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**Residential Conveyancing in Queensland and the Newman
Government's Policy Changes**

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Abstract:

This paper looks at four particular changes made to residential conveyancing in Queensland since the conservative Newman Government came to power in May 2012. The paper examines the changes through the process of presenting the legislation as it was, examining any commentary on the legislation, presenting the changes that have been made and venturing a conclusion about the change.

Keywords:

Residential conveyancing, legislation, conveyancing practice

Introduction

The conservative Liberal-National Party (LNP) Newman Government came to power in May 2012 ousting successive Labor governments which had been in power in Queensland since 1998. One election commitment was to reduce "real estate red tape".¹ The measures proposed were "streamlining home sale contracts and warning statements, scraping Sustainability Declarations and examining indirect taxes with respect to purchasing and

¹ LNP, *Property and Construction Strategy; A Dynamic Industry Building Jobs, Homes and Infrastructure for Queenslanders* (2012) <<http://lnp.org.au/policies/grow-a-four-pillar-economy/property-and-construction-strategy>> at 8 April 2013.

owning a home".² Some of these election commitments have been legislated, for example the changes to stamp duty were included as budgetary measures in the 2012-2013 Queensland Budget, whilst others are still in the process of making it through the Queensland Parliament. In addition to these changes the Newman Government has indicated that it will withdraw from the two Council of Australian Government (COAG) initiatives of the 6 star standard for new units and the mandatory energy disclosure scheme.³ There are also proposed changes to the regulation of body corporate entitlements⁴ and the streamlining of the processes involved in the sale of land.⁵ This paper will present an examination of four particular legislative and policy changes: (i) that of changing the regime with respect to warning statements, (ii) the removal of the requirement to provide a Sustainability Declaration and (iv) the refocusing of the first principal place stamp duty concession with the construction concession. These changes raise the obvious question as to whether they are in fact "red-tape reducing". This paper however will question what the changes may herald in terms of residential conveyancing and housing policy in Queensland.

Background

The property market in Queensland has been like other property markets across Australia. The market peaked in around 2008 with market values and sales volumes at an all time high to then decline in the wake of the global financial crisis. Notwithstanding these issues, the property and construction sector has been identified by the LNP government as "one of the four pillars" of the Queensland economy.⁶ A 2012 Property Council of Australia: Queensland Division Report outlined that the wider property industry is Queensland's largest employer (12.5 per cent of full time employees within the State work in property and construction) and contributes the most out of any industry to total state tax revenue (in 2010-2011, a total of \$12.9 billion was raised in State Government tax revenue; 29.2 per cent of this was contributed by the property industry).⁷ It is for these reasons that policy changes to real estate contract formation, construction, development and land taxes are of significant importance. In examining the four particular changes to housing policy noted above this paper will present the applicable legislation as it was, examine any literature commenting upon the legislation, present the changes that have been made by the Newman Government and then venture a conclusion about the change.

Change 1: Streamlining Home Sale Contracts and Warning Statements

Legislative Position

In Queensland the formation of a contract for residential premises is regulated by the *Property Agents and Motor Dealers Act 2000 (Qld)* (PAMDA). PAMDA also contains some statutory disclosure requirements imposed on the seller of residential premises. Queensland

² Ibid.

³ Steven Scott, 'Queensland Premier Campbell Newman Cans PM's Energy Rating System for New Residential Units', *The Courier Mail* (Brisbane) 6 October 2012, <<http://www.couriermail.com.au/news/queensland-premier-campbell-newman-cans-pms-energy-rating-system-for-new-residential-units/story-e6freon6-1226489478342>> at 8 April 2013.

⁴ Legal Affairs and Community Safety Committee, Parliament of Queensland, *Body Corporate and Community Management and Other Legislation Bill 2012* (Report 16) November 2012.

⁵ See <<http://www.fairtrading.qld.gov.au/2012-review-of-the-land-sales-act-1984.htm>> at 8 April 2013.

⁶ LNP, above n 1.

