

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.

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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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 primary outcome of the scheme should be to reduce the energy usage of residential dwellings for a positive environmental effect (i.e. reduce CO2 emissions by reducing house-hold electricity usage) – primarily achieved by improving the energy efficiency of existing housing stock.

Use of a market-based incentive mechanism is most likely to achieve favourable results. To maintain the integrity of the scheme, the assessment must not be carried out by a person with a vested interest in the result.

The assessment must be based upon a best-practice model to provide the highest quality information to owners/renovators and buyers/lessee's.

The assessment must be carried out by a suitably qualified professional whom is in a position to give frank and fearless advice independent to the selling/buying parties.

The assessment must apply to all dwellings and must be mandatory – any exemptions will compromise the efficacy of the scheme and diminish the environmental results.

The financial impacts of any scheme will tend to be the most easily quantified, but should not be the only consideration for judgement of different schemes. Although somewhat less tangible, the environmental (e.g. GHG emissions) and social (e.g. cost-of-living, occupant comfort, health & well-being) impacts should also be considered.

The 'ownership' of past assessments upon a dwelling should be transferred to the new owners of the dwelling – this may be achieved by attaching the provided documentation to the Certificate of Title of the property.

C-RIS Section number: <i>[insert section number eg 3.1]</i>	Comments
Option 1 Table 5.3 Table 6.1 Table ES1.1	Option 1 is my preferred method of delivery. This option is the most likely to achieve reliable, accurate results consistently across all jurisdictions. This option achieves the highest forecast direct benefits for households (through energy and water savings), and society (through GHG savings) as per Table 5.3. This option would also achieve the best outcomes against occupant cost-of-living, comfort, health and well-being, although those aspects have been ignored in the presented analysis. I dispute some of the cost/benefit items for option 1 as presented in Table 6.1, namely the figure of \$5,196 indicated as the cost of assessments. I consider the forecast cost to be grossly overstated. The requirement of a floor-plan for importation into the assessment software has been stated in Table ES1.1 Note 'F' as "Full working drawings... are not assumed", however it seems that the cost of "Full working drawings" has been assumed, and then multiplied exponentially.

<p>Table D.3</p> <p>Table ES1.2</p>	<p>In my opinion, as an assessor using the FirstRate5 program and as a Building Designer/Draughtsman, the typical time/cost for an assessment upon a two-storey detached dwelling would equate to two full working days to measure the property and create an appropriate drawing, plus a further one working day to produce an assessment – maximum. At a going rate of \$100/hour (maximum amount that I could envisage) X 22 hours, the worst-case scenario I can envisage for a difficult/complex assessment is \$2,200. A typical, modest sized 3 bedroom house could be completed in less than half that time, resulting in a cost of \$1,000 at the most.</p> <p>My current fee/hour is a payment of less than \$20/hour in the current regulatory environment – essentially, I cannot ‘value-add’ my services as an assessor to clients above my services as a building designer – so my typical fee would be \$200 for an assessment (plans included).</p> <p>I find it extraordinary that the Allen Consulting Group, engaged to conduct this CRIS, deemed it acceptable practice to consult <i>itself</i> to determine the Cost of Assessments (Table D.3), as per Figure B.1 – perhaps this may explain the outrageous costs claimed under this option. How does an estimated fee for assessment of \$774.00 (Table D.3) translate to an Assessment cost of \$5,196.00 as per Option 1 in Table ES1.2, an jump of more than 6 ½ times?</p> <p>This option is the only one that will achieve every stated objective.</p>
<p>Option 2</p> <p>Table 5.3</p>	<p>It has not been demonstrated what the differences between Options 1 vs. Option 2 are, as far as what is - or is not - required to do the assessment, to justify the difference in the forecast cost/benefit analysis as per Table 5.3. From the limited description given of the expected activity and outcome for the assessment, I fail to see what difference in time, practice or technology there is to determine that the assessment will cost 4 ½ times less than Option 1.</p> <p>What technology currently exists that will enable an assessment to be carried out without any kind of floor plan for the dwelling? The practice described in Option 2 seems to be impossible to achieve in the real world, and suggests to me a concocted compromise created with the sole intent to create a ‘saleable’, politically neutered option that will be used to sell the scheme to the general public, but fail to achieve any meaningful, tangible environmental results. It feels like I have been sucked into an episode of “Yes, Minister”, where the intention is to not <i>actually</i> do something, but rather to <i>appear</i> to be doing something.</p> <p>It is patently obvious to me that there is an existing preference by the analysts and their political masters that Option 2 is the preferred method. This is somewhat disappointing, as the assessment process seems to be compromised (in comparison to Option 1), without detailing exactly what those compromises will be, thus resulting in a poorer quality level of data collection and interpretation, and thus a compromised environmental, social and economic outcome.</p> <p>This option would fail to improve the level of information to the general public.</p>
<p>Option 3</p>	<p>The environmental, social and economic outcomes of this option are compromised by the low quality of the data collection, and the unskilled nature of the assessor. As the assessment may be carried out by the householder or agent, there can be no quality control of the practice or information entered.</p> <p>As the assessor will most likely have a vested interest in the outcome of the assessment, the results will vary in quality to such an extent as to be considered worthless, if not intentionally misleading.</p>

