



Queensland

Clean Energy Act 2008

Current as at 3 May 2013

**NOTE—This is the last reprint before repeal.
Repealed by 1994 Act No. 64 s 336
Repealed on 23 September 2013**

Information about this reprint

This reprint shows the legislation current as at the date on the cover and is authorised by the Parliamentary Counsel.

A new reprint of the legislation will be prepared by the Office of the Queensland Parliamentary Counsel when any change to the legislation takes effect. This change may be because a provision of the original legislation, or an amendment to it, commences or because a particular provision of the legislation expires or is repealed.

When a new reprint is prepared, this reprint will become a historical reprint. Also, if it is necessary to replace this reprint before a new reprint is prepared, for example, to include amendments with a retrospective commencement, an appropriate note would be included on the cover of the replacement reprint and on the copy of this reprint at www.legislation.qld.gov.au.

The endnotes to this reprint contain detailed information about the legislation and reprint. For example—

- The table of reprints endnote lists any previous reprints and, for this reprint, gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it.
- The list of legislation endnote gives historical information about the original legislation and the legislation which amended it. It also gives details of uncommenced amendments to this legislation. For information about possible amendments to the legislation by Bills introduced in Parliament, see the Queensland Legislation Current Annotations at www.legislation.qld.gov.au/information.
- The list of annotations endnote gives historical information at section level.

All Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints are not continued.



Queensland

Clean Energy Act 2008

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Clean Energy Act 2008

[as amended by all amendments that commenced on or before 3 May 2013]

An Act to improve the efficiency and management of energy use, and the conservation of energy, by particular businesses and other activities, and to amend the *Coal Mining Safety and Health Act 1999*, the *Electricity Act 1994*, the *Mineral Resources Act 1989*, the *Mining and Quarrying Safety and Health Act 1999*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* for particular purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Clean Energy Act 2008*.

2 Commencement

The provisions of the Act, other than the following provisions, commence on a day to be fixed by proclamation—

- (a) part 11, other than sections 40, 41 and 48;
- (b) part 14, other than sections 108, 109 and 116.

3 Main object

The main object of this Act is to improve the efficiency and management of the use of energy, and the conservation of energy, in relation to particular businesses and other activities.

Part 2 Interpretation

4 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

5 Who is the *regulator*

The *regulator* is the chief executive.

6 Meaning of *participating business*

- (1) A *participating business* is a person who—
 - (a) operates a business or carries out another activity at a site that used an amount of energy within the energy use threshold for the most recently completed financial year stated in a notice given to the person under section 9(1); or
 - (b) controls a commercial complex that used an amount of energy within the energy use threshold for the most recently completed financial year stated in a notice given to the person under section 9(1).
- (2) To remove any doubt, it is declared that—
 - (a) if a person is a participating business for 2 or more sites or commercial complexes, a provision of this Act that applies to a participating business applies to the person separately in relation to each site or complex; and
 - (b) subsection(1)(b) does not prevent a person who is a tenant in a commercial complex from being a participating business.
- (3) Despite subsection (1), each of the following is not a participating business—
 - (a) a person registered under the *Energy Efficiency Opportunities Act 2006* (Cwlth), part 4;

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- (b) a government entity within the meaning of the *Government Owned Corporations Act 1993*, section 5, other than a GOC issued with a generation authority under the *Electricity Act 1994*;
 - (c) a department;
 - (d) an authority or body, whether incorporated or not, established or continued in existence by or under a law of the Commonwealth.
- (4) Despite the revocation under the *Queensland Rail Transit Authority Act 2013* of the declaration of Queensland Rail Limited as a GOC, Queensland Rail Limited is taken to be a GOC for subsection (3)(b).

- (5) In this section—

commercial complex see section 7B(1).

controls, in relation to a commercial complex, see section 7B(2).

Queensland Rail Limited means Queensland Rail Limited ACN 132 181 090.

