



TheNewspaperWorks

29 January 2014

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George St
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Mr Hastie,

Re: Submission regarding the *Property Occupations Bill 2013*

The Newspaper Works appreciates the opportunity to make a submission to the Queensland Parliament's Legal Affairs and Community Safety Committee inquiry into the *Property Occupations Bill 2013* (the Bill).

About The Newspaper Works

The Newspaper Works is a not-for-profit body established to promote the newspaper media industry in Australia. It was founded in 2006 by Fairfax Media, News Corp Australia, APN News & Media and West Australian Newspapers to pursue a number of industry objectives, including the promotion of newspapers and associated media as a powerful and influential medium. The organisation also provides research and marketing tools to fulfil its objectives. It is an advocate of strong, independent journalism, freedom of expression and freedom of the press.

Executive Summary

Our concern is limited to non-disclosure of price guides associated with properties offered for sale by auction – restricting them from being disclosed in advertising '*or otherwise*', including editorial.

Information, including price guidance, is valued by and important to consumers. If the Queensland Government was to limit the provision of this information – which we do not support – it would be applying regulation without a case being made for its application. This would likely result in sub-optimal outcomes for all market participants, including consumers, and would risk interfering with freedom of speech.

The Newspaper Works requests the Queensland Government does not require such a restriction and recommends the provision of price guides for properties offered for sale at auction should be able to be disclosed, including in advertising and editorial.

Disclosure of price guides is beneficial

i. Information is an important part of efficient market operation

Consumers and prospective buyers value price guide information highly as it assists them to decide which properties may fall within the broad scope of their price range, or not, and therefore how to allocate their resources and next steps in pursuing particular property/s. The provision of price guidance also allows efficient resource allocation on supply the side, as agents are interacting with more informed consumers.

ii. The ability to disclose price guide information gives real estate agents choice

An ability to disclose price, rather than a prohibition, empowers vendors and agents with the ability to decide if price guidance is an appropriate pathway to take to inform consumers. By taking this approach, rather than preventing all agents from disclosing price guidance, it enables those agents and vendors who want to provide some information to the market to do so. This will allow vendors of properties to be auctioned to decide – and be free to – to have price guidance information included in advertising and editorial coverage.

An ability to disclose price would also enable real estate agents, in conjunction with vendors, to decide not to disclose a price guide, but provide a notional price to real estate portals for the purpose of search functionality.

iii. Price guidance information is an important part of freedom of information and freedom of speech

The Newspaper Works and its members believe that the availability of price guide information in advertising, and particularly editorial, is an important element of freedom of information and freedom of speech. In the context of this proposal, we believe an individual has the right of free speech, and therefore should be allowed to answer a question of a journalist without potential legal penalty. As we have communicated previously across a range of fora, the freedom of free speech is fundamental to the workings of a democracy. Free speech not only underpins our political but the operation of the economy and specific businesses. The Newspaper Works considers any laws or rules that infringe on such rights as unconscionable. We do not suggest, of course, that an individual must answer a question of a journalist, or indeed a potential purchaser of a property, but only that they have the choice to do so within the bounds specified in a relationship with a vendor.

Prohibiting price guides will result in sub-optimal outcomes

i. A lack of a problem that requires fixing

It is unclear to The Newspaper Works and its members what the problem is that requires a prohibition of price guides for properties being auctioned. Therefore, it seems that to implement the prohibition would be to apply regulation unnecessarily.

The Newspaper Works notes a lack of detail accompanying the Explanatory memorandum which states, without reason, that the Bill *clarifies that a price guide for a property to be sold*

by auction is not to be disclosed, whether in advertising, when asked by a potential bidder, or otherwise.¹

As there is a lack of evidence of a problem, and information is an important part of an effectively functioning market, we encourage the Queensland Government to allow price guidance, including for properties offered for sale by auction, and that price guide information should be able to be advertised or incorporated into editorial content.

ii. The creation of an uneven playing field

Prohibiting real estate agents and auctioneers from disclosing price guides for properties offered for sale by auction unduly restricts real estate agents disclosing data but does not restrict other non-agent commercial data providers that also use historical property data. To look at this from a different angle, preventing real estate agents from disclosing price guidance gives a 'leg up' to other commercial data providers who are not real estate agents and not subject to the provisions of the Bill. There is nothing to stop other data providers – who would use the same or similar data to the real estate agents – providing price guide information to the market – unimpeded – about properties offered for sale by auction.

We are not asking for other data providers to be included within the scope of the Bill. Rather, we believe this is a sound reason as to why the provision of price guides for properties offered for sale at auction should be allowed and not prohibited.

iii. Inefficient allocation of resources

A restriction of price guidance for properties for auction will affect only a segment of the property market. Those for sale by other means will not be affected at all. This will produce outcomes that result in the inefficient allocation of resources for all parties.

Some possible scenarios include potential buyers of properties offered for sale via auction having to source price guide information from multiple, potentially obscure or currently unknown sources and having to invest more time in doing so. Other data providers who may charge information, imposing an additional cost buyers. Failure to provide guidance may also lose an agent a sale.

iv. Unintended anomalous outcomes

a) Experts in the field prohibited from providing information

It seems inconsistent to prohibit real estate agents – experts in their field – from disclosing price guide information whether in advertising, editorial or otherwise. This is particularly the case when real estate agents are subject to consumer protection legislation, including state-based fair trading provisions, which address false and misleading activities. It is more efficient for complaints to be on an exceptions basis rather than applying a prohibition, particularly when there is a lack of explanation of a problem that requires the prohibition as a 'fix'.

b) Best interests of vendor may be denied

¹ Page21, <https://www.legislation.qld.gov.au/Bills/54PDF/2013/PropertyOccupB13E.pdf>

Another inconsistent outcome is that while a vendor's best interest could be served by disclosing a price guide, the agent would be prohibited from doing so. Similarly, vendors who want to disclose price guide information – including in advertising and editorial coverage – regarding a property being offered by auction are prohibited from doing so.

c) Artificially skew the market towards fixed price sales

A prohibition may also artificially move, or skew, sellers and buyers into fixed price sale/negotiated price arrangements because they are unable exercise free speech and to provide or obtain price guide information due to the prohibition. They may also miss out on editorial coverage, and therefore exposure, if a price guide is not able to be used.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Hollands', with a large, sweeping flourish underneath.

Mark Hollands
Chief Executive