

This is author version of article published as:

Miller, Evonne and Duncan, William D. and Christensen, Sharon A. and Corones, Stephen G. and Round, David and Burdon, Mark and Stickley, Amanda P. (2006) Is mandatory disclosure an effective consumer protection mechanism in Australian real estate markets? The perspective of Queensland industry experts . In *Proceedings Social Change in the 21st Century Conference*, Brisbane.

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Is mandatory disclosure an effective consumer protection mechanism in Australian real estate markets?

The perspective of Queensland industry experts

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Abstract

This exploratory qualitative study investigates the reaction of the selling side of the real estate market to mandatory disclosure of information as a consumer protection mechanism in residential property transactions, the largest purchase most consumers will ever make. In Australia, where mandatory disclosure requirements for vendors, mortgage providers and real estate agents vary on a state by state basis from stringent to no formal legal information requirements, little is known about the relative effectiveness of different disclosure regimes or whether the red tape and compliance costs of disclosure may outweigh the benefits. To address this research gap, in-depth interviews were conducted with five Queensland industry experts (lawyers, real-estate agents, mortgage provider). These interviews highlight the transaction costs and benefits of disclosure from the perspective of the supply side of the market, and raise questions about the perceived legal, economic and social effectiveness of mandatory consumer protection mechanisms in the Australian real estate market. Future research directions are outlined in light of these preliminary findings.

Keywords: consumer protection; mandatory disclosure; residential property; compliance costs; industry perspective

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With over \$110 billion spent on residential property in Australia annually (Real Estate Institute of Australia, 2002), buying a home is the largest financial transaction most people will ever make. Unfortunately, the process of searching for and buying a home is so emotionally, financially and legally challenging that it has been described as one of life's most stressful life events (Hahn & Smith, 1999; Meyer, 1987). Indeed, approximately 15% of complaints by consumers to the Queensland Office of Fair Trading concern real estate transactions, covering diverse issues such as two-tier marketing, agent kickbacks and non-disclosure of faults by vendors (Office of Fair Trading, 2004). A classic and tragic example of non-disclosure of faults in Australia is that of vendor Stephen Brooks, who was aware of a heater leaking carbon monoxide and was advised that he was playing 'Russian Roulette' by not fixing the leaking heater. Instead, Brooks sold the house and heater unfixed. The new occupants and their daughter died from carbon monoxide poisoning, with Brookes eventually convicted of involuntary manslaughter (Griggs, 2001). A more recent case where the ethical and legal obligations of real estate agents were highlighted was the sale of the notorious 'Gonzales triple murder house' in Sydney, where Sef Gonzales murdered his mother, father and sister in 2001 (Hinton & Ors v. Commissioner of Fair Trading, NSWADT, 2006). The agents did not inform potential purchasers of the crime, arguing that they sell "bricks and mortar, and consider what happened to previous owners to be immaterial to the sale" (p8) and that they were "not under an obligation to 'communicate all details' to purchasers of property" (p29). The New South Wales Administrative Decisions Tribunal disagreed, finding that the real estate agents "engaged in misleading or deceptive conduct, namely the non-disclosure of murders which occurred on the property" (p2).

Mandatory Disclosure in Australian Real Estate Transactions

Whilst the cases described above are extreme examples, repeated consumer complaints about real estate has prompted many Australian state governments to move away from the traditional principles of 'caveat emptor' or 'buyer beware' and implement a range of mandatory disclosure of information laws, which require vendors and real estate agents to disclose certain information about the property to the purchaser. The main aim of these disclosure laws is to lessen the risk associated with the non-financial side of property transactions and protect the consumer through reducing the information asymmetry between the vendor and purchaser. As Table 1 below illustrates, all Australian states have at least *some* form of mandatory disclosure from either vendors or agents or both.

