

## 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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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](mailto:residentialdisclosure@climatechange.gov.au)

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

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

### General/overall comments

The introduction of a scheme for the disclosure of residential buildings' thermal and fixture energy efficiency is a move supported by the Sustainable Energy Association of Australia in a move to improve the energy efficiency of residential dwellings. SEA agrees with the proposition that there are informational gaps within the area of residential dwellings. However, rather than an information asymmetry (one party knowing a piece of information and the other not), there appears to be an absence of knowledge by both parties regarding the energy, greenhouse and water performance of many residential dwellings across the market. A mandated assessment and disclosure scheme would address the lack of knowledge on energy efficiency in the market.

In addition, the issue of disclosure is one of ensure buyers are appropriately informed in the market as to the potential long term energy cost impact of their choice of purchase or lease. While the inclusion of white goods and consumer electronics etc. can have an impact on overall energy consumption thermal performance, in respect of energy spent on heating and cooling, and fixtures can also be a significant factor in overall energy consumption in the home.

The mandatory disclose of efficiency in existing residential buildings brings the existing residential building capital stock into line with the disclosure and standards currently required for new homes. This provides greater transparency to buyers who are considering the options between buying existing housing and building a new house and may impact their decision to buy or build, depending on their awareness of, or the importance that they place on, energy efficiency.

No business should attempt to operate without targets and performance goals and businesses set continuous improvement goals to grow the business and increase profitability. Continuous improvement on energy outcomes is no different - the return on energy efficiency returns the profit to the home owner and the tenant - better building standards deliver lower energy and water bills for all of us, and contribute to reducing greenhouse gas emissions.

C-RIS Section number: <i>[insert section number eg 3.1]</i>	Comments
4.1	<p>SEA supports Option 2 as identified in the Regulatory Impact Statement as the most cost effective and practical mechanism for the mandatory disclosure of household energy / greenhouse / water efficiency. While Option 1 is the most preferable and best practice mechanism, there is a significant additional cost to the seller, and these costs may not be effectively recoverable by them through the sale process.</p> <p>Option 2 should be the minimum choice for an assessment but consumers who choose to undertake Option 1 should not be discouraged from pursuing this option, as it is 'best practice'. Any disclosure certificate from an assessment under Option 1 or 2 should note whether or not the full thermal assessment was undertaken and if so whether the buildings NATHERS Star rating can then be disclosed as part of the rating system.</p>

<p>4.1</p>	<p>Only Options 1 and 2 would provide a definitive, independent third-party verification of the house's efficiency rating. By undertaking a process that does not have this third-party assessment there is a lack of assurance to the validity of the rating on behalf of the property's purchaser or tenant. Without assurance, a lack of trust in the system may be engendered, undermining the purpose of having a mandatory disclosure program.</p> <p>In addition, the training and certification / accreditation of the assessors needs to be in line with the current standards for undertaking building thermal and energy efficiency assessments. Without appropriate accreditation of assessors, there is a risk that variability in assessment quality or insufficient quality control can compromise the mandatory disclosure requirements in the eyes of the purchaser / tenant who may not place the appropriate value in considering energy efficiency in the purchase decision.</p>
<p>4.1 / Appendix G</p>	<p>The selection of the rating scheme for the assessment should be consistent across Australia and correlate directly to the requirements / conditions for newly built housing stock. In determining the system that would provide greatest benefits to both the market would need to be able to separately rate the NatHERS thermal rating from the determination of the overall efficiency of energy, water and greenhouse emissions (the sustainability rating). To use multiple rating systems, each with stars undermines comparability between new and existing housing stock, a factor that needs to be considered when looking at consumer benefits and clarity of choice.</p> <p>SEA supports a rating scheme which could embody the hybrid system of NatHERS stars for thermal performance (where consumers chose option 1) and a system similar to that used in the UK / Europe where there is a separate rating based around sustainability including the fixtures and appliances within the residence which will impact the consumption of energy within the home (e.g. water heating, pool pumps, air conditioning etc.). A combined rating system , NathHERS Thermal Stars and sustainability rating (such as A to G similar to the UK EPB System) would provide such a system that could compare both thermal performance and sustainability performance. However, only if Option 1 was chosen would someone need to disclose the NatHERS rating.</p> <p>The current level of building assessors and their appropriate skills and training is also an issue that needs to be addressed as based on the estimate of transactions, there is a need nationally for several thousand assessments per day based on the level of transactions estimated in the RIS. Sufficient levels of skills and capacity will need to be built up in the industry to ensure that there are no unnecessary delays or additional transaction costs for the seller or lessee.</p> <p>In a number of states building standards contain 'deemed-to-comply' provisions for new housing in assessing its energy performance ratings. Only in those states where there are these existing provisions, should any deemed-to-comply allowances be made in respect of the assessment. Furthermore, where deemed to comply provisions are included in the assessment, these should be disclosed to the purchaser / lessor of that particular dwelling.</p>

