



# **Building Energy Efficiency Disclosure Amendment Act 2015**

**No. 1, 2015**

***An Act to amend the *Building Energy Efficiency  
Disclosure Act 2010*, and for related purposes***

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Building Energy Efficiency Disclosure Amendment Act 2015

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## **An Act to amend the *Building Energy Efficiency Disclosure Act 2010*, and for related purposes**

[Assented to 25 February 2015]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Building Energy Efficiency Disclosure Amendment Act 2015*.

### **2 Commencement**

This Act commences on 1 July 2015.

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### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Building Energy Efficiency Disclosure Act 2010**

### **Part 1—Amendments**

#### **1 Section 3 (definition of *auditing authority*)**

Repeal the definition, substitute:

*auditing authority* means:

- (a) the Secretary; or
- (b) a person or body appointed by the Secretary under section 33.

#### **2 Section 3 (definition of *building energy efficiency certificate*)**

Repeal the definition, substitute:

*building energy efficiency certificate* means a certificate issued under section 13A.

#### **3 Section 3 (definition of *current*)**

Repeal the definition, substitute:

*current*: a building energy efficiency certificate is *current* for the period set out in the certificate under paragraph 13A(2)(d).

#### **4 Section 3**

Insert:

*current energy efficiency rating* means an energy efficiency rating set out in a current building energy efficiency certificate.

#### **5 Section 3 (definition of *disclosure affected area of a building*)**

After “an area”, insert “of a building, other than an exempt area,”.

#### **6 Section 3 (definition of *disclosure affected building*)**

After “a building”, insert “, other than an exempt building,”.

### 7 Section 3

Insert:

*entity* has the same meaning as in the *Income Tax Assessment Act 1997*.

*exempt area*, of a building, means an area exempted under section 17 or 17A.

*exempt building* means a building exempted under section 17 or 17A.

*issue day*: see section 13.

### 8 Section 3 (definition of *issuing authority*)

Repeal the definition, substitute:

*issuing authority* means:

- (a) the Secretary; or
- (b) a person or body approved by the Secretary under section 71A.

### 9 Section 3

Insert:

*lighting energy efficiency assessment* means:

- (a) in relation to a building—an assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet; or
- (b) in relation to an area of a building—an assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the area is let or sublet.

*non-assessable*, in relation to a building or an area of a building: see section 17.

### 10 Section 3

Insert:

*start day*: see section 13.

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**11 Section 3 (definition of *valid*)**

Repeal the definition.

**12 Section 3**

Insert:

*wholly-owned subsidiary* has the same meaning as in the *Income Tax Assessment Act 1997*.

**13 After section 5**

Insert:

**5A Application to wholly-owned subsidiaries**

This Act does not apply in relation to an offer to enter into a contract between:

- (a) an entity and a wholly-owned subsidiary of the entity; or
- (b) wholly-owned subsidiaries of an entity.

**14 Subsections 11(1) to (4) and 12(1) to (5) and (6)**

Omit “valid,”.

**15 Section 13**

Repeal the section, substitute:

**13 Building energy efficiency certificates—applications**

- (1) In this Act:

*issue day*, in relation to a building energy efficiency certificate for a building or an area of a building, means the day on which the certificate is issued under subsection 13A(1).

*start day*, in relation to a building energy efficiency certificate for a building or an area of a building, means:

- (a) the issue day for the certificate; or
- (b) a later day specified in the certificate as the start day.

- (2) A person may apply to an issuing authority for a building energy efficiency certificate for a building or an area of a building.

- (3) The application must:
- (a) be in writing, in a form approved by the Secretary; and
  - (b) include the following:
    - (i) an energy efficiency rating for the building (or the building in which the area is located);
    - (ii) a lighting energy efficiency assessment for the building or the area;
    - (iii) the start day the person seeks; and
  - (c) meet any other requirements determined by the Secretary under subsection (6).
- (4) The energy efficiency rating must satisfy one of the following conditions:
- (a) the rating was worked out by an accredited assessor by applying the assessment methods and standards determined under section 21;
  - (b) an auditing authority:
    - (i) provided or approved the rating; and
    - (ii) is satisfied that the rating was worked out by applying the assessment methods and standards determined under section 21.
- (5) The lighting energy efficiency assessment must satisfy one of the following conditions:
- (a) the assessment was performed by an accredited assessor by applying the assessment methods and standards determined under section 21;
  - (b) an auditing authority:
    - (i) provided or approved the assessment; and
    - (ii) is satisfied that the assessment was performed by applying the assessment methods and standards determined under section 21.
- (6) The Secretary may, by legislative instrument, make a determination for the purposes of paragraph (3)(c).

