national competition policy

Queensland Government
Department of Tourism, Racing and Fair Trading
incorporating
Liquor Licensing

Final Public Benefit Test Report – *Land Sales Act 1984*

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NCP Legislative Review

Land Sales Act 1984

PUBLIC BENEFIT TEST REPORT

EXECUTIVE SUMMARY

A Public Benefit Test ("PBT") has been conducted on the *Land Sales Act 1984* ("the LSA") in line with National Competition Policy ("NCP") guidelines. This document reports the findings of the PBT.

The LSA was introduced with the four-fold objective of:

- Facilitating land development in Queensland;
- Protecting the interests of consumers in relation to property development;
- Ensuring that land is accurately described; and
- Achieving these objectives without placing additional burdens on local Government authorities.

The LSA was introduced as a response to a number of significant incidents of consumer detriment in the 1970s and 80s caused by misdescribed land. Prior to the introduction of the LSA, the *Auctioneers and Agents Act 1971* regulated aspects of land sales in Queensland.

The LSA regulates the sale of flat land ("allotments") and building units purchased off the plan ("lots") by restricting the point at which allotments and lots may be sold in the registration of title process. Information disclosure statements required under the LSA are designed to ensure accurate descriptions of allotments and lots. If there are significant variations between the descriptions on the disclosure statements and the actual allotment/lot, consumers may then be able to vary the terms of the contract, or avoid the contract. The provisions of the LSA apply only to sales where land is subdivided into five or less allotments (known as "small" transactions).

The key stakeholders in land sales market are vendors and developers of land; real estate agents, acting for vendors and developers; builders, legal professionals, and other professionals such as architects, engineers and surveyors; and consumers, both experienced and inexperienced in purchasing lots and allotments.

In addition to the LSA, a number of other pieces of legislation have effect in the land sales market. The *Fair Trading Act 1989* has a provision regulating false and misleading representations in relation to land. The *Property Agents and Motor Dealers Act 2000* regulates the conduct of licensed real estate agents and auctioneers with respect to the sale of land. The *Integrated Planning Act 1997* outlines local Government authorities' approval process for land development, while the *Land Title Act 1994* provides for the registration of title. Each of these pieces of

legislation regulates a distinct part of the market, without overlap. This level of regulation in the land sales market is needed to protect consumer interests, often substantial due to the high dollar values involved.

A number of restrictions on competition were identified in the LSA, including:

- Prohibition on sale: an allotment can only be sold if there is local government authority approval on the development of the allotment. The objective of this restriction is to ensure consumers are purchasing accurately described land with relevant approvals in force; and
- Exemptions: if an allotment is to be subdivided into five or less subdivisions, an exemption from any or all parts of the LSA can be applied for. The objective of this restriction is to recognise that sales of five or less subdivisions may involve families rationalising their holdings, and that such small businesses could benefit from not having to comply with all parts of the LSA. Currently, the Office of Fair Trading processes exemption applications at a loss. The PBT's recommendations include a review of the fee and processing requirements for applications for exemption.

A number of regulatory options to the LSA were considered. Self-regulation via a voluntary code of conduct was considered to not have net public benefit on the grounds that there was not a sufficient industry framework to support a voluntary code.

In the deregulation alternative, there are benefits for developers and vendors as there would be fewer administrative obligations and this may encourage more entrants into the market. However consumer protection would be at risk with an increased risk of misdescribed land and a lack of funds protection. Consumer confidence in the market would decrease, having a negative impact on demand. Deregulation is also inconsistent with whole of Government outcomes of safer, more supportive communities. Consequently, deregulation is not in the public benefit.

In the mandatory code of conduct alternative, small developers are disadvantaged under the mandatory code and placed in a position where it is feasible they will have more competitive restrictions than any they already face. Government would no longer administer costly exemptions but would, in repealing the LSA and educating stakeholders, be spending money to achieve a result the same as or worse than that it currently has. Moreover, penalties under a code of conduct are generally less than penalties in prescriptive legislation. As a result, there is a risk that over time the code could come to be regarded by industry as voluntary or a guideline only. Consumers could also view the mandatory code as not having enough "teeth", which may negatively impact on their overall consumer confidence. Consequently the benefits of a mandatory code are outweighed by its costs.

With exception of Tasmania, the ACT and the Northern Territory, all jurisdictions administer specific Land Sales Acts. For those states with legislation, NCP reviews have either not been deemed necessary, or arrived at the conclusion that there was benefit in retaining the legislation mainly due to their consumer protection provisions.

A targeted public consultation process has been carried out with key stakeholders such as the Real Estate Institute of Queensland, the Mortgage Industry Association of Australia, and key Government Departments. Submissions received supported the recommendations of the PBT Report.

The PBT Report also found that whole of Government policy objectives are met by the objectives of the LSA.

It is therefore the conclusion of this PBT Report that the restrictions on competition contained in the *Land Sales Act 1984* result in a net public benefit, and it is therefore recommended that the *Land Sales Act 1984* be retained without amendment. It is also recommended that the Office of Fair Trading review the fee and method for processing exemption applications.

It is proposed that a further review of the *Land Sales Act 1984* be carried out in 10 years time.

1.0 Review Parameters

1.1 Title of Legislation

This review considers the *Land Sales Act 1984* ("the LSA"). The *Land Sales Regulation 2000* was also considered. However, it did not contain any restrictions on competition. The LSA will be referred to exclusively herein.

1.2 Reasons for Review

In April 1995, the Council of Australian Governments ("COAG") agreed to implement National Competition Policy ("NCP") objectives. One of the agreements was the Competition Principles Agreement ("CPA"), which established principles governing review and reform of government regulation. Reviews include the completion of a Public Benefit Test ("PBT") that assesses the costs and benefits of restrictions on competition contained in legislation, and testing alternate means of achieving the desired outcomes against the public benefit.

This review of the LSA has been conducted by officers of the NCP Unit of the Office of Fair Trading ("OFT"), within the Department of Tourism, Racing and Fair Trading ("DTRFT") in accordance with criteria contained in the *Queensland Treasury Public Benefit Test Guidelines*.

The review has been undertaken to meet the Queensland Government's obligation under the CPA, particularly the guiding principles of clause 5(1). The principles state that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs to the community; and

- the objectives of the legislation can only be achieved by restricting competition.

1.3 Terms of Reference for the Review

This review has adhered to clause 5(9) of the CPA which states that a review, without limiting itself, should:

> "(a) clarify the objectives of the legislation;
> (b) identify the nature of the restriction on competition;
> (c) analyse the likely effect of the restriction on competition and on the economy generally;
> (d) assess and balance the costs and benefits of the restriction; *and*
> (e) consider alternative means for achieving the same result including non-legislative approaches." (Queensland Treasury, October 1999, p. 69)

This review has also given consideration to clause 1(3) of the CPA which states that:

"Without limiting the matters which may be taken into account, where this Agreement calls:

(a) For the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
(b) For the merits or appropriateness of a particular policy or course of action to be determined; or
(c) For an assessment of the most effective means of achieving a policy objective;

the following matters, shall, where relevant, be taken into account:

(d) Government legislation and policies relating to ecologically sustainable development;
(e) Social welfare and equity considerations, including community service obligations;
(f) Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
(g) Economic and regional development, including employment and investment growth;
(h) The interests of consumers generally or of a class of consumers;
(i) The competitiveness of Australian businesses; and
(j) The efficient allocation of resources."