7 Meaning of ***energy use threshold***

The ***energy use threshold*** for a financial year is—

- (a) for the financial year ending on 30 June 2010—100 terajoules of energy or more, but less than 500 terajoules of energy; or
- (b) for a financial year ending on 30 June 2011, 2012, 2013 or 2014—30 terajoules of energy or more, but less than 500 terajoules of energy; or
- (c) for a financial year ending on or after 30 June 2015—10 terajoules of energy or more, but less than 500 terajoules of energy.

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7A Verification year for a business

- (1) The first *verification year* for a registered participating business is the 1 year period nominated by the business as its first verification year in its application for registration under section 11.
- (2) The second and each subsequent *verification year* for a registered participating business is the 1 year period that ends on the day that is 5 years after the end of the preceding verification year for the business.

7B Commercial complexes

- (1) A *commercial complex* is a cluster of premises having all of the following attributes—
 - (a) the majority of the premises are used wholly or predominantly for commercial purposes;
 - (b) all the premises—
 - (i) are owned by 1 or more persons; or
 - (ii) have 1 lessor or head lessor, or, if the premises were leased, would have 1 lessor or head lessor; or
 - (iii) comprise lots within a single community titles scheme;
 - (c) all the premises are located in—
 - (i) 1 building; or
 - (ii) 2 or more buildings that are adjoining or separated by common areas owned by an owner of the buildings.

Examples—

conference centre, office block or shopping centre

- (2) A person *controls* a commercial complex if the person—
 - (a) owns or leases the commercial complex and the common areas of the complex; and
 - (b) is an on-supplier for 1 or more premises in the complex.

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- (3) For this Act, the amount of energy used at a commercial complex includes all energy used—
- (a) by the person in control of the complex; and
 - (b) at common areas of the complex; and
 - (c) at premises for which the person who controls the complex is the on-supplier.

- (4) In this section—

common areas, of a commercial complex, means areas in or adjacent to the complex that are used, or intended for use—

- (a) by the public; or
- (b) in common by the lessees of premises in the complex in relation to the conduct of businesses in premises in the complex.

Examples—

parking areas, toilets, stairways and walkways

community titles scheme means a community titles scheme under the *Body Corporate and Community Management Act 1997*.

on-supplier see the *Electricity Act 1994*, section 20.

Part 3 Energy use information

8 Energy provider must give regulator information about energy use

- (1) The regulator may give an energy provider a written notice requiring the provider to give the regulator the name and address of, and the amount of energy used by, any customer the energy provider has supplied with 10 terajoules or more of energy, but less than 500 terajoules of energy, at the site of the customer, in the 1 year period stated in the notice.

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- (2) The energy provider must give the regulator the information within 14 days after the end of the period stated in the notice for that purpose, or 14 days after receiving the notice, whichever is later.

Maximum penalty—200 penalty units.

- (3) An energy provider does not commit an offence under subsection (2) if compliance with the provision would be unlawful under another law of the State or a law of the Commonwealth.

- (4) In this section—

energy provider means any of the following entities if the regulator has given the entity written notice that this section applies to the entity—

- (a) the holder of a distribution authority, generation authority or retail authority under the *Electricity Act 1994*;
- (b) a special approval holder under the *Electricity Act 1994*;
- (c) the holder of a distribution authority or retail authority under the *Gas Supply Act 2003*;
- (d) the holder of a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.

9 **Obligation to record total energy consumption**

- (1) The regulator may give a person a written notice requiring the person to give the regulator sufficient information to establish the total amount of energy used by the person in the financial year stated in the notice if —
- (a) the person is a registered participating business; or
- (b) the regulator decides, on reasonable grounds, that the person is or may be a participating business.
- (2) The person must give the regulator the information within 2 months after the end of the financial year stated in the notice, or 2 months after receiving the notice, whichever is later.

Maximum penalty—200 penalty units.

- (3) The regulator must give the person an information notice for the decision of the regulator that the person is or may be a participating business.

Part 4 Smart Energy Savings Register

10 Smart Energy Savings Register

- (1) The regulator must keep a register (the *Smart Energy Savings Register*) of each participating business that is, or may be, registered under section 11.
- (2) The register must include the following information for each participating business—
 - (a) the name of the participating business;
 - (b) the address of the principal place of business of the participating business;
 - (c) a phone number for the participating business;
 - (d) if the participating business is a corporation—
 - (i) the address of the corporation's registered office; and
 - (ii) the Australian company number for the corporation;
 - (e) the website, if any, of the participating business;
 - (f) for a registered participating business—the total amount of energy used by the participating business in its most recently completed verification year.

