

Education, Compliance and Enforcement Policy

The *Building Energy Efficiency Disclosure Act 2010* (BEED Act) came into effect on 1 July 2010. The BEED Act is administered by the Department of the Environment and Energy (the Department) through the Commercial Building Disclosure (CBD) Program. The Education, Compliance and Enforcement Policy (the Policy) sets out the approach to facilitating compliance with the BEED Act and outlines the Department's enforcement powers under the BEED Act. The Policy is designed for building owners, lessors, tenants and assessors that have obligations under the BEED Act. The BEED legislation is made up of the following parts:

- [Building Energy Efficiency Disclosure Act 2010](#)
- [Building Energy Efficiency Disclosure Regulations 2010](#)
- [Building Energy Efficiency Disclosure \(Disclosure Affected Buildings\) Determination 2016](#)
- [Building Energy Efficiency Disclosure Determination 2016](#).

The Policy sits within the broader Australian Government law enforcement policy context and should be read in conjunction with other relevant documents, including:

- [Prosecution Policy of the Commonwealth](#)
- [Commonwealth Fraud Control Guidelines](#)
- Attorney-General's Department - *Overarching Principles for Selecting Cases for Investigation and Administrative, Civil and Criminal Sanctions*.

Our approach

Managing compliance is about encouraging stakeholders to comply voluntarily, and dealing with contraventions appropriately.

The Department will use intelligence analysis and risk assessment to make strategic decisions about the allocation of resources, with the intent to maximise the number of stakeholders who voluntarily comply with their obligations under the BEED Act.

The core elements of this approach are:

- assisting stakeholders to understand their rights and obligations
- making it as easy as possible for stakeholders to meet their obligations
- supporting stakeholders who want to do the right thing
- actively pursuing those who opportunistically or deliberately contravene the law.

Our role

In the course of implementing the Policy, the Department will:

- be available during normal office hours to assist with enquiries about the CBD Program
- respond to stakeholder requests for assistance and advice in an appropriate manner and within a reasonable time
- provide the most accurate and up-to-date information available



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- handle all information in accordance with relevant legislative obligations and Australian Government guidelines and principles, including those set out in the BEED Act, the *Privacy Act 1988*, the *Freedom of Information Act 1982*, the *Commonwealth Fraud Control Guidelines*, and the *Commonwealth Protective Security Manual*
- administer and enforce the BEED Act in a coherent, consistent and objective manner,
- operate as efficiently, effectively and transparently as possible, so as to be accountable to the Australian Government and the community.

Your obligations

Final responsibility for compliance with legislation, including ensuring the accuracy of all relevant information and advice, rests with the individual person or organisation affected by the legislation. You should be aware that some civil penalty provisions are subject to additional penalties that accrue on a daily basis from the time of the contravention. The Department recommends that you obtain independent, professional advice relevant to your particular circumstances.

Implementing the Policy

The Department will implement the Policy by:

- engaging with, educating, guiding and encouraging stakeholders to promote voluntary compliance
- monitoring compliance with obligations to register energy efficiency assessments and include ratings in advertising of sales, leases and subleases of disclosure affected buildings. This will enable us to deploy pro-active programs and to identify potential contraventions of the legislation in a timely manner
- investigating alleged contraventions
- undertaking an appropriate response to alleged contraventions
- reviewing the Policy, its implementation, and amending as necessary.

Engagement and education

We place a strong emphasis on engaging with, educating and assisting stakeholders to build trust, confidence and encourage voluntary compliance with the BEED Act. We will listen, respond and provide information and opportunities for stakeholders to ask questions, discuss issues of concern, and participate in educational and discussion forums.

Monitoring compliance

We will monitor stakeholder compliance with the BEED legislation. Monitoring helps us to:

- determine levels of compliance and trends in behaviour
- detect possible contraventions
- identify whether, and what type of, education campaigns or enforcement action may be required
- assess the effectiveness of the BEED legislation, and identify opportunities for improvement.



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Compliance monitoring may be undertaken through a range of activities including:

- analysis of information gathered from advertisements for sale, lease or sublease
- analysis of and cross reference with information from other sources, such as state title records
- desk top auditing of assessments
- targeted onsite audits using appointed auditors.

Where possible, strategic partnerships with other agencies will be developed to maximise cooperation where monitoring responsibilities overlap. We will also work closely with Australian, State and Territory Government agencies with specific expertise in intelligence gathering, law enforcement or other relevant areas.