	<p>The result under this option is that the entire scheme will be a pointless waste of time, money and effort for all parties involved, to the detriment of actually achieving any meaningful outcome environmentally, socially or economically.</p> <p>The consumer confidence in this option would be greatly diminished.</p> <p>This option would fail every stated objective.</p>
Option 4	<p>Worse than Option 3 by virtue of the fact that not even a rating is determined. No skill or expertise required creating the assessment, no scope for regulation of claims, no consumer confidence – why would anyone even bother advocating this, let alone enacting it?</p> <p>This option would fail every stated objective.</p>
Option 5	<p>Option 5 is a ‘Do Nothing’ option – and would result in exactly that. The moment you make a scheme like this voluntary, you will exclude anyone who thinks that their asset for sale/lease will be disadvantaged or devalued. The only participants of this scheme will be those who think their property will rate well, or those who think they should publish the information for ideological reasons.</p> <p>This option would fail every stated objective, apart from improving the level of information available to the general public (subject to the quality and availability of such an education campaign).</p>
Option 6	<p>I am struggling to conceive of an instance under any option where the ability to ‘Opt Out’ wouldn’t be detrimental to achieving the desired aims. As with Option 5, the only participant in any scheme will be those who think their property will rate well, or those who think they should publish the information for ideological reasons.</p> <p>The Opt Out option may be of use in an instance where the seller knows the dwelling is likely to be demolished – in fact such a situation may allow the new owner to negotiate a lower buying price. However, as I understand the costs associated to mandate this as a condition of sale, (such as amending Certificate of Title/adding an encumbrance), it would be cheaper to do an assessment.</p> <p>In this hypothetical instance, what happens if the new owner subsequently leases the dwelling rather than demolishing it or, if they renovate the dwelling and then place it for sale again? In either event, the new owner will be required to engage an assessment. How is the market to assess the current condition against its history, or the value of the improvements made? Also, consideration should be given to the existing embodied energy that the dwelling already contains, and it should not be considered acceptable to condone the loss of that element.</p> <p>Looked at from another perspective, if a derelict dwelling does have a rating done, and it is very poor, there is the impetus for the seller to at least consider improvements to the structure, and the potential purchaser has more information to base their decision upon.</p> <p>I can find no sound reason to allow any Opt Out option for any scheme, as the obvious negation of any potential benefit would be dominant above any perceived advantage.</p> <p>This option would fail every stated objective.</p>

<p>General Comments</p> <p>NATHERS SOFTWARE LIMITATIONS</p>	<p>The software currently in use to provide NATHERS assessments is limited as to the elements that may be included within the calculation, i.e. they only consider the built/structural elements that do not change very frequently over time, but do not consider other environmentally beneficial aspects, such as Solar PV array, Solar (or Heat Pump) HWS, different types of appliances (fixed, such as stove, oven, dishwasher), or the types and number of light fittings (incandescent, CFL's, LED's, halogen down-lights etc.) If these other elements are to be included in the calculation, (they should, as this will have an effect upon whether appliances are upgraded over time or not), an additional software package will need to be used in conjunction with the existing NATHERS programs, (which will require accreditation by government), or the NATHERS programs will require expansion.</p>
<p>Alternative Software</p>	<p>I am aware of, (but have not used), a program called "EcoDesigner" by Graphisoft, which uses a 3D model to evaluate building energy performance, incorporating 'green' energy, solar power/HWS etc. Actually assessing the building in the 3D model environment is in itself an improvement upon current technology. The scope of the program is wider, and the practicalities of assessing in the CAD environment are substantial. To my knowledge, EcoDesigner is not currently accredited under the NATHERS scheme.</p>
<p>Specific Limitations to FirstRate5</p>	<p>FirstRate5 relies upon a sketched over floor plan to model the building, where the floor plan has usually been generated from a CAD program anyway, which results in a duplication of work, an increase of the time involved, a compromise in level of quality of data and process, and lengthy delays if a change is required in the design (in the example of a new building). FirstRate5 is also limited in the type of information and result that it gives – the program does not assess elements other than those built, structural components of the dwelling. There is no recognition of elements such as Solar P/V, Solar HWS, and efficient appliances etc. given to the householder, many of which may represent a significant financial outlay. FirstRate5 does not readily create a list of available options as to possible improvements to the dwelling.</p> <p>FirstRate5 also returns inconsistent results – identical dwellings done by different assessors my return wildly variable ratings, up to ½ a star. I have had instances where I have reopened an existing FirstRate5 file, and found that a dwelling which had previously rated 6 stars now only returns 5 ½ stars with no data having been altered in the file. What level of confidence can the consumer have in the assessed results if the software available is so inconsistent between packages and assessors? If I create and assessment of one value, then a subsequent assessment is a lower value (with no changes having been made to the dwelling), how is the consumer or the assessor protected from legal proceedings? If the new owner bought a dwelling as a 6 star rating, then find that a new assessment rated it at 5 stars, who is culpable?</p>
<p>Management of Assessment Data</p>	<p>The 'ownership' of past assessments upon a dwelling should be transferred to the new owners of the dwelling – this may be achieved by attaching the provided documentation to the Certificate of Title of the property. In this way, a permanent historical record will be created over time, which will be important to successive owners, by expanding the available knowledge of the physical structure of the dwelling.</p> <p>Assessments on individual dwellings for sale/lease should be published to an online database available to anybody to view for independent verification of advertised ratings. Along with ensuring consumer confidence, this would also have benefit to government and industry bodies to develop statistical data for analysis/reporting of housing efficiency levels over time.</p>
<p>Life Expectancy of Assessment Data</p>	<p>The accuracy of an assessment will diminish over time, as various elements used in the calculation of the assessment change, i.e. ceiling insulation compresses and becomes less effective, trees or shading devices (such as awnings, pergolas) grow or perish over time, floor coverings (such as carpets) are removed/added. As such, there</p>

