

GST46



30 November 2009

The Honourable Ms Anna Bligh MP
Premier
PO Box 15185
CITY EAST QLD 4002

Via Email: thepremier@premiers.qld.gov.au
cc infrastructure.planning@ministerial.qld.gov.au

Dear Premier,

Mandatory Sustainability Declaration

We refer to the *Building and Other Legislation Amendment Act 2009* passed in the House on 12 November 2009. The legislation provides for the introduction of a mandatory sustainability disclosure to be completed by sellers before a property is marketed for sale. The declaration is scheduled to be implemented on 1 January 2010.

This letter seeks your immediate action to delay the introduction of this declaration.

Background

You would no doubt be aware there has been an enormous backlash from both the real estate profession and the public in relation to this legislation for a number of reasons:

- The lack of consultation in relation to the specific drafting of the legislation;
- The rushed passage of the legislation through the House on 12 November;
- The short lead time until implementation;
- Limited opportunity for education;
- The complexity of the declaration form;

Consultation

The Department of Infrastructure and Planning's consultation with the Institute commenced in 2007. At that time proposals around the declaration contemplated a relatively simple form. The Institute has since made several submissions and attended numerous meetings with departmental officers and met with the Minister for Infrastructure and Planning in September.

We have consistently expressed our concerns as to the increasing complexity of the form and that the development of the legislation itself seemed to be a secondary concern. We anticipated we would have the opportunity to review a consultation draft of the relevant bill, but this was denied us without explanation. With amendments to most other legislation affecting our members, we have had the opportunity to consider a draft of the legislation ahead of tabling in Parliament. The first opportunity we had to consider the legislation was after it was introduced into the House on 29 October.

We lodged an urgent submission with the Minister in regard to a serious error in the *Building and Other Legislation Amendment Bill 2009* relating to contracts formed on a sale by auction. We are relieved this was amended in the committee stages. However, there are other shortcomings in the legislation that could have been examined more fully had there been genuine consultation prior to its introduction in the House.

A number of areas such as marketing by letterbox drop or mail remain uncertain. Sellers will be concerned that a document bearing their signature and significant details about their dwelling's physical features will be provided to persons whose bona fide interest in a property has not been established.

The lack of transitional provisions, particularly in relation to the marketing of an estimated 50,000 existing listed properties in Queensland at 1 January 2010, will impose unnecessary burdens of resourcing on agents, and costs on sellers during the Christmas/New Year period. Significantly, we estimate that 20 percent of these properties have absentee owners who will face an almost impossible challenge to comply with the new laws on 1 January. The impact on sales activity should not be underestimated.

Timing

In May 2009, the Council of Australian Governments (COAG) agreed on the phase-in of a mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease, commencing with energy efficiency by May 2011. Thankfully, your government determined to exclude rental properties from the recently legislated requirements.

The legislation was passed on 12 November, with debate halted by the government after several hours. Given the May 2011 timeframe we see no explanation as to your government's rationale for the haste to enact this requirement by 1 January 2010.

Significantly, other new legislation with increased compliance requirements that impacts our members and their clients has been subject to a more reasonable lead-in period. The *Residential Tenancies and Rooming Accommodation Act 2008* was passed in November 2008 but took effect on 1 July 2009.

The *Queensland Civil and Administrative Tribunal Act 2009* was passed in late June with a commencement date of 1 December 2009. This legislation affects lessors, tenants and agents as the new tribunal absorbs the Small Claims Tribunal. We note, however, that even in this case, the application forms for use at the new tribunal became available on 25 November, less than a week before its commencement.

Similarly, the government, in its recent review of pool safety laws, adopted a phase-in period for a number of provisions that affect the same constituency as the sustainability disclosure. The introduction of mandatory inspections at point of sale and lease of properties with a pool and the issue of a compliance certificate does not commence until late 2010.

Further, we are in receipt of the government's discussion paper, *Safety Switches Save Lives*, which canvasses a proposal that extends the requirement for mandatory fitting of safety switches to all power and lighting circuits in all domestic properties on a phased basis over five years. Again, the goals in the Electrical Safety Office's own words is: "the elimination of all preventable electrical deaths".

In short, steps to prevent toddler drowning and electric shocks are being phased in over the next few years. These regulations are about saving lives, yet the sustainability declaration has been rushed through Parliament and will be forced on all sellers in less than a month. There is no logic to this timing and confusion will be the order of the day among sellers from 1 January.

Since the legislation was passed, unrest, confusion and anger amongst members of the public and agents has grown. This has been evident in talkback radio, the press and via enquiry to the Institute.

Our members are reporting that external businesses are hastily being established to provide a sustainability declaration service at the cost of several hundred dollars. The elderly are particularly at risk. There was much made in the parliamentary debate about the "little old lady at Stafford". It is inevitable that scams will be hatched by 'fly by night' operators who will take advantage of the lack of education and the rushed nature of the proposal to rip off those who can least afford it.

The declaration

It has been well documented and publicised that the declaration itself is extremely detailed, confusing and difficult for a seller to accurately complete. While the fact sheet on the relevant website consists of two pages, our advice is that the sustainability declaration reference guide, yet to be finalised, may run to more than 20 pages.

Penalties

At our meeting with the Minister in September we outlined our concerns regarding the quantum of penalties associated with any failure to comply with the requirement surrounding the declaration and its completion. The penalty provisions in the *Property Agents and Motor Dealers Act 2000* (PAMDA) are very punitive and we have been advised by the Minister that penalties were determined to ensure they were consistent with the range of penalties already in PAMDA. The fact the penalties for a real estate agent are five times those that apply to the seller appears to have escaped the attention of those involved in framing this legislation.

Recommendation

Urgent regulatory action needs to be taken to, as a minimum, delay the introduction of the sustainability declaration regime for up to six months with appropriate transitional provisions including a moratorium on the imposition of penalties. This will allow the proper education of both public and professional stakeholders in this process and will not compromise the process agreed by the government through COAG.

We are pleased that the government is committed to finalising amendments to PAMDA to streamline the residential contracts process in early 2010. In the meantime, the hasty introduction of the declaration requirement will add another layer of compliance to an already difficult selling process.

This letter will be released to our members for their information and we expect they will keenly anticipate an early and positive response to this issue.

Yours sincerely,



Dan Molloy
MANAGING DIRECTOR AND
CHIEF EXECUTIVE OFFICER