When examining matters identified above, consideration was given to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

1.4 Type of Review Undertaken

A reduced NCP review model was considered appropriate for this review based on the size and scope of anticipated impacts.

2.0 Background

The LSA came into effective operation on 1 July 1985. The LSA regulates the sale of:

- single parcels of land which are shown (or are to be shown) on a plan of survey that is to be registered ("proposed allotments" or "flat land"); and
- a lot which will become a registered lot upon, at the least, registration of a plan (usually a subdivision for a unit development ("proposed lot")).

The LSA has stated objectives of:

- facilitating property development in Queensland; and
- protecting the interests of consumers in relation to property development; and
- ensuring that proposed allotments and proposed lots are clearly identified; and
- achieving these objects without imposing procedural obligations on local Government authorities in addition to their relevant statutory obligations.

Prior to 1973, the sale of proposed allotments and lots was unrestricted in Queensland. Problems with misdescribed land and the sale of unsuitable land in the 1960s and early 1970s led to amendments to the *Auctioneers and Agents Act 1971* ("the A & A Act") to regulate the sector. These problems included instances where consumers purchased unregistered land that was subject to inundation, subsidence, slip, and erosion and drainage problems. Essentially the amendments established requirements in relation to placement of money paid as deposit in trust and allowed purchasers to avoid contracts prior to registration of title.

Amendments to the A & A Act in 1976 further restricted the sale of flat land in Queensland. The amendments established an absolute prohibition on the sale of flat land that was part of a subdivision comprising five or more allotments, unless all documentation required for registration of title had in fact been registered. Restrictions in relation to the sale of proposed lots were unchanged.

In 1984 the *Land Sales Bill 1984* ("the Bill") was introduced into Parliament, in response to increasing numbers of land misdescriptions. In his second reading speech, the then Attorney-General, the Honourable N J Harper MLA, justified the Bill by describing:

- The disparity that existed between consumers being able to purchase building units, but not land, off the plan;
- Consumer detriment caused by recent financial failure of a number of land development companies; and
- An estimated average saving to consumers of $750 per land sales transaction if the Bill went ahead. (*Hansard No. 17*, Wednesday, 4 April 1984);

The substantive provisions of the LSA came into effect on 1 July 1985 and repealed the relevant provisions of the A & A Act. At the time, the provisions of the LSA relating to proposed allotments:

- generally prohibited the sale of flat land until the relevant local Government authority had sealed the survey plan (the stage prior to lodgement of instruments for registration of title);
- prohibited the sale of leasehold land until Ministerial approval to the subdivision had been granted;
- perpetuated requirements for vendors to place money paid as deposit in trust; and
- allowed avoidance of contracts for prescribed breaches (including failure to settle within a specified time period).

These requirements were subject to a provision allowing an application to the Registrar for an exemption from the application of all requirements regulating the sale of flat land.

In contrast to regulation of the sale of flat land, the LSA simply maintained the thrust of existing requirements for the sale of proposed lots.

In response to requests from stakeholders for further amendments, the LSA was subject to interdepartmental review between 1993-94. Essentially, stakeholders sought amendments to the LSA to allow selling of flat land at an earlier stage of development, for example, upon approval of engineering drawings for the subdivision by the relevant local Government authority.

The LSA was subject to review in 1994 / 95 under the Government's Systematic Review of Business Regulation and Legislation program. A Regulatory Impact Statement for the LSA and proposed amendments arising from the interdepartmental committee were finalised in 1995.

In 1997, the *Land Sales and Land Title Amendment Act 1997* introduced substantial amendments to the LSA. The amendments, which have current effect, changed the operation of the LSA to:

- allow sale of proposed allotments of land (being the allotments contained in the subdivision approved by the relevant local Government authority) after approval of engineering drawings;
- require that vendors provide consumers with "disclosure" information setting out the detail of the land and the rights of the purchaser under the legislation;
- limit the amount of deposit payable for proposed allotments to 10% of the total purchase price;
- require money paid as deposit to secure land (but not by way of an instalment of the contract price) be placed in trust;
- require vendors to advise purchasers of significant variations (as defined in the LSA) between the disclosure plan and later plans; and
- exclude regulation of large transactions, that is, the sale of six or more proposed allotments where the vendor for each allotment is the same person and the purchaser for each allotment is the same person.

The original intention of Government intervention was to protect consumers in the purchase of unregistered land, an interest in land, or a lot in a body corporate and community title.

The objective of the present legislation is to ensure that consumers are adequately protected in the purchase of land, an interest in land or a lot in a body corporate and community title, without unduly restricting the development of raw land or construction of unit developments.

The rationale behind this protection is to prevent consumer loss resulting from misdescription or misrepresentation about the position, shape or nature of any land because the land is not readily identifiable in the early stages of development. Alternatively, during development, the land may be substantially altered in contour, shape, and/or size beyond the purchaser’s expectations or understanding of the parcel being purchased.

The sub-division and sale of the resultant land is undertaken by a diverse cross-section of the community. A number of developers, including the thirty-six (36) largest developers, are members of the Urban Development Institute of Australia. Other developers are members of the Australian Property Institute and the Property Council of Australia.

Professionals, such as lawyers, accountants and surveyors also act as project managers of sub-divisions. Individuals also undertake their own sub-divisions. This group includes farmers wishing to retire who may excise the homestead before selling the land or offering up a few blocks to the urban sprawl as well as "mums and dads" splitting a large suburban block into two or three allotments.

2.1 Other legislation related to the sale of land

There are a number of other pieces of legislation that have some effect on the land sales market.

The *Land (Fair Dealings) Act 1988* was repealed in 1994, with its provisions transferred to s40A of the *Fair Trading Act 1989* ("the FTA"). This provision of the FTA deals with false and misleading representations in relation to land generally.

The *Property Agents and Motor Dealers Act 2000* ("the PAMD Act") replaced the A & A Act on 1 July 2001. THE PAMD ACT regulates the conduct of real estate agents and auctioneers. In the PAMD Act, s574 regulates the conduct of licensed real estate agents and auctioneers in relation to their representations about land. As was the case with the A & A Act, the PAMD Act is administered by DTRFT.