Table 1: Mandatory disclosure requirements in residential property transactions, Australia and New Zealand¹

State/Country	Degree of Vendor Disclosure	Degree of Agent Disclosure
Australian Capital Territory (ACT)	extensive mandatory disclosure ²	mandatory disclosure
New South Wales (NSW)	extensive mandatory disclosure ²	mandatory disclosure
Northern Territory (NT)	none	mandatory disclosure
Queensland (QLD)	none	extensive mandatory disclosure ³

South Australia (SA)	mandatory disclosure on vendors	no
Tasmania (TAS)	mandatory disclosure on vendors	mandatory disclosure
Victoria (VIC)	extensive mandatory disclosure ¹	mandatory disclosure
Western Australia (WA)	none	extensive mandatory disclosure ³
New Zealand (NZ)	none	none

² Requirement for vendor statement

³ Represents the degree of mandatory agent disclosure, from limited to extensive

Importantly, unique differences in local history, real estate industry lobbying strength, property market growth and consumer pressures has meant that states differ in how they regulate the residential property transaction process, with each state focussing on and regulating different stages in the real-estate supply chain. Four Australian jurisdictions (ACT, NSW, VIC, and TAS) have enacted mandatory disclosure of information requiring both vendors and real estate agents to disclose certain information about their property. Three states (WA, QLD, and the NT) do not currently have formal vendor mandatory disclosure of information requirements, although a standard form contract used in property sales has been developed to encourage vendor disclosure (Tasmanian Law Reform Institute, Warner et al., 2004), whilst New Zealand does not have mandatory disclosure legislation. In an attempt to standardise disclosure practices in Australian states, Griggs (2001) recently outlined a Draft Vendor Disclosure Statement for Australia. Originally developed by the Tasmanian Office of Consumer Affairs and Fair Trading (Hayes, 2000), this draft Vendor Disclosure Statement covers a diverse range of issues, including local government notices, building issues, encroachments and strata or community lot, which Griggs (2001) believes:

should not impose extra transaction costs associated with the selling of real estate. Rather the costs will be redistributed from the purchaser to the vendor...sales, vendor disclosure statements provide an opportunity to assist the purchaser in their decision making process without imposing an unfair or burdensome obligation on the vendor or her/his agent (p. 154).

The Effectiveness and Value of Disclosure in Real Estate Transactions

However, despite calls for increasing and standardising disclosure practices in all Australian states and territories, there is remarkably little evidence about how these processes of disclosure work in the real world. Providing useful and usable information to consumers is a key principle of consumer protection, viewed as a way to balance the power and information asymmetry between consumers and traders. Yet, although the provision of information is typically viewed positively, an emerging body of literature has highlighted the limits of information as a consumer protection mechanism and has raised questions about the effectiveness and value of disclosure. Of particular concern are three key potential limitations of disclosure, specifically consumer comprehension, the benefit-cost ratio, and moral hazard.

Consumer Comprehension

The first potential limitation of disclosure is the extent to which consumers read, understand or utilise the information that is disclosed to them, with Hadfield, Howse and Trebilcock (1996) suggesting that “if complete information on the part of consumers were to be established as a precondition for the validity of consumer transactions, very few would meet the test” (p 6). Indeed, research in America suggests that over a third of Americans had signed common legal documents (e.g., loan agreements, leases, insurance forms) without reading them, citing reasons such as lack of time, explained by someone, too difficult, trust and not important (Wogalter, Howe, Sifuentes & Luginbuhl, 1999). However, even if people do read legal documents, the degree to which the ‘legalise’ or legal jargon is understood is debatable. Howells (2005) has outlined in detail the limits of providing consumers with information, arguing that few consumers make use of the information provided. Similarly, Murphy and Richards (1992) compared the efficacy of alternate disclosure statements in rental car radio advertisements and found that the shorter statement was as effective as the longer statement.

The Relative Benefit-Cost Ratio

Second, from a cost-benefit perspective, one long-standing criticism of general consumer protection mechanisms is that “they fail to take into consideration the increases in costs and therefore prices, generated by companies’ putting into effect the measures demanded by the consumerists” (Foxall, 1980, p 31) and that as “information is often costly both to obtain and process, consumers often must choose at what point they should remain rationally ignorant” (Hadfield et al., 1996). Traditional economic theory models consumer behaviour on the assumptions of perfect information and the maximization of expected utility. In fact consumers rarely if ever possess all the information necessary to make optimal purchasing decisions, and in the light of this, and also because of the search and transaction costs of discovering information, they will make decisions on the basis of what is known as bounded rationality – a choice process that allows for the presence of limited information, a limited capacity by the consumer to process information, and an inability to evaluate fully any given product and to enumerate and evaluate all of the possible alternative purchases (Kahneman, Knetsch & Thaler, 1986).