⁷ Property Council of Australia - Queensland Division, *Economic Significance of the Property Industry to the Queensland Economy: The Facts are Black and White* <http://www.aecgroup ltd.com/files/images/qld_the_facts_are_black_and_white.pdf> at 8 April 2013.

is not unique in that regard with most other jurisdictions in Australia having disclosure of information provisions statutorily imposed upon contracting parties.⁸

The objects of PAMDA are:

- (1) The main object of this Act is to provide a system for licensing and regulating persons as resident letting agents, real estate agents, pastoral houses, auctioneers, property developers, motor dealers and commercial agents, and for registering and regulating persons as registered employees, that achieves an appropriate balance between—
 - (a) the need to regulate for the protection of consumers; and
 - (b) the need to promote freedom of enterprise in the market place.
- (2) Another significant object of this Act is to provide a way of protecting consumers against particular undesirable practices associated with the promotion of residential property.⁹

One of the ways through which the Act assists consumers is through the provision of a Warning Statement. The Warning Statement is currently a statement (an approved statutory form) separate to the contract itself and required to be attached to the Contract. Section 368 of the Act prescribes the information to be contained in the Warning Statement and details when and how the Warning Statement was to be provided to a buyer.¹⁰ Failure to provide

⁸ See for example, *Civil Law (Sale of Residential Property) Act 2003* (ACT), *Conveyancing Act 1919* (NSW), *Land and Business (Sale and Conveyancing) Act 1994* (SA), *Property Agents and Land Transactions Act 2005* (Tas) and *Sale of Land Act 1962* (Vic).

⁹ *Property Agents and Motor Dealers Act 2000* (Qld), s 10. Section 10(3) provides that objects are to be achieved:

- (a) ensuring—
 - (i) only suitable persons with appropriate qualifications are licensed or registered; and
 - (ii) persons who carry on business or are in charge of a licensee's business at a place under the authority of a property agents and motor dealers licence maintain close personal supervision of the way the business is carried on; and
- (b) providing—
 - (i) protection for consumers in their dealings with licensees and their employees; and
 - (ii) a legislative framework within which persons performing activities for licensees may lawfully operate; and
- (c) regulating fees and commissions that can be charged for particular transactions; and
- (d) providing protection for consumers in their dealings with marketeers; and
- (e) promoting administrative efficiency by providing that—
 - (i) responsibility for licensing rests with the chief executive; and
 - (ii) responsibility for minor claims against the fund rests with the chief executive; and
 - (iii) responsibility for claims, other than minor claims, against the fund rests with the tribunal; and
 - (iv) responsibility for reviewing particular decisions of the chief executive rests with the tribunal; and
 - (v) responsibility for disciplinary matters rests with the tribunal; and
- (f) establishing a claim fund to provide compensation in particular circumstances for persons who suffer financial loss because of their dealings with persons, other than property developers and their employees, regulated under this Act; and
- (g) providing for the enforcement of matters involving marketeers by the tribunal and the District Court; and
- (h) providing increased flexibility in enforcement measures through codes of conduct, injunctions, undertakings, and, for contraventions by marketeers, preservation of assets and civil penalties.

¹⁰ *Property Agents and Motor Dealers Act 2000* (Qld), s 368C

the Warning Statement is an offence under the Act; the maximum penalty being 200 penalty units.¹¹

Much litigation was generated with respect to Warning Statements and how they were *attached*¹² to contracts, *when*¹³ they had been given and *how*¹⁴ they had been given. Indeed the results of litigation necessitated ongoing changes to the legislation.¹⁵

Literature

Given the litigation, there was professional and academic discussion about the effectiveness of the Warning Statements not only with respect to professional imposts (i.e. time and compliance burdens) but the overall benefit of the statements for consumers and their decision making processes.¹⁶ In particular, in 2006 Queensland University of Technology Professors Sharon Christensen, William Duncan and Amanda Stickley¹⁷ examined the disclosure legislation for residential conveyancing across Australia. They argued then that governments needed to re-evaluate the information (im)balance between the buyer and seller in residential contracts. They suggested that greater consideration needed to be given to what buyers actually want to know when buying a residential property balanced against the burden imposed on sellers of real estate to supply the information sought by buyers.¹⁸

They conducted a further study in 2009 to examine the literature on consumer purchasing behaviour with respect to residential property as against the existing information disclosure laws imposed with respect to residential transactions in the Queensland context.¹⁹ The purpose of the study was to see if there was a connection between the consumer protection benefit of pre-contract disclosure and the usefulness of the information provided during the course of such disclosure.