One of the inclusions in the PAMD Act is the regulation of property developers for the first time. Previously, the provisions of the A & A Act did not capture the actions of property developers. Under the PAMD Act, a person is required to hold a licence as a property developer if they transact in six or more sales of residential property in a twelve-month period and have a 15% or higher stake in the sale. This regulation of property developers is a response to a number of complaints made to DTRFT by consumers who have entered into property investment deals only to find the information they were supplied was misleading, causing them financial detriment. The PAMD Act will regulate the conduct of licensed property developers.

DTRFT administers the LSA, the FTA and the PAMD Act. DTRFT considers applications for exemption under the LSA and provides inspectors under the LSA to investigate any breaches of the LSA. DTRFT also has an education role, providing information to consumers and industry on issues related to the LSA, FTA and the PAMD Act. DTRFT enforces and investigates breaches of the FTA, the PAMD Act and the LSA.

The Department of Local Government and Planning ("DLGP") has responsibilities for local Government authority processes in Queensland and administration of the *Integrated Planning Act 1997* ("the IPA") which outlines local Government authorities' approval processes.

Local Government authorities consider applications (accompanied by plans) to subdivide land, and take into account such things as the proposed use of the proposed allotments and drainage, local traffic and access issues.

Approval may be conditionally given by local Government authorities with the proviso that an amended plan, with any additional local Government authority requirements, be submitted. Within two years of approval and before works are commenced on the allotment, engineering plans relevant to the allotment must be submitted for approval.

Within two years of the subdivision approval or approval of engineering drawing (whichever is later), an accurate survey plan must be submitted, to which the local Government authority may then give approval under its seal. The survey plan must be registered with the Titles Offices within the Department of Natural Resources and Mines ("DNRM"). DNRM administers the *Land Title Act 1994* ("the Title Act"). The Title Act is the mechanism for the registration of title in relation to the purchase of allotments and lots.

Though there are several pieces of legislation that have effect on the overall land sales market, each Act has a distinct role in regulating conduct and transactions in the market. There is no duplication of regulation, or overlap, between these pieces of legislation. For example, the LSA sets out conditions which minimise the misdescription, inadvertent or not, of allotments and lots. Section 40A of the FTA makes provision in relation to false or misleading representations in relation to land, for example, the way in which land is advertised or marketed. These instances are not covered in the LSA and incorporate transactions not captured by the scope of s574 of the PAMD Act.

The various stages of the sale of allotments and lots – representation, marketing, subdivision, approval, and registration of title – are all regulated by the pieces of legislation described herein.

2.2 Market Participants

The participants in the land sales market are industry and consumers.

Government also plays a role in the market. As established in Section 2.1, Government's role in the market is intervention via a number of pieces of legislation spread across a number of State Government departments.

The nature of "industry" and "consumer" is interchangeable. An individual that enters the market initially as a consumer may become a vendor or developer if the market is favourable, and thus considered part of the "industry". This concept should be kept in mind when considering the nature of participants in the land sales market.

Industry

The following table describes the roles of various industry participants in the market:

Industry participant	Role/s in market
Vendors and developers	• Offer lots and allotments for sale and development; • Engage the services of other industry participants, such as real estate agents or developers, in the sale of lots and allotments; and • Develop and market flat land, develop and market lots.
Real estate agents	• Act as agents for vendors and land developers; • Provide services for the sale of lots and allotments; • Point of contact for consumers purchasing lots and allotments; and • Agents operate within the regulations of the PAMD Act. These regulations set a code of conduct for agents' behaviour, including provisions relating to representations about land for sale.
Builders	• Develop allotments and lots, either on instruction from vendor, developer or agent, or for themselves if they are vendor or developer.
Legal professionals	• Provision of legal and conveyancing services to vendors, developers, agents, builders, and consumers.
Other professionals, such as surveyors, engineers, planners, architects	• Provision of professional services in the development of allotments and lots.

Consumers

Consumers in the land sales market may come under the following categories:

Consumer type	Role/s in market
Infrequent consumers with limited knowledge of the market	• First-time buyers seeking a lot on which to build a family residence; and • Consumers buying an allotment or lot as an investment, done once or twice in their lifetime.
Consumers with localised knowledge	• Consumers who have the benefit of knowledge of the history and use of a particular allotment or lot, knowledge that other consumers would not be privy to.
Knowledgeable consumers	• Consumers who are comfortable with buying and selling lots and allotments on a semi-regular basis. These consumers have a good knowledge base of the market, and depending on the frequency of their transactions, some may be considered to be more a part of the "industry" participant group.

3.0 Overview of the objects and restrictive provisions of the LSA

3.1 Objects of the LSA

As per s2 of the LSA, the objects of the LSA are:

(a) to facilitate property development in Queensland;
(b) to protect the interests of consumers in relation to property development;
(c) to ensure that proposed allotments and proposed lots are clearly identified; and
(d) to achieve the objects mentioned in (a) and (c) without imposing procedural obligations on local Government authorities in addition to their obligations under the IPA.

3.2 Contemporary Relevance of the objects of the LSA

Part of the NCP legislative review process involves a review of whether the objectives of legislation are still relevant. An assessment of the relevance of the objects follows:

Object (a) - facilitate property development in Queensland

By facilitating property development, the Government can receive a number of benefits. These benefits include increased employment opportunities, development of rural and regional areas, and a view that the Government is displaying strong leadership by stimulating growth in the market. These benefits are consistent with whole-of-Government priorities generally.

Object (b) – protect consumer interests

Consumers require protection in the land sales market. Land sales transactions represent a significant investment for consumers. The market involves a high dollar value and there is the potential of large financial detriment if a transaction fails.

Consumers today are faced with a larger number of investment and property choices than ever before. Low interest rates and increased competitiveness between lending institutions can encourage consumers to invest in allotments and lots without having first conducted extensive checks into the viability of the investment. The incidences of detriment suffered by consumers in purchasing investment properties without having first obtained independent legal and financial advice was a catalyst for regulation of property developers under the PAMD Act. This detriment is also indicative of the need to protect consumer interests in relation to property transactions generally.

Additionally, with the First Home Owners Scheme offering financial incentives for first-time land buyers to enter the market, it is reasonable to expect an increase in the numbers of inexperienced consumers entering the land sales market over the next few years. For this reason, object (b) continues to be relevant.

Object (c) – ensure proposed allotments and lots are clearly identified

This objective - to ensure that proposed allotments and lots are clearly identified – is clearly still relevant, as it is the tool which consumer protects interests. In order for object (a) to be achieved, object (c) is a necessary complement.

Object (d) – achieve other objects without imposing on local Government authorities

Local Government authorities have the approval role in relation to proposed allotments and lots. As this can be a time-consuming task depending on the local Government authority in question, it is still not desirable to impinge upon this process with further indirect obligations that may emanate from the LSA.

3.3 Restrictive Provisions of the LSA

The following restrictions in the LSA have been identified:

3.3.1 Restriction - Prohibition (s8, Part 2)

A proposed allotment may only be sold if:

- There is unconditional local Government authority approval of the subdivision application under the IPA; or
- There is local Government authority approval subject to conditions other than requiring construction of works on the land; or
- The following approvals are in force under the IPA:
  - Approval of the subdivision application, subject to conditions requiring construction of works on the land; and
  - Approval of the engineering drawings and specifications for the works mentioned above.