The identification of alternatives, and an evaluation of their contribution to the welfare of a consumer, is a long and expensive procedure. Rather than identifying the optimum purchase, the consumer will instead opt for one that is generally acceptable, or at least yields a more agreeable outcome than has been obtained from the current purchase. People opt for rules of thumb or other techniques to help them more easily make their purchasing decisions – and accordingly will at times behave in ways that may not appear to be rational according to the standard economic theory of consumer behaviour (Rabin, 2002). The area of economics that considers such conduct has become known as behavioural economics. It is an approach based on empirical testing of the consumer decision-making process. It seeks to explain why consumers make the choices that they do in the presence of imperfect information and uncertainty and their own limited abilities, why they do not follow strict classical utility-maximizing rules, and why these choice processes may indeed be rational, given the consumer’s circumstances, knowledge and abilities. Such behaviour has been termed ‘satisficing’, in the sense that consumers will select an alternative if it is found to be satisfactory according to all the indicators used by them in their decision-making processes. Moreover, in the context of real-estate disclosure, a precise calculation of the costs and benefits is difficult, with Hadfield et al. (1996) arguing in the Canadian context, that:

since the cost of information is crucial, consumer protection instruments that actually generate information that is costly for consumers to interpret or access are counter-productive. This principle may imply the re-evaluation of quite a wide range of consumer protection laws and regulations, especially those that mandate detailed disclosure of contents or ingredients, complex details of the

price, terms and conditions of a transaction or very specific caveats about the use of the product (p64-65).

To date, although researchers have not explicitly explored the costs of disclosure in the context of real estate transactions, an analysis of the effectiveness of used motor vehicle disclosure requirements designed to protect consumers from bad ‘lemon’ cars in the United States, Pratt and Hoffer (1985) concluded that “these disclosure requirements do not seem to decrease a prospective buyer’s risk of purchasing a lemon” (p185).

Moral Hazard

A third concern is moral hazard, where consumers believe they are protected or assume the law will protect them and thus will not take appropriate self-protection actions. Viscusi (1984) offers an example of this, documenting a correlation between child-resistant safety caps and accidental poisonings in the United States which led him to suggest that the presence of safety caps may have made consumers less safety-conscious. Similarly, Hadfield et al. (1996) describe how people with insurance are less likely to take care to avoid losses, whilst in the context of investment services Llewellyn (1995) warns that consumer regulation “creates the impression that the consumer need not take care with respect to the firms with which he or she deals in financial services. This becomes a moral hazard of regulation: a hazard that regulation itself creates the image that less care need be taken” (p17). In the context of disclosure in real estate, the gradual shift away from principles of caveat emptor may actually lead consumers to assume, often falsely, that the law will always protect them. Figure 1 below illustrates how several factors may foster a real estate environment characterised by moral hazard.

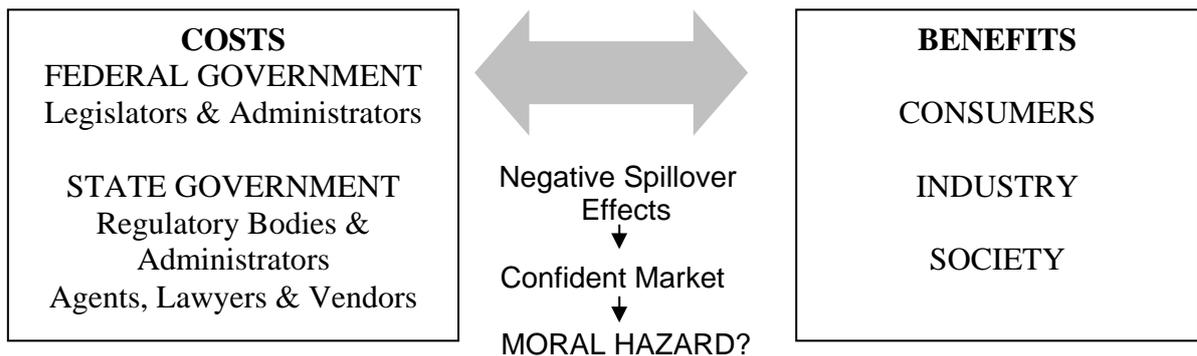


Figure 1: Overview of potential costs, benefits and market implications of disclosure