Note: For who is an issuing authority, see section 71A.

### **13A Building energy efficiency certificates—issue**

- (1) An issuing authority may, on application under section 13, issue a building energy efficiency certificate for a building or an area of a building if the issuing authority is satisfied that:
  - (a) the application meets the requirements of subsections 13(3), (4) and (5); and
  - (b) the energy efficiency rating is appropriate for the building (or the building in which the area is located), applying the methods and standards determined under section 21; and
  - (c) the lighting energy efficiency assessment is appropriate for the building or the area, applying the methods and standards determined under section 21.
- (2) The certificate must set out the following:
  - (a) the energy efficiency rating for the building (or the building in which the area is located);
  - (b) the lighting energy efficiency assessment for the building or the area;
  - (c) the start day for the certificate (which may be different from the start day sought by the applicant);
  - (d) the period for which the certificate is current;
  - (e) any other information determined by the Secretary under subsection (4).
- (3) For paragraph (2)(d), the period set out in the certificate must be a period of no more than 12 months beginning on the start day set out in the certificate.
- (4) The Secretary may, by legislative instrument, make a determination for the purposes of paragraph (2)(e).

### **16 Subsection 14(1)**

Omit “valid”.

### **17 Subsection 14(2)**

Omit all the words after “Register may”, substitute:

include information about the following:

- (a) current building energy efficiency certificates and those that are no longer current;

- (b) current exemptions under section 17 and those that are no longer current;
- (c) variations and revocations of such exemptions.

**18 Paragraphs 15(1)(a), (2)(a), (3)(a) and (4)(a)**

Omit “valid,”.

**19 Section 16**

Repeal the section.

**20 Section 17**

Repeal the section, substitute:

**17 Exemptions on application**

*Application for an exemption*

- (1) A person may apply to the Secretary for a building or an area of a building to be exempt from the operation of section 11, 12 or 15.
- (2) The application must:
  - (a) be in writing in a form approved by the Secretary; and
  - (b) include information of a kind prescribed by regulation; and
  - (c) be accompanied by the fee (if any) prescribed by regulation.

*Granting an exemption*

- (3) The Secretary may grant the exemption:
  - (a) if the Secretary is satisfied that the building or the area is used for police or security operations; or
  - (b) if the Secretary is satisfied that the building or the area is non-assessable (see subsections (7) and (8)); or
  - (c) in circumstances prescribed by regulation for the purposes of this paragraph.
- (4) The Secretary must give the applicant written notice of the Secretary’s decision under subsection (3).

*Varying or revoking an exemption*

- (5) The Secretary may vary or revoke an exemption by giving notice in writing to:
  - (a) the applicant; and
  - (b) any other person whose interest in the building or the area is registered with a land titles office (however described).
- (6) Subsection (5) does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.

*Meaning of non-assessable*

- (7) A building is **non-assessable** if it is not possible to work out an energy efficiency rating for the building, or perform a lighting energy efficiency assessment for the building, because of the characteristics of the building.
- (8) An area of a building is **non-assessable** if it is not possible to work out an energy efficiency rating for the building in which the area is located, or perform a lighting energy efficiency assessment for the area, because of the characteristics of the building or the area.

**17A Automatic exemptions**

A building or an area of a building is exempt from the operation of section 11, 12 or 15 if circumstances specified in a determination under paragraph 21(1)(d) apply to the building or the area.

**21 Subsection 18(2)**

Omit “may by notice in writing”, substitute “may, by written notice, request the Secretary to”.

**22 Subsection 18(3)**

Repeal the subsection, substitute:

- (3) At the written request of the accredited assessor, the Secretary may, by written notice, require the owner, lessee or sublessee of the building or the area to give the information to the assessor within the period specified in the notice. The period must end at least 14 days after the day on which the notice is given.

**23 Subsection 18(4)**

Omit “The accredited assessor may by notice in writing”, substitute “At the written request of the accredited assessor, the Secretary may, by written notice,”.

**24 Subsection 18(4)**

Omit “and the assessor reasonably believes that the person either occupies or controls access to the place”.

**25 Subsection 18(5)**

After “under subsection (4)”, insert “to an owner, lessee or sublessee”.

**26 Subsection 18(6)**

Omit “A person”, substitute “An owner, lessee or sublessee”.

**27 Subsections 18(8) to (12)**

Repeal the subsections.

**28 Subparagraphs 19(1)(a)(i) and (2)(f)(i)**

Omit “18(2)”, substitute “18(3)”.