This restriction is in the LSA to ensure that, for consumers purchasing allotments, their purchase will not be jeopardised because there is no approval for the subdivision of the allotment.

This restriction on competition imposes conditions on the sale of allotments. Allotments can only be sold provided they meet the conditions. This is a restriction on competition, as vendors/developers may have to wait for these conditions to be met, while in the meantime, other sales in the market can go ahead without this level of restriction (for example, vendors in large transactions). Some vendors and developers may be eligible to apply for exemption from these provisions (see Section 3.3.3), which could offset the impact of the restriction. Because of this possibility, this restriction has been assessed as "minor".

3.3.2 Potential Restriction - Handling Money (s11, Part 2; s23, Part 3)

Money received by the vendor, as consideration from a consumer for a proposed allotment or lot, must be placed in the trust of a third party. Section 11A sets a deposit limit of 10% of purchase price.

The purpose of Government intervention was to protect consumers' funds that, in the case of purchasing an allotment or lot, can be substantial. This provision is an essential consumer protection tool. However, this provision does not of itself restrict competition. It applies equally to all participants in the market, and no one market participant receives a benefit over other participants as a result of this provision. All market participants equally comply with this provision.

It is therefore considered that this provision no longer be considered a restriction on competition. It should, however, be considered as part of an overall analysis of the effectiveness of the LSA in meeting its objectives.

3.3.3 Restriction - Conferred Benefit through exemption (s19, Part 2)

An applicant can apply to be exempted from any part of Part 2 (relating to allotments, with the exception of providing a registrable instrument of transfer). There are no exemptions under Part 3 (relating to lots). Exemptions only apply to small subdivisions (five or less). If a consumer wishes to apply for exemption, they can only do so with the vendor's written agreement.

The Registrar, under s19(2B) of the LSA, has discretionary powers in considering applications for exemption. The Registrar can seek further information from an applicant to rectify a defective exemption application. For example there may be a case where a consumer has entered into agreement to purchase an allotment under terms that to the Registrar appear detrimental to the consumer. The registrar may require the consumer to seek legal advice, or show evidence of having sought legal advice, about the matter.

In the respective land sales legislation for New South Wales, South Australia and Western Australia, there are exemption provisions. Victoria, which also administers specific land sales legislation (see Section 5.0), does not have an exemption provision in its legislation.

The reason for Government providing the ability to apply for exemption is in recognition of vendors who sell small numbers of allotments, or families rationalising their holdings. The exemption is an opportunity for these parties to proceed with their relatively small sale with minimal impediment. An exemption provides assistance for smaller vendors and developers to enter the market. Small businesses are benefited by this exemption in that they would not have to comply with all of the requirements of the LSA. Exemption could therefore be seen as a way for Government to assist small businesses to be more competitive.

Legislative exemptions may restrict competition, as they may confer an advantage onto those parts of the market that are able to apply for exemption.

DTRFT received 746 applications for exemption in 99/00, of which four were refused. As a percentage of the market, approximately 8,400 survey plans were lodged with DNRM for the same period. This means approximately 9% of the market use the exemption provisions.

Applicants apply to the Registrar for exemption in the prescribed form and pay the prescribed fee of $30.50. In 99/00, DTRFT collected $19,537 in exemption application fees. It is estimated by OFT that processing costs are $80 per application.

There is an obvious disparity between the costs of processing exemptions and the exemption fees received by the Government. Though the nature of the fee for exemption is not relevant to any discussion of restrictions on competition, it will be a recommendation of this report that the fee for, and process of, processing exemption applications be reviewed.

3.3.4 Potential Restriction - General Business Conduct (s10A, Part 2; s27, Part 3)

Prior to the consumer entering into a contract for a proposed allotment or lot, the vendor must, in addition to providing a registrable instrument of transfer, provide the consumer with the following information:

- a copy of the registered survey plan;
- a copy of a plan showing any constructed works, if so constructed under s5.2 of the IPA; and
- a statement by a licensed surveyor stating either that there are no variations to the disclosure plan, or, if there are variations other than those of which notice is required under s10 of the LSA, the nature of such variations.

For an allotment, the time frame to provide this information is 18 months. For a lot, it is 3 years.

While requirements are arguably onerous, they apply equally to all participants in the market and are unlikely of themselves to prevent participants entering the market. Accordingly, this provision is not considered a restriction on competition.

3.3.5 Restriction – Information Disclosure (s9, Part 2; s21, Part 3)

The need to provide to consumers certain disclosing information about the allotment or lot they are about to purchase has been identified as a restriction on competition.

On closer examination, however, it does not appear that this requirement constitutes a significant restriction on competition. The information disclosure requirements help provide accurate description of land or lots, and fulfil an essential consumer protection objective. The requirement to provide disclosure applies equally to all vendors and industry participants in the market, and no one section of the market receives a competitive advantage by virtue of the information disclosure requirement. Accordingly, the information disclosure requirement will not be considered as a restriction on competition in this PBT report. Certainly, however, this provision needs to be considered as part of the LSA's overall consumer protection objectives.

3.3.6 Summary of base case

The base case consists of the LSA plus provisions of the FTA and the PAMD Act, and the associated effects of the Title Act and the IPA. The FTA prohibits certain misleading practices in relation to sale and representation of land but does not refer to lots. The PAMD Act makes provisions regarding the actions of real estate agents and auctioneers in relation to the sale of land.

The LSA contains restrictions on competition. The first is that only a proposed allotment may only be sold under certain conditions. The second is that a conferred benefit may apply to those industry participants who can apply for an exemption from any or all provisions of the LSA.

4.0 Comparable regulation in other jurisdictions

With the exception of Tasmania, all States and Territories administer specific land sales legislation. Some States share commonalities with the LSA, while other States' legislation has a different focus than the LSA.

New South Wales

The *Land Sales Act 1964* ("the LSA (NSW)") is in the portfolio of the Department of Information Technology and Management ("DITM"), and administered by a business unit of DITM known as Land and Property Information New South Wales ("LPINSW").

The LSA (NSW) deals with the sale of land under instalment contracts. Excluded from the LSA (NSW) are contracts for sale of subdivisions of less than five lots and contracts for sale of a lot within the meaning of either the *Strata Schemes (Freehold Development) Act 1973* and/or the *Strata Schemes (Leasehold Development) Act 1986* (s2). Sales of lots under instalments are prohibited unless the sale is subject to the LSA (NSW), and any sale must also comply with the subdivisional requirements provided for in Section 4. Similarities between the LSA and the LSA (NSW) include an exemption provision (s6) and the obligation of vendors to provide to a consumer with a notice of intent to change the features of lots and allotments should such a change be considered (s14). Section 11 of the LSA (NSW) states that no instalment payments will be accepted until the consumer pays a minimum of 15% of the purchase price.