To date, surprisingly little is known about the effectiveness of disclosure as a consumer protection technique. However, with the federal government recently directing the Productivity Commission to review Australia’s current competition and consumer protection framework (Productivity Commission, 2005), it is timely to investigate the effectiveness of consumer protection laws, specifically mandatory disclosure requirements, in real estate transactions. In Australia, mandatory disclosure requirements for vendors, mortgage providers and real estate agents vary on a state by state basis, with little known about the relative effectiveness of these different disclosure regimes or whether the red tape and compliance costs of disclosure may outweigh the benefits. Thus, this exploratory qualitative study investigates the reaction of the selling side of the real estate market to mandatory disclosure of information as a consumer protection mechanism in residential property transactions, the largest purchase most consumers will ever make.

Methodology

Participants

A total of five in-depth interviews were conducted with Queensland residential property experts, specifically two lawyers, two real-estate agents and a mortgage provider. Lawyer 1 was a partner in a large commercial law firm located in the Brisbane central business district that specialised in acting for large developers, whilst Lawyer 2 was a partner in a smaller suburban firm that specialised in property and consumer advocacy. The Mortgage Broker and Real Estate Agent 1 were employees, whereas Real Estate Agent 2 was a partner. All participants were older males who had worked in the property industry for a minimum of five years (Real Estate Agent 1), with the majority involved for over two decades.

Procedure

Using purposive sampling, participants were recruited through the author's professional networks and snowball sampling, a non-probability sampling method where participants nominate other people in their professional or personal networks to also participate in the research. An email was sent to potential interviewees, outlining the research and inviting them to participate in an in-depth interview exploring the effectiveness of disclosure as a consumer protection mechanism in residential property transactions. A \$25 gift voucher was offered in appreciation of their time and opinions. Those interested in participating were invited to email the first author for more information and to schedule an interview time. Those who agreed to participate were sent an information sheet outlining the project and key research questions, thereby giving them the opportunity and time to reflect on their experiences with disclosure prior to the interview. The interviews were all conducted by the first author, taking place in a convenient location for the interviewee, primarily their business premises and local cafes. The interviews lasted for between 45 minutes and 2 hours in duration, and were audio-taped and later transcribed.

Semi-Structured Interviews

A semi-structured discussion format was utilised to explore the effectiveness of disclosure as a consumer protection mechanism, focussing on the interviewees' experiences and understandings from the supply side of the real estate market in Brisbane. The following areas were broadly covered: the main aim of disclosure and effectiveness in meeting this aim; amount of time typically spent on disclosure issues, and by whom, and whether further disclosure was asked for by consumers (i.e., is the current level optimal in this way); and the effectiveness of disclosure as a consumer protection mechanism and their ideal regime. The questions were designed to foster a wide-ranging discussion and reflective evaluation of the costs and benefits of disclosure, from both an industry and consumer perspective. A key focus was to ensure that participants felt comfortable raising and discussing all aspects of disclosure and any other issues they believed were relevant. Notably, most interviewees covered the key areas in the interview guide without much prompting, as they reflected on the relative effectiveness of disclosure and their ideal regime.

Analysis

Transcripts and responses were analysed using a thematic approach, identifying categories, themes and patterns (Liamputtong & Ezzy, 2005). The process of identifying, categorising and coding data, described by Punch (1998) as "putting tags, names or labels against pieces of the data" (p204), helps reduce and simplify the vast amount of data and identify dominant themes. A key focus was to identify the extent of convergence or divergence in views on disclosure from an industry perspective. Only a relatively small number of industry experts were interviewed (n=5) in this exploratory study, however, it is important to remember that in qualitative research:

the success of a study is *not* in the least dependent on sample size, it is *not* the case that a larger sample necessarily indicates a more painstaking or worthwhile piece of research. Indeed, more interviews can simply add to the labour involved without adding anything to the analysis (Potter & Wetherell, 1987, p. 161).

