

12 September 2011

Residential Energy Efficiency Team
Buildings Government Energy Efficiency Branch
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601

By email: residentialdisclosure@climatechange.gov.au

Dear Residential Energy Efficiency Team,

CONSULTATION REGULATION IMPACT STATEMENT - MANDATORY DISCLOSURE OF RESIDENTIAL BUILDING ENERGY, GREENHOUSE AND WATER PERFORMANCE

The Real Estate Institute of Queensland Limited (REIQ) appreciates the opportunity to provide its comments in respect of the Mandatory Disclosure of Residential Building Energy, Greenhouse and Water Performance Consultation Regulation Impact Statement (the RIS).

The REIQ is the peak professional association for the real estate industry in Queensland. The REIQ represents approximately 2,000 agency offices and more than 15,000 real estate practitioners. REIQ members specialise in all facets of real estate, including residential sales, auctions, residential and commercial property management and buyers agency. Our membership equates to approximately 85 percent of the real estate agencies across the State. REIQ is proud to hold a reputation as the State's leading authority on real estate related matters.

Introduction

The objective of intervention is summarised as follows in the RIS:

“to improve community wellbeing and environment sustainability, including reducing greenhouse gas emissions, by countering information shortfalls and the uneven distribution of information (or information asymmetries) in the residential housing market that prevent efficient investment in energy and water efficiency”.

The RIS makes reference to evidence of under-investment in known and cost effective energy, water and greenhouse savings, technologies in the residential building sector.

The analysis in the RIS suggests that there is a case that intervention is necessary to “overcome market failures” and “to obtain and provide information about energy and water performances of housing in Australia”. Notably, the RIS concludes that the benefits of such intervention must outweigh the costs (pg xiv).

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The Queensland experience

As noted in the RIS, Queensland and the Australian Capital Territory already have disclosure regimes in place respectively pertaining to sustainability and energy efficiency matters. In late 2009, the Queensland State Government enacted mandatory disclosure of the environmental features of dwellings for sale in Queensland through amendments to the *Building Act 1975*. On 1 January 2010 pursuant to these laws, the 'Sustainability Declaration' (the SD) came into effect.

All residential sellers are required to complete the SD which purports to disclose their dwelling's features in the key areas of energy, water, safety and access. Sellers must complete the SD to the best of their knowledge. Where a seller does not know the answer to a question in the SD, it may be left blank. Sellers may, but need not, engage a professional to assist with the completion of the SD. The seller may be liable for any losses incurred by the buyer as a result of false or misleading information contained within the SD.

Sellers and/or real estate agents must comply with strict information requirements when advertising a property for sale. Generally, all advertisements pertaining to the promotion and sale of a property must feature information about the availability of a SD and details of how this can be obtained. Additionally, legislative requirements require that the SD must be conspicuously displayed at the site or in the dwelling at an open inspection. Further, if a person requests a copy of the SD, the seller and/or agent must supply it. Notably, the onus is on a prospective buyer to request the SD from the seller and/or the real estate agent. If no request is forthcoming, the seller/real estate agent is not compelled to provide it to a prospective purchaser.

The SD has now been in effect for more than 18 months in Queensland. It is the experience of this organisation that the SD has had minimal impact on the decision making process of buyers. Anecdotal evidence gathered from the industry overwhelmingly indicates that sustainability features of a property are not considered to be important factors in the view of the majority of buyers. Indeed, the feedback we have received is that the SD is commonly ignored by prospective buyers (when it is given together with promotional material about the property) and, that persons rarely request a copy of the SD.

Similarly, research undertaken by Eves and Bryant from QUT ¹ indicates that the introduction of SD's have had little impact on buyers and, that sustainability is yet to become a criterion of relevance to the majority of buyers in Queensland.

The following is an excerpt from an article written by Eves and Bryant and featured in the February 2011 edition of the *REIQ Journal*, summarising the findings of their research:

QUT recently surveyed REIQ members to determine what impact the Sustainability Declaration has had on home buyer decision making in its first year of operation. Findings indicate the introduction of Sustainability Declarations have had little impact on buyers and confirm that sustainability is yet to become a criterion of relevance to the majority of home buyers in Queensland.

¹ Bryant, L.E. and Eves, A.C., 2011, "HOME SUSTAINABILITY POLICY AND MANDATORY DISCLOSURE - A survey of buyer and seller participation and awareness in Qld", *Journal of Property Management* (Accepted for Publication June 2011).