They concluded that:

... regulatory responses by governments to the dilemma of information asymmetry between vendor and purchaser have relied upon traditional economic theory, perceived market imbalance and political and social pressure

For example: If the seller is giving the buyer a copy of the contract then the seller must:

- (a) have the warning statement mentioned in section 368A(2)(a) attached to the relevant contract; and
- (b) if the relevant contract relates to a unit sale, have the information sheet mentioned in section 368A(2)(b) attached to the relevant contract.

¹¹ *Property Agents and Motor Dealers Act* 2000 (Qld), s 368C.

¹² See for example, *MP Management (Aust) Pty Ltd v Churven* (2003) Q Conv R ¶154-581; [2002] QSC 3 and *MNM Developments Pty Ltd v Gerrard* [2005] 2 Qd R 515.

¹³ See for example, *Rice v Ray* [2009] QDC 275 and *Fletcher v Kakemoto* [2011] QCA 46.

¹⁴ See for example, *Hedley Commercial Property Services Pty Ltd v BRCP Oasis Land Pty Ltd* [2008] QSC 261 and *Pazcuff Pty Ltd v Farmilo* [2010] 2 Qd R 268.

¹⁵ See also Sharon Christensen, William Dixon, William Duncan and Stephen Jones, *Land Contracts in Queensland* (3rd ed, 2011) 182.

¹⁶ See Evonne Miller, William Duncan, Sharon Christensen, Stephen Corones, David Rounds, Mark Burdon and Amanda Stickley, 'Is Mandatory Disclosure an Effective Consumer Protection Mechanism in Australian Real Estate Markets? The Perspective of Queensland Industry Experts.' (Paper presented at the Social Change in the 21st Century Conference, Brisbane, 2006.

¹⁷ Sharon Christensen, William Duncan and Amanda Stickley, 'Evaluating Information Disclosure to Buyers of Real Estate – Useful or Merely Adding to the Confusion and Expense?' *Queensland University Technology Law and Justice Journal* (2007) 7(2) 148.

¹⁸ *Ibid* at 176-177.

¹⁹ Sharon Christensen, William Duncan and Amanda Stickley, 'Behavioural Biases and Information Disclosure Law Relating to Residential Property Sales: Narrowing the Gap Between Existing Laws and Calls for Future Reforms' (2009) 9(2) *Queensland University of Technology Law and Justice Journal* 251.

to justify intervention in the market. This has resulted in obligations on vendors in most jurisdictions to disclose voluminous and often complex information to buyers in formats that do not ensure buyers will read and understand the information.²⁰

With respect to disclosure, they suggested that the regulatory response has been focussed more on the process of disclosure rather than the content – particularly the content in the context of what purchasers may need, may comprehend and use to inform their decision whether or not to continue with the contract.²¹ Indeed, they found the timing of the disclosure and the options available to terminate or act on late information did not necessarily ensure that consumers act rationally or for their benefit.²²

Their 2009 examination revealed that:

... the overall picture reveals idiosyncratic requirements and no evidence of any attempt to analyse the effectiveness or the usefulness of the actual disclosure in any case. Clearly, the implementation of an effective disclosure regime for residential property requires evidence based research of consumer behaviour in the context of information disclosure. There is no evidence that any State or Territory government which has adopted a disclosure regime in Australia has undertaken consumer research to determine what is the optimal level of information from the point of view of balancing the usefulness of the information and its practical effectiveness.²³