<p>Chapter 5.1 Critique</p> <p>Table B.3</p> <p>Table B.3 Table 5.3 Section 5.1</p> <p>Table 5.3</p> <p>Table B.3</p>	<p>should be an effective ‘age’ to an assessment – such as, if the dwelling doesn’t sell within 12 months, an updated assessment should be carried out. The suggested period validity of 5 years (Table D.1) is far too long in the instance of an unsold property.</p> <p>I don’t know how many instances of dwellings remaining on the market for over a year there are on average, but I would suggest that this would be rare. If a property is placed upon the market by new owners, irrespective of the time, a new (or updated if you like) assessment must be engaged. This covers a scenario such as a quick renovation of a dwelling is done with a view to improve the resale value.</p> <p>In Chapter 5.1 Estimating Costs and Benefits, I find it extraordinary that the assumption remains that; “there continues to be no carbon price of any kind, and subsequently, no carbon reduction implications for energy prices”. This assumption ignores the political reality of a federal Labor government; in power only by the agreement of the Greens; would face electoral suicide if it reneged on action on climate change again; and a senate that has the balance of power controlled by the Greens for the next two terms. This assumption devalues the potential uptake rates given in Table B.3. This has the potential to affect the forecast cost/benefit analysis of this entire document. CO2 price aside, I would also ask in what jurisdiction is it anticipated that the cost of electricity will be reducing in the future? As the cost of living continues to rise – irrespective of a CO2 price or not – consumers will become increasingly aware of the long-term purchasing decisions they make.</p> <p>The forecast return on sale/rental of a property against expected implementation (such as detailed in Table B.3) of measures to improve the rating of a property has not been fully explored, nor is it included at all in the cost/benefit Table 5.3. I reject the determination in Section 5.1 that “...there is no need to reflect this wealth transfer in the model.” The property seller/lessor is the party that will be required to pay for the assessment, and the direct appeal of the immediate, demonstrable financial return upon that impost is tangible and self-evident. You can always rely upon people to do something in their own interests over altruism.</p> <p>In other words, the increase in the market value a seller/lessor achieves for improving the rating of a dwelling, such has been demonstrated by over a decade of this scheme being run in the ACT, equates to approximately \$8,000 increase in sale value for every full increase in star rating the property has. That this demonstrated, predictable and measured return of investment to householders has not been included skews the forecast cost/benefit analysis in Table 5.3 dramatically, particularly against Option 1.</p> <p>It should not be difficult to calculate the average improvement in star ratings that 30% (as per Table B.3) of householders engaged in to apply the typical increased sale value of dwellings under the Option 1 scheme (as in ACT), and apply this value to the Cost/Benefit analysis. For whatever reason, this element has been ignored to date.</p> <p>Government regulation can either be a ‘carrot’ (incentive to do better), or a ‘stick’ (minimum standard to be achieved, or else). An example of a ‘stick’ approach is the recent requirement for all new dwellings to achieve a minimum standard of a 6 star rating – the result? All new dwellings are designed to meet that minimum standard – and no better – rather than be designed to ‘best practice’ and exceed the minimum.</p> <p>This regulation (achieved fully only by Option 1) will appeal to the base, greedy nature of the rest of the population, by focusing their myopic attention upon the direct financial benefits available to them by improving the energy efficiency of their properties before sale/lease. This proposed regulation is a ‘carrot’ approach, in that it allows people to see ‘what is in it for them’ to do better.</p> <p>Unless regulation forces the recalcitrant selfish bastards of this world to actually</p>
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contemplate the consequences of their behaviour, nothing will change. The small percentage of dwelling sellers/lessors whom actually do care (environmentally, socially, economically, take your pick) will continue to do 'the right thing', as that is what they believe, irrespective of government intervention. This regulation will bring the rest of the reluctant masses along for the ride.

Common sense would suggest that only Option 1 will actually achieve the stated objectives, however this being a government decision, I won't hold my breath.