

# Civil Law (Sale of Residential Property) Energy Efficiency Rating Guidelines Determination 2009 (No 2)

**Disallowable instrument DI2009–124**

made under the

**Civil Law (Sale of Residential Property) Act 2003, s20A (Energy efficiency rating guidelines)**

## EXPLANATORY STATEMENT

---

The *Civil Law (Sale of Residential Property) Act 2003* (“the Act”), section 20A (Energy efficiency rating guidelines), entitles the planning and land authority to make guidelines for the preparation of energy efficiency rating statements.

Under Part 3 of the Act an energy efficiency rating (EER) must be declared when premises that may lawfully used for residential purposes are advertised or offered for sale, with specific exclusions for certain types of dwellings. An EER Statement, which contains information on specific elements of a building as well as on opportunities to improve that building’s energy efficiency, must also form part of the contract of sale.

Requirements for the sale of residential properties were introduced in the ACT in 1998. EERs provide the market, industry and consumers with a quantifiable measure of the theoretical energy performance of residential premises, and therefore a comparison of relative energy efficiency across buildings of the same type. An EER is expressed as a star rating and is based on the theoretical amount of energy required to heat and cool the home.

Similar requirements for the disclosure of an EER exist under the Residential Tenancies Act 1997 when leasing or advertising a residential property for lease in cases where an EER has been prepared for the property.

Currently the energy efficiency of a dwelling to be sold is calculated using FirstRate, a ‘first generation’ thermal modelling software tool developed by the Victorian Government under the NatHERS program in the mid 1990s.

The BCA has also regulated the adoption of national protocols and standards for the energy efficiency of new dwellings including houses, units and apartments, requiring

the minimum of the equivalent of 5 stars under relevant protocols for Class 1 building buildings since 2006.

While the BCA provides various methods to assess the energy efficiency of a dwelling, until 1 May 2009 performance could be verified by either first generation or second generation software tools. After that date the BCA will cease to recognise first generation software tools, and only second generation software tools will be recognised when undertaking an EER to demonstrate compliance with the BCA under relevant verification methods. Therefore, energy ratings prepared to demonstrate compliance with the BCA cannot be used in relation to the sale of premises.

In previous years, the EER guidelines formed a code under the Territory Plan and provision of an EER was required as part of the development approval process. Since the removal of building regulation from planning codes an EER is no longer a requirement for gaining development approval, therefore alternate guidelines for premises to be sold ‘off the plan’ are required.

The Authority proposes to implement a number of changes to the ACT House Energy Rating Scheme (ACTHERS) to increase its coverage and provide a more comprehensive regulatory framework to support the scheme. Interim guidelines will allow proposed and new constructions that have not been occupied to comply with energy efficiency disclosure requirements while these changes are developed and implemented.

These guidelines will apply to people who are selling a premises and registered energy assessors undertaking an EER for the purpose of sale of premises.

## **Explanation of Guidelines**

### *Part 1*

Part 1 provides general information about the making, purpose, and application of the Guidelines.

### *Part 2*

Clause 2.1 provides for the documentation that must be used as an EER Statement.

Clause 2.2 outlines requirements concerning the currency, validity and completeness of EER Statements. This is necessary to ensure that information provided to prospective purchasers and tenants is an accurate basis on which to make a comparison between properties and a decision on a purchase.

Clause 2.3 provides for deemed energy efficiency rating statements to be used for completed new buildings in certain instances. This is necessary to allow for the use of standard documentation certifying compliance with minimum energy efficiency performance standards and detailing elements of an energy rating for new premises to be used for contracts of sale prior to the first occupation of the premises.

Clause 2.4 outlines provisions for documentation that forms a deemed energy efficiency rating statement for premises that are sold prior to completion of

construction. This is necessary to avoid the need for preparation of separate ratings for the sale where compliance with energy efficiency requirements for new buildings can be demonstrated. This clause also allows for standard documentation demonstrating energy efficiency performance to be used to ensure consistency of information.

Clause 2.5 outlines requirements for advertising of energy efficiency star ratings.

### *Part 3*

Part 3 provides for the technical preparation of an EER Statement. This is necessary to ensure that an EER is accurate, relevant to the climate in which the premises is located, and ensures that only people who are qualified to undertake assessments of building energy performance can prepare EER Statements.