

SUBMISSIONS GUIDE AND TEMPLATE

Regulation Impact Statement on Residential Building Mandatory Disclosure

COAG principles of best practice regulation

Residential Buildings Mandatory Disclosure is a Council of Australian Governments (COAG) proposal.

The COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the principles of Best Practice Regulation. These principles are outlined below and apply to decisions of COAG, Ministerial Councils and intergovernmental standard-setting bodies (including bodies established by statute, or administratively by government, to deal with national regulatory problem).

COAG PRINCIPLES OF BEST PRACTICE REGULATION

COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b. the objectives of the regulation can only be achieved by restricting competition
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

Source: COAG 2007.

The principles and assessment requirements apply to agreements or decisions to be given effect, whether at the Commonwealth or State/Territory level, or both, through principal and delegated legislation, administrative directions or other measures which, when implemented, would encourage or force businesses or individuals to pursue their interests in *material* ways they would not otherwise have done.

A Regulatory Impact Statement (RIS) is a central component of the COAG's regulation impact assessment process. It is a document prepared to assist with stakeholder consultation (COAG Principle 7).

The objective of any RIS is to formalise and provide evidence of the key steps taken during the development of a regulatory proposal, including an assessment of the costs and benefits of each option.

Consulting effectively with key stakeholders in the development of regulation is also a central part of the COAG Best Practice Principles.

Consultation on Residential Building Mandatory Disclosure

The Regulation Impact Statement (RIS) for Residential Building Mandatory Disclosure has been released for public consultation and is available at www.ret.gov.au/Documents/mce/quicklinks/bulletins.html.

Public consultation meetings will be held in the following cities during August 2011:

- Parramatta - 2nd August, 12.30pm, Mantra Parramatta, Corner Parkes St & Valentine Ave, Parramatta
- Sydney - 3rd August, 12.30pm, Grace Hotel Sydney CBD, Corner of York & King Streets, 77 York Street
- Hobart - 5th August, 12.30pm, Mercure Hobart, 156 Bathurst Street, Hobart
- Bunbury - 8th August, 12.30pm, Clifton Hotel Bunbury, Corner Clifton & Molloy Streets, Bunbury
- Perth - 9th August, 12.30pm, Comfort Inn Bel Eyre, 285 Great Eastern Highway, Belmont
- Adelaide - 10th August, 12.30pm Mercure Grosvenor Adelaide, 125 North Terrace, Adelaide
- Brisbane - 12th August, 12.30pm Brisbane Mercure, 85–87 North Quay, Brisbane
- Darwin - 15th August, 10.30am Travelodge Darwin, 64 Cavenagh Street, Darwin
- Canberra - 16th August, 12.30pm All Seasons Olim's Hotel Canberra, Corner of Ainslie & Limestone Ave, Braddon

For those in regional areas unable to attend metropolitan sessions, separate web based seminars will be available. The current schedule is available at <http://www.climatechange.gov.au/government/submissions.aspx>. To register your participation in an online meeting, please email your details, including your location, to buildings@climatechange.gov.au.

Making Written submissions

Comments can be made on any aspect of the Consultation RIS. Of particular importance is feedback from stakeholders and interested parties on:

- *The extent of the 'problem' in residential building energy, greenhouse and water performance.* That is, to what extent are there market failures, which present a barrier to improved energy, greenhouse and water performance of residential buildings in Australia? Has the problem been accurately represented in this RIS?
- *The adequacy of the options assessed in the Consultation RIS in addressing the problem* — are there any other feasible policy options that should also be considered in the assessment?
- *The assessment of costs and benefits of options:*
 - Does the assessment fully reflect all potential costs and benefits of the options assessed?
 - Are there costs to industry that have not been accounted for?
 - Are the costs of the energy and water efficiency measures included in the RIS reasonable?
 - Are the assumptions underlying the analysis valid/reasonable?
 - Are the take-up rates for the proportion of sellers and lessors that invest in upgrades to their properties in each scenario reasonable?
 - The impact of the HIP upon the penetration of roof insulation in the stock of Australian residential buildings.
- *Identified risks and uncertainties associated with each option.*

A **submissions template** follows. It is advisable but not essential that you use this template in framing your submission. Forward your submission:

- via email (preferred) to: residentialdisclosure@climatechange.gov.au OR
- via mail to: Residential Energy Efficiency Team
Buildings and Government Energy Efficiency Branch
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601

Submissions should be received by 12 September 2011.

Any general enquiries regarding the Mandatory disclosure of residential building energy, greenhouse and water performance initiative should be directed to buildings@climatechange.gov.au.

Submission Template

Residential Buildings Mandatory Disclosure – Consultation Regulatory Impact Statement - July 2011

Overview

This submission template should be used to provide comments on Residential Building Mandatory Disclosure Consultation Regulatory Impact Statement (CRIS).

Contact Details

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Date:	9 September 2011

Confidentiality

All submissions will be treated as public documents, unless the author of the submission clearly indicates the contrary by marking all or part of the submission as 'confidential'. Public submissions may be published in full on the Department of Climate Change and Energy Efficiency or other relevant Government websites, including any personal information of authors and/or other third parties contained in the submission. If any part of the submission should be treated as confidential then please provide two versions of the submission, one with the confidential information removed for publication.