Their concluding suggestion in the absence of this research was to call for a moratorium upon any additional legislation of this kind, or even more relevantly a moratorium on ‘any changes, until there is some understanding as to the objectives and effectiveness of vendor disclosure in the residential property market.’²⁴

No research was cited when the LNP promised during the election to alter the form of Warning Statements as part of their “reducing real estate red tape” platform. Nevertheless, on 23 October 2012 the Attorney-General Jarrod Blejje announced via Media Statement that:

... [PAMDA] would be simplified and split to make buying and selling property and cars easier for consumers. ... Consumers are often overwhelmed by pages of paperwork so they just sign on the dotted line without reading the fine print, which can be dangerous. ... These changes will simplify the process for consumers, while ensuring their rights are protected, and also make life easier for industry. This fulfils one of our election commitments, incorporating the PAMDA warning statement into the contract, removing unnecessary duplication from the buying process.²⁵

Comment

The legislative changes are yet to be passed by the Queensland Parliament although a Bill has been presented to the Queensland Parliament to bring these changes into effect.

²⁰ Ibid at 279.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Jarrod Bleijje Attorney General and Minister for Justice, ‘Home buyers to benefit from PAMDA reforms’ (Media Statement, 23 October 2012).

Whether merely incorporating the Warning Statement in the contract achieves any consumer benefit remains to be seen. Tentatively, at least, it can be suggested that the change is supported by the academic literature. That being said, the nature and extent of the statutory disclosure regime in Queensland remains a concern. Another documentary and pre-contract disclosure change in the pre-contractual residential conveyancing process in Queensland has been the Government's removal of the obligation for the vendor to provide a Sustainability Declaration to the buyer.

Change 2: Removing Provision of Sustainability Declarations

Legislation as it was

Sustainability Declarations became part of the pre-contract disclosure regime in Queensland on 1 January 2010. The then Labor Government in the Explanatory Memorandum to the legislation justified inclusion of this pre-contractual disclosure on the basis that:

Mandating a Sustainability Declaration at the point of sale for houses, townhouses and units will:

- increase community awareness of sustainable building features and thereby over time help to improve the sustainability of our community;
- promote the relevance of sustainability features for the value of homes;
- encourage sellers to improve the value of homes by adding sustainable building features; and
- provide valuable information about how the features of an existing home compare to most of the mandatory minimum energy and water efficiency features of a new (or in some cases renovated) home.²⁶

The form and content of the Sustainability Declaration was prescribed; the legislation requiring that:²⁷

- (1) A sustainability declaration for a class 1a or 2 building must be in the approved form.
- (2) The approved form may only make provision for information about features of a class 1a or 2 building, or an enclosed class 10a building attached to a class 1a or 2 building or class 10b structure associated with a class 1a or 2 building, that support or enhance—
 - (a) the building's or structure's sustainable energy or water use; or
 - (b) the amenity or safety of persons using the building or structure.

*Example of information for the sustainability declaration—*information about how lighting in a building compares to standards under the building assessment provisions or a regulation about sustainable energy use

In order to comply with the legislation the seller was required:

- (2) ... before the building is offered for sale or an invitation to buy the building is made by the seller or another person engaged by the seller—
 - (a) prepare or have another person prepare a sustainability declaration for the building; and
 - (b) sign the declaration.

²⁶ Building and Other Legislation Amendment Bill 2009 (Qld), available at http://www.legislation.qld.gov.au/Bill_Pages/Bill_53_09.htm viewed 21 December 2012.

²⁷ *Building Act 1975* (Qld), s 246B (repealed).

- (3) For subsection (2), the requirement to prepare a sustainability declaration is taken to be satisfied if a person completes the declaration to the best of the person's ability and knowledge.

