

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

### General/overall comments

Building Designers Australia (BDA) commend DCCEE and CoAG on their commitment to this important initiative. BDA believe that, more than any other sustainable change agenda aimed at the housing sector, Residential Buildings Mandatory Disclosure (MD) has the greatest potential to deliver meaningful dividends for both current and future generations and creates a substantial opportunity for the housing sector.

BDA attribute this to the potential for MD to link sustainable performance to property value and market forces - thereby creating a market driven incentive to improve the sustainable performance of all housing stock in an otherwise cost and risk averse industry sector. We believe that, if implemented effectively, MD will create consumer demand for the high level sustainable practices and skills our members have been acquiring during the last decade.

Our submission focuses on energy use and greenhouse gas emission (GGE) reduction aspects of MD because, in our view, these are the most challenging to assess. While water consumption is also of critical importance, assessment options for this resource are far more straightforward. Additionally, while BDA support the initial focus on GGE and water, we would suggest that consideration be given to the introduction of additional indices in the future. These would include: indoor air quality, resource depletion and biodiversity impact.

BDA hold the view that, while the range of contexts and housing types to be assessed under Mandatory Disclosure (MD) is diverse, *Option 2: Simplified thermal assessment* as defined in the Allen Consulting 2011 Report (Allen Consulting 2011) is the most viable amongst those proposed. Further, BDA submit that little advantage would be gained from a full HERS rating (Option 1) over a simplified form such as modified BASIX Thermal Performance assessment or NABERS for the reasons outlined below.

BDA argue that the less rigorous Options 3 and 4 would be ineffective (relative to Options 1 or 2) while still incurring significant cost and inconvenience to the vendor and marketing agent. We suggest that, to be effective, MD must be introduced within a rigorous, closely audited framework to deliver quality assured, consistent outcomes that will build market trust and be sufficiently robust to withstand the rigors of litigation over time. Further, we submit that less rigorous options are ineffective and more likely to create negative perceptions leading to market mistrust and resistance.

The following observations and recommendations are included to qualify and expand the BDA position outlined above.

#### 1. High level assessor skills are critical

**Observation:** Effective assessment of existing homes is highly dependent on assessor skills. Such skills are critical if MD is to deliver cost effective outcomes and create meaningful, long-term sustainable change. In our view, software rigour is much less critical in this process – particularly in the early years where the emphasis should be on information, education and “*picking the low hanging fruit*” rather than accurately measuring aspects of older housing about which little can be done.

**Recommendation:** Option 2 will only be viable if MD assessment is conducted by highly trained and skilled assessors. The number of assessments required under MD is substantial and would justify the training and accreditation of a brand new profession. We should learn from the Green Loans experience – flooding the market with poorly trained HSAs made the program ineffective and ultimately contributed to its failure.

## 2. Single or multiple assessment methods?

**Observation:** The viability of a “one size fits all” assessment protocol is questionable due to the sheer range of housing types, ages, climate zones and life span considerations being assessed. Further, the range of effective, viable options for assessing the thermal performance (TP) of existing housing is limited.

HERS assessment for existing buildings is expensive and is arguably no more accurate than some of the simpler modelling tools. This is due to measure up errors and the many unknowns including wall insulation, air infiltration rates, thermal mass properties and thermal bridging generating margins of error similar to those encountered with less rigorous software.

BDA submit that HERS simulation ratings are more appropriate for new buildings where they simulate the performance of a design that is yet to be built where the input data is ready at hand and thermal performance can be “fine tuned on the drawing board”. When used to assess the majority of existing buildings HERS simulation provides detailed analysis of many TP elements that can’t or won’t be changed (eg orientation, construction system, wall insulation, glazing type) and fails to address the more easily measured and addressed issues in existing homes such as air tightness (simple test), thermal leakage (thermal imaging) and site specific shading (simple observation by a trained assessor).

**Recommendation:** BDA recommend the development of a new tool (Option 2) that includes a range of assessment protocols. We suggest that a variety of assessment types and levels of rigor should be available for application by assessors depending on house type, age, value, climate and construction and the combined role of these characteristics in determining viable upgrade scope.

Such a system would rely on highly skilled assessors to apply the most cost-effective and appropriate assessment and consumer advice protocol according to building age, condition, climate and life expectancy. Such a tool might require an assessor to categorise the property to justify his/her choice of assessment protocol. Such a system would require rigorous assessor auditing to quality assure the categorisation process. Additionally, homeowners should be able to challenge their assessment or assessment category or, have it upgraded later to reflect changes or improvements made to the property.

## 3. Star banding limitations

**Observation:** BDA submit that NatHERS star-band information is misleading and recommend that it be abandoned or substantially modified for MD purposes. For example, the potential GGE reduction gains from a three to six star retrofit differ dramatically between Canberra and Sydney or Melbourne and Brisbane. While the star score provides a useful relative comparison between properties within each region, it hides or backgrounds important information about how the most cost-effective greenhouse and water efficiency upgrades might be achieved in different regions. This is

clearly counter to the aims and objectives of MD.