A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Do you want this submission to be treated as confidential? Yes No

Submission Instructions

Submissions should be made by **close of business on 12 September 2011**. The Department reserves the right not to consider late submissions. Please restrict your submission to 4 pages of comments

Where possible, submissions should be lodged electronically, preferably in Microsoft Word or other text based formats, via the email address – residentialdisclosure@climatechange.gov.au

Submissions may alternatively be sent to the postal address below to arrive by the due date.

*Residential Energy Efficiency
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601*

Residential Buildings Mandatory Disclosure – Consultation Regulatory Impact Statement (CRIS)- July 2011

General/overall comments

The comments contained in this submission have been prepared on behalf of Lake Macquarie City Council by Council staff and have not been ratified as a formal Council position or policy.

The extent of the problem in residential building energy, greenhouse and water performance and the case for intervention:

Council agrees with the CRIS's outline of the extent of the problem in residential building energy, greenhouse and water performance and the case for intervention due to inherent market failures such as lack of transparent and standard information. Therefore, Council supports the objectives of the Residential Buildings Mandatory Disclosure legislation. Given the significant carbon emissions resulting from the construction and operation of the residential built environment and the positive results reported by the ACT's Home Energy Rating Scheme (as outlined p121-122 in the CRIS), Council believes there is a case for legislative intervention. Council supports the mandatory provision of the information required by the proposed legislation to both buyer and vendors or tenants and landlords (referred to as market participants here forth) to guide purchase decisions and environmental improvements properties.

The legislation improves transparency of energy and thermal performance for buyers and tenants, who have become increasingly aware of the higher living costs, discomfort, and adverse impact on the environment, poorly designed homes can impose. The legislation favourably allows energy and thermal performance to be a selling point of a property and facilitates a market for those who wish to take account of this in their investment decisions. Importantly, the proposed legislation provides a consistent, objective basis for assessment, removing inconsistencies that can arise in voluntary or industry self-regulated schemes. This is important, as the components that make a home more or less energy efficient are not necessarily obvious or easily assessed by non-professionals.

Adequacy of assessment options presented in the CRIS:

Council does not support Options 3 and 4, because of the limited and superficial information they would provide market participants and uncertainty as to the reliability of the data. It is doubtful that these types of assessments can provide meaningful guidance to market participants, if only because of the default component of the self-assessments. The assumptions that would underlie the default option, triggered by self-assessors unsure of the answer, are unlikely to provide quality, useful information. As the provision of sound information that usefully informs market participants is the objective of the legislation, this should not be jeopardised. Further, if the vendor or landlord contracted the assessments in Option 3 and 4 to a third party, the cost savings compared to Option 2 are negligible and considering the lesser quality of information produced, it would be a wasteful use of this legislation, and ineffective cost impost, to implement Options 3 and 4 over Option 2.

From the discussion paper, it appears that Option 2 would be the best value for money in guiding market participants as to how a property is performing and improvement recommendations. However, part three of the assessment process should also include potential cost savings relating to each recommendation, as is done in Energy Performance Certificate issued in England and Wales (http://www.direct.gov.uk/en/HomeAndCommunity/BuyingAndSellingYourHome/Energyperformancecertificates/DG_177026).

Further, the CRIS provides limited information on the key differences that Option 1 and Option 2 would provide in terms of achieving the legislative objectives. The larger cost impost of Option 1 due to requirements for a floor plan is not elaborated on, in terms of what quality or additional information this would be expected to provide over Option 2. We assume that Option 1 would, in principle, have the capacity to provide more reliable information, as it requires a floor plan which presumably is then used to improve the quantification of the home's thermal performance. The options presented in the CRIS lacked meaning, as how they would relate to providing the rating of the property was not covered. More detailed feedback is provided in the next section.

Council believes that the certificate should consist of:

- a) a rating that is meaningful, easy to understand and useful in comparison by market participants;
- b) a thorough predictive assessment that captures the technical potential performance of the house; and
- c) an actual assessment that captures occupant interaction with the technical capabilities of the house

By using both a predictive and actual assessment, a more holistic assessment approach is available. It allows the legislation to create opportunities to identify:

- possible operational issues of sustainable features that a buyer may need to address, for example, solar hot water permanently on boost mode or operable external shading not working;
- incorrect technical assumptions about the performance of certain building elements that creates more knowledge about green building, for example thermal mass or insulation used in a certain way may not be as effective in cooling a building as assumed in its design or by an assessment tool;
- potential incorrect data input or other mistakes in the predictive assessment if there is a large gap between expected performance and actual performance; and
- the potential for the occupants behaviour to more closely align the building performance with its assumed technical capacity.

The assessment of costs and benefits of options presented:

The administration process for the certificate was not well covered in the CRIS and presumably, this will have a significant affect on the costs and benefits of this legislation to the economy. The assessment and certificate process do not need to be a cumbersome burden on market participants, and could in fact present an opportunity to make the whole process of buying a house more streamlined and less expensive for buyers. Council presents an administration system that would make the economic cost of the legislation much less than what has been presented in the CRIS.