Example—The requirement might be satisfied even if a person does not include information about a feature of a building stated in the declaration if the person can not reasonably find out the information or has no technical knowledge about the feature.²⁸

A failure to comply was an offence against the Act, and if, after provision of the Declaration the seller became aware of different or additional information the Act imposed an obligation upon the seller to correct or have a replacement declaration completed and provided to the buyer.²⁹ Again it was an offence against the Act if there was a failure on the part of the seller to comply with this obligation. There were also obligations imposed upon a seller with respect to not advertising the sale of premises unless the advertising contained information about whether the Sustainability Declaration for the premises might be obtained.³⁰ This obligation also applied where the building was generally open to the public for inspection by potential buyers of the building. In such a case the seller was required to ensure a copy of the building's current sustainability declaration was conspicuously displayed so anyone entering the building could easily read the declaration. Failure to attend to this was also an offence under the Act.

Whilst the Act created a penalty for the provision of a false or misleading Sustainability Declaration³¹ compensation was the only remedy available to a buyer in such a case. The Act explicitly provided that the buyer under a contract for the sale of the building could not terminate the contract merely because the sustainability declaration was incomplete or contained information that was false or misleading.³² The Act also provided that the breach of an obligation did not give rise to an action for breach of statutory duty or other civil right or remedy.³³

Literature

In 2012 Lyndall Bryant and Chris Eves published research which questioned the perceived effectiveness of Sustainability Declarations and the experience of real estate agents in dealing with buyers and sellers with respect to complying with the Sustainability Declaration process.³⁴ Bryant and Eves noted that the research confirmed (as with other studies conducted with respect to a buyers decision to purchase) that environmental concerns are 'not yet a criterion of reference to the majority of home buyers in Queensland.'³⁵ Indeed, in their analysis of the data they collected they concluded that, 'widespread disengagement with the sustainability declaration process was recorded from sellers, and even more so from buyers.'³⁶ In particular their research revealed that, '... up to 40 per cent of the forms completed by sellers are never provided to any potential buyers. Of those used, virtually none (96 per cent) impact the buyer's decision-making process.'³⁷

²⁸ *Building Act 1975* (Qld), s 246C (repealed).

²⁹ *Building Act 1975* (Qld), s 246D (repealed).

³⁰ *Building Act 1975* (Qld), s 246F (repealed).

³¹ *Building Act 1975* (Qld), s 246I (repealed).

³² *Building Act 1975* (Qld), s 246J(2) (repealed).

³³ *Building Act 1975* (Qld), s 246K (repealed).

³⁴ Lyndall Bryant and Chris Eves, 'Home Sustainability Policy and Mandatory Disclosure. A Survey of Buyer and Seller Participation and Awareness in Queensland' (2012) 30(1) *Property Management* 29 and Chris Eves and Lyndall Bryant, 'Have Sustainability Declarations Impacted Home Buyer Patterns?' February 2011, *REIQ Journal* 48.

³⁵ Bryant and Eves, above n 34.

³⁶ *Ibid.*

³⁷ *Ibid.*

They therefore argued that:

This lack of awareness from both buyers and seller 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 the role of the sustainability declarations in helping home buyers made 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.³⁸

Without considering whether there was merit in amending the nature and content of the Sustainability Declarations to achieve any consumer benefit the Newman Government repealed in its entirety the legislation governing Sustainability Declarations as of 27 June 2012.

Comment

The decision appears to be have been reached on the simple argument that the Government was meeting an election promise with is pursuit of "real estate red tape reduction".³⁹ Given the apparent ineffectiveness of the Sustainability Declarations as evidenced in the literature it could be suggested that such a move was justified. However, with its removal there is no legislative or policy position with respect to imposing upon sellers a statutory requirement to make disclosure with respect to the sustainability or otherwise of the house they are selling in Queensland. This position highlights the current discourse on environmental disclosure. On the one hand there is the suggestion that buyers do need information about the long-term energy and water use of their future home so as to make an informed decision about the (potential) ongoing costs of the property.⁴⁰ On the other is that such disclosure is a lot of "red and green tape" for no result; buyers didn't want them and concern over sustainability features in a property is not a priority when compared with concern over housing affordability and financial distress.

However, given the research, it would appear that the need for disclosure with respect to sustainability does need to become a more important decision making factor to encourage changes in buyer behaviour.⁴¹ Arguably such a change will not occur without Government policy or statutory intervention. That the Queensland Government is moving out of this sphere of policy intervention is further highlighted by the Queensland Government's withdrawal from two Council of Australian Government initiatives: the 6 star standard for new units and the mandatory energy disclosure scheme.