The LSA (NSW) was not identified as containing restrictions requiring a NCP legislative review. However, the LSA (NSW) underwent a general policy review approximately 18 months ago, with a brief to examine whether or not it should be retained. The overall recommendation was that it was in the interests of stakeholders to retain the LSA (NSW). This recommendation was accepted.

Victoria

The Victorian *Sale of Land Act 1962* ("the SLA (Vic)") is administered by Consumer and Business Affairs Victoria ("CBAV") within the Department of Justice and Attorney-General.

The SLA (Vic) contains a number of similar provisions to the LSA. For example, s9AB of the SLA (Vic) requires vendors to disclose to consumers any works performed on the land after the contract is entered into. Victorian consumers have contract avoidance provisions similar to those in the LSA, and are also entitled to a cooling-off period. The SLA (Vic) also has a similar requirement to the LSA in terms of holding deposit money in trust. However, s24 of the SLA (Vic) only requires that money paid to a legal practitioner or real estate agent in respect of a sale is placed in trust. There are no exemption provisions under the SLA (Vic).

The SLA (Vic) has undergone a recent review, although that review and its recommendations are still under consideration at a Ministerial level.

South Australia

The *Land and Business (Sale and Conveyancing) Act 1984* ("the LBSC Act") is administered by the Office of Consumer and Business Affairs ("OCBA") within the Department of Justice. Unlike the LSA (NSW), the LBSC Act prohibits instalment contracts (s6). A cooling-off period (s5) and opportunity to apply for exemption (s32) are provided for. Sections 18 and 19 set out requirements in relation to subdivided land, but primarily the LBSC sets out obligations for agents (Part 4) and conveyancing (Part 5) and does not contain the same number or nature of restrictive provisions as the LSA.

The NCP review of the LBSC Act was completed in December 1999. The recommendation of the review – a recommendation consequently accepted by the Minister –was for retention of the LBSC Act. The review panel conducting the review felt that, overall, the LBSC Act contained a number of restrictive provisions that were in the public benefit, providing consumer protection and certain benefits also for industry. The restrictions were not seen to be onerous.

Western Australia

The *Sale of Land Act 1970* ("the SLA (WA)") sets out a number of obligations and rights on the part of consumers and vendors. There is provision for exemptions to be granted (s15), while a terms contract (similar to an instalment contract) is permitted.

One restriction is contained in section 13 which prohibits the sale of five or more subdivisions unless the vendor is the proprietor or agent, or they sell five or more lots in the one transaction. The SLA (WA) also makes various provisions in relation to misdescription of lots, including a prohibition against advertising the existence of a public amenity on a lot for sale unless that amenity is in existence (s17). The SLA (WA) is administered by the Western Australian Department of Land Administration ("DOLA"). It was not identified as containing restrictions on competition requiring NCP legislative review.

Tasmania and the Northern Territory

There is no specific land sales legislation in Tasmania, the Northern Territory or the ACT. In these jurisdictions, regulation of a similar type to the LSA is generally contained in fair trading and/or real estate agent legislation.

5.0 Regulatory alternatives

With the base case established, the next step of the NCP review process for the LSA is to assess the impacts of moving from the base case to any regulatory alternatives to the LSA. In moving from the base case to another regulatory state the options are self-regulation via a code of conduct, deregulation, and a mandatory code of conduct.

5.1 Self-regulation by a voluntary code of conduct

A code of conduct is a set of guidelines for industry regulation agreed to by and informing all stakeholders of expectations and obligations under that code (Department of State Development, 2000, p.17).

Under the voluntary code of conduct in the land sales market, a code of conduct would be developed and administered by a peak industry body. There would need to be significant consumer representation in the voluntary code to ensure consumer interests are met. The code is not enforceable by law. Membership of the industry body and/or agreement to the principles of the code is not mandatory for participants in the market. The provisions of both the FTA and the PAMD Act would still be in force.

A voluntary code of conduct does not appear a viable model because of the absence of a peak industry group. The disparate nature of industry participants in the land sales market, which encompasses strands of building, real estate, land development, and professions, would make it difficult to develop and administer a code to satisfy the interests of all parties.

Additionally, the potential for consumers to become vendors in the land sales market may result in difficulty in ensuring a consistent membership, or a fair representation of consumers and industry to an administering body.

Historically, there has been a need for Government to regulate significant consumer purchases, such as houses, cars and land. This is because such purchases involve large amounts of money. Without Government intervention in the land sales market, there may be an increased risk of consumer detriment.

Because of these factors, the voluntary code appears difficult, if not impractical to implement. It will not be considered further as a regulatory option to the base case.

5.2 Deregulation

In this scenario, the LSA is repealed. The market would be regulated by:

- The FTA – s40A, relating to false or misleading representations in relation to land. This provision of the FTA may also need to be amended to ensure that the definition of "land" includes both allotments and lots;
- The PAMD Act – in particular, s574 relates to false representations by a licensed real estate agent or auctioneer in relation to land and land development. Other provisions of the PAMD Act may also apply. These provisions include the (new) regulation of property developers with conduct provisions, and the continued regulation of real estate agents and auctioneers with codes of conduct and consumer protection mechanisms such as trust account requirements;
- The Title Act and the IPA; and
- The *Criminal Code* and civil actions.

The deregulated market would mean that consumers are not given disclosure statements when purchasing allotments and lots. Money given in respect of a sale would not be kept in trust. There would be no restriction on when allotments and lots could be offered for sale. Vendors and developers may have obligations under the FTA and/or the PAMD Act. DTRFT would investigate breaches of both statutes in relation to land sales transactions.

The deregulated market would have fewer restrictions for business. The distinction between small and large transactions in the land sales market would be removed, resulting in a lessening of competitive restrictions.

As both the FTA and the PAMD Act would still be in effect, it is possible that the deregulated market would still hold some protection for consumers.

Accordingly, the deregulation option will be considered further as a regulatory option to the base case.

5.3 Mandatory Code of Conduct

In certain situations codes of conduct can have the benefit of setting mandatory guidelines that are less prescriptive than those found in primary legislation, allowing for more flexibility in the way in which specific industry participants carry on business.

This may also be the case for a mandatory code for regulation of the land sales market. In this model the LSA would be repealed and a mandatory code of conduct introduced under the FTA. To continue to ensure land is accurately described, the mandatory code would replicate the LSA's prohibition provisions. To ensure consumer protection objectives, the money handling provision and information disclosure requirements would be retained.

In order for exemption to be included in a mandatory code, the FTA would need to be amended to allow for a Registrar to consider exemption applications. There is the potential for this to be a time consuming and costly exercise. In addition it would also not be practical to consider replicating the exemption structure at this time without the recommended fee and processing review (see Section 4.3.3). For these reasons, the mandatory code would not contain an exemption provision.

