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Land Valuation Amendment Bill 2023

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Transport and Resources Committee

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Transport and Resources Committee

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Acknowledgements

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All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Land Valuation Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and appeared before the committee. I also thank our Parliamentary Service staff and the Department of Resources.

I commend this report to the House.

Shane King MP

Chair

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Executive summary

About the Bill

On 23 August 2023, the Minister for Resources introduced the Land Valuation Amendment Bill 2023 (the Bill) into the Queensland Parliament, and it was referred to the Transport and Resources Committee for consideration.

The Bill proposes to improve the administration and operation of Queensland's statutory land valuation framework by amending the *Land Valuation Act 2010*. A key mechanism contained in the Bill is a provision to allow the Queensland Valuer-General to make statutory guidelines to provide direction to registered valuers on processes, practices and considerations to be applied in the preparation of statutory land valuations.

The committee recommends that the Bill be passed.

Summary of stakeholder views

During the course of the inquiry, the committee heard from the legal profession, local government representatives, and the agricultural, commercial, retail, property, and valuation industries, as well as individuals.

Submitters raised a number of matters regarding:

- the consultation process
- the power of the Valuer-General to make guidelines
- the statutory and binding nature of the administrative guidelines
- the potential for limiting object and appeal grounds or rights for individual landholders
- lack of justification for the exceptions to the requirement for annual valuations
- changed requirements for valid objections to land valuations
- the disclosure obligations of agents and representatives
- the chairperson's written report and its use to ensure it is made without prejudice
- the proposal to direct external rights of review to the Queensland Civil and Administrative Tribunal (QCAT)
- the definition of lots and parcels.

The committee made 7 recommendations regarding these matters.

A key observation during our inquiry is that the Department of Resources did not provide adequate justification for several of the proposals put in this Bill sufficient to address submitter concerns. This reinforces our Recommendation 4 encouraging the department to engage in sufficient, substantive consultation when implementing this Bill.

The Bill has sufficient regard to fundamental legislative principles.

We considered the Bill's compliance with the *Legislative Standards Act 1992* and identified several fundamental legislative principle issues. We are satisfied in all cases that any potential breaches of fundamental legislative principle are reasonable and sufficiently justified in the circumstances. In regard to QCAT now being the external review body for some land valuation matters, we acknowledge that an automatic right of legal representation does not apply and have made a recommendation to ensure procedural fairness.

The Bill is not compatible with some human rights but is justifiable.

We considered the Bill's compatibility with the *Human Rights Act 2019*. While we found that the Bill is not compatible with some human rights, the incompatibility is justified in the circumstances.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Land Valuation Amendment Bill 2023 (Bill), as described by the explanatory notes that accompany it, are to improve the administration and operation of Queensland's statutory land valuation framework by amending the *Land Valuation Act 2010* (LV Act) to ensure:

- it is responsive to changes in the property market and operational environment and transparent in its operation
- valuations are consistent and defensible, and the supporting processes such as objections and appeals are effective and efficient
- a clear and consistent framework for determining when land is valued separately or combined, based on land use and occupation.

A key mechanism contained in the Bill is a provision to allow Queensland's Valuer-General (VG) to make statutory guidelines to provide direction to registered valuers on processes, practices and considerations to be applied in the preparation of statutory land valuations.[1]

1.2 Background

The LV Act commenced in 2010 and replaced the *Valuation of Land Act 1944* (VOL Act). The LV Act established a statutory land valuation framework to inform the calculation of state land tax, local government rates, and state land rent. Under the LV Act, the VG is empowered to independently decide the value of all land in a local government area for a statutory purpose. In doing so, the VG makes decisions in relation to the configuration of land, including whether to combine lots, or separate parts of a lot, for valuation purposes.

The LV Act also provides rights for landowners to object to the valuation of their land. There are both legislative and administrative mechanisms to assist with resolving objections, including the VG's information-gathering powers, informal meetings, and independently chaired objection conferences designed to facilitate the exchange of information between the objector and the VG. If the objector remains dissatisfied with the objection decision, they may appeal the decision to the Land Court of Queensland (Land Court).

The LV Act is supported by the Valuation of Land Regulation 2003 which prescribes various fees and fee exemptions relevant to the LV Act. In 2020, the VG issued administrative guidelines on the most appropriate way to undertake certain valuations when applying the LV Act in the form of a Manual titled 'Statutory Valuation Procedures and Practices under the Land Valuation Act 2010'.[2]

The explanatory notes state that land valuations are becoming increasing complex as a result of:

- significant growth in the property market since 2010
- more intensive and complex mixed use, volumetric and transport-oriented developments becoming commonplace
- changes to the rural property market from carbon farming, solar farms, gas, and mineral extraction uses which often coexist with traditional farming uses.[3]

1 Explanatory notes, p 1.

2 Department of Resources, correspondence, 16 October 2023, p 5.

3 Explanatory notes, p 1.

Amendments to the LV Act are therefore required to ensure it is responsive and adapted to such changes. In his introductory speech, the Hon Scott Stewart MP, Minister for Resources, stated:

> In the 2023 annual valuation program, the Valuer-General undertook approximately 800,000 statutory valuations. This bill will support the Valuer-General in delivering one of Queensland's largest annual programs.[4]

The Bill also seeks to ensure consistencies in the land valuation objections processes. The LV Act provides for independently chaired objection conferences, which have 'been an effective mechanism at resolving objections that reduces matters proceeding to the Land Court'.[5] The Bill proposes to remove the existing $5 million land valuation threshold for when the VG must offer an objection conference, and to encourage participation in objection conferences in good faith with relevant disclosures to enable the VG to make objection decisions. The explanatory notes state:

> There are many examples where objectors do not reveal relevant information until it is disclosed through Land Court proceedings. Objection decisions made in the absence of relevant information increase the risk of appeals to the valuer-general's decision. Ensuring that all parties engage in the objection process and share relevant information in good faith would improve the objections process and realise greater efficiencies for all parties.[6]

The Bill further proposes to enhance usability, certainty and clarity for landowners and local governments about what land is subject to a valuation, the timing of such valuations, and when land is valued separately or combined based on land use and occupation.[7]

Additionally, the Bill aims to achieve timely application of deduction for site improvement applications, clarify the definition of an encumbrance on land, and provide more choice for landowners about how they receive valuation notices.[8]

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 *Legislative Standards Act 1992*

Our assessment of the Bill's compliance with the LSA identified issues which are discussed in relevant sections of this report. The explanatory notes indicate that issues of fundamental legal principle (FLP) may arise or be perceived in respect of the following clauses of the Bill:

- clause 5 which proposes to confer power on the VG to make statutory guidelines about any matter related to the administration of the Act or the valuation of land, which engages the FLP that a Bill should have sufficient regard to the institution of Parliament as required by section 4(4) of the LSA
- clause 9 which changes the way that a deduction for site improvement may be made, which engages the FLP that legislation should be consistent with the principles of natural justice as required by section 4(3)(b) of the LSA

4 Queensland Parliament, Record of Proceedings, 23 August 2023, p 2290.

5 Explanatory notes, p 2.

6 Explanatory notes, p 2.

7 Explanatory notes, p 2.

8 Explanatory notes, p 2.

- clause 22 which proposes an applicant-led process regarding the combination of non-adjoining farming lots into one valuation, which engages the FLP that legislation should be consistent with the principles of natural justice as required by section 4(3)(b) of the LSA
- clause 37 which proposes to remove the requirement for the VG to offer an objection conference for valuations greater than $5 million, which engages the FLP that legislation should be consistent with the principles of natural justice as required by section 4(3)(b) of the LSA
- clause 47 which proposes to confer power on an independent chairperson to request further information from an objector, which engages the FLP that legislation should provide appropriate protection for the rights and liberties of individuals regarding the right to privacy as required by section 4(3)(a) of the LSA
- clause 51 which proposes to confer power on the VG to request further information from all objectors, which engages the FLP that legislation should provide appropriate protection for the rights and liberties of individuals regarding the right to privacy as required by section 4(3)(a) of the LSA.

We are satisfied in all cases that any potential breaches of fundamental legislative principle are reasonable and sufficiently justified in the circumstances. In regard to QCAT now being the external review body for some land valuation matters, we acknowledge that an automatic right of legal representation does not apply and have made a recommendation to ensure procedural fairness.

The explanatory notes contain sufficient information required by Part 4 of the LSA, and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.3.2 *Human Rights Act 2019*

Our assessment of the Bill's compatibility with the HRA is included below and discussed in relevant sections of this report. While we find the Bill is not compatible with some human rights, the incompatibility is justified in the circumstances.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained an insufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. The statement of compatibility notes that the Bill might limit the following human rights:

- the right to a fair hearing (section 31 HRA) may be limited by the Bill's clause 38 regarding when objection conferences might be held
- the right to privacy and reputation (section 25 HRA) might be limited by the Bill's clause 22 (non-adjoining farming lots or parcels combined valuation), clauses 43, 49 and 54 regarding a written objection conference report, clause 47 (chairperson may request further information) and clause 51 (VG may require further information).

The statement of compatibility did not identify substantial human rights issues, including:

- whether the right to a fair hearing could be limited by the Bill's clauses 44 and 47 which propose to allow the chairperson to decide not to hold an objection conference or to end an objection conference
- whether the right to privacy and reputation for third party agents or representatives could be limited by the Bill's clauses 44, 47 and 51 which create disclosure requirements that go beyond the parties to an objection
- whether the right to privacy and reputation could be limited by the Bill's clause 49 which proposes to require the chairperson to prepare a written conference report.

1.4 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Land Valuation Amendment Bill 2023 be passed.

2 Examination of the Bill

On 23 August 2023, the Land Valuation Amendment Bill 2023 was introduced into the Queensland Parliament. The Bill was referred to the Transport and Resources Committee for consideration. Fifty-four submissions were received, with 16 of these requesting confidentiality. Thirty-two of the 54 submissions contained substantively identical submissions ('form submitters').[9]

The committee received a public briefing from the Department of Resources (department) on 11 September 2023, and the public officials who attended are listed in Appendix B. We also held a public hearing on 9 October 2023, and witnesses in attendance are listed in Appendix C.