Introduction

Issues of energy efficiency and environmental sustainability have been increasing in awareness in residential home ownership and construction worldwide. Over the last decade more stringent environmental laws have been introduced by many countries to counter soaring energy usage and prices.

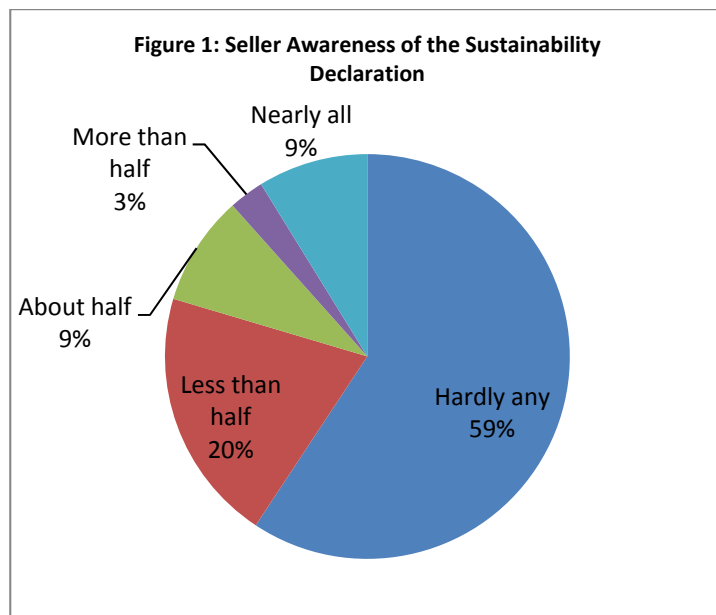
This research has been undertaken to assess public awareness of the current Queensland legislation introduced at the end of 2009, specifically the need for residential property sellers to supply a Sustainability Declaration, buyer awareness in respect to the availability of the form and the importance of sustainability features in the buyer decision making process.

Respondent Summary

A total of 587 responses to this online survey were received over a two week period, with a good cross section of respondents across Queensland. A high proportion from Brisbane and surrounds was to be expected (40%) where a large portion of the population is centred, however it was also pleasing to see a good spread of responses from other regions with 15% from the Gold Coast, 14% from the Sunshine Coast, 6% Western Queensland including the Darling Downs, 10% Central Queensland including Wide Bay/Burnet and 12% North/Far North Queensland.

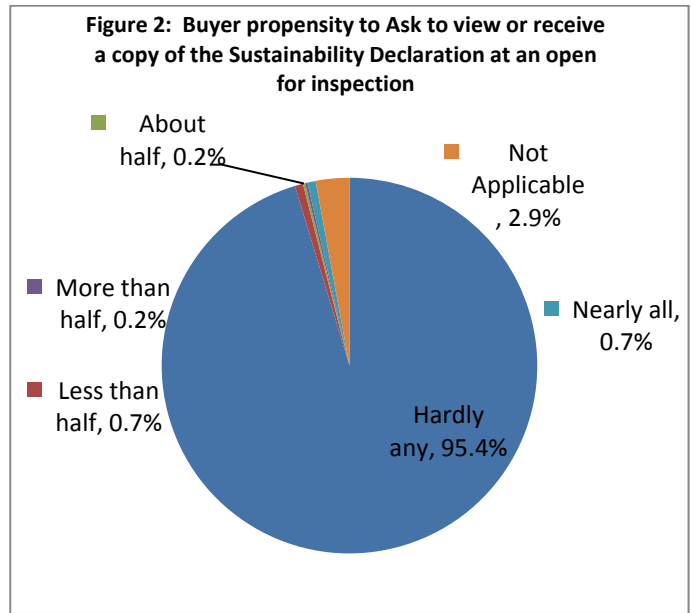
Seller Awareness

60% of survey respondents reported that sellers had very limited awareness of the requirements to provide a sustainability declaration, with less than 10% of survey respondents reporting that nearly all their sellers over the past 12 months were aware of this requirement.