11 Registration as a registered participating business

- (1) A person may apply to the regulator for registration under this section.

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- (2) The application must—
 - (a) be in writing; and
 - (b) include the information mentioned in section 10(2)(a) to (e); and
 - (c) state a 1 year period of energy use by the applicant that will be the applicant's first verification year.

Note—

The 1 year period nominated by the applicant does not need to be a financial year but would need to enable the applicant to be able to comply with its obligations under parts 5 and 6.

- (3) A person, other than a registered participating business, given a notice under section 9(1) must apply for registration no later than 3 months after the end of the financial year stated in the notice if—
 - (a) the person is a participating business; and
 - (b) the person does not have an exemption granted under section 12.

Maximum penalty—100 penalty units.

12 Exemption from registration

- (1) A participating business given a notice under section 9(1) may apply to the regulator for an exemption from registration under section 11.
- (2) The application must be in writing and include—
 - (a) the reason that the participating business is seeking an exemption; and
 - (b) sufficient information to enable the regulator to decide the application.
- (3) The application must be made within 3 months after the end of the financial year stated in the notice given to the participating business under section 9(1).
- (4) The regulator may exempt the participating business from registration if the regulator is satisfied—

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- (a) the participating business does not ordinarily use an amount of energy within the energy use threshold for the financial year in which the application was made; or
 - (b) that in the most recently completed financial year—
 - (i) the participating business (the *primary business*) leased space to another participating business (a *secondary business*) at the site of, or in the commercial complex controlled by, the primary business; and
 - (ii) the total amount of energy used by the primary business, less the total amount of energy used by all secondary businesses, is less than the lowest energy amount in the energy use threshold for the financial year.
 - (5) If the regulator decides to refuse the application, the regulator must give the participating business an information notice for the decision.
 - (6) An exemption granted under this section continues until the day the participating business is given another notice under section 9(1).

13 Deregistration

- (1) A participating business may apply to the regulator for deregistration as a participating business.
- (2) The application must be in writing and include—
 - (a) the reason that the participating business is seeking to be deregistered; and
 - (b) sufficient information to enable the regulator to decide the application.
- (3) The regulator must deregister the participating business if the regulator is satisfied—
 - (a) the participating business is registered under the *Energy Efficiency Opportunities Act 2006* (Cwlth), part 4; or

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- (b) the participating business will not use an amount of energy within the energy use threshold for the current financial year or either of the following 2 financial years; or
 - (c) that in the most recently completed financial year—
 - (i) the participating business (the *primary business*) leased space to another participating business (a *secondary business*) at the site of, or in the commercial complex controlled by, the primary business; and
 - (ii) the total amount of energy used by the primary business, less the total amount of energy used by all secondary businesses, is less than the lowest energy amount in the energy use threshold for the financial year.
- (4) If the regulator decides to refuse the application, the regulator must give the person an information notice for the decision.

14 Change of information in register

A participating business must, within 14 days of any change to the information contained in the Smart Energy Savings Register under section 10(2) about the participating business, give the regulator written notice about the change.

Maximum penalty—20 penalty units.

Part 5 Energy use audit

15 Participating business must carry out energy use audit

- (1) A registered participating business must carry out an energy audit no later than 12 months after the end of each verification year for the participating business.

Maximum penalty—100 penalty units.

Note—

Given the length of an energy savings plan under section 16, a verification year could be expected to be established approximately every 5 years under section 9.

(2) In this section—

energy audit means an energy audit prescribed under a regulation, and if no energy audit is prescribed, an energy audit that complies with a level 2 energy audit under AS/NZS 3598:2000 (Energy Audits).

Part 6 Energy Savings Plan

16 Participating business must give regulator energy savings plan

(1) A registered participating business must give the regulator a plan (an ***energy savings plan***) that complies with subsections (2) and (3), no later than 12 months after the end of each verification year for the participating business.