This section of the report discusses key issues raised during our examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Consultation process

The explanatory notes state that consultation regarding this Bill has occurred with key stakeholders since 2021. These stakeholder include AgForce Queensland (AgForce), Australian Property Institute, Local Government Association of Queensland (LGAQ), Property Council of Australia (PCA), Royal Institution of Chartered Surveyors, Queensland Farmers' Federation, Queensland Law Society, Queensland Resources Council, Real Estate Institute of Queensland, Urban Development Institute of Australia, Shopping Centre Council of Australia, and the Valuers Registration Board.[10] We note that we received submissions from the majority of these stakeholders during our inquiry into the Bill.

In May 2023, the department provided a consultation paper to key industry stakeholders and some in-camera meetings were held. The explanatory notes state that the amendments proposed in this Bill have undergone sufficient regulatory impact analysis to satisfy the Queensland Office of Best Practice Regulation.[11]

2.1.1 Submitter views

The overarching weight of submissions received by the committee contended that the level of consultation conducted by the department in support of this Bill was insufficient.[12] A letter signed by 12 Queensland senior commercial valuers stated:

> Only twice in history has a letter of concerns regarding the changes to valuation practices proposed and adopted by Government Valuers been signed by the most senior valuers in QLD. The last time was in 2010 and that Act was replaced within one year after an outcry from the Industry. That Act was replaced with the current stable Land Valuation Act (2010) which was

[9] See submissions 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 24, 25, 26, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 48, 50, 53 and 54.

[10] Explanatory notes, p 6.

[11] Explanatory notes, p 6.

[12] See Submissions 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 24, 25, 26, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 47, 48, 50 and 53.

> based on the NSW legislation and has worked for the last 13 years. Concerningly, we believe this Bill goes further than the changes in 2010.[13]

The submission from Corporate and Commercial Property Advisors (CCPA), also on behalf of Savills and CBRE, stated:

> In the case of the Bill there was no genuine consultation. We were in attendance at the PCA initial one hour meeting to go through a spreadsheet of concerns. After the hour was up, we were only half-way through the concerns. At the second PCA consultation PCA were specifically told no valuers were to attend. This is not proper consultation it is ticking a box which enabled the claim no issues were raised by valuers.[14]

Representatives of CCPA, Savills and CBRE reiterated at the public hearing this claim that private sector valuers were excluded from a departmental consultation meeting held in development of this Bill.[15]

The PCA submitted that despite the apparent length of time of the consultation process, consultations were not extensive. PCA stated it advised the department that the lack of detail contained in the information supplied about the proposed amendments meant PCA was unable to settle a comprehensive position, and cautioned the department against introducing hastily implemented changes without sufficient consultation.[16]

During a public hearing, we asked various witnesses about the degree of consultation they had experienced with the department. AgForce advised that consultation was limited.[17] The Queensland Law Society (QLS) advised the department's engagement with QLS:

> … has been quite long-running and quite outstanding. While there are some issues in the translation of good policy ideas into legislation, there has been quite a lot of engagement.[18]

When asked about the nature of appropriate consultation in support of this Bill, the QLS submitted:

> Really good consultation looks like something that has a decent and significant public consultation phase - and potentially once a bill has been introduced and it is before this august committee this is a form of consultation, although it is always good to do that consultation at an earlier stage so that if issues are brought up they can actually result in amendments and changes at a much earlier stage. Potentially before the drafting of the legislation is the best time to get a bit of a hammering out of the policy issues rather than trying to hammer the policy issues out at the drafting stage once it is already before the parliament. That is the ideal process.[19]

The QLS further submitted at the public hearing that public discussion papers and consultation drafts of legislation are important to see in early stages of consultation.[20]

2.1.2 Departmental response

At a public briefing, a department representative described the consultation process:

> … we wanted to cast the net very wide to get input, as opposed to, 'Here is our bill. What do you think of it?' Even the scope of the bill itself certainly has been significantly influenced by the input we got from the stakeholders. As I am sure you will see in the submission, there will not be

13 Submission 28, p 2.

14 Submission 6, p 13.

15 Public hearing transcript, Brisbane, 9 October 2023, pp 14-15.

16 Submission 47, p 10.

17 Public hearing transcript, Brisbane, 9 October 2023, p 9.

18 Public hearing transcript, Brisbane, 9 October 2023, p 19.

19 Public hearing transcript, Brisbane, 9 October 2023, p 20.

20 Public hearing transcript, Brisbane, 9 October 2023, p 21.

> universal acclaim for every provision in the bill, but we think the bill represents a pretty reasonable balance between the concerns and the opportunities associated with the amendments.[21]

In its written response to submissions, the department advised:

> Resources has engaged and sought feedback from key stakeholders on all aspects of the statutory land valuation framework to identify areas for improvement. Four rounds of one-on-one meetings with external stakeholders were undertaken (August 2021, February 2022, and November 2022) in relation to the review of the Act and in May/June 2023 on the development of the Bill.
>
> **Round 1**
> The first meetings in August 2021 were an initial introductory meeting with key stakeholders to identify issues and concerns and identify potential improvements to the Act. These meetings were held at the early stages of the review to inform the policy development process and identify issues requiring further examination and analysis…
>
> **Round 2**
> In February 2022, a second round of one-on-one meetings were held to gauge stakeholder views on possible solutions, without formally conveying Resources' proposed solutions at that stage. Meetings were aimed at testing the appropriateness, workability, and appetite for early draft proposals. Results of the first round of consultation were also discussed and further views sought…
>
> **Round 3**
> In November 2022, Resources discussed the proposed list of amendments and sought stakeholder views. These views informed the final list of proposed amendments…
>
> **Round 4**
> In May/June 2023, stakeholders were provided with a consultation paper of the amendments in the Bill and were encouraged to provide a submission in response to the paper. Stakeholders were advised they could share the paper with their members if they chose to do so. One-on-one meetings were also offered, with 10 one-on-one meetings held. Resources received 6 written submissions and the comments informed the development of the Bill…
>
> It is noted that the Australian Property Institute and Valuers Registration Board of Queensland are representative bodies for the vast majority of valuers in Queensland and were involved in each round of consultation undertaken on the Bill.[22]

In response to PCA's submission that the consultation period was not extensive, the department submitted:

> PCA wrote to Resources throughout the consultation period, on the 7 December 2022, and 9 June 2023. The PCA outlined their concerns about a range of matters, and a number of the matters raised were removed on the advice of PCA and other stakeholders.
>
> In the letter of 9 June 2023, the PCA identified two amendments, the change to the definition of lot and the definition of unencumbered, where they stated the changes may pose unintended consequences. What these unintended consequences were was not further described.[23]

Committee comment

This Bill does not deal with only minor or inconsequential amendments to the LV Act. That should mandate a sufficiently intensive consultation process, proportionate to the impact that the proposed amendments might have on stakeholders. Advice from the department is that it conducted 4 rounds of one-on-one meetings during the period August 2021 to June 2023. It was only in May 2023 that a consultation paper was provided to stakeholders, 3 months prior to the introduction of the Bill. There

[21] Public briefing transcript, Brisbane, 11 September 2023, p 4.

[22] Department of Resources, correspondence, 16 October 2023, pp 3-4.

[23] Department of Resources, correspondence, 16 October 2023, p 4.

were lengthy gaps between each round of consultation, in some cases up to 12 months, which appears incongruous with the relatively short period of time that elapsed between the release of the consultation paper and the introduction of the Bill.

We note the department's advice that its consultation process complied with Queensland Government requirements for regulatory impact analysis. We also note the submission from the Queensland Law Society regarding the value of exposure draft Bills and the need to give stakeholders enough time to analyse proposed policy changes. In that vein, we note that the department received advice from the Property Council of Australia (PCA) about unintended consequences of 2 proposals in the Bill; however, it is unclear that the department followed the PCA up for further information.

We were also made aware by some submitters that historical consultation processes around amendments to land valuation legislation were problematic. In particular, attempts at several amendments to the predecessor of the LV Act, the VOL Act, in 2009-2010, apparently culminated in the revocation of that Act and its replacement with the current Act, due to significant stakeholder objections. Given this history, the department was aware of the need to ensure thorough and constructive engagement on these proposed amendments.

Submissions indicated that insufficient time was allowed by the department for stakeholders to provide rigorous and comprehensive feedback once the consultation paper was released. While we are not familiar with the specific requirements that the Queensland Office of Best Practice Regulation might mandate for the type of proposals in the Bill, it does appear, from most submitters, that consultation processes could have been more intensive, based on more discussion papers and/or exposure drafts, and timed to ensure sufficient time for stakeholder feedback. Because of this, we have chosen to incorporate more direct excerpts from submissions than we otherwise would in a Bill inquiry report to ensure all issues are appropriately ventilated, albeit at this relatively late stage of the Bill's consideration.

In the following section of this report, where we consider the Bill's proposal to empower the VG to make statutory guidelines, we acknowledge stakeholder feedback about mandating sufficient, substantive consultation when implementing this Bill.

2.2 Power of the Valuer-General to make guidelines

The explanatory notes state:

> Clause 5 inserts new section 6A which provides a head of power for the valuer-general to make guidelines about any matter relating to the administration of the Act or the valuation of land. The guidelines are intended to ensure consistency in decision-making and establish consistent state-wide valuation practices for complex property types, such as volumetric lots, shopping centres, land affected by heritage restrictions, and childcare centres, where appropriate. More than one guideline can be made.
>
> The guideline must be consistent with the Act. Valuation practices and processes are technical and need to be responsive to changes in the property market, the way properties are traded and changes in professional practice. This detail is suited to a guideline, which frees the Land Valuation Act of unnecessary detail, and assists with clarity…
>
> The guidelines will be binding in relation to the valuations to which they apply. If the guidelines mandate a particular valuation methodology for a particular property type, this will limit the grounds of potential objections and appeals against valuations to consideration of whether the guidelines have been properly applied in determining the subject valuation.[24]

[24] Explanatory notes, p 8.