Results

The data clearly demonstrates that although Queensland residential property experts all agree that disclosure needs to be simplified, they have diverse views about the role of industry professionals and the impact and effectiveness of disclosure for both sellers and buyers. Thematic analysis identified three key themes emerging from the data; unfortunately, a further detailed analysis of important sub-themes is beyond the scope of this paper and will be addressed in future work. In this paper, each of the three key themes, specifically perceived costs and benefits of current disclosure requirements, the need for a balanced and common-sense approach, and industry challenges, is discussed in turn.

Costs and Benefits of Disclosure

Industry professionals all viewed disclosure is an essential component of consumer protection in property transactions, arguing that disclosure is about “protecting everyone and giving people as much information as you can, because they need to be educated” (Real Estate Agent 2), a way to “protect people from their own trusting naivety” (Lawyer 2) and “fundamentally, it needs disclosure to ensure that the buyer is fully aware of the entire process and fully aware of the product which they are buying” (Real Estate Agent 1). However, although all participants endorsed the intent and aims of disclosure, there were common concerns about the effectiveness, complexity, time and cost of current disclosure requirements.

Whilst disclosure was viewed as essential, a common concern raised by all participants was how to motivate consumers to read and understand the complex disclosure documentation: “we need disclosure – it’s about how we do it effectively. I don’t think it’s effective at the moment. We are just getting more paper and less understanding of the paperwork. I think it creates a minefield for everybody” (Lawyer 1) and “I go over the forms with them- tell them what I’m being paid etc and they don’t won’t to bother. I say please read through them, but probably only about half read through them – they walk out the door with a copy of it anyway” (Real Estate Agent 2). Similarly, the Mortgage Broker argued that “I think it would be very rare that people read through all that stuff. 95% of people would not read the disclosure documents, put off by their length, formality and complexity. But, if it was simpler and smaller in size, people might actually read, understand and utilise the information”. The second key theme, need for a common sense approach, discusses the need for a simpler disclosure template in more detail.

Notably, the estimated cost and time spent on disclosure issues varied considerably. With the exception of the development lawyer, who dealt with complex new high-rise developments, participants generally felt there was no cost in providing information, arguing “what is the cost of a piece of paper? It is negligible” (Real Estate Agent 1) and “don’t worry about the cost of disclosure that’s nothing – it’s just part of doing business. It’s not an issue. With the documentation and programme by the REIQ – cost is irrelevant” (Real Estate Agent 2). However, whilst dismissing the time spent on disclosure requirement, both agents felt that the legislation was primarily designed to warn consumers to not trust real estate agents, neglects the interests of the seller and is too focussed on procedural aspects: “there is all this fixation about these forms – the forms seem to be to protect the buyer from the agent but the disclosure doesn’t cover important things about the property” (Real Estate Agent 2). Both agents had created flow-charts and/or forms to ensure they correctly followed the *process* of disclosure correctly and were frustrated with different aspects of the current legislation, believing that it protects the buyer at the expense of the seller:

The intent of the act does not meet with the practical application of the act - that form sets the agent up for failure because if that is not done absolutely correctly the buyer can withdraw from the contract up to settlement. When it comes to the actual contract process it is so detailed that it has actually created flaws where mistakes are made – buyers can get out of it easily. You have no

protection for the sellers in that process...it has been done to protect the buyers, sometimes at the cost of the seller. There is no balance between the two. I have another form to say that I did everything in the right order and in the contract also (Real Estate Agent 1).

Similarly, the consumer advocate lawyer dismissed issues of cost, arguing for full disclosure because “the cost is not mega-bucks” (Lawyer 2). However, the development lawyer estimated the time and effort involved in developing disclosure forms was 40-50 hours for each disclosure document. Although they had developed a basic template, the disclosure forms for large new high-rise developments comprised of nine sections over 60 double-sided pages and are “very complicated and bulky” (Lawyer 1). Unfortunately, he believed few consumers ever read these lengthy documents, except when they were looking for an excuse to get out of the contract and that “even the eyes of developers gaze over when we talk about disclosure issues. I tell my staff to write and include a brief executive summary outlining the key points, because clients aren’t going to read the 50 page document”. Indeed, when he checked with the head of clerks about whether clients read the disclosure documentation, she estimated that only 10% of people ever queried disclosure issues and believed that was because their law firm focussed on describing the purchase process in detail.