**29 Paragraph 20(1)(b)**

Repeal the paragraph, substitute:

- (b) perform a lighting energy efficiency assessment for the building by applying the assessment methods and standards determined under section 21; and

**30 Paragraph 20(2)(b)**

Repeal the paragraph, substitute:

- (b) perform a lighting energy efficiency assessment for the area by applying the assessment methods and standards determined under section 21; and

**31 At the end of section 20**

Add:

- Note: This section does not provide for recovery of damages in relation to approval by an auditing authority of energy efficiency ratings or lighting energy efficiency assessments.

**32 Paragraph 21(1)(b)**

Omit “assessing the energy efficiency of lighting for a building that might reasonably be expected to remain if the building is sold, let or sublet”, substitute “performing a lighting energy efficiency assessment for the building”.

**33 Paragraph 21(1)(c)**

Omit “assessing the energy efficiency of lighting for an area of a building that might reasonably be expected to remain if the area is let or sublet”, substitute “performing a lighting energy efficiency assessment for the area”.

**34 At the end of subsection 21(1)**

Add:

; and (d) the circumstances in which a building or an area of a building is exempt for the purposes of section 17A.

**35 Sections 22 to 23A**

Repeal the sections.

**36 Subparagraphs 25(2)(a)(i) and (ii)**

Omit “an assessment of the energy efficiency of lighting”, substitute “a lighting energy efficiency assessment”.

**37 Paragraph 27(3)(a)**

Repeal the paragraph, substitute:

(a) a condition that the assessor may work out energy efficiency ratings or perform lighting energy efficiency assessments only under the supervision of an auditor; and

**38 Paragraphs 28(1)(a) and (b)**

Omit “an assessment of the energy efficiency of lighting”, substitute “a lighting energy efficiency assessment”.

**39 Paragraphs 30(2)(a) and (b)**

Omit “an assessment of the energy efficiency of lighting”, substitute “performing a lighting energy efficiency assessment”.

#### **40 Paragraph 31(2)(c)**

Omit “conduct an assessment of a building or an area”, substitute “work out an energy efficiency rating or perform a lighting energy efficiency assessment”.

#### **41 Subsection 33(2)**

Repeal the subsection, substitute:

- (2) An auditing authority has the following functions:
  - (a) to direct auditors in performing their work to ensure that:
    - (i) accredited assessors properly apply the assessment methods and standards determined under section 21 in working out ratings and performing assessments for the purposes of applying for building energy efficiency certificates; and
    - (ii) the ratings and assessments are not influenced by any conflict of interest;
  - (b) to provide or approve ratings and assessments for building energy efficiency certificates;
  - (c) such other functions as are conferred by this Act or the regulations.

#### **42 Subparagraph 33(4)(a)(ii)**

Omit “assessment of the energy efficiency of the lighting for the building that might reasonably be expected to remain if the building is sold, let or sublet”, substitute “lighting energy efficiency assessment for the building”.

#### **43 Subparagraph 33(4)(b)(ii)**

Omit “assessment of the energy efficiency of the lighting for the area that might reasonably be expected to remain if the building is let or sublet”, substitute “lighting energy efficiency assessment for the area”.

#### **44 Subsection 34(3)**

Repeal the subsection, substitute:

- (3) The functions of an auditor are to:
  - (a) conduct audits of:



- (i) energy efficiency ratings and lighting energy efficiency assessments worked out or performed by accredited assessors for the purposes of applying for building energy efficiency certificates; and
  - (ii) such ratings and assessments provided or approved by auditing authorities; and
  - (iii) applications for exemptions under section 17; and
  - (iv) the documentation and record keeping of accredited assessors and other persons in relation to such ratings, assessments and applications; and
- (b) supervise ratings and assessments by accredited assessors to ensure that:
- (i) the assessment methods and standards determined under section 21 are properly applied; and
  - (ii) the ratings and assessments are properly documented; and
  - (iii) the records of ratings and assessments are properly kept.
- (3A) Without limiting subsection (3), an auditor may conduct an audit of a rating, assessment or application by doing no more than reviewing documents relating to the assessment, rating or application.

**45 Subsection 36(1)**

Omit “an assessment of the energy efficiency of lighting”, substitute “a lighting energy efficiency assessment”.

**46 Subsection 47(2)**

Omit “an assessment of the energy efficiency of lighting”, substitute “a lighting energy efficiency assessment”.

**47 Paragraph 47(4)(c)**

Omit “an assessment of the energy efficiency of lighting”, substitute “a lighting energy efficiency assessment”.