This proposal raises the question of whether the Bill has sufficient regard to the institution of Parliament as required by section 4(4) of the LSA, as it confers legislative power on the VG. The explanatory notes justify this potential breach of fundamental legislative principle by additionally noting:

- the power is conferred on the VG who possesses the relevant skills and qualifications
- the guidelines (and any amendments) are required to be tabled in the Legislative Assembly within 14 sitting days after they are made and will be subject to the disallowance provisions of the *Statutory Instruments Act 1992*, which ensures adequate parliamentary oversight and appropriate opportunity for scrutiny.[25]

Forty-two of the 54 submissions had concerns or were unsupportive of this proposal.[26] The main submitter concerns about statutory guidelines were:

- increases to land tax and rates
- incompatibility with legal precedent
- incompatibility with existing valuation standards and practices
- providing excessive power to the VG
- no mandatory consultation requirement
- no clear policy justification about why well-functioning administrative guidelines already in operation require elevation to a statutory guideline
- increased limits (and costs) for objections and appeals of land valuation decisions inconsistent with natural justice
- inconsistency with other Australian jurisdictions
- potential ramifications of the length of time for disallowance.

Stakeholder submissions about each of these themes will be discussed below, with relevant departmental responses provided.

2.2.1 Effect on land tax and rates

In his introductory speech, the Minister stated, '[l]et me be clear for the benefit of the House, these changes will have no material impact on rates and property taxes'.[27]

2.2.1.1 Submitter views

Some submitters, including the form submitters, held a view that providing the VG with the power to make statutory guidelines would result in higher land tax and rates for owners and cause property value reductions because of higher outgoings.[28]

[25] Explanatory notes, p 3.

[26] See submissions 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 37, 42, 44, 45, 46, 47, 48, 49, 50, 51, 53 and 54.

[27] Queensland Parliament, Record of Proceedings, 23 August 2023, p 2290.

[28] See submissions 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 23, 25, 26, 32, 33, 34, 36, 37, 42, 44, 48 and 53.

The CCPA submission, also on behalf of Savills and CBRE, stated:

> Providing the VG with the right to write its own position into law, via binding guidelines, when it is a party to the litigation, will result in significant changes to Site Values and the resultant rates and taxes and the market value of assets. This is a material change...[29]

The PCA submitted that the proposed changes are systemic with the potential to result in material departures from land valuation practice.[30] The PCA stated 'whilst the function of applying Land Tax and Council rates does sit outside of the Department of Resources, the statutory value given to land is the critical element on which these taxes and rates are levied'.[31]

The Large Format Retail Association (LFRA) submitted:

> … the Guidelines could be prepared in a way to maximise land values. This would in turn affect local government rates and property taxes paid by landowners in relation to a property.[32]

2.2.1.2 Departmental response

The department submitted:

> The Bill will have no material impact on land tax or rating liability. It does not change how land is to be valued.
>
> The Bill is focussed on ensuring greater consistency and transparency of state-wide valuation practices.
>
> Statutory valuations are used to determine the value of land for statutory purposes -- for calculating liability under the *Land Tax Act 2010*, making and levying rates under the *Local Government Act 2009*, and for calculating rent for tenures under the *Land Act 1994*. A statutory land valuation does not directly determine the amount of tax, rates or rent paid. Those liabilities are decided in accordance with the provisions of the relevant legislation.[33]

2.2.2 Compatibility with legal precedent and existing industry practice

The proposal would permit the VG to make statutory guidelines which will be binding on the valuations made under such guidelines.

2.2.2.1 Submitter views

A number of submitters, including the form submitters, held a view that providing the VG with the power to make guidelines would lead to derogation from legal precedent and accepted valuation practice.[34] The form submitters also stated that the committee should be concerned that the power to make guidelines will affect the Land Court in the exercise of its powers.[35]

The submission from CCPA, also on behalf of Savills and CBRE, described how this proposal might overturn legal precedent:

> Spencer vs the Commonwealth [was] a High Court Decision handed down in 1907 and is regarded by the valuation profession in Australia as the "Bible" that set all future valuations. … The Bill, as proposed, gives the right to the VG to write guidelines to suit its own opinion that have the

[29] Submission 6, p 6.

[30] Submission 47, p 2.

[31] Submission 47, p 2.

[32] Submission 53, p 6.

[33] Department of Resources, correspondence, 16 October 2023, p 5.

[34] See submissions 2, 3, 4, 5, 6, 46, 47, 51 and 53.

[35] Submission 7, p 2.

> potential to be contrary to the decision of the High Court that has stood the test of time for the past 116 years.[36]

Of particular concern to some submitters was the potential for the guidelines to bind the Land Court. A representative of the QLS told a public hearing:

> As to what is a chapter 3 court for the purpose of the Constitution, the Land Court is probably a chapter 3 court, which means the department will have to be very careful that it uses that power in a way that does not fetter or diminish the discretion of the Land Court in deciding a matter…
>
> I am a little surprised that the drafting in section 6A is so broad rather than being more refined as to how the Valuer-General will exercise its discretion rather than the machinery and the operation of the act. I think that puts a few traps in for the Valuer-General as to how to form those guidelines and probably then also means that more consultation about the guidelines before issuing them is even more important to make sure that the guidelines themselves do not end up being challenged in court as being potentially unconstitutional or, alternately, they may be just good old-fashioned administrative law ultra vires.[37]

Colin Biggers & Paisley Lawyers submitted:

> The Bill does not provide any guidance about whether or not the Land Court would be similarly bound by the guideline. Notwithstanding that, it appears that the intention is that the Land Court would be so bound, given that the Explanatory Notes clearly say that a guideline made about the valuation methodology to be applied to certain land "will limit the grounds of potential objections and appeals against valuations to consideration of whether the guidelines have been properly applied in determining the subject valuation".[38]

Turning to concerns that the proposed clause might derogate from existing industry practice, the Australian Property Institute (API) submitted its members are required to comply with the International Valuation Standards (IVS). API held concerns that the proposal may permit the VG to make a guideline that creates a mandatory requirement that is inconsistent with existing and accepted valuation standards.[39]

Many submitters, including form submitters, spoke to concerns about the way that a statutory guideline might affect the way that heritage, volumetric title, childcare centres and shopping centres are treated in valuation methodology in Queensland. [40]

2.2.2.2 Departmental response

The department did not provide a specific response to submitter concerns that the proposed guidelines might overturn legal precedent. In terms of the potential for the guidelines to fetter the discretion of the Queensland Land Court, a departmental representative stated:

> … we see there are a lot of methodological issues the Land Court is ultimately being asked to adjudicate on, as opposed to there being an accepted approach, one that the Valuer-General will consult on before that is put into the statutory guidelines.[41]

The department's response to submissions stated the guidelines will only be binding where expressly provided. In such cases a statutory guideline 'may remove the need for the Valuer-General and the Land Court of Queensland to consider the appropriateness of a valuation methodology for a specific

36 Submission 6, p 7.

37 Public hearing transcript, Brisbane, 9 October 2023, p 20.

38 Submission 51, p 3.

39 Submission 49, p 1.

40 See submissions 3, 5, 6, 46 and 49.

41 Public briefing transcript, Brisbane, 11 September 2023, p 4.

use and reduce the points of disagreement between the parties in relation to objections and appeals'.[42]

In terms of the impact of the guidelines on existing industry practice, the department stated 'it is not the intent to depart from existing or established valuation practice, but rather to provide greater transparency and direction on valuation practice in Queensland'.[43] The department continued:

> In other areas of professional practice, International Valuation Standards guide what is appropriate practice for different types of valuations, and professional bodies (i.e., Australian Property Institute, Royal Institution of Chartered Surveyors) enforce adherence. These standards are useful as they are concerned with the fundamentals of valuation practice and are also applicable to statutory valuation practice. However, statutory valuation legislation differs (in some cases significantly) between jurisdictions, imposing unique requirements depending on the jurisdiction. The International Valuation Standards do not sufficiently cover all aspects of making valuations under the Act.[44]

The department confirmed the need for statutory guidelines because the IVS do not provide specific requirements for how valuations are made under the laws of a particular jurisdiction.[45]

Committee comment

It has been observed that the department has not responded to submitter claims that the guidelines have the potential to overturn legal precedent. We note concerns from the Queensland Law Society about the risk of the guidelines being found to be either unconstitutional or *ultra vires*. The submission from Colin Biggers & Paisley Lawyers on the explanatory note about limiting grounds for objections and appeals is persuasive support for the idea that the guideline could fetter the discretion of the Court. The department also seems to contemplate this in its response about the need for an accepted methodological approach for Land Court matters.

In terms of the impact on established valuation practice, the department does clearly indicate that the guidelines would only function to clarify aspects of professional practice where international standards are silent. It is difficult for us to offer a view on this one way or the other when the guidelines have not yet been released publicly.

2.2.3 Delegation of power to the Valuer-General

Section 22 of the *Statutory Instruments Act 1992* provides that if an Act authorises the making of a statutory instrument, the statutory instrument can be made with respect to any matter prescribed in the Act.

2.2.3.1 Submitter views

Some submitters, including the form submitters, expressed concern that the power to make guidelines delegates excessive power to the VG.[46] A submission by 12 Queensland senior commercial valuers stated the VG will be conferred a broad delegated legislative power:

> The Bill provides to the effect that the Valuer-General has reserved, to itself, the right to change the law in its favour to prevent challenges to a Site Value or Unimproved Value that would otherwise be decided by the Land Court of Queensland, based on precedent and interpretation of the law as written. The Valuer-General has reserved the right to change law rather than the law being decided by the Parliament. It is given the right to write guidelines and table the same in

[42] Department of Resources, correspondence, 16 October 2023, pp 8-9.

[43] Department of Resources, correspondence, 16 October 2023, p 5.

[44] Department of Resources, correspondence, 16 October 2023, p 6.

[45] Department of Resources, correspondence, 16 October 2023, p 13.

[46] See submissions 18, 28, 30, 31, 47, 49 and 51.