The code would set conduct standards in the market, and industry and consumer stakeholders would be invited to provide input into the structure of the code. This input may encourage compliance with the code when it is implemented. It would be this potential for a cooperative input by stakeholders to the code that would make it most attractive. In terms of whole-of-Government outcomes, a benefit could be that a Code could encourage industry participation while at the same time safeguarding consumer interests.

Accordingly, the mandatory code of conduct option appears to be a viable regulatory option and will be considered further.

5.4 Incremental analysis: moving from the base case to the regulatory options

With deregulation and a mandatory code of conduct being the regulatory options to the LSA which appear to be feasible, it is necessary to assess the costs and benefits of moving from the base case to each of these two options. This "incremental analysis" is assessed in terms of the impact on stakeholders of moving to the regulatory options.

5.4.1 Deregulation model – Impacts on stakeholders

Developers and vendors

As a result of deregulation, developers and vendors may be more encouraged to enter a market with fewer restrictions. Competition may increase. With greater competition, prices may fall, encouraging more demand from consumers. Vendors and developers could be in a position to gain financial benefit from this increased demand. Vendors and developers would also have reduced compliance costs.

This scenario is based upon a perfect market model. In a "real world" situation, the market is subject to variables such as interest rates and regional variations. There is also a risk of decreasing consumer confidence in the deregulated market. Consumers may be less likely to purchase allotments and lots if regulations regarding those purchases were removed. Historically, Government has always regulated significant consumer purchases such as motor vehicles, houses, investments, and land. It is likely there would be consumers who would regard a deregulated land sales market with suspicion if it were not regulated by legislation designed to inform consumers and protect their interests. It may be that deregulation would dissuade consumer interest in the market even if increased competition were able to result in decreasing prices.

It is unclear what the net effect of deregulation will be on demand. Deregulation may stimulate demand, through lower prices. However, deregulation may also see decreased consumer confidence because the market is not subject to regulation and consumer protection objectives.

A deregulated market would also maintain the inequity between vendors and developers and real estate agents. Real estate agents would still have to be licensed under, and compliant with, the PAMD Act, while vendors and those developers not caught by the provisions of the PAMD Act may not be subject to the same regulations. There would be a disparity between the obligations these stakeholders would each have to meet.

Real estate agents

Real estate agents would benefit from a deregulated market if vendors and developers also benefit from a deregulated market. But it has also been established that under a deregulated market, real estate agents will still be required to comply

with the PAMD Act regulation. This creates an imbalance in obligations between the groups.

It is unclear whether deregulation would see an increased demand for agents' services. It may be that consumers would be more likely to consider a purchase with a licensed agent as opposed to a "private" sale in a deregulated market. Consumers may perceive that they enjoy more protection through a licensed agent. It is likely that the amount of land sales involving an agent in the sale would, under deregulation, remain proportionately the same as it is under the LSA.

Builders, legal and other professions

The impact on builders, legal and other professions is dependent on any flow-on effects from the impact of deregulation on vendors and developers. However, vendors and developers will not be incurring compliance costs currently associated with the LSA under deregulation, such as legal fees and other fees for drawings and documents. This may result in a potential (albeit minor) decrease in revenue for surveyors, architects, engineers and the legal profession.

Consumers with localised knowledge, and experienced consumers

This category of consumer would be at an advantage in the deregulated market. Their knowledge of the market will enable them to make informed decisions while inexperienced consumers will not have the benefit of disclosure statements to guide them. Experienced and knowledgeable consumers will be able to negotiate more attractive deals for allotments and lots than inexperienced consumers will.

If decreased consumer confidence is an issue in the deregulated market, experienced consumers will not suffer from this because of their knowledge of the market. While this provides a benefit to knowledgeable consumers, inexperienced consumers may become marginalised as a result. Inexperienced consumers will need to expend more effort and expense to educate themselves.

Infrequent consumers

Without knowledge of the market that would have been given to them in disclosures, infrequent consumers are at a disadvantage in the deregulated market. They may be less likely to be aware of terms and phrases particular to land sales, placing them in a position of information asymmetry when entering into a contract. This may lead them to incur more expenses on things such as legal advice than they would have incurred under regulation. In addition, the lack of information disclosures may, over time, dissuade these infrequent consumers from participating in the market at all. This would have a negative impact on demand.

The LSA was introduced as a response to a number of particularly detrimental land sales transactions for consumers in the 1980s. The detailed obligations contained in the LSA were drawn up to prevent such occurrences in future transactions. There is therefore a significant risk that consumers may be exposed to similar detrimental occurrences if the LSA were to be repealed.

Deregulation would see a removal of the requirement to keep money in trust. This would represent a significant risk that may lead to detriment for consumers. There would not necessarily be any way of tracking the status of a consumer's financial investment without money being kept in trust. The trust account requirements of the PAMD Act would not capture all land sales transactions. For example, the PAMD Act requirements in relation to property developers apply only to those developers with six or more transactions in a twelve-month period, and who have a 15% or more stake in those transactions. Additionally, even though s19 of the LSA can exempt industry participants from trust account requirements, this is a provision that the Registrar would have to consider carefully, taking into account issues of potential consumer detriment, before granting such an exemption.

There is also the issue of the First Home Owners scheme ("the scheme") to consider. Currently, consumers may be eligible for a benefit of $14,000 to assist in the construction of a first home. This incentive to assist with the construction of a home may in turn encourage more first-time consumers to consider the possibilities of purchasing allotments on which to build the home. If the scheme continues for any length of time, the land sales market is likely to see increasing numbers of inexperienced consumers entering the market seeking allotments on which to build. This class of consumer will likely require protection and education, which they will not readily receive in the absence of the LSA. In view of the above, there is an increased need for the consumer protection elements of the LSA to protect this class of consumer.

On the positive side, there is the possibility of an advantage for all consumers in the deregulated market of more competitive prices as a result of greater competition between developers and vendors.

Deregulation would be contrary to object (b) of the LSA, which is to protect consumer interests, and also part (h) of clause 1(3) of the CPA, which calls for the interest of consumers, or a class of consumers, to be taken into account in assessing the costs and benefits of regulatory options.

Local Government (including DLGP):

If deregulation is able to stimulate demand, then bcal Government authorities may have to consider an increased number of applications for approval of subdivision in a deregulated market. The increased demand for approvals would place increased demands on the time and resources of local Government authorities.

On the other hand, any stimulated demand as a result of deregulation may result in upward economic growth for regions where development is strongest. There would then be a flow-on benefit for the relevant local Government authority in that region.

If decreasing consumer confidence was a result of deregulation, local Government authorities would benefit by having to process fewer approval applications but be disadvantaged by not having the benefit of any economic growth.

DNRM:

DNRM would be registering more titles if deregulation were to stimulate development. This would necessitate either streamlining of, or more resources allocated to, the registration of titles. If fees were not on a cost-recovery basis, this may result in an increase of fees payable for registration. If deregulation did not stimulate demand in the market there would be negligible effect on DNRM.