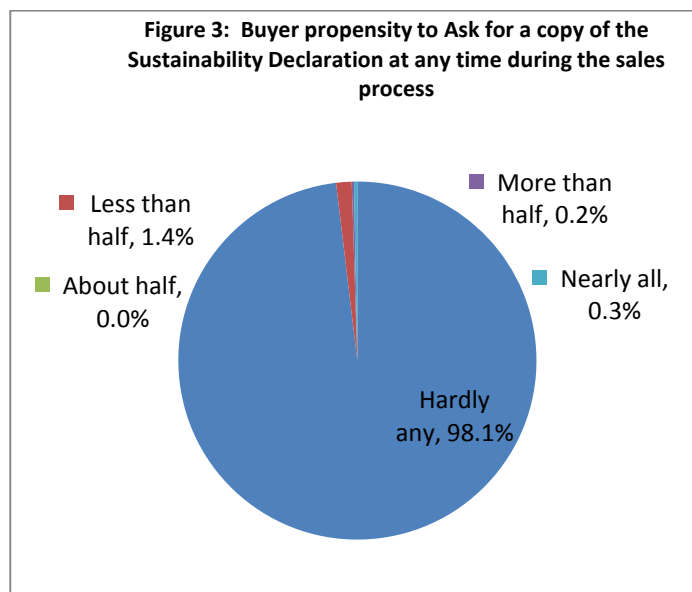


Buyer Awareness

A huge 95% of survey respondents reported that during the open house inspections they have carried out over the past 12 months hardly any (0 - 20%) of all potential buyers requested a copy of the form.



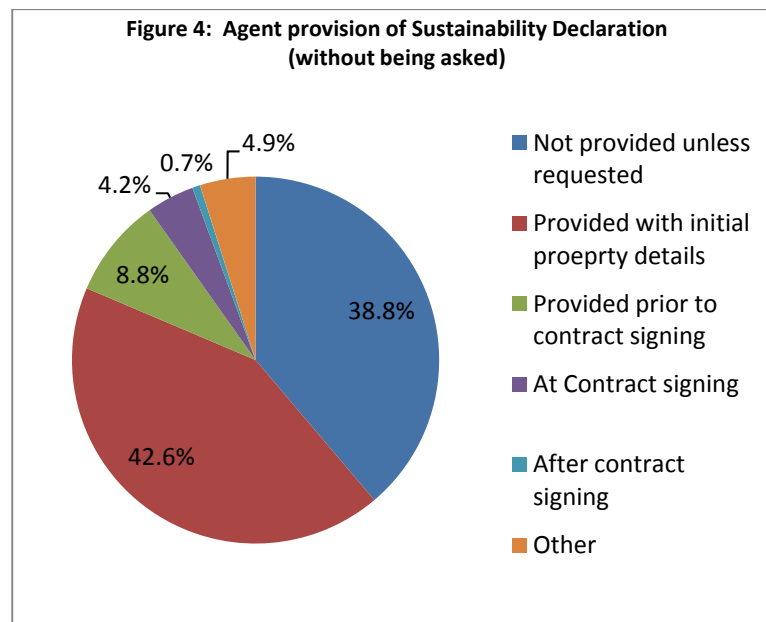
This limited buyer interest and/or awareness during the initial property inspection continued throughout the full sales process, with 98% of agents surveyed indicating that hardly any (0 - 20%) clients requested the declaration at any time during the sales process.



This evidence indicates that despite the fact that Sustainability Declarations have now been in operation in Queensland since January 2010, only a very limited number of house buyers are taking advantage of this energy and water efficiency measure in determining the suitability of the house for purchase.

Although survey respondents are only required by law to provide a copy of the sustainability declaration when asked for it by a potential buyer, anecdotal evidence collected prior to the formulation of the survey questions, indicated that a number of agents do provide the form to buyers in any case.

Despite not being asked directly for the declaration, 43% of survey respondents actually provide this declaration to potential buyers with the initial property details, 39% advised that the declaration was not provided unless requested, with the remaining percentage advising that the declaration is provided just prior or at the signing of the contract. This indicates that almost 40% of the declarations provided by sellers are never presented to a potential buyer and remain only in the hands of the selling agent.



House Purchase Decision

The remaining questions in this survey were designed to assess the perceptions of survey respondents in respect to the perceived importance of the sustainability declaration for home buyers and the main sustainability features buyers considered most important in the house purchase decision.

As indicated in Figure 5, 96% of survey respondents do not consider the Sustainability Declaration to be an important factor in house purchase decision making process. Only 3.5% considered this declaration to be somewhat important, with less than 1% considering this to be very important.