> parliament, and that guideline then becomes binding law. Guidelines currently exist and there is no need to change well held principles.[47]

A QLS representative submitted:

> Making them a statutory guideline is all well and good; it is the binding aspect with respect to how the act is to be dealt with that is probably the problematic part. If it is not to be binding then, arguably, why go through all of the disallowance motions and things? It is interesting because for a guideline it has the clothing of a regulation which is made by the Governor in Council, but this is made by the Valuer-General. It does not look and feel like quite the right vehicle to achieve the purpose, but if the purpose is simply to set out transparently and easily for everybody how the Valuer-General will make decisions and how the Valuer-General will consider things then that is certainly a very good thing to do. Maybe this machinery is not quite the machinery to achieve that job.[48]

The PCA and API noted that power to make guidelines is usually vested in the Minister or chief executive administering the relevant Act, and the proposed amendment is unusual in allowing a statutory office holder to have the power to make guidelines about the administration of an Act.[49] The PCA stated:

> The ability for the Valuer-General to make binding guidelines about the statutory valuation of land is effectively subverting the parliamentary process and undermining the legislative framework as the Valuer-General, being an unelected and unaccountable statutory office holder established under the Land Valuation Act 2010, is effectively being given the power to usurp the legislature and courts.
>
> Presently the Valuer-General is established under the Act and required to value land in accordance with the Act (i.e., the Valuer-General is subordinate to the Act). However, under the proposed amendments, the Valuer-General is effectively being given a new power to 'write the rules' that apply to the valuation of land for Statutory purposes, so that the Valuer- General is not just subject to the Act's valuation framework but can create new rules that could change or conflict with the Act (i.e. the Valuer-General is being empowered to set the rules, not just apply the rules).[50]

The Valuers Registration Board of Queensland noted the potential for a significant increase in the VG's powers and submitted 'further consultation would no doubt be welcomed by the profession to better understand the need for such a change, how this power may be utilised in the future, and what safeguards are in place to address potential issues'.[51] Identical submissions from Grant Jackson and FA Pidgeon & Son P/L about the power to make guidelines stated:

> My own personal experience, having provided expert evidence on numerous occasions before the Land Court of Queensland highlights the inability of the VG to adopt guidelines consistent with the legislative requirements.
>
> A constructive suggestion is for the parliament to review legislative changes in the normal manner should the current legislation prove to be deficient. That provides a level of transparency and oversight enshrined in our parliamentary system. There has been no reasonable basis put forward by the Minister in the Explanatory Note other than to say the valuation of land is becoming increasingly complex. That is a training issue for VG staff, not a legislative issue.[52]

47 Submission 28, p 3.

48 Public hearing transcript, Brisbane, 9 October 2023, p 21.

49 See submission 47, p 2 and submission 49, p 1.

50 Submission 47, pp 3-4.

51 Submission 18, p 1.

52 See submission 30, p 1 and submission 31, p 1.

2.2.3.2 Departmental response

The department pointed to the status of the VG as a statutory office which possesses necessary expertise, therefore making it the appropriate decision maker for matters related to the LV Act and valuation practice. [53] The department submitted that the new power proposed for the VG is:

> … consistent with the approach across Queensland's statute book – for example, binding survey standards for surveyors under the Survey Mapping and Infrastructure Act 2003 which are designed to achieve an acceptable level of survey quality, and the Land Title Practice Manual which guides land title practice under the *Land Title Act 1994*.
>
> Similar provisions to make guidelines (or similar instruments) exist in other jurisdictions. For example, section 4 of New Zealand's Rating Valuations Act 1998 states that the Valuer-General may "make rules in relation to rating units, rating valuations, district valuation rolls and the distribution of rateable values".
>
> Similarly, the Victorian Valuation of Land Act 1960 section 5AA states that the Valuer-General must prepare the 'Valuation Best Practice Specifications Guidelines' at the commencement of every revaluation.
>
> The New South Wales Valuer-General publishes the 'Specifications for Provision of Land Valuation Services for Government Rating and Taxing.' There is no legislative standing for this document, however contractors engaged by the Valuer-General are obliged to follow it.[54]

Regarding the submission by the 12 senior commercial valuers that guidelines currently exist and there is no need to change well established principles, the department advised of an administrative guideline about the application of the Act titled – 'Statutory Valuation Procedures and Practices under the Land Valuation Act 2010' (the Manual). The department submitted:

> This document was developed in consultation with stakeholders and though accepted and referenced by some valuers with an interest in statutory valuations, it lacks legislative standing which has limited its utility more broadly. The practical use of the Manual is limited in relation to aspects of valuation practice. The Manual provides advice on the operation of, or processes associated with, certain provisions of the Act i.e., lodging an objection.[55]

A departmental representative stated, 'importantly, we have administrative guidelines but [we are] moving them to statutory guidelines so that they then bind the valuers in making their assessments'.[56]

Committee comment

We note the existence of administrative guidelines and the view held by some submitters that there is no rationale for making these guidelines statutory and binding. It does appear that the justification for doing so has not been clearly put by the department, although we note its advice to the committee that the guidelines are accepted and referenced by 'some' valuers but lack legislative standing which limit their utility. This suggests one rationale for the proposal is to bind all valuers, although without access to the proposed guidelines this is difficult to determine. We note the advice from the department of examples from other jurisdictions which empower a VG to make guidelines; however, that advice does not specify the legislative status of such guidelines (apart from the NSW example which is administrative).

In the examples provided by the department of other similar provisions in existing Queensland legislation, we note that the power to make guidelines under the *Survey Mapping and Infrastructure Act 2003* resides in the chief executive, and that the Land Title Practice Manual is an administrative

53 Department of Resources, correspondence, 16 October 2023, p 7.

54 Department of Resources, correspondence, 16 October 2023, pp 7-8.

55 Department of Resources, correspondence, 16 October 2023, p 7.

56 Public briefing transcript, Brisbane, 11 September 2023, p 4.

guidance kept by the Registrar of Titles 'for the information and guidance of persons performing functions in relation to the land registry and other persons dealing with the land registry'; the Land Title Practice Manual's existence has statutory recognition under the *Land Title Act 1994* but no power to bind parties appears to flow from this.

While we note that the exercise of such a power by the VG under the current proposal would be subject to scrutiny by the Parliament and potential disallowance, we note the doubt expressed by submitters that the existing administrative guidelines require statutory enactment.

2.2.4 No mandatory requirement to consult

Clause 6a(3) of the Bill provides that before making a guideline, the VG may consult with, and have regard to the views of, any person the VG considers appropriate.

2.2.4.1 Submitter views

Various submitters, including the form submitters, raised concern that there is no mandatory requirement for the VG to consult before making a guideline.[57] Colin Biggers & Paisley Lawyers submitted that the lack of a mandatory consultation requirement:

> … is not consistent with the approach taken in similar situations in other legislation. For example, s 283 of the *Planning Act 2016* contains a guideline making power exercisable by the Minister or chief executive. Under the *Planning Act,* the Minister or chief executive must consult with the persons the Minister or chief executive considers appropriate. It is not clear why a similar approach should not be followed in respect of guidelines made by the Valuer-General.[58]

The Shopping Centre Council of Australia (SSCA) submitted:

> During the May/June 2023 consultation, the Department's consultation paper expressly referenced that '*the guidelines and future revisions will be made in consultation with stakeholders*' (our emphasis) …
>
> The Bill fails to provide the anticipated certainty and protection that stakeholders will be consulted, on both the guidelines and future revisions.
>
> We are also concerned that the original Consultation Paper in May 2023 referenced that the Department is *"currently working on a draft of the guideline"* however no consultation has been commenced with the SCCA to date.[59]

The PCA submitted the proposal means its members 'will not need to be consulted prior to the statutory guideline being created, and therefore have no capacity to provide input as to the practical applications of any guideline prior to its finalisation and publication'.[60] This concern is reiterated by the George Group submission.[61]

The SSCA, QLS and AgForce supported the amendment of the proposal to state the VG must consult in order to achieve the policy objectives of the bill, namely, ensuring transparency and consistency in the land valuation framework.[62]

The CCPA submission, also on behalf of Savills and CBRE, indicated that the department may already have the guidelines drafted in a form amenable to consultation. It states that 'a person in the [State

[57] See submissions 45, 46, 47, 51, 53 and 54.

[58] Submission 51, p 3.

[59] Submission 46, p 2.

[60] Submission 47, p 2.

[61] Submission 54, p 4.

[62] See submission 45, p 2, submission 46, p 3; and public hearing transcript, Brisbane, 9 October 2023, p 8.

Valuation Service] who we believe was involved in drafting the guidelines inadvertently let slip that they are, if not fully drafted, then close to it'.[63]

2.2.4.2 Departmental response

A departmental representative stated:

> To be effective, the guidelines will definitely require input from key stakeholders. I can assure the committee that the Department of Resources is preparing and will finalise those guidelines in consultation with key stakeholders.[64]

In regard to the availability of guidelines to commence consultation, the department stated:

> Initial work has begun on the potential scope and content of the statutory guidelines and will be subject to change following further internal and external consultation. External stakeholder consultation will commence before the end of 2023.[65]

The department further stated:

> The current administrative guideline 'Statutory Valuation Procedures and Practices under the Land Valuation Act 2010' (the Manual) published on Resources' website represents a significant body of work that was completed in conjunction with industry stakeholders. As noted above, the intent is that the proposed statutory guidelines would draw largely on the contents of the existing Manual.
>
> The proposed statutory guidelines will be developed in consultation with stakeholders. Clause 5 of the Bill provides that the Valuer-General may undertake consultation. This ensures adequate consultation occurs while balancing the administrative burden of consultation where it is not necessary or inappropriate (i.e., for general administrative matters).[66]

Committee comment

We note the department's response that the level of consultation required for the proposed guidelines turns on whether consultation is 'not necessary or inappropriate (i.e. for general administrative matters)'. The committee noted from submitters their deep concerns about the provision that the VG 'may' consult and their preference for a mandatory consultation requirement.