Alleged Contraventions

All alleged contraventions of the BEED Act will be prioritised for investigation using a risk management approach. This will include a preliminary assessment and analysis of relevant facts in order to decide on the likelihood that a contravention has occurred, or is about to occur, its seriousness and its likely consequences.

Appropriate response to contraventions

The BEED Act provides the Department with a number of administrative, civil and criminal responses to contraventions of the Act. Certain conduct may also give rise to offences under the *Criminal Code Act 1995*. We will determine the most appropriate response based on the particular circumstances of each case.

Generally, targeted education will be used in response to first and less serious contraventions.

This ensures that parties that have contravened the BEED Act are made aware of their legislative obligations, and provided with guidance to assist them in meeting these obligations in the future. For deliberate or continuing contraventions, deterrent sanctions will be used, including pecuniary penalties and criminal prosecution.

Available response to contraventions

The various options available to the Department are outlined below.

Targeted education: We are committed to helping parties meet their obligations under the BEED Act. Where we detect a contravention, the party will be informed and given an opportunity to voluntarily comply. To assist the party in this, we will provide guidance materials to help it understand how to meet its obligations, as well as contact points within the Department for further clarification.

Suspension or revocation: We may suspend or revoke accreditation of an assessor where the Department has reasonable grounds to believe that the assessor has breached the conditions of their accreditation, or if they have been convicted of an offence against Division 137 of the *Criminal Code*.

Infringement notices: Where we have reasonable grounds to believe that a party (including a corporation) has breached a civil penalty provision of the BEED Act, the Department may issue that party with an infringement notice.

The Department will not take any further action in relation to the alleged contravention should the party pay the amount stated in the notice, within the prescribed time. Failure to pay the stated amount may result in court action in relation to the alleged contravention.



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Non-disclosure Register: we may record instances of non-disclosure by a party on the publically available Energy Efficiency Non-disclosure Register.

Court cases: We may commence legal action if, having regard to all the circumstances, this is considered the best way to deliver an effective outcome.

The Department is more likely to proceed with legal action where a party is not acting in good faith and/or is unwilling to resolve matters administratively.

We may apply to a court:

- for an order directing a person to pay a penalty as a result of breaching one of the civil penalty provisions
- for criminal conviction of a person suspected of having contravened any of the various offence provisions in the Act.

The Department will use specialist staff to investigate all cases of fraud and intentional non-compliance and where necessary, refer these cases for prosecution.

Determining appropriate responses

STAKEHOLDER BEHAVIOURS AND MOTIVATION

VOLUNTARY COMPLIANCE

- Assessments are registered
- Advertisements contain required ratings

ACCIDENTAL NON-COMPLIANCE

- Not yet compliant
- Attempting compliance (e.g. developing understanding of requirements to ensure compliance)

OPPORTUNISTIC NON-COMPLIANCE

- Resistance to compliance
- Lack of indication of intention to comply (e.g. no indication of arrangements being developed to ensure compliance)

INTENTIONAL NON-COMPLIANCE

- Deliberate non-compliance
- Criminal intent or fraud
- Other illegal activity



DEPARTMENT RESPONSE

HELP AND SUPPORT

- Department will provide information and opportunities for complying stakeholders to ask questions, discuss issues of concern and participate in educational and discussion forums

EDUCATE AND PROVIDE FEEDBACK

- Department will provide additional guidance to targeted stakeholders
- Where an apparent non-compliance is identified, Department will provide relevant parties with an opportunity to respond
- Department will provide feedback on adequacy of arrangements to ensure compliance

CORRECT BEHAVIOUR

- Department will respond to detected non-compliance according to the severity (e.g. employing infringement notices and suspension)
- Department may publish information on the Energy Efficiency Non-disclosure Register about stakeholders who do not comply

ENFORCE THE LAW

- Where appropriate, Department will initiate court action in cases of deliberate non-compliance (including criminal prosecution of any offence that may have been committed)



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In determining appropriate responses to non-compliance, the Department will use a risk-based approach that takes into account stakeholders' behaviours and motivations. The Compliance Continuum above shows a spectrum of these behaviours and motivations, ranked according to compliance risk, and the corresponding levels of the Department's response.

Review

The Department is committed to administering the BEED Act in a transparent and accountable manner. As part of this, we will regularly review the Policy and its implementation, ensuring that operational experiences and amendments to legislation are incorporated. In the event that amendments to the Policy are required as a result of review findings, the Policy will be updated on the CBD website.