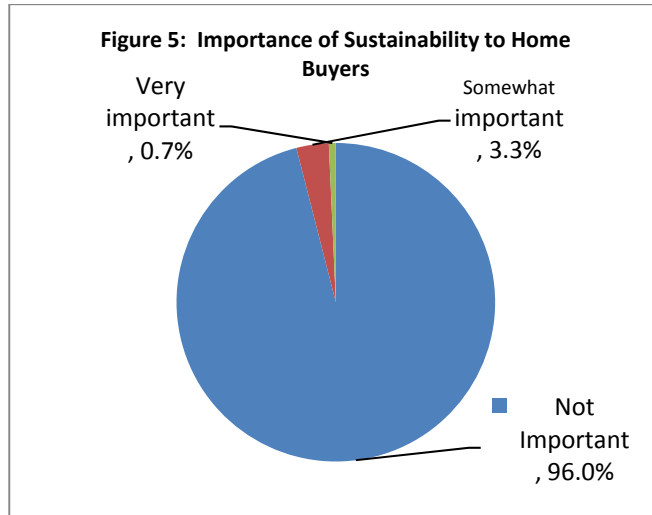
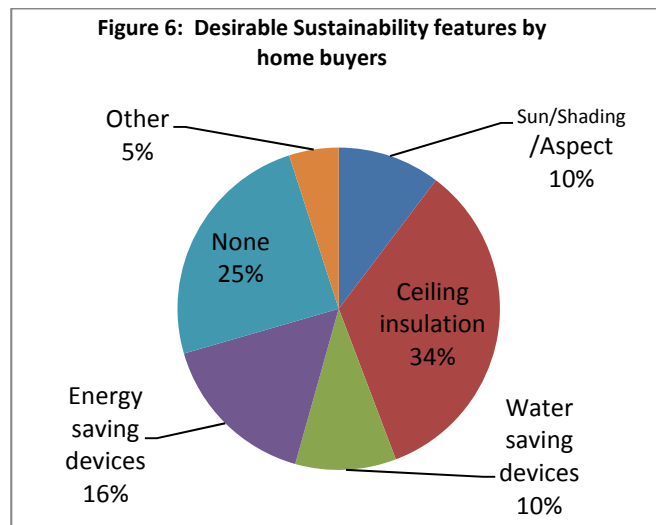


Figure 6 below shows the environmental aspects of home ownership that home buyers in Queensland over the past 12 months have considered being of some importance in relation to their home purchase.



Survey respondents reported that nearly a quarter of buyers are not interested in any home sustainability features. Ceiling insulation was a factor that 34% of buyers enquired about during the sales process (both from a positive and negative perspective). 16% of buyers were interested in energy saving devices in the houses they purchased, with 10% interested in water saving devices. 10% of home buyers were interested in houses with appropriate aspect (sun and shading).

Conclusion

Widespread disengagement with the Sustainability Declaration process was recorded from sellers, and even more so, from buyers. 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 these forms 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 (96%) 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 is disappointing from a policy perspective. It could be countered by a public awareness campaign to raise awareness of housing's contribution to sustainability issues such as water and energy consumption, and role of the Sustainability Declaration in helping home buyers make informed choices. Alternatively, a review of the current legislative mechanisms could work to more closely align the intent of the legislation with the actual outcomes.

The ACT experience

In 1999, the ACT became the first jurisdiction in Australia to introduce mandatory energy disclosure for all houses on the rental and sales market. The consumer response to this regime is remarkably similar to that experienced in Queensland.

ACT real estate agents have reported that purchasers and renters give minimal consideration to the energy rating of the property they are considering buying or renting. In line with the Queensland experience, we understand that the energy rating information is largely ignored and is simply not of relevance to the majority of buyers and renters.

The common view amongst the real estate industry in the ACT, is that the energy rating disclosure regime has imposed an unnecessary cost on property owners seeking to lease or sell their properties and, is of no great significance to the consumers it seeks to benefit.

REIQ's response to the RIS

The RIS contains repetitive themes of market failures, information deficiencies and, lack of awareness amongst prospective buyers and tenants in relation to water and energy efficiency. This is presented, to a large extent, as the impetus and justification for government intervention.

The REIQ is concerned that the proposed intervention appears to be largely motivated by the need to deliver an education and awareness program around sustainability and energy efficiency. The REIQ considers that it is unfair for sellers and landlords to have to bear the cost and onus of delivering a campaign of this nature to the public.

The RIS models six options ranging from highly technical and detailed assessment through to a voluntary scheme. The anticipated costs (and perceived benefits) of these options are detailed in the RIS.

The REIQ does not support any of the regulatory options (1-4 inclusive) outlined in the RIS. A review of the costs of the regulatory options indicates that the cost of the most expensive (option 1) is estimated to be \$824.00. Meanwhile, the estimated cost of the least expensive (option 4) is \$205.00. These costs comprise self and external assessment costs and householder waiting costs (as

defined in the RIS). It is the view of the REIQ that the benefits to the community arising from these intervention options, would not outweigh the costs, as required under the terms of the RIS.