2.2.5 Consistency of guidelines with other Australian jurisdictions

The explanatory notes indicate that the power to make guidelines will allow the VG to 'provide direction' to registered valuers.[67]

2.2.5.1 Submitter views

Some submitters, including the form submitters, built on submitter concerns regarding the delegation of this power to the VG, to dispute the need for binding guidelines due to inconsistency with practice in other Australian jurisdictions. CCPA, also on behalf of Savills and CBRE, submitted that no other Australian state operates in this manner regarding land valuations.[68]

The SCCA submitted:

> It is long-established practice across most states in Australia that the Valuer-General will publish guidelines or practice notes based on the legislation and case-law. We generally support this

63 Submission 6, p 14.

64 Public briefing transcript, Brisbane, 11 September 2023, p 2.

65 Department of Resources, correspondence, 16 October 2023, p 5.

66 Department of Resources, correspondence, 16 October 2023, p 10.

67 Explanatory notes, p 1.

68 Submission 6, p 4.

> approach subject to these guidelines being developed in conjunction with relevant stakeholders and industry bodies.
>
> Our key concerns are that, without changes, the Bill will: provide the Valuer-General with the power to prescribe binding valuation methodology that may depart from existing and established valuation practice, legal precedent and (as currently drafted) the Act itself.
>
> This is contrary to long-established practice across all states in Australia whereby such guidelines are non-binding practice notes based on the legislation and case-law.[69]

Grant Jackson and FA Pidgeon & Son P/L submitted:

> No Valuation Act in [any] other State or Territory in Australia attempts to legislate the approach to value or the methodology to be adopted by the valuer. There is very good reason for that. The complexity, nature and circumstances of individual properties does not necessarily fit a specific approach.[70]

A representative of the PCA advised:

> The statutory nature of the guideline creates real concerns from an industry perspective because it is a feature we have never had in Queensland before. It is an entirely new process. I understand that it is also entirely new Australia-wide. We are not aware of any other state jurisdiction that operates statutory guidelines that are binding on valuation practice. It is quite untested as to how this will operate.[71]

The PCA additionally noted confusion around whether the guidelines are binding because of the lack of consequential amendments to the LV Act as to how the guidelines may be used. The PCA submitted 'the Act is silent on how a guideline would be used and it is not a relevant consideration to any exercise of decision making about the valuation of land under the Act'.[72]

As an alternative to binding guidelines, Colin Biggers & Paisley Lawyers submitted:

> To the extent that there is a need for supplementary guidance to valuation practitioners to assist in the implementation of the Act, this could take the form of either administrative (non-statutory guidance) from the department, or if the need is substantiated for the role of more formal guidance, through a statutory guideline but such guidance must be strictly confined to a supporting role consistent with legal principles and precedent and the Act itself. Furthermore, such 'guidance' would need to be truly of the nature and character of a guideline based on principles and practices, allowing discretion and not being mandatory (binding) in nature.[73]

2.2.5.2 Departmental response

Regarding the administrative manual currently in use by the VG, the department submitted:

> The practical use of the Manual is limited in relation to aspects of valuation practice…
>
> The intent is that the proposed statutory guidelines is to be a procedural document. The guidelines will draw largely on the content in the existing Manual focussing on the practical process of valuation including guidance on applying relevant legislative provisions and statutory valuation practice. Consideration may be given to including greater guidance on specific valuation methodology e.g., childcare centres.[74]

69 Submission 46, p 2.

70 See submissions 30 and 31.

71 Public hearing transcript, Brisbane, 9 October 2023, p 3.

72 Submission 47, p 3.

73 Submission 51, p 4.

74 Department of Resources, correspondence, 16 October 2023, p 5.

Regarding concerns from the PCA around how the guidelines would be used, the department stated that 'careful consideration will be given during development of any aspects of the guideline that may be binding on the valuations to which it applies'.[75]

Committee comment

The department has provided examples of other Australian jurisdictions where land valuation statutes provide powers to a VG to make guidelines; however, the department's submission does not indicate the binding nature of such guidelines. We have earlier commented that it appears the intent of the guidelines is to bind all valuers, not just those working for the VG.

2.2.6 Limits on objections and appeals of land valuations, and cost increases

There are separate provisions in the Bill regarding amendments to objection processes under the Act, which will be dealt with in a later section of this report. This section deals with some concerns from submitters that giving the VG the power to make guidelines may restrict landowners' ability to object or appeal a land valuation. This builds on concerns already outlined about the binding nature of the guidelines and their potential to fetter the jurisdiction of the Land Court of Queensland.

2.2.6.1 Submitter views

Some submitters, including the form submitters, spoke to the potential impact that statutory guidelines might have on the right to object or appeal a decision regarding land valuations.[76]

The form submissions stated:

> The proposed power is likely to restrict landowners' ability to object to a valuation made under the LVA or appeal against a decision on objection for the following reasons:
>
> 1. In an appeal to the Land Court about a valuation made under the LVA it is necessary for an appellant to demonstrate that error was made by the Valuer-General in making the valuation as part of the 'two-step' test.
>
> 2. The guidelines are to be binding. So, if the Valuer-General makes a guideline and it is clear that she has (through her delegate) applied the relevant guideline in making the valuation, it will be difficult for a landowner seeking to appeal that valuation to demonstrate error (even if the guideline is wrong in principle).
>
> 3. The errors that could be shown by a landowner would be limited to the Valuer-General not correctly applying the guideline, applying the wrong guideline or failing to apply a guideline where it should have been applied.[77]

The submission from CCPA, also on behalf of Savills and CBRE, characterised the possible impact on landowners of binding guidelines:

> Taking this authority to the extreme, envisage a dispute between a landowner and the VG on the method of valuation that should be adopted. The VG, if this Bill proceeds as currently written, will have the ability to table in parliament just before the court hearing a guideline consistent with its own position and this guideline is binding on the court. The owner is limited to the grounds of appeal as lodged with the court prior to the tabling of the new guideline. This, to us, seems contrary to Natural Justice.[78]

This potential breach of natural justice is also observed by the LFRA and the SSCA in their submissions.[79]

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75 Department of Resources, correspondence, 16 October 2023, p 13.

76 See submissions 2, 3, 4, 5, 22, 23, 46 and 51.

77 See, for example, submission 7, p 2.

78 Submission 6, p 4.

79 See submission 46, p 2 and submission 53, p 6.

The form submitters also noted concerns that such guidelines might increase the cost of objecting to or appealing valuations by landowners.[80]

2.2.6.2 Departmental response

In regard to the potential for guidelines to limit objections, the department stated:

> The guidelines will only be binding where it is expressly provided for. In these cases, a statutory guideline may remove the need for the Valuer-General and the Land Court of Queensland to consider the appropriateness of a valuation methodology for a specific use and reduce the points of disagreement between the parties in relation to objections and appeals. In other cases, the guideline may provide guidance and clarity to the operation of the Act.
>
> The statutory guidelines will reflect current Queensland statutory valuation practice and provide greater certainty for all stakeholders to ensure consistent and transparent decision-making.[81]

Regarding any increased costs for objecting landowners, the department submitted 'the amendments have been developed to reduce the burden of regulation, limit inefficiencies and importantly to ensure there is minimal cost associated with compliance'.[82]

Committee comment

We note submitter concerns that empowering the VG to make statutory guidelines might have the effect of limiting objection and appeal grounds or rights for individual landholders. Nothing in a statutory guideline should limit objection or appeal rights of landowners.

2.2.7 Potential length of time for disallowance

The Bill requires any guideline made by the VG to be tabled within 14 sitting days after it is made, and is subject to parliamentary disallowance, ensuring further parliamentary oversight.

2.2.7.1 Submitter views

The form submissions stated:

> 14 sitting days... provides little oversight considering that Parliament does not sit all the time.
>
> This should be concerning to the Committee because if the Valuer-General made a guideline that she should not have made, then it might be many weeks or months before the guideline is considered by Parliament (and any disallowance motion made). Even if the guideline is disallowed, the operation of s 51 of the *Statutory Instruments Act 1992* means that anything done or suffered under the guideline before it ceased to have effect would be unaffected by the disallowance.[83]

Colin Biggers & Paisley Lawyers expanded on this point:

> … the Legislative Assembly generally sits between three and six days per month (based on the past three years of Parliamentary sittings). Consequently, there may be a significant delay between the time guidelines become effective and the time at which the Legislative Assembly is able to consider those guidelines.
>
> …
>
> This should be concerning to the Committee because if the Valuer-General were to make a guideline that, for example, was inconsistent with established precedent or that sought to address a matter the subject of existing litigation, then:.
>
> (a) it might be many weeks or months before the guideline is considered by Parliament (and any disallowance motion made); and

80 See, for example, submission 7, p 2.

81 Department of Resources, correspondence, 16 October 2023, pp 8-9.

82 Department of Resources, correspondence, 16 October 2023, p 13.

83 See, for example, submission 7, p 2.

> (b) even if the guideline were to be disallowed by Parliament, the operation of s 51 of the *Statutory Instruments Act 1992* means that anything done or suffered under the guideline before it ceased to have effect would be unaffected by the disallowance.
>
> In those circumstances, a person aggrieved by the guideline would have to wait for the Legislative Assembly to consider the guideline (although they would have no guarantee that the guideline would be disallowed before action were taken by the Valuer-General under the guideline that might affect their rights or obligations). This does not seem to us to be satisfactory.[84]

The PCA also observed the potentially lengthy elapse of time before disallowance of a guideline.[85]

2.2.7.2 Departmental response

The department submitted that:

> Objection decisions and appeals on complex matters often take weeks, months or even years to be resolved. That the Legislative Assembly may not consider a new guideline for a matter of weeks or months is unlikely to impact significantly on landowners.[86]

Committee comment

We recognise that the proposal contains an unusual provision in that any guideline made under Clause 5 of the Bill, despite not being subordinate legislation, will be subject to the disallowance provisions of the *Statutory Instruments Act 1992*. This indicates an awareness on the part of the government that the powers conferred on the VG by the proposal do require significant oversight.

In earlier comments in this report, we have noted reservations about Clause 5. We now note that it is possible that a lengthy period of time could elapse between the publication of a guideline under this clause and its disallowance. Despite the department's view that this is unlikely to impact upon landowners, submitters gave many anecdotal accounts about how valuations can change during objection and appeal processes, usually for the benefit of landowners, after challenges to valuation assessments made by the VG. Valuations favourable to a landowner have consequential effects in terms of reduced land tax and rates. In this regard, the committee unanimously makes the following 2 recommendations.

Recommendation 2

The committee recommends the Minister reconsiders Clause 5 of the Bill with a view to ensure that statutory guidelines bind only the Valuer-General in how a type or class of property valuation is conducted. Nothing in a statutory guideline should limit objection or appeal rights of individual landholders or fetter the discretion of the Land Court of Queensland.