Need a Balanced, “Common-Sense Approach”

There was a consensus among industry professionals on the need for a simpler approach, particularly an executive summary or industry-wide template that concisely summarises in an easily understood checklist form, disclosure requirements and findings. The feeling was that, whilst the intent was good, there are flaws with the current disclosure laws in Queensland which are essentially limited to buyers signing a statutory warning statement acknowledging they have been told to seek independent legal advice and valuations.

In particular, the consumer advocate lawyer queried the effectiveness of current practice, raising four key criticisms. First, the best consumer protection would be not allowing agents to prepare real estate contracts, as “foxes should not be permitted to give warnings to chickens”. His second key point was that “contracts needs to be prepared by a solicitor and they need to be accessible, non-goobledgook and not look like every other bit of paper buyers are asked to sign. Its not rocket science”. His third criticism was that the warning statement needed to be clear and stand out:

The statutory Warning Statement is, in my opinion, overly wordy – more than a 1000 words, filling 2 pages. And it looks little different form the other forms and papers buyers are given and have to sign. It needs to stand out and be sexy – a different size and colour. The problem is that, despite the intent, most contracts are signed by buyers, on car boots and in kitchens, in the presence of seller’s agents without any legal advice or valuations. This advice in the Warning Statement has NOT sent swarms of buyers to lawyers, but it lets the government say ‘you have been warned’ (Lawyer 2).

Fourth, he felt consumer protection laws and codes of conducts needed to be enforced more strongly, and that they were worthless if they are not well policed or adequately enforced. His perception was that, in Queensland:

The government’s lame laws fail to protect consumers from property predators, real estate racketeers and consumers own trusting natures. The law protecting buyers does not go far enough, and doesn’t even exist for sellers. To best protect consumers, governments should obligate buyers and sellers to obtain independent legal advice before contracts are signed (Lawyer 2).

In particular, he advocated looking to America, particularly Minnesota, where sellers have to disclose all material facts that could adversely and significantly effect an ordinary buyer’s use and enjoyment of the property. To define what ‘material facts’ are,

there is a list of questions for sellers to answer on diverse issues such as past flooding, fire or smoke damage, structural alterations, asbestos and if they smoked or kept pets indoors. Within Australia, he cited the ACT as a good example of effective disclosure laws, where sellers must give all prospective buyers building and pest inspection reports and building records. This notion of sellers providing potential buyers with information on the property was mentioned and endorsed by both real estate agents, who felt it would “make a more honest and professional industry. People will be more happy, a lot less anger and it will save everybody money (Real Estate Agent 2).

All participants suggested a potential way to streamline the process, essentially requiring the sellers to disclose certain elements about the property. Lawyer 2 commented that “I would like to see something like in car sales, perhaps a “home-worthy” certificate. It could be used as a selling tool”, whilst Mortgage Provider 1 discussed the advantages and challenges of having a “road-worthy certificate for a house”, raising potential issues such as the possibility of vendor’s bribing the building and pest inspector or getting multiple reports and then utilising the most favourable. He argued for the importance of simplicity and balance in disclosure:

Regulation and disclosure is coming for a reason and it is to protect the consumer. There are obviously instances where people are getting burnt. I think it is good as long as it is not onerous. It shouldn’t mean that it costs a business more than it did before. Yes, a little bit more time is ok, as long as it is not onerous. If it makes things clearer for the borrower that’s great, but if it’s going to be multi-paged documents, then that is silly (Mortgage Provider 1).

Industry Challenges

Participants highlighted two key industry challenges; the need for change in the industry and the imbalance between buyer and seller. There was a consensus on the need for a review and reform of current disclosure practices in the real estate industry, with participants describing the current disclosure legislation as too process-orientated and not focussed enough on the actual product (i.e., the qualities and features of the product). There was a call for an extensive review of current practice; “real estate in Queensland has been done the same way for about 100 years – everything else has changed, except for the way in which we structure and go about real estate. I would like the whole thing go through a review” (Real Estate Agent 1).