DTRFT:

DTRFT would no longer administer the LSA, no longer incurring the financial loss of processing applications for exemption. There would also be the resultant loss of one full-time position that currently processes applications.

However, there has always been a role for Government in regulating transactions of particular significance to consumers. The absence of a strong Government position in a market as significant as land sales would be inconsistent with whole-of-Government priorities. This would also be true if deregulation led to a decrease in consumer confidence, as Government would be seen to be encouraging a situation that negatively impacted on demand.

On the other hand, if deregulation were to lower prices and thereby stimulate demand and development, the Government generally may benefit from the resultant economic growth.

Analysis of impacts of the deregulated model

Consumers stand to lose most in the deregulated market. Without funds protection and information disclosures, consumers, particularly inexperienced consumers, would have decreasing confidence in a deregulated land sales market. This will especially be the case if more inexperienced consumers enter the market in the near future as a result of incentives such as lower interest rates and the First Home Owners Scheme. Decreased confidence would have a negative impact on demand. Consumers may also view Government as failing in its role to protect their interests in significant and large transactions.

Consumers' funds would also be at risk in a deregulated market due to the removal of the trust account requirements. Some consumers would not face this risk, if they dealt with licensed real estate agents that maintained a trust account. But not every transaction would involve a real estate agent. Ultimately the deregulated market may see an imbalance between those consumers purchasing through an agent and those not purchasing through an agent, with those consumers not purchasing through an agent being at a disadvantage, or at the least, a risk of financial detriment.

Industry stakeholders would suffer also if consumer confidence decreased. It may be that any benefit industry receives by way of fewer obligations under deregulation may be eroded by decreased consumer confidence. There has been no discernible demand by industry stakeholders for a repeal of the LSA, possibly indicating that

industry sees benefit in a regulated market that creates some confidence in consumers and potential consumers.

Conversely, industry may benefit under deregulation from increased competition and lower prices stimulating demand. Demand, however, is subject to external variables and therefore no accurate prediction could be given of the level of demand in future.

Government would not be acting in the best interests of consumers by repealing the LSA. There are few obvious benefits for Government from the deregulated market. Queensland would be out of step with other states and territories if it were to deregulate the market.

Overall, there is a net public cost in moving to a deregulated model. The absence of the LSA may create an uncertain market where consumers are reluctant to spend without the relative certainties created by the regulations the LSA imposes on vendors and developers. This would be of detriment to industry stakeholders as well, with demand decreasing due to decreased consumer confidence.

5.4.2 Mandatory Code of Conduct model – impacts on stakeholders

The significant difference between the base case and the mandatory code model is the absence of an exemption provision. The absence would mean that developers of small subdivisions would be subject to all the requirements of the LSA, and would be forced to compete on the same playing field as large developers.

Developers and vendors

Small developers are significantly worse off under the code model. The distinction between small and large developers was made in the LSA to offer small, often family-based developers and vendors the chance to apply for exemptions and thereby engage in small-scale transactions without the requirements of the LSA impacting on them. Larger developers may, depending on the nature of their business, be complying with the provisions of the PAMD Act. The mandatory code would mean that small developers would be complying with specific obligations. A distinctly inequitable and anti-competitive market would be the result.

In the 99/00 year there were 746 applications for exemption. Under the mandatory code, the transactions covered by these 746 applications would be subject to the full range of provisions of the code. There would be financial and administrative costs to be borne by these smaller developers. If this figure of 746 holds proportionate for future years, it represents a significant number of stakeholders negatively impacted by the mandatory code.

Real estate agents; **builders**; **legal and other professions**:

Because they provide the associated services to developers and vendors, this group of stakeholders will be affected by the mandatory code to the same degree that vendors and developers are affected by the mandatory code.

Consumers:

There would be benefits for consumers generally from a mandatory code of conduct in that information would continue to be disclosed to consumers in a form that addresses consumers' information asymmetry.

However, penalties under a code of conduct are generally less than penalties in prescriptive legislation. As a result, there is a risk that over time the code could come to be regarded by industry as voluntary or a guideline only. Consumers could also view the mandatory code as not having enough "teeth", which may negatively impact on their overall consumer confidence.

Local Government (including DLGP), and DNRM:

A move to a mandatory code would see both local Government authorities and DNRM in essentially the same position as it currently is under the LSA.

DTRFT:

With the mandatory code, DTRFT would support whole-of-Government objectives by protecting consumer interests as well as involving industry in input to the code.

As noted in the previous section, penalties under a code of conduct are generally less than penalties in prescriptive legislation. As a result, there is a risk that over time the code could come to be regarded by industry as voluntary or a guideline only. Consumers could also view the mandatory code as not having enough "teeth", negatively impacting on their overall consumer confidence. This would then put DTRFT in the position of administering a code that is seen to have few powers of enforcement. There would also be significant costs of implementing and administering a code, including repeal of legislation, amendments to the FTA, the costs for a Code Administration Committee and the costs of publicising to and educating the public about changes. DTRFT may be seen to be spending money on regulation to achieve the same overall effect as it already is achieving, or, in the case of small developers, achieving in fact a lesser result.

Analysis of impacts of the mandatory code of conduct model

Small developers are disadvantaged under the mandatory code and placed in a position where it is feasible they will have more competitive restrictions than any they already face. Government stands to gain little out of the mandatory code save for the elimination of a costly exemption granting process. In fact, Government could, under a mandatory code, be spending money to achieve a result the same as or worse than that it currently has. Consumers remain largely unaffected by the mandatory code as it continues to protect their interests. Accordingly, there is a net public cost in moving to a mandatory code of conduct to replace the LSA.

Impact Matrix

An impact matrix, which further describes the relative impacts on stakeholders of moving to the regulatory options, is included in "Appendix A".

6.0 Consultation

Targeted public consultation was conducted for this review of the LSA. A draft copy of the PBT Report was sent to the following key stakeholders for comment:

- Mortgage Industry Association of Australia (Queensland);
- Australian Bankers Association;
- Queensland Law Society;
- Real Estate Institute of Queensland;
- Urban Development Institute of Australia;
- Department of Premier and Cabinet;
- Department of State Development;
- Department of Natural Resources and Mines;
- Department of Local Government and Planning;
- Queensland Consumers Association;
- Local Government Association of Queensland; and
- Brisbane City Council.

The draft PBT Report was made available on OFT's web site and via an advertisement in *The Courier Mail* from Saturday 22 September 2001. Subsequently, there were two requests from stakeholders to obtain a copy of the draft PBT Report.

In response to the draft PBT, three written submissions were received from stakeholders. A submission from the Real Estate Institute of Queensland stated that it "agrees with the recommendations contained the in the Consultation Draft". A submission from Peter Dwyer, solicitor, states that:

> "the LSA is an appropriate piece of consumer protection legislation. The arguments for alternatives to the Act outlined in the Consultation Draft are argued comprehensively and fairly. I agree with the conclusions reached in 6.0 of the Consultation Draft."