Recommendation 3

The committee recommends the Minister reconsiders Clause 6(a)(3) of the Bill with a view to ensure that before making any guideline regarding statutory valuation of land, the Valuer-General must consult with, and must have regard to the views of, any person the Minister considers appropriate.

84 Submission 51, pp 3-4.

85 Public hearing transcript, Brisbane, 9 October 2023, p 2.

86 Department of Resources, correspondence, 16 October 2023, p 11.

2.3 Removing 'agreement for lease' from the definition of unencumbered land

Clause 6 of the Bill omits 'agreement for lease' from the definition of 'unencumbered' in section 17 of the LV Act. The explanatory notes state that its present inclusion creates an expectation that a consequential deduction will be made by the VG from the sale price for properties with an agreement for lease in place, when in practice the value of an agreement for lease is considered on a case-by-case basis. The Bill proposes its removal is necessary to nullify any expectation about the treatment of an agreement for lease.[87]

2.3.1 Submitter views

This proposal is not supported by most submitters, including form submitters.[88] CCPA, also on behalf of Savills and CBRE, stated:

> Removing the added value of Agreements to Lease will have a significant impact on Rates, Land Tax and Land Rent. The reasoning behind removing the agreements for lease from the [Land Valuation Act] LVA is clear from our point of view. The guidelines need to be consistent with the LVA and the only "intangible improvement" defined in the Act is an agreement for lease. Those in the [State Valuation Service] have broadcast the intention to water down the allowances for agreement for lease or potentially any other intangible improvement through the guidelines which is contrary to the second reading speech and more importantly court precedent.[89]

Harvey Norman opposed this proposal on the basis that it will result in higher land valuations, on account of any improvements on the land such as buildings or structures which potentially service an agreement for lease being reflected in the valuation.[90] Harvey Norman also submitted this proposal will create conflict with existing court judgements,[91]a view that Centennial Property Group, CCPA, SCCA, and Colin Biggers & Paisley Lawyers supported in their submissions.[92]

The QLS disagreed with the proposal which it says will alter the legal approach to be applied to the treatment of agreements for lease, as according to its members' experience, agreements for lease can materially affect the land's value.[93] The QLS and API said that the policy intention for the change is unclear.[94]

The PCA submitted:

> Our members are greatly concerned that if agreements to lease are removed from the definition of 'unencumbered' in the Act, this will cause a significant shift away from the valuation of land to the valuation of business activities associated with land and will undermine the consistency and defensibility of valuations under the Act.[95]

Colin Biggers & Paisley Lawyers stated in their submission:

> (a) the amendment is an attempt to circumvent the decision of the Court of Appeal in *Chief Executive, Department of Natural Resources and Mines v Kent Street* [2009] QCA 399 (and subsequent decisions by the Land Appeal and Land Courts that have applied that decision);

87 Explanatory notes, p 9.

88 See submissions 5, 6, 29, 45, 46, 47, 49 and 50.

89 Submission 6, pp 7-8.

90 Submission 29, p 4.

91 See for example *Kent Street Pty Ltd & Ors v Department of Natural Resources and Mines* [2008] QLAC 221 (the Pacific Fair case)

92 See submissions 5, 6, 46 and 51.

93 Submission 45, p 2

94 See Submission 45, p 2 and Submission 47, p 2.

95 Submission 47, p 5

(b) the amendment will be unlikely to provide certainty about the approach to be taken to agreements for lease (thus reverting back to the situation that confronted landowners and the courts prior to the decision in *Kent Street,* the repeal of the *Valuation of Land Act* and enactment of the Act);
(c) the amendment may lead to an inconsistent approach being taken by the Valuer-General;
(d) the amendment may mean that there is less transparency in the operation of the Act; and
(e) valuations will actually be less defensible as a result of the change.[96]

2.3.2 Departmental response

The department noted a distinction between leases, mortgages and easements as examples of the ordinary legal meaning of encumbrances, and agreements for lease which is:

> … a contractual arrangement and would not fit within the definition of an encumbrance. An agreement for lease would not encumber the title to the relevant land. It is simply a contractual right to the grant of a lease in the future.[97]

The department submitted that the amendments 'ensure that agreements for lease can be considered on a case-by-case basis as is the existing practice and remove the disconnect between the ordinary understanding of encumbrance and the provisions of the Act'.[98] In response to submitter concerns that the proposal conflicts with the decision of the Queensland Court of Appeal's Pacific Fair case,[99] the department submitted it does not, stating:

> The existence of any intangible improvements on the land and their added value, if any, must not be considered when determining the value of land. This practice does not rely on nor require that intangible improvements are listed under section 17, it is noted that there are other intangible improvements (other than agreement for lease), which are not referenced in section 17, including development approvals, and infrastructure credits.[100]

The department also pointed out that the LV Act is the only mainland Australian legislation that includes an agreement for lease in the definition of unencumbered, and cited relevant New South Wales, Victorian, and South Australian examples.[101] The department submitted it is evident 'that most other jurisdictions do not explicitly specify agreement for lease in their legislation and this deficiency has not led to extensive disputes'.[102]

Committee comment

There is fundamental disagreement between the department and the large majority of submitters about the Bill's proposal to remove agreements for lease from the definition of unencumbered land. It does appear that the justification for this change had not been clearly put by the department, notwithstanding the department's advice to us about bringing the Queensland jurisdiction into line with the approach in other Australian states.

We note that many of the objecting submitters are professional valuers and legal practitioners, with experience and technical knowledge about this issue far superior to committee members. We also note that none of the objecting submitters reference the situation in other Australian states or any

96 Submission 51, p 4

97 Department of Resources, correspondence, 16 October 2023, p 14.

98 Department of Resources, correspondence, 16 October 2023, p 14.

99 *Kent Street Pty Ltd & Ors v Department of Natural Resources and Mines* [2008] QLAC 221

100 Department of Resources, correspondence, 16 October 2023, p 15.

101 *Valuation of Land Act 1916 No 2 (NSW), Valuation of Land Act 1960 (Vic), Valuation of Land Act 1971* (SA).

102 Department of Resources, correspondence, 16 October 2023, p 16.

court decisions from those jurisdictions which might indicate that the way other Australian states treat agreements for lease in relation to land valuations is problematic. While there is disagreement between submitters and the department about the relationship between this proposed amendment and the decision of the Queensland Court of Appeal in the Pacific Fair case, we are not lawyers and therefore cannot offer a view. What we can observe is that it appears that the inadequate level of consultation impacting this Bill, which we have already observed earlier in this report, might explain why the positions of the objecting submitters and the department are far apart on this issue.

If it has not already done so, during further consideration of this Bill, the department may wish to share with relevant stakeholders their formal legal advice regarding whether this proposal is inconsistent with established Queensland precedent about the treatment of agreements for lease during valuations of land.

2.4 Exceptions to the requirement for annual valuations

Clause 26 of the Bill seeks to amend the LV Act to clarify that an annual valuation may only be made when there is an existing statutory purpose for that valuation. If there are no lands in a local government area for which a valuation is required, an annual valuation is not required.

Clause 27 of the Bill gives the VG discretion not to make an annual valuation because of unusual circumstances when it is considered not appropriate to do so. The explanatory notes state:

> Whilst it may be possible, there are circumstances where it would not be appropriate. For example, it may not be appropriate to make an annual valuation because the occurrence of an unusual circumstance, such as a flood, may have affected the value of the land. In this scenario, it could not necessarily be said that the valuation was 'not possible'. Unusual circumstances is a defined term in the Land Valuation Act.[103]

The term 'unusual circumstance' is currently defined in the LV Act to include civil disturbance, extreme climatic conditions, industrial action, changes in the way valuations are made and computer failure.[104]

2.4.1 Submitter views

Six submitters commented on this proposal.[105] The submission from CCPA, also on behalf of Savills and CBRE, stated:

> Whilst it may seem innocuous, changing the wording relating to valuation of land that has been recently affected by flood from it not being "possible" to value the land to it not being "appropriate" is concerning. There appears to be no reason for the change.
>
> In what circumstances would it not be appropriate to take into account flooding and who decides what is appropriate.
>
> In early 2011 there was a major flooding event in Brisbane, the impact of which was taken into account in the valuation as at 1 October 2010. It was possible to do so. Another major flooding event occurred in Brisbane in February 2022. Following the 2022 flood event in 2022, the VG decided it was not appropriate to incorporate into the 1 October 2021 valuations using the argument that the flooding was not known at the relevant date. This issue was known to be so controversial that two senior representatives of the VG attended our individual offices in an attempt to personally explain the reasoning adopted by the VG.
>
> We fear this may result in owners who have suffered loss in value as a result of a future flooding event not being provided with appropriate rating and relief of Land Tax and Land Rent as would be

[103] Explanatory notes, p 12.

[104] *Land Valuation Act 2010*, Chapter 11, Schedule, Dictionary.

[105] See Submissions 1, 6, 27, 47, 50 and 51.

> reflected by a Site Value that took the flooding in to account. We fear that "not appropriate" could be extended to it would result in a fall in the Site Value.[106]

The PCA submitted that land affected by flood should be valued based on post-flood impact, which is the case under the current LV Act. The PCA was concerned that this proposal to replace the word 'possible' with 'appropriate' potentially imports an opinion on behalf of the VG that 'it is not appropriate to make a decision that has the effect of reducing the land tax payable by the owner'.[107]

The QLS also opposed the proposal on the basis that unless impossible, annual valuations should be issued to capture substantial market fluctuations (including flooding) which otherwise would not be captured until a subsequent valuation was issued.[108] QLS additionally notes that 'unusual circumstances' is inclusively defined within the LV Act which already provides considerable flexibility for the VG to decide whether to exempt an annual valuation requirement without this change.