**48 Subsection 61(1)**

Repeal the subsection, substitute:

*Representations seeking withdrawal of notice*

- (1) If an infringement notice has been given to a person, the person may, within 28 days, make written representations to the Secretary seeking the withdrawal of the notice.

**49 Paragraph 66(1)(a)**

Omit “valid,”.

**50 Paragraph 66(1)(c)**

Omit “assessment of the energy efficiency of lighting”, substitute “lighting energy efficiency assessment”.

**51 Section 67 (before table item 1)**

Insert:

1A	To refuse to issue a building energy efficiency certificate	Section 13A
1B	To issue a building energy efficiency certificate with a start day other than the start day included in the application for the certificate	Section 13A

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**52 Section 67 (table items 1 and 2)**

Omit “an energy efficiency disclosure obligation”, substitute “the operation of section 11, 12 or 15”.

**53 Section 67 (table items 3 to 6)**

Repeal the items.

**54 Subsection 68(1)**

Repeal the subsection, substitute:

- (1) A person may apply in writing to the Secretary for review of a reviewable decision if:
- (a) the decision was made by:
    - (i) a delegate of the Secretary; or
    - (ii) an issuing authority other than the Secretary; and
  - (b) the person’s interests are affected by the decision.

## **55 Before subsection 71(1)**

Insert:

- (1A) The Secretary may, in writing, delegate to an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department, any or all of the Secretary's powers or functions under the following:
- (a) section 13A (issuing building energy efficiency certificates);
  - (b) section 17 (granting exemptions);
  - (c) section 18 (information gathering);
  - (d) section 25 (accrediting or refusing to accredit assessors);
  - (e) paragraph 33(2)(b) (providing or approving ratings and assessments for building energy efficiency certificates).

## **56 Paragraphs 71(1)(b), (c) and (d)**

Repeal the paragraphs.

## **57 At the end of subsection 71(1)**

Add:

- ; (l) the Secretary's power under section 71A (approving an issuing authority).

## **58 Subsection 71(2)**

Omit "the issuing authority", substitute "an issuing authority approved under section 71A".

## **59 After section 71**

Insert:

### **71A Issuing authorities**

- (1) The Secretary may, by written instrument, approve a person or body as an issuing authority.
- (2) The Secretary must not approve a person or body as an issuing authority unless the Secretary is satisfied that:
  - (a) the person or body has the competencies necessary to apply the assessment methods and standards determined under section 21 to decide whether energy efficiency ratings or lighting energy efficiency assessments are appropriate; and

- (b) the person or body has systems in place to ensure that building energy efficiency certificates are issued in good faith.
- (3) An instrument under subsection (1) is not a legislative instrument.

## **Part 2—Application and savings provisions**

### **60 Application of amendments**

The amendments of the *Building Energy Efficiency Disclosure Act 2010* made by Part 1 of this Schedule apply in relation to the following:

- (a) an offer to enter into a contract made on or after the commencement of this Schedule;
- (b) an invitation to make such an offer made or continued on or after the commencement of this Schedule;
- (c) an application for a building energy efficiency certificate made under section 13 of that Act on or after the commencement of this Schedule, and the issue of a certificate on such an application;
- (d) a building energy efficiency certificate issued as mentioned in paragraph (c);
- (e) in the case of the amendment of section 14 of that Act (the Building Energy Efficiency Register)—a building energy efficiency certificate, or an exemption under section 17, issued or granted before, on or after the commencement this Schedule;
- (f) an application for an exemption made under section 17 of that Act on or after the commencement of this Schedule, and the grant, variation or revocation of such an exemption;
- (g) an exemption granted as mentioned in paragraph (f);
- (h) the exercise of a power under section 18 of that Act (information gathering) on or after the commencement of this Schedule;
- (i) an infringement notice given to a person under section 58 of that Act on or after the commencement of this Schedule.

Note: This Schedule commences on 1 July 2015 (see section 2).

### **61 Saving—recognition of issuing authority before commencement**

Despite the repeal of section 13 of the *Building Energy Efficiency Disclosure Act 2010* by Part 1 of this Schedule, an issuing authority recognised under that section immediately before the commencement of this Schedule is taken to continue to be recognised under that section on and after that time for all purposes in relation to:

**Schedule 1** Building Energy Efficiency Disclosure Act 2010  
**Part 2** Application and savings provisions

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- (a) considering an application for a building energy efficiency certificate made, but not determined, before that commencement; and
  - (b) making a decision on such an application.
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*[Minister's second reading speech made in—  
House of Representatives on 22 October 2014  
Senate on 4 December 2014]*

(228/14)

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