Both real estate agents expressed concern about how their profession was perceived by the general public, arguing that “because it is, basically, a commission only business, there are a bag of bad agents out there, but the majority are good people and they don’t intentionally go out there to do the wrong thing” (Real Estate Agent 1). Both agents strongly believed that introducing template disclosure forms for properties would improve the image of the industry, and that “making a level playing field would make it harder for the dodgy agents as well” (Real Estate Agent 2). Indeed, Lawyer 2 raised concerns about real estate skulduggery and marketeering, arguing that “every week, I see examples of real estate skulduggery, with people steered to ‘tame’ building and pest inspectors, conveyancers, solicitors and finance brokers paying kickbacks. I have dealt with scores of trusting home buyers (Lawyer 2).

As well as emphasising the need for review and reform, participants acknowledged the imbalance in disclosure between buyers and sellers in residential real estate transactions; “my problem is that there is not enough seller disclosure. I think the buyer is covered pretty well “(Real Estate Agent 2). Notably, perceptions and definitions of imbalance differed among professions. Whereas real estate agents emphasised how the rigidity of disclosure requirements, and particularly the process, creates loopholes for buyers, Lawyer 1 focussed on the time involved in complying with disclosure requirements, and how buyers utilise disclosure formalities and innocent errors to get out of contracts; “there are not a lot of genuine people who claim misrepresentation. But, if someone really wants to get out of a contract they can and that creates

uncertainty...off the plan buyers are often are investors and they'll use the disclosure clauses to get out" (Lawyer 1). Conversely, Lawyer 2 emphasised the importance of protecting the consumer against their own trusting natures and that "90% of my time is spent trying to get people out of problems – consumers are too trusting and should not believe what agents say. People must not sign anything unless they have read and understood every word" (Lawyer 2).

Discussion

Given the paucity of literature exploring the effectiveness of consumer protection mechanisms, and particularly disclosure in real estate transactions, this exploratory research has highlighted how industry professionals in Queensland utilise and view current disclosure requirements. The qualitative findings suggest that Queensland real estate industry professionals generally support calls by Griggs (2001) for a universal Vendor Disclosure Statement for Australia that presents information "in such a way as to unambiguous, clear, and concise and which is known to the vendor or which should be known" (Griggs, 2001, p 9). The prevailing view was that there needs to be a comprehensive review and development of an industry-wide template which concisely summarises disclosure requirements and findings in a consumer-friendly checklist or executive summary form. The challenge, as our participants noted, is to develop something that (1) provides valuable information in a simple form that consumers will read and understand; (2) equably balances the needs of both seller and buyer; and (3) clarifies and simplifies the role of industry professionals in the disclosure process.

This exploratory research has highlighted an interesting dichotomy: industry professionals seem to want to provide more detailed disclosure information, yet they agree consumers seldom read current disclosure documentation. There was a strong belief that smarter disclosure, focussing on identifying the product attributes in a practical, user-friendly and accessible manner, will improve both the standards and image of the real estate industry. Moreover, as relatively few consumers read or understand current disclosure legislation which utilises complex 'legalise' language, real estate industry professionals believed that there should be an executive summary or checklist of disclosure requirements. They advocated strongly for a simpler, common-sense approach, acknowledging that the "intent of the act does not meet with the practical application of the act" (Real Estate Agent 1) and that "the eyes of developers glaze over when we discuss disclosure" (Lawyer 1). There was agreement that the best thing for the industry may be the development of simple industry-wide home-worthy certificate or checklist, with only a minority of participants (2/5; Lawyer 1 & Mortgage Provider) emphasising the costs associated with disclosure and requiring people to produce and comply with additional legislation. There was a general belief "there isn't really a cost involved in providing information" (Real Estate Agent 1), with participants calling for additional, yet smarter and user-friendly disclosure which focuses on outlining the properties attributes.