> QLS is apprehensive that these amendments may propose to enable or justify a decision not to undertake annual valuations where it is administratively inconvenient, or to avoid possibly contentious valuations. We understand this is not the intent of the amendment but note that the widening of this provision may allow for such discretions to occur.[109]

Colin Biggers & Paisley Lawyers made submissions in a similar vein.[110]

The LGAQ was also unsupportive of this proposal, recommending sufficient resourcing for the VG to undertake regular and reliable valuations annually. LGAQ also submitted that the definition of 'unusual circumstances' should be expanded to include natural disasters, and that the VG should not be able to decide to not make an annual valuation if an annual valuation has not been made for the relevant local government area in the previous 2 years.[111]

2.4.2 Departmental response

The department acknowledged that the current LV Act empowers the VG to decide not to make an annual valuation 'after considering a market survey for a local government and the results of consultation with the local government and appropriate local or industry groups'.[112] Nonetheless, the department submitted that the proposed word change is necessary because there are circumstances in which a valuation might be possible but not appropriate, for example, where an unusual circumstance (such as flood) occurs after the statutory valuation date of 1st October but before the valuation issues the following 31st March.[113]

In response to the concern raised by the QLS and Colin Paisley & Biggers Lawyers that the proposal would allow the VG to not make a valuation where it was administratively inconvenient, the department submitted:

> This provision can only be used where: (1) there has been an unusual circumstance; and (2) is it not appropriate to make a valuation. Appropriate is not a defined term and takes its ordinary meaning – suitable or proper in the circumstance. This should be read in the context of the provision, that it would need to meet the existing threshold and safeguard of being an unusual circumstance…

106 Submission 6, pp 12-13.

107 Submission 47, p 10.

108 Submission 45, p 3.

109 Submission 45, p 3.

110 Submission 51, p 5.

111 Submission 27, p 6.

112 Department of Resources, correspondence, 16 October 2023, p 17.

113 Department of Resources, correspondence, 16 October 2023, p 17.

> The matters of 'unusual circumstances' in the definition are significant events and administrative inconvenience or avoidance of possibly contentious valuations would not satisfy the threshold. A significant event consistent with those in the definition would be justifiable and reasonable.[114]

In response to the LGAQ recommendation to expand the definition of unusual circumstances to include natural disasters, the department submitted:

> The definition of unusual circumstances does not include natural disasters, though it does include extreme climatic conditions. Note however, it is not an exhaustive list. Including natural disaster in the definition of unusual circumstances would complement the definition but its absence does not preclude the Valuer-General from using this power in the case of a natural disaster.[115]

The department is unsupportive of the LGAQ recommendation to mandate a valuation where one has not happened in the relevant local government area for the previous 2 years, on the basis that it would lock all local governments into a minimum 2-year valuation cycle which in some regional and remote areas is not a sufficient timeframe to provide a body of market sales evidence that demonstrates a market trend, resulting in a waste of government resources.[116]

Committee comment

The position of submitters suggests that there is not sufficient justification for this proposal given existing provisions in the LV Act:

(a) for the VG not to undertake annual valuations in circumstances where a market survey is available and after consultation with local government and other stakeholders, and

(b) which inclusively define 'unusual circumstance' in the Act providing the VG with considerable flexibility.

Given submitter concerns about consultation that we have so far observed in our report, this issue is one that could be better ventilated during further consultation in support of this Bill.

Recommendation 4

The committee recommends that the Minister should encourage the department to undertake sufficient, substantive consultation when implementing this Bill, during which the rationale for the change proposed in Clause 27 of the Bill should be communicated.

2.5 Objections to land valuations

The Bill proposes several changes to the process of making an objection to a land valuation. Currently, the LV Act provides for objection conferences to resolve an objection through an exchange of information to support the VG in making a decision on the objection that is lodged. The Minister stated:

> Queensland's objection framework is best practice. Over the past five years, the objection rate has been between only 0.2 and 0.5 per cent of all land valuations issued annually. However, there are opportunities for more objections to be resolved before proceeding to the Land Court. Independently chaired objection conferences have proven to be an effective way of resolving these objections. Over the past five years, on average, over 75 per cent of objections eligible for a conference were resolved prior to proceeding to the Land Court.[117]

[114] Department of Resources, correspondence, 16 October 2023, p 18.

[115] Department of Resources, correspondence, 16 October 2023, pp 17-18.

[116] Department of Resources, correspondence, 16 October 2023, p 18.

[117] Queensland Parliament, Record of Proceedings, 23 August 2023, p 2291.

The Bill proposes the following changes related to objection processes:

- Clause 34 varies the initial assessment decision by removing the concept of a 'partially compliant objection'
- Clause 38 removes the current requirement in the LV Act that the VG must offer an objection conference for valuations of over $5 million. Instead, clause 37 provides that the VG may invite an objector to participate in an objection conference if an objection is properly made and the objection has not been decided by the VG
- Clause 44 encourages parties, and their agents and representatives, to share relevant information prior to an objection conference to improve conference outcomes
- Clause 47 enables the conference chairperson to seek relevant disclosure from parties, their agents and representatives during or after the objection conference
- Clause 49 expands the chairperson's function to prepare a written report about the conference
- Clause 52 provides the VG with the power to request further information from a party, their agent or representative, including a requirement for all objectors to provide an alternate valuation
- Clause 54 allows the VG to take into account any matter it considers appropriate when deciding an objection.

The form submitters and various other submitters expressed concerns regarding the impact of the proposed changes, including increased costs to landowners flowing from more onerous disclosure processes, and the potential for less objection conferences to be offered by the VG, leading to more objections having to be heard by the Land Court of Queensland.[118] The Valuers Registration Board considers that the changes to the independently chaired objection conference process and the removal of the without prejudice coverage would benefit from greater consultation and understanding of how this will work.[119]

The department submitted:

> These changes are designed to support parties to engage in the objections process. They will provide opportunities to resolve objections through the most efficient means, delivering efficiencies for landowners and the Valuer-General. Timeliness is important, because when objection decisions are delayed and the outcome is a lesser land valuation, landowners can overpay their land tax and rates, requiring local governments to refund the difference, sometimes for multiple years.
>
> Statistics in relation to the 2023 annual valuation program (as of October 2023) demonstrate that the statutory land valuation process under the Act results in accurate valuations.[120]

2.5.1 Initial assessment decisions

For an objection to be properly made, the LV Act currently requires only one objection ground to be validly made out. If an objection contains at least one ground that has not been properly made, the VG is presently required to issue a correction notice and wait 28 days before deciding the objection.

[118] See submissions 51 and 54.

[119] Submission 18, p 2.

[120] Department of Resources, correspondence, 16 October 2023, p 19.

The Bill removes the requirement for the VG to issue a correction notice for a partially compliant objection. It proposes to require objectors to establish at least one ground and supply supporting information for each ground.[121]

2.5.1.1 Submitter views

The proposal is not supported by CCPA (also on behalf of Savills and CBRE), Harvey Norman, and the PCA. These submitters are concerned that the intent of this proposal is to require all objection grounds cited by an objector to be compliant. CCPA stated:

> The clerical staff in the SVS who make the decision whether an objection is properly made do not have the technical skills to understand an argument that may assist a qualified valuer to understand the principles being put for consideration. The proposal seems to be if those staff believe there is a non-valid ground in an objection, then the objection will be deemed 'not properly made'.
>
> The proposal potentially leads to a point that the SVS valuer who would otherwise decide whether to amend a valuation will no longer get to even see the objection. This could lead to more matters in the Land Court or challenges in the Queensland Civil and Administrative Tribunal (QCAT).[122]

The QLS echoed the concern that the proposed drafting to remove the provisions regarding partially compliant objections could have the effect that:

> If the information is not provided in respect of each of the objection grounds, the objection is not properly made. That would be the case even if there was only one non-compliant ground.[123]

2.5.1.2 Departmental response

The department stated the proposal would not result in any change to internal practice regarding properly made objections; rather, it will streamline processes by reducing the number of correction notices that need to be issued.[124]

The department pointed to existing requirements in the LV Act requiring the objector to provide relevant grounds and supporting information for objections:

> If there is sufficient information for one ground an objection will be properly made…
>
> The proposition that this requirement increases the burden of making an objection is not supported by objection statistics. More than half of objectors with valuations below the $750,000 threshold already provide an owners estimate of value.
>
> Requiring objections to include the valuation sought for the land is intended to support earlier resolution of objections by allowing the parties to understand the variance of the respective positions at the outset of the process. Notwithstanding that this is an added requirement for objections below the $750,000 threshold, this change is intended to reduce the overall burden of objections by resolving objections earlier and avoiding appeals to the Land Court.[125]

Committee comment

Submitters are concerned about the ramifications of the current proposal as drafted. There is concern that if one ground advanced for an objection is not valid, then the whole objection application would be deemed not valid, or alternately if there are insufficient grounds advanced initially to support an objection, then the objection is deemed not properly made. We note the advice from the department that the proposal only requires sufficient information for one ground to ensure an objection is

121 Explanatory notes, p 14.

122 Submission 6, p 10.

123 Submission 45, p 4.

124 Department of Resources, correspondence, 16 October 2023, p 19.

125 Department of Resources, correspondence, 16 October 2023, pp 19-20.

properly made. However, the proposal would benefit from clearer drafting to remove the potential for doubt and clarify the proposal's intent as indicated by the department.

We also note a potential typographical error with the drafting of clause 34 and suggest the department may wish to consider inserting 'whether' or 'if' after '… and decide (the initial assessment decision)'.

2.5.2 Required content of objections

Clause 32 proposes to change the content required in an objection by applying a requirement to supply an alternate valuation onto all objectors, not just those with a valuation of more than $750,000, as is presently the case in the LV Act. This clause also removes site improvement deductions as a ground of objection – this issue is considered in more detail later in the report.