Change 4: Withdraw From Council of Australian Government Initiatives

³⁸ Ibid.

³⁹ Teela Jurgensen, 'Real estate industry celebrates scrapping of sustainability declarations amid calls for new measures' *The Courier Mail* (Brisbane), 29 June 2012

<<http://www.couriermail.com.au/questnews/central/brisbane-real-estate-industry-celebrate-scrapping-of-sustainability-declarations-as-triumph-over-red-tape/story-fn8zbrmq-1226412368605>> at 8 April 2012.

⁴⁰ Timothy O'Leary, 'Residential Energy Efficiency and Mandatory Disclosure Practices' (Paper presented at the 18th Pacific-Rim Real Estate Society Conference, Adelaide, Australia 15-18 January 2012) and Richard Reed, Sara Wilkinson and Georgia Warren-Myers, 'Energy Efficiency and Property Values: A Discussion Paper' (Paper presented at the 17th Pacific-Rim Real Estate Society Conference Gold Coast, Australia 16-19 January 2011)

⁴¹ Lucy Craddock and Nathalie Wharton, 'The Adoption of Residential Sustainability Programs: Lessons from the Commercial Sector' (Paper presented at the 17th Pacific-Rim Real Estate Society Conference, Gold Coast, Australia 16-19 January 2011)

Legislation

On 2 July 2009 the Council of Australian Governments (COAG), signed the National Partnership Agreement on Energy Efficiency, which promised:

to deliver a nationally-consistent and cooperative approach to energy efficiency, encompassing a number of matters however of relevance higher energy efficiency standards to deliver substantial growth in the number of highly energy efficient homes and buildings, and provide a clear road map to assist Australia's residential and commercial building sector to adapt.⁴²

The mandatory regime would see National Strategy on Energy Efficiency developing the proposed Residential Building Disclosure, which would require owners of existing houses, flats and apartments to provide energy, water and greenhouse performance information when selling or leasing their properties.⁴³

Literature

Within the property valuation literature there is much current debate over the ability to discern a link or correlation between sustainability measures, property value and housing affordability. Georgia Warren-Myers suggests that the relationship between sustainability and its impact upon value in the market needs to be better identified before the connection is confirmed through valuation practice and property sale prices. In her research on the incorporation of 'sustainability' into valuation practice she found that:

Market leaders have engendered change in the commercial property markets in particular, however, broad scale investment across the market is limited due to the lack of understanding of the relationship between sustainability and market value. Valuers do not direct the market in terms of providing a price or value on sustainability, however, they are responsible for thorough analysis of transactions to ascertain whether sustainability has or was a consideration in the transaction, and consequently, a link or relationship between sustainability and value. If valuers are not acknowledging the contribution of sustainability to the property's market value, it is difficult for owners and other stakeholders to justify sustainability investment.⁴⁴

Similarly, Richard Reed, Sara Wilkinson and Georgia Warren-Myers argue that 'sustainability in the built environment is multi-faceted and the concept is constantly changing'.⁴⁵ They argue that:

When discussing sustainability with reference to the built environment it appears the broad perception is placed on improving energy efficiency, limited mainly to the operating expenses linked to HVAC and/or electricity for lighting. This is a relatively narrow use of the term 'energy efficiency' which should include three (3) main types of energy directly related to aspects of the building:

- (a) operating energy
- (b) embodied energy
- (c) transport energy.⁴⁶

⁴² See <<http://www.mce.gov.au/energy-eff/nfee/default.html>> at 8 April 2013.

⁴³ See <<http://www.climatechange.gov.au/government/initiatives/rbd.aspx>> at 8 April 2013.

⁴⁴ Georgia Warren-Meyers, 'Valuing Sustainability in Australia: Implications for the Valuation Profession' (2012) 18(2) *Pacific Rim Property Research Journal* 163 at 164.

