsection (4).
- 10 (3) Each of the following is an *instance of non-disclosure* by a
11 person:
12 (a) the person is given an infringement notice under Division 3;
13 (b) a Court makes a civil penalty order against the person for a
14 contravention of section 11, subsection 12(6) or section 15.
- 15 (4) The Secretary may withhold or delete an instance of non-disclosure
16 from the Register if the Secretary is satisfied that the instance is not
17 part of a continuing pattern of conduct demonstrating a disregard
18 for the requirements of this Act in relation to the disclosure of
19 building energy efficiency information.
- 20 (5) The Secretary must remove, or cause to be removed, an instance of
21 non-disclosure by a person from the Register if:
22 (a) the instance was included on the Register because the person
23 was given an infringement notice and the notice is
24 subsequently withdrawn; or
25 (b) the instance was included on the Register because a Court
26 made a civil penalty order against the person and that order is
27 overturned on appeal.
- 28 (6) The Register must be maintained by electronic means and be made
29 available for inspection on the internet.
- 30 (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.
16

1 **Part 6—Miscellaneous**
2

3 **67 Reviewable decisions**

4 Each of the following decisions is a *reviewable decision*:
5

Reviewable decisions		
Item	Decision	Provision under which decision is made
1	To refuse to grant an exemption from an energy efficiency disclosure obligation	Subsection 17(3)
2	To revoke or vary the grant of an exemption from an energy efficiency disclosure obligation	Subsection 17(5)
3	To grant an exemption from section 18	Subsection 18(10)
4	To revoke or vary the grant of an exemption from section 18	Subsection 18(12)
5	To refuse to grant an exemption from section 18	Subsection 18(10)
6	To refuse to revoke or vary the grant of an exemption from section 18	Subsection 18(12)
7	To refuse to accredit a person as an assessor	Section 25
8	To impose additional conditions on the accreditation of an assessor	Subsection 27(2)
9	To vary or revoke a condition on the accreditation of an assessor	Subsection 27(4)
10	To suspend the accreditation of a person as an assessor	Subsection 28(1)
11	To refuse to lift the suspension of accreditation of a person as an assessor	Subsection 29(1)
12	To refuse to waive all or a specified part of the requirement under paragraph 24(2)(b) to produce information or under paragraph 24(2)(c) to pay a fee	Subsection 29(2)
13	To revoke the accreditation of a person as	Section 30

Reviewable decisions

Item	Decision	Provision under which decision is made
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	an assessor	
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1

2 **68 Internal review of certain decisions**

- 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.

23 **69 Administrative review of certain decisions**

- 24 An application may be made to the Administrative Appeals
25 Tribunal for review of the following decisions:
26 (a) a reviewable decision made by the Secretary personally;
27 (b) a decision of the Secretary under subsection 68(4).

1 **70 Protection of information obtained or generated by issuing**
2 **authorities, auditors etc.**

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

17 Penalty: Imprisonment for 2 years.

- 18 (2) Subsection (1) does not apply if:
19 (a) the information is copied, recorded, used or disclosed for the
20 purposes of issuing a building energy efficiency certificate;
21 or
22 (b) the information is copied, recorded, used or disclosed in, or
23 in connection with, an audit conducted under Part 4; or
24 (c) the information is copied, recorded, used or disclosed for the
25 purposes of ensuring compliance with this Act; or
26 (d) the information is copied, recorded, used or disclosed in
27 circumstances in which the conduct is permitted, either
28 expressly or by implication, under this Act; or
29 (e) the information is copied, recorded, used or disclosed for the
30 purposes of proceedings for an offence against section 137.1
31 or 137.2 of the *Criminal Code* (false or misleading
32 information or documents) that relates to this Act; or
33 (f) the information is copied, recorded, used or disclosed for the
34 purposes of proceedings for an offence against section 149.1

Section 71

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

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

9 **71 Delegations**

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

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

6 **72 Regulations**

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