

27 May 2022

Strategic Policy and Legal Services
Department of Justice and Attorney-General
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Brisbane, Qld 4001

Via email: riccardo.rivera@justice.qld.gov.au

Seller Disclosure Draft Bill Comments

Thank you for the opportunity to provide additional input into the Government's draft Property Law Bill 2022. Whilst the Property Council supports the introduction of a Statutory Seller Disclosure (SSD), we have some concerns which we outline below.

Compliance Implications

The existing disclosure regime in Queensland is complex and spans several pieces of legislation. This creates a likelihood of confusion and inadvertent non-compliance. As such, the Property Council is supportive of a simplified disclosure regime, as it would aid compliance and improve outcomes for both seller and buyer.

Prescribed searches

The Property Council is concerned by the broad nature of clause 7(1)(c). It seeks to require the provision of more information than is currently required by the Real Estate Institute of Queensland (REIQ)'s seller statement without a clear justification for that additional information. The Property Council is somewhat concerned that sellers may not be able to practically comply with the additional information amendments. For example, will this mean a full town planning certificate will be required in every case? If so, this is costly and time consuming, and given the nature of real estate transactions, likely to add unnecessary delays in a process that is time bound.

The Property Council believes it would be more appropriate to manage the additional information requirement through standardised searches, in addition to the existing seller statement.

Rates notices

The Property Council believes that a rating authority search from the local government authority (LGA) would satisfy the outcome that is proposed under draft clause 15 (1)(j). In the event that the parcel of land is not rateable, or exempt from rates, a notice from the appropriate LGA to that effect would suffice.

Water charges

The proposed provisions in clause 15 (k) are unnecessarily burdensome and difficult to calculate, increasing the risk of errors in calculations. The matter is currently managed through the search process and calculated at settlement, allowing for a more streamlined and reliable process. The practical application of this draft clause is likely to cause more confusion and increase the risk of contracts not proceeding on the basis of faulty searches.

Definition of 'Material' v 'nonmaterial'

As per our previous feedback in relation to this matter, the Property Council wishes to again reiterate that it is imperative to define material v nonmaterial in regard to disclosure. The proposed legislation is still too broad in nature, and the lack of clear definition does not provide industry with the certainty it requires.

Definition of property types

The Property Council welcomes the inclusion of a differentiated approach based on property types and the inclusion of a clear definition. The varied types of property means that a universal approach is not appropriate.

The more nuanced approach being proposed in the draft Bill will allow parties to have the flexibility to agree on commercial arrangement that suits the scale or type of the property.

Building Management Statements

As we have outlined above, we are supportive of proposals that look to streamline processes without the duplication of existing framework and legislation.

The practical implications of the legal requirement for a seller to provide Body Management Statements (BMS) (where applicable) and its subsequent variations are likely to add delays to the process, along with costs. As a matter of standard practice, sellers already provide substantial information, and so requiring additional documents to be provided is likely to add confusion to any unsophisticated investor or inexperienced buyers.

The nature of real estate transactions in Queensland are heavily impacted by time, with majority of residential settlements managed by sales agents and occurring within 30 days (generally speaking). The proposals outlined within the review look to place further impost on the seller whilst not appearing to consider the appropriateness of the role real estate agents are to play in providing advice to sellers on complex legal matter.

If you would like to discuss these comments further, please don't hesitate to contact Jess Caire Queensland Deputy Executive Director on 0499 181 366 or at jcaire@propertycouncil.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Jess Caire". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Jess Caire

Queensland Deputy Executive Director