⁴⁵ Richard Reed, Sara Wilkinson and Georgia Warren-Meyers, 'Energy Efficiency and Property Values: A Discussion Paper' (Paper presented at the 17th Pacific Rim Real Estate Society Conference, Gold Coast Australia, 16-19 January 2011).

⁴⁶ *Ibid.*

They contend that 'for a building to be truly sustainable it is important to somewhat address all three types of sustainability. It appears that too much emphasis is placed on energy efficiency relating to operating expenses with little consideration given to the other two at present.'⁴⁷ The literature with respect to consumer decision-making and the extent to which environmental and sustainability measures are a criterion are also relevant in this regard. As noted above the Bryant and Eves⁴⁸ research highlighted that there is concern (at least in Queensland) as to the effectiveness of the provision of environmental and sustainability information for properties for sale on the market.

The withdrawal of Queensland from the COAG agreement was reported in Queensland in the following way:

Campbell Newman has pulled out of a tougher 6-star national energy rating for new residential units to slash an average \$1200 from the cost of building an apartment. The Premier has also scrapped a deal with the Federal Government for mandatory reporting of energy efficiency standards of new buildings in a move he describes as cutting red tape. ... Mr Newman's decision to pull out is a blow to Ms Gillard's plans to streamline rules through the Council of Australian Governments. The new 6-star rating would require better minimum levels of insulation and glazing in new apartment buildings to cut energy use for heating and cooling. But the Premier warned the new rating would drive up the cost of new buildings without getting much return in lower power costs. The tougher standards are estimated by Queensland to add an average \$1200 per unit to construction costs but are only expected to reduce electricity costs by about \$54 a year.

In a letter to the Prime Minister, Mr Newman said the higher 6-star rating was unnecessary in Queensland and suggested it was designed for the climate in other states:

"The Queensland Government cannot justify the cost of transitioning from 5-star to 6-star requirements, especially given that Queensland's climate makes our 5-star units generally more energy efficient than 6-star units in other states," Mr Newman said in the letter. The Premier also hit out at plans for mandatory disclosure of energy, greenhouse gas and water performance in new units at the point of sale. He said the scheme would breach his own election commitment to cut red tape and was "unlikely to increase consumer uptake of sustainability features in homes". ...⁴⁹

Comment

The Premier's statement highlights the competing discourse over how environmental policy objectives might influence consumer behaviour with respect to the purchase of property. This would seem to support the suggestion of Bryant and Eves, and Christensen, Duncan and Stickley that much more research is required with respect to the use by consumers of particular information and how that information may or may not influence their ultimate decision whether to purchase a property or not. It also highlights the that the notion of sustainability needs to be considered in a wider context – not just energy efficiency or building costs – which then also links through to value – market or otherwise and affordability (now and into the future).⁵⁰ Whilst the policy of "red tape reduction" may be satisfied through Queensland's withdrawal from the scheme whether that is a good thing for consumers; or

⁴⁷ Ibid.

⁴⁸ Bryant and Eves, above n 34.

⁴⁹ Scott, above n 3.

⁵⁰ Carolyn Hayles, 'An Examination of the Relationship Between Sustainability and Affordability in Residential Housing Markets' (Paper presented at 12th Pacific Rim Real Estate Conference, Auckland, New Zealand, 22-25 January 2006).

the housing/property/construction industry and community more widely must still be open for discussion. In contrast to the literature on consumer behaviour and disclosure one way that has been proven to influence a buyer's decision to buy a property or not are financial incentives. In this area the Newman Government has also made changes.

Change 3: Indirect Taxes Associated with Purchasing a House

Legislation as it was

Historically, in Queensland concessions have been allowed on the purchase of a principal place of residence. One of the rationales for stamp duty concessions with respect to residential premises is to encourage property ownership market and participation in the market.⁵¹ In June 2011, the then Queensland Treasurer Andrew Fraser withdrew the principal place of residence concession as a way to save the Government money and increase the State's revenue.⁵²

Legislative Change

On 1 July 2012 the Newman government approved the reinstatement of the principal place of residence stamp duty concession of \$7,000.00. A further concession was the first home owner construction grant (FHOCG) which was introduced in the 2012–13 Budget as a way by which to refocus the concession and support the construction industry.