A submission from Brisbane City Council ("BCC") stated that the following issues relating to the LSA are related to BCC programs:

- Legislation that protects consumers' interests and as a result gives confidence to first time purchasers in the residential market, supports social policy outcomes relating to housing.
- Exemptions in legislation that support activities of small business to participate in a market in which they may otherwise be disadvantaged, supports economic development outcomes.

BCC stated in their submission that the recommendations in the Consultation Draft were consistent with program outcomes in BCC, and that BCC supported the recommendations of the Consultation Draft.

In summary, there appears minimal stakeholder interest in the LSA. For those stakeholders that responded to the draft PBT Report, there is agreement on its recommendations.

7.0 Conclusions and Recommendations

- The LSA is an Act that places restriction on the sale of allotments and lots;
- The LSA was devised and implemented in response to instances of consumer detriment;
- The LSA fulfils the historical role of Government in regulating transactions of large significance to consumers;
- The restrictions on competition in the LSA are the prohibition restrictions and the exemption provisions;
- Deregulation of the market does not achieve consumer protection objectives and may also have a negative impact on consumer demand and therefore impact negatively impact on industry stakeholders. It is therefore not a viable regulatory alternative;
- Self-regulation via a voluntary code of conduct is also not a viable regulatory alternative as there is difficulty in achieving a consistent self-regulatory base due to the disparate nature of industry participants in the market;
- A mandatory code of conduct contained in the FTA would not be a viable option, as it would create an anti-competitive environment for small developers. Government would incur costs to achieve a similar or potentially worse state than the current base case;
- It would be consistent with other states for Queensland to retain the LSA as part of an overall consumer protection framework that also encompasses provisions of the FTA and the PAMD Act. On an overall comparison, Queensland's LSA contains a similar number and degree of restrictions to other States and Territories. The restrictions in Queensland are not onerous compared to other States;
- The restrictions on competition in the LSA are minor, and have a net benefit in comparison to the effects of the options of self-regulation, deregulation and a mandatory code of conduct;
- **It is recommended that**, the LSA be retained unchanged; and
- **It is recommended that** the fee and method for processing exemption applications be reviewed by the Office of Fair Trading to determine overall cost effectiveness of the exemption process.

8.0 Bibliography

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APPENDIX "A": Impact Matrix

The following terms are used to describe the magnitude of impacts:

- **Small (S) impact**: has a negligible to marginal difference over the base case;
- **Medium (M) impact**: a marked difference over the base case, but without the likely financial ramifications of a large impacts and likely to effect a particular segment of the community only; and
- **Large (L) impact**: an impact with major financial ramifications that is likely to effect a large section of the community

A "+" or a "-" indicates if the impacts are positive or negative for that stakeholder.

Stakeholders	***Move to deregulation – benefits***	***Move to deregulation – costs***	***Move to mandatory code – benefits***	***Move to mandatory code - costs***
Developers and vendors	Deregulation = less compliance costs (M+); more competitors under deregulation = lower prices = more consumer demand = more financial benefit (M+)	Vendors and developers of "small" subdivisions may not be able to adequately compete with vendors and developers of "large" subdivisions (M-)	Code may be seen as less restrictive than legislation, may be an encouragement for more participants to enter the market (S+); if so, then the benefits of more competition – lower prices – greater consumer demand may apply (M+)	Inability to apply for exemption may again pose a disadvantage to vendors and developers of "small" subdivisions (M+)
Real estate agents	Dependent on impact on developers and vendors – but if the scenario of deregulation = greater demand applies, then real estate will receive flow on benefit (M+)	Deregulation may stimulate demand only in certain geographical areas of Queensland – agents in other areas may see a downturn in activity (S+)	Dependent upon the impact upon developers and vendors. Again, as with deregulation, any impact for agents may be subject to regional variations. If, however, as predicted, developers and vendors would receive a benefit (S+) under the mandatory code, then the same impact will apply to real estate agents.	

Builders; legal and other professions	Legal profession could get more work from consumers needing to get more legal advice/commence actions in the absence of the LSA (S+); all participants in this group would have their impact dependent upon the impact upon developers and vendors – again, if the predicted holds, there will be a benefit (M+) for builders, legal and other professions	Under deregulation, there would be less need for vendors and developers to use legal and surveying services due to the fact that statements would not be required to be given to consumers (S-)	Dependent on impact on vendors and developers – if as predicted, there is a small benefit for vendors and developers out of a mandatory code, then there may be a resultant small benefit for builders, legal and other professions (S+)
Consumers – experienced, and with localised knowledge	Greater knowledge of terminology and the market = advantage over inexperienced consumers in deregulated market (M+);	No discernible costs – neutral impact.	All consumers would enjoy a similar level of protection under a mandatory code as they currently do under the LSA. There are no costs to consumers of moving to a mandatory code. Infrequent consumers will benefit under the mandatory code by having some guarantee that allotments and lots will be accurately represented to them, which is needed to put them on an equal or similar footing to experienced/knowledgeable consumers (overall, S+)
Consumers – inexperienced and/or infrequent	If a deregulated market = increased competitiveness = lower prices, then infrequent consumers may be more inclined to enter the market, which may outweigh negatives of information asymmetry (S+)	Are at a disadvantage - the deregulated market will not offer as much information as the regulated market about allotments and lots (L-); may be an increased need to seek legal and professional advice which may increase the overall cost of transactions (M-)	

Local government/DNR	Local government receives flow-on economic benefits of any increased growth in the land sales market in that regional area (could be S, M or L, depending on scope of flow-on benefits); for DNR, increased demand – more registration of titles – more processing time and costs – increase in fees – increase in revenue (M+)	If deregulation = increased overall demand, then local government will be considering more approval applications, which place greater demands on local governments' time and resources (M-); the increased demands may lengthen the time taken to grant approvals, delaying projects (M-); for DNR, increased demand will mean more registration of titles – more processing time and cost (M-)	No discernible impacts in moving to a mandatory code – neutral impact.	
DTRFT	Ceases to incur a loss in processing exemptions (M+); removal of admin costs associated with LSA (M+)	Repeal of LSA costs (S-); employment cost – one officer currently processes exemption applications (S-); government not showing strong leadership, leaving consumers to "fend for themselves" in the market (M); removal of exemptions may favour larger industry participants, leaving government to be viewed as not favouring the interests of smaller players (S-)	Government continues to show strong leadership by protecting consumer interests in the market (M+); cost saving device of no longer processing exemption applications (M+)	Costs of repealing LSA, amending FTA, forming Code Administration Committee, and possibly a tribunal under the mandatory code (L-); code may be seen as voluntary or a guideline over time, leaving government expose to a view that it is administering a "toothless tiger" (M-)