Maximum penalty—200 penalty units.

(2) The plan must be for a period that—

- (a) starts on the day the plan is given to the regulator; and
- (b) ends on the day that is 5 years after the end of the verification year.

(3) The plan must—

- (a) be in the approved form; and
- (b) include a copy of a report about the energy audit carried out by the participating business under section 15(1); and
- (c) set out the measures the participating business intends to implement from the energy audit that are of the following type—

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- (i) efficiency measures;
- (ii) conservation measures;
- (iii) management measures; and
- (d) state how the participating business intends to implement the measures.

17 Participating business may change energy savings plan

- (1) A participating business may change an energy savings plan of the participating business to the extent that it relates to a matter mentioned in section 16(3)(c) or (d).
- (2) The participating business must, within 14 days of the change, give the regulator written notice setting out the change.

Maximum penalty—20 penalty units.

18 Review of energy savings plan

- (1) This section applies if a participating business gives an energy savings plan to the regulator under section 16.
- (2) The participating business must give the regulator a report, in the third year in the 5 year period of the plan, stating how the plan has been implemented by the participating business and the results of the implementation.

Maximum penalty—100 penalty units.

- (3) In this section—

5 year period, of an energy savings plan, means the period of 5 years starting from the end of the most recent verification year to which the plan relates.

19 Publication of energy savings plan implementation

- (1) Within 28 days after a participating business gives the regulator an energy savings plan under section 16, the participating business must publish information, in the way stated in subsection (3), about the measures the participating

business intends to implement under the plan that are of the following type—

- (a) efficiency measures;
- (b) conservation measures;
- (c) management measures.

Maximum penalty—20 penalty units.

- (2) Within 28 days of the start of the second and each subsequent year in the 5 year period of the plan, the participating business must publish information, in the way stated in subsection (3), about the implementation, and the results of implementation, of the measures mentioned in subsection (1).

Maximum penalty—20 penalty units.

- (3) Information under subsections (1) and (2) must be published in a way that is readily accessible to the public.

Examples of how information may be published—

- publishing on a website
- publishing in a local newspaper

- (4) The participating business must, within 28 days after it complies with subsection (1) or (2)—

- (a) advise the regulator by written notice that the participating business has complied with the subsection; and
- (b) give the regulator proof of compliance.

Maximum penalty—20 penalty units.

Example of how a participating business may prove compliance—

give the regulator a website address or a newspaper article

- (5) In this section—

5 year period, of an energy savings plan, means the period of 5 years starting from the end of the most recent verification year to which the plan relates.

- (a) made in connection with the administration of this Act; or
- (b) made with the consent of the person to whom the information relates; or
- (c) ordered by a court in relation to proceedings before it; or
- (d) made with other lawful excuse.

Maximum penalty—100 penalty units.

- (2) In this section—

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

Part 8 Evidence and legal proceedings

Division 1 Application

23 Application of part

This part applies to a legal proceeding under this Act.

Division 2 Evidentiary aids

24 Appointments and authority

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the regulator's appointment;
- (b) the authority of the Minister or the regulator to do anything under this Act.

25 Signatures

A signature purporting to be the signature of the Minister or the regulator is evidence of the signature it purports to be.

Division 3 Offence proceedings

26 Summary proceedings for offences

- (1) Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding for an offence against this Act must start—
 - (a) within 1 year after the commission of the offence; or
 - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

27 Executive officers must ensure corporation complies with Act

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer

exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) In this section—

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

Part 9 Review of decisions

Division 1 Internal review

28 Application for internal review

A person who is given, or is entitled to be given, an information notice about a decision of the regulator under this Act, may apply for an internal review of the decision.

29 How to apply for internal review

(1) An application for internal review of a decision must be—

(a) made—

(i) in the approved form; and

(ii) to the Minister; and

(b) supported by enough information to enable the Minister to decide the application.

(2) The application must be made within 20 business days after—

(a) the day the person is given the information notice about the decision; or

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- (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the decision.