In other words, while NatHERS star banding based on (questionable) cost effectiveness is of some use to consumers in comparing new or recent homes built under BCA or BASIX provisions, BDA submit that it fails to provide relevant or appropriate information in relation to older housing stock because this was never its intended application.

To effectively overcome the “information asymmetry” referred to in the Allen Report (2011), this situation requires careful consideration and attention prior to the selection or development of an MD rating tool.

**Recommendation:** If Option 1 is chosen, the RIS must address the star banding information imbalance between climate zones and better reflect building age to recommend effective and cost-effective upgrades. Should Option 2 be chosen, the modified tool should also address these issues (see Point 4 below) so that meaningless (in GGE and energy bill terms) TP upgrades are not recommended but more cost-effective alternatives such as appliances or renewables are recommended as part of a holistic, climate/age appropriate solution. Again, this aspect of MD would rely heavily on high level assessor skills.

#### 4. Consumption based ratings to influence occupant behaviour

**Observation:** BDA observe that, while simulated ratings are essential for informed choice, they do little to influence user behaviour. A combination of simulated rating (e.g. a simplified HERS rating) and consumption based (e.g. NABERS) rating could be used to extend the change creation potential of MD. This would provide useful additional information to the consumer whilst also facilitating lifestyle or behaviour comparisons between owners and tenants – thereby increasing awareness of the role of user behaviour.

Consumption based ratings (e.g. NABERS) are arguably the simplest and most cost-effective rating system available that also maintain high levels of rigor and consistency because they are based on actual performance data. A consumption based rating would provide all users (and particularly low income owners and tenants) with an opportunity to have their lifestyle contribution recognised and rewarded under MD. This would provide immediate opportunities for best practice or early adopter households to provide peer group opinion leadership based on measured outcomes from behaviour change. This local leadership would likely diffuse more broadly throughout the community over time. BDA acknowledge that such an approach would likely attract criticism from some interest groups and suggest that its initial introduction be voluntary.

Due to the relatively high turnover of rental occupants and the potential to measure whole of building energy and water consumption, BDA suggest that the rental market is particularly suited to consumption based metrics which would reflect average rather than individual consumption numbers. Such a metric would be low cost, high rigor and provide a useful indication of likely performance to prospective lessees – particularly if provided with explanatory information on how to minimise their consumption/costs through behaviour changes.

**Recommendation:** For maximum effectiveness, MD should address occupant behaviour through the inclusion of a NABERS like metric based on actual consumption. A simulated rating would also be required to inform comparative choice.

## 5. The need to provide interpretive advice or upgrade strategies with each rating

**Observation:** Existing Queensland and ACT MD schemes have clear and distinctly different limitations. Anecdotal reports from Queensland agents, owners and investors demonstrate the limitations of self-assessment in market credibility terms. Additionally, a lack of recommendations or advice renders the minimal information provided less useful to consumers.

The ACT system, while arguably more effective than the Qld system, lacks upgrade recommendations and explanations that would translate the rating information into informed upgrade strategies. ACTHERS ratings remain very much “black box” to prospective home buyers. Accordingly, it is very easy (and common) for real estate agents to dismiss unfavourable energy ratings during a sale. Energy Partners research found that in a seller’s market, energy rating takes a distant last place behind the more traditional price, size, inclusions, age and location buyer motivations. EER influence on value and saleability was observed to diminish significantly under boom conditions.

**Recommendation:** These observations lead BDA to recommend that ratings should always be accompanied by both information provision/recommendations and incentives. The strongest incentive would arguably arise from linkage of sustainability rating to property value. This would engage the marketing, lending and investment sectors - as has already occurred in the commercial sector. BDA recommend that methods to mandate or drive the uptake of this linkage by property valuers should be investigated.

## 6. Marketing the opportunity instead of the imposition

**Observation:** What’s in a title? Residential Building Mandatory Disclosure or Information to Inform Sustainable Housing Choice? BDA observe that the continued use of the words Mandatory Disclosure in the title of this initiative is likely to feed the arguments of opponents who reject any and all regulatory imposts. More importantly, this title undersells the extensive opportunities that will flow from an informed community who understand:

- why sustainable housing performance is important;
- how to make housing choices that save money and carbon while increasing the comfort and value of their asset or reducing their costs and;
- how to upgrade their asset to achieve these outcomes and have them funded by reduced bills and capital gains.

BDA see this initiative as providing an exciting opportunity for the housing sector to engage the vast, existing home owner market in the process of planning and design for adaptation of older housing stock to meet the rapidly changing needs of a carbon constrained future. As such, it constitutes an opportunity for the housing sector to expand and value-add their practices and businesses.

**Recommendation:** BDA recommend a shift in branding and marketing emphasis for this exciting initiative to present it to industry as the opportunity it is rather than just another regulatory impost with intangible benefits for unidentifiable recipients.

## 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 RIS for Residential Building Mandatory Disclosure has been released for public consultation and is available at <http://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](mailto: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](mailto: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](mailto:buildings@climatechange.gov.au).