For the most part, the general range of views about disclosure did not vary dramatically according to occupation. However, occupation determined the element of disclosure participants focussed on. The development lawyer emphasised the time and effort involved in developing disclosure documents which, because of their complexity and length, were typically seldom read or utilised by their clients except when they were seeking a loophole to escape a contract. On the other hand, real estate agents typically focussed on the procedural aspects of following disclosure requirements, lamenting how the requirements focussed on protecting the buyer and were so specific that any small errors "generates loopholes which an educated buyer and solicitor can exploit" (Real Estate Agent 1). Notably, both agents supported full disclosure, arguing that "the buyer is fully aware of the entire process and fully aware of the product which they are buying" (Real Estate Agent 1). Disclosure was not yet an issue for the mortgage provider, who are not currently legally required to disclose anything. However, he

acknowledged that disclosure requirements were coming for mortgage providers and emphasised the value of usability, arguing that there was “no point such requirements being 80+ pages and costing extra \$10-20,000 per year with no benefit if they are unread by the consumer – 1 page is ok”.

There was significant disagreement amongst participants about the role and function of real estate agents in the process, with the agents believing that they have been unfairly vilified in the legislation which essentially says “we can’t trust an agent to do the right thing” (Real Estate Agent 1). Conversely, the consumer advocate lawyer strongly believed that agents, who he compared to foxes, should not be allowed to give warnings to consumers (chickens) or prepare real estate contracts. The role and competing obligations of real estate agents was mentioned by both agents, who spoke of the challenges of acting “for the seller and with the buyer” (Real Estate Agent 1). Even the judge in the Gonzales murder house case acknowledged the ethical and legal obligations of disclosure are “valid issues of real day to day concern to licensed agents. They have troubled me in considering this matter” (Hinton & Ors v. Commissioner of Fair Trading, NSWADT, 2006, p29-30). Further research should explore how agents manage and negotiate this delicate balancing act, specifically the role of legislation, industry protocols and disclosure. Research conducted for the Real Estate Institute of New Zealand suggests that most New Zealand residential property buyers believe their real estate agent explained the contract for sale and purchase well and rate the fidelity fund, trust account regulations and rules for ethics as the most important consumer protection mechanisms in real estate (Crews & Hovell, 2005). Disclosure was not included as an option in their survey, as disclosure is not a legal requirement in New Zealand. Clearly, quantitative research is needed to identify the costs and benefits of disclosure for Australian buyers, sellers and industry professionals.

Finally, with Howells (2005) lamenting the lack of research partnerships between legal and social science disciplines on consumer policy issues, the present paper is the first step to highlight the experience and effectiveness of disclosure in residential real estate transactions via a transdisciplinary research partnership amongst lawyers, psychologists and economists. Of course, this research is limited by the small sample size and the focus on the experiences of industry professionals in one Australian state only, neglecting the perspective of both consumers and professionals in other states with different disclosure requirements. Proposed future research will address these limitations, utilising both qualitative and quantitative research to explore the perspective of consumers and the experiences of industry-professionals in other Australian states. Notably, Real Estate Agent 2 was correct in his comment that “I bet everyone has said that there should be more disclosure”; for researchers and policy-makers, the challenge now is how to ensure disclosure in real estate transactions is efficient, effective and user-friendly, for both industry and consumers.

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¹ For vendor disclosure see *Conveyancing Act 1919* (NSW) s 52A; *Land and Business (Sale and Conveyancing) Act 1994* s 7; *Sale of Land Act 1962* (Vic) s 32. In the Northern Territory, Queensland and Tasmania, the legislation is similar to the vendor's common law duty to provide good title: *Law of Property Act 2000* s 64 (NT); *Property Law Act 1974* (Qld) s 61; *Conveyancing and Law of Property Act 1884* (Tas) s 37. In Western Australia, the vendor must provide the purchaser with written notice of any mortgage, encumbrance, lien or charge of the land: *Sale of Land Act 1970* (WA) s 7.

For agent disclosure see *Agents Act 2003* (ACT); *Property, Stock and Business Agents Act 2002* (NSW); *Agents Licensing Act 1979* (NT); *Property Agents and Motor Dealers Act 2000* (Qld); *Land Agents Act 1994* (SA); *Auctioneers and Real Estate Agents Act 1991* (Tas); *Estate Agents Act 1980* (Vic); *Estate and Business Agents Act 1978* (WA).