30 Review decision

- (1) The Minister must, within 30 business days after receiving the application—
 - (a) review the decision (the *original decision*); and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must comply with the QCAT Act, section 157(2).
- (3) If the Minister does not comply with subsection (1), the Minister is taken to have made a decision confirming the original decision.

Division 2 External reviews

31 Who may apply for external review

A person who has applied for a review of a decision under division 1 and is dissatisfied with the decision (the *dissatisfied person*) may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

Part 10 Miscellaneous

36 **Delegations**

(1) The Minister or the regulator may delegate his or her functions under this Act to an appropriately qualified officer or employee of the department.

(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to perform the function.

Example of standing for an employee of the department—

the employee's classification level in the department

functions includes powers.

37 **Approval of forms**

The regulator may approve forms for use under this Act.

38 **Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide for a maximum penalty of 20 penalty units for a contravention of the regulation.

Schedule 2 Dictionary

section 4

approved form means a form approved by the regulator under section 37.

conservation measures mean measures that will result in a reduction of energy used.

Example of a conservation measure—

turning off stand-by power on electronic equipment

dissatisfied person see section 31.

efficiency measures mean measures that will result in a reduction of energy used for the same or a higher output.

Example of an efficiency measure—

installing new technology to make a process more efficient

energy means electricity or processed natural gas, or electricity and processed natural gas.

energy savings plan see section 16(1).

energy use threshold see section 7.

information notice, about a decision of the regulator, means a written notice stating each of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may, within 20 business days after the day the notice is given, ask the Minister to review the decision;
- (d) how the person may have the decision reviewed.

management measures mean measures that will result in an improvement in a participating business' ability to implement conservation measures and efficiency measures.

Example of a management measure—

making it the responsibility of each person in a senior management position in a participating business to ensure that conservation measures and efficiency measures are implemented by the participating business

participating business see section 6.

processed natural gas see the *Gas Supply Act 2003*.

registered participating business means a participating business, or other person, that is registered under section 11.

regulator see section 5.

Smart Energy Savings Register see section 10(1).

verification year, for a registered participating business, see section 7A.

Endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 May 2013. Future amendments of the *Clean Energy Act 2008* may be made in accordance with this reprint under the *Reprints Act 1992*, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised version
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
0A	none	21 May 2008	certain provs commenced
0B	none	1 July 2008	certain provs commenced
1	none	22 May 2009	pts 4–10 commenced
1A	2009 Act No. 24	1 December 2009	

Endnotes

Reprint No.	Amendments included	Effective	Notes
1B	2010 Act No. 17	21 April 2010	
1C	2011 Act No. 2	17 March 2011	

Current as at 3 May 2013	Amendments included 2013 Act No. 19	Notes
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5 List of legislation

Clean Energy Act 2008 No. 33

date of assent 21 May 2008

ss 1–2 commenced on date of assent

pts 4–10 commenced 22 May 2009 (automatic commencement under AIA s 15DA(2))

pt 11 (other than ss 40, 41, 48), pt 14 (other than ss 108, 109, 116) commenced on date of assent (see s 2(a)–(b))

remaining provisions commenced 1 July 2008 (2008 SL No. 191)

amending legislation—

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 5 pt 14

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

Mines and Energy Legislation Amendment Act 2010 No. 17 s 1, pt 2

date of assent 21 April 2010

commenced on date of assent

Mines and Energy Legislation Amendment Act 2011 No. 2 s 1, pt 2

date of assent 17 March 2011

commenced on date of assent

Queensland Rail Transit Authority Act 2013 No. 19 ss 1, 120 sch 1

date of assent 3 May 2013

commenced on date of assent

6 List of annotations

Meaning of *participating business*

s 6 sub 2010 No. 17 s 4
amd 2013 No. 19 s 120 sch 1

Meaning of *energy use threshold*

s 7 sub 2010 No. 17 s 4

Verification year for a business

s 7A ins 2010 No. 17 s 5

Commercial complexes

s 7B ins 2010 No. 17 s 5

Energy provider must give regulator information about energy use

s 8 amd 2010 No. 17 s 6

Obligation to record total energy consumption

s 9 amd 2010 No. 17 s 7

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7 Forms notified or published in the gazette

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