Council believes this certificate process could be embedded in an online 'home performance portal' created and maintained by the government. Potential buyers accessing the portal would type in the address and pay a fee to obtain a 'guest' login. Through the login they could access all property performance information including the house rating and assessment certificate, the building and pest inspection reports, existing BASIX reports, flood certificate, and any other relevant information on the property that can be uploaded by the owner at the time.

The building and pest report and flood certificate therefore only needs to be paid and uploaded once by the vendor, rather than organised and paid several times by prospective buyers as is currently the case in NSW. The fee for information relevant to the house would actually then be less for buyers than what they would currently pay for a building and pest report, and flood certificate. The fee paid by every interested buyer can be used to reimburse the vendor and administer the site. For example, the fee to access all that information per interested buyer is \$200 (the standard , seven interested buyers obtain guest logins to view the information, that means the vendor is reimbursed \$1 400. There could be an upper limit on the amount of guest logins used to reimburse the vendor with the rest going to fund administration.

If this system were put in place at the time the legislation came into effect, the time and money involved in gathering all relevant information on a house, including its thermal and energy performance would be much less for the Australian economy than is presented in the CRIS when taking into account the efficiencies gained from other information sources required.

The advantages of this administration system on disclosing rating and assessment information are:

- The system allows a different fee, or potentially no fee, for tenants wanting to access information on a rental property;
- An owner would be administrator of the houses online account until exchange of contracts. An owner that has already undertaken an assessment and rating could upload evidence of any additional works (for example, invoice and contractor's details of a solar hot water system) succeeding the certificate that could then be verified by the assessor for a lower cost re-assessment and rating;
- If significant renovations are carried out within the five year validity period of the certificate, the BASIX (or similar) report could be uploaded to supplement the thermal and energy certificate;
- If a vendor has an exceptionally performing house, they can supply additional detailed information

to further the selling point, for example, carbon neutral or green star documentation. It acts as an avenue for vendors to document the extra effort gone into greening the home;

- The system could allow vendors to document existing trades people who have a history with the home and connect them with buyers. For example, a plumber installs a tank with one homeowner and after the owner sells the home, a maintenance issue arises. The buyer can access the details of who installed it and contact them for assistance. This feature therefore keeps tradespeople more accountable, but also generates further work for them if the buyer does not have an existing preferred tradesperson or chooses to contract someone who is already familiar with the house;
- All information contained in the portal is more easily accessible to market participants who are travelling/living overseas or for people migrating;
- It would cut down on the paper from printing out several building and pest inspection reports, energy and thermal performance certificates, BASIX certificates etc. per house sale; and
- Administration costs of the system are likely to be less and take less of market participants' time.

The validity and reasoning of the assumptions underlying the analysis - clarification needed on the relationship between the assessment options and rating approach:

The CRIS did not discuss the possible range of rating approaches, nor did it discuss expected interpretation by market participants, or the merit of different rating approaches. Further, the CRIS did not clarify how the assessment options would inform the ratings that would be publicly available. This is of concern given the entire CRIS report was dedicated to analysis of assessment approaches that may be considered irrelevant or secondary to the rating approach. For example, the rating is displayed as megawatt hours and/or energy costs per square metre or person per year for the particular postcode the buyer is looking in. This rating could be obtained using something like NABERs where an actual assessment of the occupants energy use is standardised and benchmarked next to other houses in the same postcode. If this rating approach was used, then the predictive assessment (all options presented in the CRIS) would be support information only and Option 1 would certainly not be value for money given it would not be essential to the actual rating. If this rating approach was used, Option 2 would be preferred and the certificate would then be a hybrid of an actual and predictive assessment.

The rating is what tenant and buyers will see immediately when searching for and comparing properties at the initial stages. It is what vendors and landlords are likely to have the biggest issue with, if they believe the money they must pay for an assessment produces an inaccurate reflection of their houses performance in terms of the rating. From the CRIS, it appears the rating is the first point of information for a home's performance, and the content of the assessment is the supporting information used by tenants and buyers to determine potential improvements and perhaps inform a final decision to upgrade the property's performance. More clarity is needed around the relationship between the rating and the assessment as what is chosen as the rating could change the importance of the different assessment options presented.

Further consultation regarding the legislation should include information on the possible rating approaches, and how these approached are informed by the selected assessment method. However as stated above, Council believes the most effective use of this legislation would involve:

- a) a rating that is meaningful, easy to understand and useful in comparison by market participants;
- b) a thorough predictive assessment that captures the technical potential performance of the house; and
- c) an actual assessment that captures occupant interaction with the technical capabilities of the house.

C-RIS Section number:	Comments
4:3	Council is opposed to the 'opt-out' option. If a vendor/landlord knows their house does not perform well it should not preclude them from identifying ways to improve its performance. Improved performance of dwellings is the over-arching goal of the legislation, which is described in the certificate to the prospective buyer/tenant. Buildings that should be demolished, or are likely to be demolished upon sale, however, should be exempt.