

Your Ref:

Our Ref: Property and Development Law Committee

12 September 2011

Residential Energy Efficiency Team
Buildings Government Energy Efficiency Branch
Department of Climate Change and Energy Efficiency
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Dear Residential Energy Efficiency Team

MANDATORY DISCLOSURE OF RESIDENTIAL BUILDING ENERGY, GREENHOUSE AND WATER PERFORMANCE

Thank you for providing the Queensland Law Society the opportunity to provide comments in response to the Mandatory Disclosure of Residential Building Energy, Greenhouse and Water Performance Consultation Regulation Impact Statement (the RIS).

The RIS has been considered by our Property and Development Law Committee who have contributed to this response. We note that there are six options being considered:

- Option 1 - full thermal assessment
- Option 2 - simplified thermal assessment
- Option 3 - online self-assessment
- Option 4 - checklist assessment
- Option 5 – information campaign and voluntary uptake
- Option 6 - mandatory rating with an opt-out feature

Feedback is sought on:

- *The extent of the 'problem' in residential building energy, greenhouse and water performance.*
- *The adequacy of the options assessed in the Consultation RIS in addressing the problem*
- *The assessment of costs and benefits of options*
- *Identified risks and uncertainties associated with each option.*

Current Queensland Experience

The sustainability declaration was introduced into Queensland as a mandatory disclosure at the point of offer for sale on 1 January 2010. Its introduction was met with initial criticism from stakeholders and subsequently the disclosure form was refined into its current format.

Academics from the Queensland University of Technology (Bryant & Eves) have published research into the awareness and importance of housing sustainability in Queensland, following a significant survey of the sustainability declaration's effectiveness in the first twelve months of its operation.

Helpfully, in general terms Bryant & Eves identified that sustainability information was not considered important by purchasers of property¹:

A study by Reed and Mills (2007) found that the financial aspects of the house purchase decision were the most significant factor for first home buyers and not the environmental factors. A further study by Eves and Kippes (2010), and Kippes and Eves (2010) found that in the German and New Zealand residential property markets, buyers were more concerned about the price of the property, its location and number of bedrooms, than the energy efficiency or green rating of the property. These studies also showed that buyers were generally unaware of the energy efficiency schemes and measures and considered the most important environmental aspect of the residential dwelling to be the aspect of the building.

Kippes and Eves (2010) also found that, although mandatory disclosure of sustainability features were required for both residential home buyers and renters, in less than 50% of residential sales transactions it was not considered important by the purchaser and even less so by those considering leasing residential property.

Following their survey focusing on usage and perceptions of the Queensland sustainability declaration, Bryant & Eves opined:

Widespread disengagement with the sustainability declaration process was recorded from sellers and, even more so, from buyers. Results indicate that 98% of buyers do not ask for a copy of the sustainability declaration at any time during the sales process. Despite this, sellers are legislatively required to complete these forms to their best knowledge, prior to the property going to the market. Whilst agents are not required by law to provide sustainability declarations to potential buyers, many do (60%). Therefore, up to 40% of the forms completed by sellers, are never provided to any potential buyer. Of those that are used, virtually none (4%) impact the buyer's decision making process.

Previous studies in the area of buyer awareness in 2007 and 2009, noted that environmental issues were not a major factor in the house purchase decision. This study again confirms that a further year on, this is still the case.

This lack of awareness from both buyers and sellers could be countered by a public awareness campaign formulated to raise awareness of the scale of housing's contribution to sustainability

¹ Bryant, Lyndall & Eves, Chris (2011) Assessing the awareness and importance of housing sustainability in Queensland. In The First International Postgraduate Conference on Engineering, Designing and Developing the Built Environment for Sustainable Wellbeing, 27-29 April 2011, Queensland University of Technology, Brisbane, Qld. At page 68

issues such as water and energy consumption, and role of the sustainability declaration in helping home buyers make informed choices².

The extent of the problem

It appears that the extent of the problem currently is that the public in Queensland do not consider sustainability features a significant influencer of the decision to purchase a residential property.

The low reported rates of enthusiasm for the Queensland sustainability declaration demonstrates that even in instances where the declaration is not requested yet disclosed, it plays ‘virtually no impact’ on the buyer’s decision.

Adequacy of the options to address the problem

The experience in Queensland shows that the options presented which compel a disclosure of either features or a particular assessment model will likely be of little utility (Options 1 - 4 and 6). The research shows in Queensland that a greater degree of education and awareness is required for the disclosure to be effective. One criticism which has been directed toward the Queensland sustainability declaration is that it seeks to be an educational tool and a disclosure form to a prospective buyer and perhaps meets neither of these objectives.

The Society has serious concern about a disclosure regime being directed toward achieving an educative purpose. It is unfair for vendors to be expected to pay compliance costs to deliver a Government awareness message to a prospective buyer. In the Society’s view Government awareness campaigns should be funded by Government.

The Society supports option 5 proposed and would see a comprehensive Government funded awareness campaign as the best option to raise public awareness of the importance of sustainability measures.

We have some significant concern that the RIS projects little to no benefit for Queensland flowing from any of the options given the table ES1.3 presented on page xvi:

Table ES 1.3

IMPACT OF OPTIONS ON DIFFERENT STATE JURISDICTIONS, \$MNPV

| | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 |
|-------------------------------------|----------|----------|----------|----------|----------|
| New South Wales | -\$731.7 | \$431.7 | \$386.5 | \$382.8 | \$46.3 |
| Victoria | -\$607.9 | \$305.8 | \$277.1 | \$281.1 | \$34.4 |
| Queensland | -\$930.9 | \$14.6 | -\$8.6 | \$0.0 | \$0.0 |
| South Australia | -\$231.5 | \$31.9 | \$35.2 | \$50.7 | \$6.6 |
| Western Australia | -\$371.6 | \$91.4 | \$90.7 | \$107.5 | \$13.8 |
| Tasmania | -\$34.5 | \$29.6 | \$24.4 | \$28.6 | \$3.5 |
| Northern Territory | -\$31.7 | \$13.0 | \$10.6 | \$16.7 | \$2.1 |
| Australian Capital Territory | -\$34.3 | \$9.7 | \$9.7 | \$0.0 | \$0.0 |

Source: Allen Consulting Group Analysis

² Bryant, Lyndall & Eves, Chris (2011) Assessing the awareness and importance of housing sustainability in Queensland. In The First International Postgraduate Conference on Engineering, Designing and Developing the Built Environment for Sustainable Wellbeing, 27-29 April 2011, Queensland University of Technology, Brisbane, Qld. At page 70

Identified Risks and Uncertainties

The Society remains unconvinced that a mandatory disclosure regime will be effective and reiterates its concern that vendors should not be made to pay for the dissemination of a Government awareness message to prospective buyers.

The QLS also has concern that the standard thermal assessment methodologies may discriminate against high-set Queenslander style houses. This iconic housing style which is prevalent through Queensland is designed to dissipate heat quickly and effectively. This style of housing is not designed to be heated or cooled by independent means, is not well suited to the application of insulation and is designed to maximise the effect of breezes and shade. The Society would be significantly concerned if a thermal assessment system devised for more temperate zones was directly applied to traditional Queensland style housing which is in many respects more sustainable and environmentally efficient than new builds.

Thank you for providing the QLS the opportunity to contribute to this important issue. Should you require any further information or clarification please contact our Principal Policy Solicitor, Mr Matt Dunn, on (07) 3842 5889 or via email on m.dunn@qls.com.au.

Yours faithfully

Bruce Doyle
President