<p>4.1 / 4.2</p>	<p>It is SEA’s position that the residential disclosure requirements should be applied to both the sale and lease of residential properties. By applying the mandatory disclosure rules only to the sale of houses and not to leases, lessees are denied the same level of information as buyers and can be disadvantaged through exposure higher energy costs than they might otherwise face.</p> <p>The RIS noted that the assessment will make recommendations on the improvement of energy efficiency once the assessment has been undertaken. However, there is no mechanism to address the well-recognised problem of split incentives between landlords and tenants in respect of energy efficiency. This is not isolated to commercial transactions but to residential tenancies as well. Should the mandatory disclosure requirements be applied to residential leases, there needs to be mechanisms in place to assist landlords with the implementation of the assessment’s recommendation. Funding programs such as Property assessed clean energy (PACE) funding should be considered complimentary measures to encourage the implementation of these improvements and reduce residential tenancy energy c and water consumption as well as the consequent greenhouse emissions.</p> <p>SEA recognizes that in social and low-cost housing the implementation of mandatory disclosure for leases is problematic as there is no often no choice on the tenant’s behalf about the housing in which they will be a tenant. In certain specific circumstances, in group housing for example, the mandatory disclosure requirements should be allowed a waiver as it makes little sense to undertake this for individual transactions of this nature. However, in other low-cost or social rental situations, (units or houses) then the tenant should be given an understanding of the likely energy costs of the tenancy.</p>
<p>4.1 / 4.2</p>	<p>The inclusion of a self-assessment option in the program also carries with it a risk to buyers regarding the accuracy of these assessments. Whether due to lack of experience and knowledge or some ill-intent on behalf of the owner, self-assessment of the rating carries no guarantee or assurance to the buyer that it was done correctly. While disclosure is mandatory, without independent verification, there is a potential for risk perception on behalf of the buyer increasing, thereby reducing the value of the rating to the consumer.</p>
<p>4.3</p>	<p>It is SEA’s position that the inclusion of an opt-out in the program would undermine the value of mandatory disclosure requirements for consumers. While in providing an opt out a zero-rating would be given, there is a lack of evidence that in doing so the cost to the seller / landlord in terms of sale or rental price would provide sufficient motivation to choose to undertake the rating assessment.</p> <p>Furthermore, unless there was an exceptional reason to do so (such as demolition of the house or social housing issues as noted elsewhere), the opt-out choice undermines the purpose of a mandatory disclosure program.</p>

<p>Appendix B</p>	<p>The modelling makes the assumption of no tax or price on carbon in its assumptions. With the current Clean Energy Future legislation before the Parliament, the modelling will need to be revised to assume that this will affect the price of energy and therefore the financial motivations of buyers and tenants.</p> <p>In the modelling of the opt-out option, there is an assumption of a 50% opt-out rate. In discussions with SEA members, there is a view that this rate is in fact too low and should be higher. Discussions with SEA members have indicated that 50% opt out is overly optimistic and that rates above 80% may be expected, based on the assumption that there is only a 20% uptake rate in voluntary home assessment for existing buildings without some form of direct incentive to do so.</p> <p>Pricing on Option 1 is also an issue in respect of the costs involved in the assessment. Discussions with various stakeholders has raised the potential issue of this price being too high and therefore having a negative impact on the overall assessment of the</p>
<p>Not noted in the RIS</p>	<p>One issue not covered in the RIS is how the administration of the scheme may work and how the purchaser behaviour may be impacted by the availability of the assessment information. If the purchaser / lessee is interested they need the information to be available when screening for potential properties to view and therefore this information needs to be available at the time of advertising (online or in papers). Suggestions made in respect of how this system might work include:</p> <ol style="list-style-type: none"> <li>1. Requiring disclosure of any assessment certificate number in any advertising;</li> <li>2. Having a publicly available online portal for purchasers / lessee to look at the certificate;</li> <li>3. Prescribing what information should be included in the disclosure certificate.</li> </ol> <p>The UK system has a regulatory requirement for the lodging of certain information as well as the assessment results, which are held by a central registering body and are accessible to potential buyers interested enough to access this information using the certificate number. In addition to providing appropriate consumer information on disclosure matters, this information can be used in the longer term in respect of classification and understanding of the extent and adoption of energy consumption / avoidance behaviours in relation to residential dwellings, where there is a recognised paucity of data at this time.</p>