The provision of the disclosure documentation contemplated by options 1 to 4 has been shown to be an ineffective mechanism for raising public awareness of housing's contribution to sustainability and energy efficiency issues and in influencing decisions based on such criterion. The response of the public in Queensland and the ACT to the disclosure regimes in those respective jurisdictions, clearly indicates that consumers do not consider sustainability and energy efficiency to be factors of relevance in the decision to lease or buy a residential property.

Consumers understand the need to investigate certain matters before making decisions about the property they wish to buy or rent. However, consumers will investigate the matters that *they* perceive to be relevant and/or important. It is the experience of this organisation that prospective buyers and tenants consider the following factors to be of critical importance when making a decision to rent or buy:

- property location,
- surrounding amenities
- size and features of the property (in particular, number of bedrooms and bathrooms, size of yard)
- access to infrastructure (such as schools and transport).

We have also observed that many prospective buyers (in Queensland) are prepared to engage external parties to conduct assessments in relation to a property where they are not sufficiently skilled to do so themselves. In particular, it is common for contracts of sale to include conditions regarding satisfactory building and pest inspections. Whereas, anecdotal evidence indicates that buyers do not seek inspections in respect of the sustainability and energy efficiency features of the property. This is despite the existence of available assessors in the community and, despite the existence of the SD. This is also reflected in the RIS which reports that it is "*apparent that buyers (and sellers) do not seek inspections for energy and water performance at present*" (pg 86).

The above is not to suggest however that consumers do not have an awareness of factors which contribute to the energy efficiency of a property such as heating, cooling, flooring, insulation and the like. Similarly in our experience, consumers are capable of conducting comparative analyses of properties in respect of such matters. In situations where a property is deemed to be deficient in a particular area (eg. lack of insulation) buyers are not likely to refrain from purchasing the property based solely on this. Rather, they will negotiate a purchase price to reflect the 'remedial' work to address the deficiency.

REIQ's preferred option

In view of the matters set out above, the REIQ considers option 5, a non-regulatory option, to be the preferred intervention model. Of the options outlined in the RIS, we regard a government funded education campaign to be the most effective mechanism to aid education and raise public awareness around the sustainability, energy and water efficiency of residential dwellings.

Under this option, we understand that government would conduct a public education program and publicity campaign to "*increase awareness of the importance of improving the energy, greenhouse and water performance for residential buildings, and the opportunities that home owners, tenants and landlords have to improve the performance of buildings*". According to the RIS, the key objectives of the campaign would be to educate and raise awareness by providing information around the attributes of an energy efficient building, the kinds of actions that home owners could

take to improve the energy efficiency performance of their building and the likely benefits these actions would deliver.

Whilst the REIQ accepts that the proposed campaign may assist property owners to understand the environmental, social and financial benefits of home sustainability, we are concerned that this will not necessarily lead to significant improvements in the sustainability features of existing properties. Although the campaign may encourage relatively minor improvements (such as the installation of insulation or solar water heating) the expense and inconvenience of retrospective upgrades is likely to prevent substantial intended outcomes.

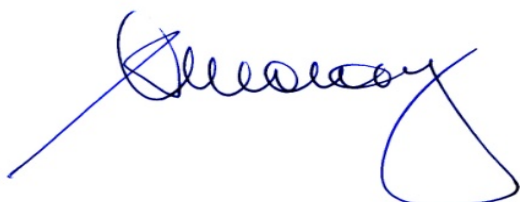
REIQ considers that the emphasis of any government campaign should be expanded to promote energy, greenhouse and water performance in relation to the construction of new dwellings. The aim should be to encourage and promote the construction of sustainable buildings and, to minimise the need for costly future upgrades to residential dwellings.

National consistency

The REIQ would support the eradication of the SD in favour of the implementation of option 5 in the RIS. We note that there is no assurance that each jurisdiction will adopt the same model or, any other proposed in the RIS. In view of the anticipated introduction of national licensing for the real estate profession in late 2012, the REIQ would prefer that a uniform approach is adopted across all jurisdictions. This is consistent with the agreement of the Council of Australian Governments to develop a national licensing system to remove inconsistencies across state and territory borders and, allow for a more mobile workforce.

The REIQ appreciates the opportunity to contribute to this important issue. If you wish to discuss any aspect of this correspondence, please contact Ms Antonia Mercorella, Executive Manager Policy and Legal on (07) 3249 7325 or via email: execpolicy@reiq.com.au.

Yours faithfully



Dan Molloy
MANAGING DIRECTOR AND
CHIEF EXECUTIVE OFFICER