The framework of the FHOCG is that:

- The grant is available to first home owners who will be buying or building a new home.
- This grant of \$15,000 is available for: contracts to buy a new home (including off the plan) dated on or after 12 September 2012 and new homes being built by an owner–builder where the date the foundations start to be laid is on or after 12 September 2012 capped at the amount of homes of \$750,000.⁵³

Literature

In 2006 Gregory Costello examined the impact of stamp duty reductions in first-home buyer markets on the Western Australian property market.⁵⁴ His study examined the 2004 policy initiative of the Western Australian government which reduced stamp duty levels for first-home buyers. His study 'confirmed that direct intervention by state governments in housing markets through amending conveyance (stamp) duty levels for first-home buyers price segments can have an immediate and significant impact on demand in both the price segments that are the target of policy initiatives and also within the aggregate housing market.'⁵⁵ More recently, Valerie Kupke and Peter Rossin in a study examining the effect of First Home Owners grant in the Adelaide (South Australia) market found that rates of

⁵¹ Gregory Costello, 'The Impact of Stamp Duty Reductions in First-Home Buyer Markets – A Western Australian Case Study' (Paper presented at the 12th Pacific-Rim Real Estate Society Conference, Auckland, New Zealand, 22-25 January 2006).

⁵² Roseanne Barrett, 'Queensland Budget Scraps Stamp Duty Discount but Ambulance Levy Will Also Go', *The Australian* (Sydney) 14 June 2011 <<http://www.theaustralian.com.au/national-affairs/state-politics/queensland-budget-scraps-stamp-duty-discount-but-ambulance-levy-will-also-go/story-e6frgczx-1226075006508>> at 8 April 2013.

⁵³ See <<https://www.osr.qld.gov.au/first-home-owner-grant/fhog-fhocg-landing-page.shtml>> at 8 April 2013.

⁵⁴ Costello, above n 51.

⁵⁵ *Ibid.*

borrowing and the volume of transactions increase in the wake of the introduction of such measures.⁵⁶

Comment

The Housing Industry of Australia generated a media release on 5 December 2012 noting that building approval figures for Queensland in October 2012 had increased by 7 per cent from the same time in 2011. Building levels are expected to increase by over 15 per cent in 2013.⁵⁷ The Newman Government attributed the change in policy with respect to the first home owner's construction granted to that increase.⁵⁸ Whilst the reasons for this increase are probably multifaceted the literature supports that contention that the Government's direct intervention through the concession may be a significant contributing factor.

Conclusion

The Newman Government rushed to power after a long period of Labor Governments in Queensland. Their election commitment of "reducing red-tape" has been focussed on the property and construction industries and proposed a number of changes to policy and legislation to reduce this "red tape". This paper has examined the position that existed prior to the Newman Government coming into power and the changes made to Queensland's conveyancing practice since the Newman's government's entry to power to attempt to venture an answer about the nature and effect of the changes through a summation of the existing literature. The analysis of the literature in this way has highlighted that some changes are supported by the literature whilst others are less conclusive. In each of the areas of change the literature examining the existing position called for further research to determine impact and effectiveness. Similarly, further research will be required to determine the impact and effectiveness of the changes made by the Newman Government.

⁵⁶ Valerie Kupke and Peter Rossin, 'Assessing Policy Outcomes Through An Evaluation of House Price, Time on Market and the Relationship Between First Advertised and Last Advertised Price' (Paper presented at the 7th Australasian Housing Researchers' Conference, Fremantle, Western Australia, 6-8 February 2013).

⁵⁷ Housing Industry Australia, 'Home Building on the Up' (Press Release, 5 December 2012).

⁵⁸ Tim Nicholls, Treasurer and Minister for Trade, 'Newman Government Policies Having Positive Impact' (Media Statement, 14 January 2013)

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