2.5.2.1 Submitter views

Harvey Norman stated that the proposal to require all objectors to supply an alternate valuation would:

> … bring forward the cost of making an objection process and introduce a 'litigation' element to the objection process given the early disclosure of material. This increases the burden of making an objection onto the landowner. This is expected to involve landowners providing an alternative valuation and will result in a significant increase in the cost of preparing any objection as it would effectively require:
>
> - a professional valuation be obtained which deals with the grounds of objection; and
> - that the valuation set out the analysis of how any information, which a landowner proposes to rely upon, affects the valuation.
>
> This onerous requirement further disadvantages the average person in making a comprehensive and informed objection and results in a significant cost burden.[126]

The QLS recognised that a requirement for objectors to state what valuation is sought will help all parties to understand how far apart the respective positions are in the valuations.[127]

> We note that it is principally important that this process is uncomplicated and accessible for unrepresented owners of lower value properties (typically residential property owners), given it is unlikely they will be relying on a formal valuation. It is vital that objectors plainly comprehend the procedure for both nominating the valuation, and amending their nominated valuation….
>
> QLS also highlights the compounding impact of the amendments for unrepresented and inexperienced landowners where they will be subjected to an added obligation to specify an alternative valuation, and a prospective obligation to provide additional evidence at the request of the valuer-general (or risk the objection expiring).[128]

2.5.2.2 Departmental response

The department submitted that the existing $750,000 threshold before a landowner is required to supply an alternate valuation is arbitrary and unreflective of contemporary land values:

> These owners will [now] be required to provide an alternate valuation. This will help all parties to understand how far apart the respective positions are for the valuations, to better support an earlier resolution of the objection. This amendment will ensure that the same requirements apply for all objections. More than half of objectors with valuations below the $750 000 threshold already elect to provide an owners estimate.
>
> Where the Valuer-General agrees with an owner's alternate valuation, there are no further appeal rights. If the Valuer-General does not agree, the landowner has the right to appeal the decision to

[126] Submission 29, p 3.

[127] Submission 45, p 4.

[128] Submission 45, p 4.

> the Land Court. The landowner also has the right to amend their alternate valuation at any time up until the Valuer-General decides the objection...
>
> If the alternative valuation is not justified by the supplied grounds, the Valuer-General's delegate can contact the landowner to gather more information to support their objection, prior to making a decision.
>
> Clear and straightforward application materials will be developed to support all landowners (including unrepresented landowners) in providing their nominated valuation.[129]

2.5.3 Removal of $5 million threshold to offer objection conference

Clauses 37 and 38 of the Bill provide that landowners with valuations of greater than $5 million will no longer automatically be offered an objection conference, and it will be at the discretion of the VG as to whether a conference is held. The explanatory notes raise a potential breach of FLP regarding the principle of natural justice but justify it on the basis that removing the $5 million threshold ensures the most appropriate mechanism is used to gather all the evidence required to make an objection decision regardless of the quantum of a valuation.[130] Further, the amendment would 'enable the allocation of resources to offer conferences based on complexity and promote fair hearing rights to a different group of objectors'.[131]

The statement of compatibility additionally notes:

> Where circumstances do not warrant the expense of an objection conference, the valuer-general can continue to offer an informal conference to the landowner. Objectors maintain their appeal rights and if the objector does not agree with an objection decision, they may appeal to the Land Court.[132]

2.5.3.1 Submitter views

Submitters held the view that the LV Act's current process for independently chaired objection conferences works well and is not in need of review.[133] Removing the automatic right to an objection conference for valuations over $5 million is seen to potentially direct more matters to the Land Court for resolution should the VG decide not to offer a conference.

AgForce submitted:

> Rural valuations are complex valuations with a range of factors that can influence the valuation. A landholder who has a valuation of $5 million is paying a significant amount of rates and rent if leasehold. AgForce strongly believes that the department should automatically offer an independently chaired conference to valuations over $5 million to ensure these objections have been heard fairly by someone outside of the department….
>
> AgForce feels that the removal of this provision will result in significant increases in the lodging of appeals to the Land Court. Furthermore, AgForce is concerned that independently chaired objection conferences will only be offered at the discretion of the Valuer-General.[134]

Grant Jackson and FA Pidgeon & Son P/L submitted:

> This proposal is a clear breach of the FLP with no basis to support the change. There is no detail provided for what is a "less complex valuation", or "Where circumstances do not warrant an independently chaired conference..". The current ICC for objections in my experience is one of the better systems in Australia. It provides government and the landowner with a feeling of

129 Department of Resources, correspondence, 16 October 2023, p 22.

130 Explanatory notes, p 5.

131 Explanatory notes, p 5.

132 Statement of compatibility, p 3.

133 See, for example, submissions 6, 22, 29, 30, 31 and 51.

134 Public hearing transcript, Brisbane, 9 October 2023, p 8.

> independence and justice. Objection review systems in some other states, as was previously the case in Queensland, are infected with a lack of independence, VG influence, compliant valuers both within government and contract valuers to government which leaves landowners and the public with a feeling of a compromise of natural justice. The current ICC is a respected system in Australia which has been considered by other jurisdictions. To walk back from a well-respected system to a compromised approach, determined solely by the VG without oversight or rigor is a backward step and clearly an impact to natural justice.[135]

2.5.3.2 Departmental response

The department advised:

> It is not in the Valuer-General's interest or objectors' interests to see more objections needing to be appealed to the Land Court…
>
> Criterion will be developed to inform the Valuer-General's decision to offer a conference and will be based on a broad range of factors such as complexity of planning requirements rather than solely on the valuation amount.
>
> Developing new criterion provides the opportunity to establish a process that more accurately identifies complex issues or other objections that will benefit from the independently chaired objection conference process. This would be likely to include significant rural valuations which are generally considered complex.
>
> For other, less-complex valuations, informal / local conferences will continue to be offered where appropriate. These conferences are usually convened in a departmental office between the valuer responsible for the valuation, a delegate of the Valuer-General and the objector. Informal conferences do not have the benefit of an independent chairperson but are less costly and have less administrative overhead. Informal conferences provide an opportunity for an objector to explain the grounds of their objection and for the valuer to explain how the valuation was determined. They are conducted with as little formality as possible but provide both parties an opportunity to speak to the valuation. These informal conferences have proven effective at resolving objections.[136]

Committee comment

While the proposal to remove the automatic right to an objection conference for valuations over $5 million does raise issues of natural justice, we consider any departure from fundamental legislative principles is sufficiently justified in the explanatory notes. The amendments are designed to streamline the statutory valuations framework and while there are instances where individuals may be subjected to changed processes, there do not appear to be any fundamental changes to their right to be heard or significant limits on procedural fairness. Importantly, there remains avenues for internal and external review for decisions made under the LV Act.

2.5.4 Invitation to participate in an objection conference

The proposed clause 37 sets out when the VG may invite an objector to participate in a conference. It provides that the VG may invite an objector to participate in an objection conference if an objection is properly made and the objection has not been decided by the VG, regardless of the amount of the valuation.[137] The invitation may be by oral or written communication.

2.5.4.1 Submitter views

The QLS, in a submission supported by the PCA, suggested this proposal should be amended to ensure that an owner may request an objection conference in all cases, and that the decision to offer or not offer a conference is made by the VG with reference to published criteria. These measures should be

[135] Submission 30, p 1 and submission 31, p 1.

[136] Department of Resources, correspondence, 16 October 2023, pp 23-24.

[137] Explanatory notes, p 14.

prescribed in the LV Act to provide a suitable level of transparency and weight to the criteria.[138] The QLS continued:

> We consider the core issue, whether or not the threshold is retained, is one of transparency about the discretion of the valuer-general to offer or not offer a conference. Further, if an owner requests a conference but the valuer-general declines, the owner then needs to understand their options. If internal review is not provided for, then the owner needs to be provided with clear information about their right to challenge the decision in the land Court. Additionally, if not all objectors are provided with the opportunity to request a conference, the department should publish information about the criteria the valuer-general considers when refusing to hold a conference.[139]

2.5.4.2 Departmental response

The department stated the proposal to allow landowners to request an objection conference would unnecessarily increase the number of objection conferences, where these objections could be resolved in other more efficient ways.[140]

> Where circumstances do not warrant an independently chaired conference, such as for less complex valuations, or where it is considered a conversation with the landowner may lead to a resolution, the Valuer-General can continue to offer an informal / local conference to the landowner. This enables a landowner to clarify or gather more information about their valuation from a senior Resources' valuer who may also undertake an inspection of the land. Landowners maintain their appeal rights and, if the landowner does not agree with an objection decision, they may appeal to the Land Court.[141]

2.5.5 Disclosure for agents and representatives and effects of non-disclosure

Clauses 44, 47 and 51 of the Bill create additional disclosure requirements for parties, and extend these obligations to include 'agents' and 'representatives' of the parties. The explanatory notes observe a potential breach of FLP by these clauses regarding appropriate protection against rights and liberties regarding the right to privacy, as the information might include personal information. This potential breach is justified because requirements to disclose are consistent with the purpose of an objection conference and the onus an objector has of proving their case.[142] Further:

> the scope of information required is not arbitrary and is restricted to that which is necessary to assist in the resolution of an objection. The information is only used for a legitimate purpose and is not made publicly available.[143]

The statement of compatibility acknowledges that requests for further information by the chairperson (clauses 44 and 47) and the VG (clause 51) may include personal information. This will limit individuals' right to privacy. The statement of compatibility concludes that the limits are reasonable and can be demonstrably justified in a free and democratic society because requests for information will 'reduce errors in decision-making and ultimately reduce the number of appeals to the Land Court'.[144] However, the statement of compatibility does not acknowledge the effect of these provisions on landowners' 'agents' and 'representatives'. Requests for information by the VG and the chairperson from parties' agents or representatives will limit these individuals' rights to privacy. 'Agent' is defined in the LV Act to include persons who have 'for someone else (the principal) the lawful control or disposal of any

138 Submission 45, p 4.

139 Submission 45, p 5.

140 Department of Resources, correspondence, 16 October 2023, p 25.

141 Department of Resources, correspondence, 16 October 2023, p 25.

142 Explanatory notes, pp 5-6.

143 Explanatory notes, pp 5-6.

144 Statement of compatibility, p 4.

land belonging to the principal, or the lawful control, receipt of disposal of any rents, issues or proceeds gained from the principal's land'.[145] 'Representative' is not defined in the LV Act or Bill.

Clauses 44 and 47 of the Bill also allow the chairperson to decide not to hold, or to end, a conference, if parties, or their agents or representatives, do not comply with a requirement to produce requested documents or give further information. If a conference is not held, or is ended, parties' right to a fair hearing will be limited. The statement of compatibility assumes that the right to a fair hearing applies to objection conferences. In the event that an objection conference is ended, the statement of compatibility states:

> The valuer-general can still decide the objection and would be able to consider any information provided during disclosure prior to the conference being held and the written conference report, that the chairperson is required to provide regardless of whether a conference is ended or not. Landowners will maintain their appeal rights and if the landowner does not agree with an objection decision, they may appeal to the Land Court.[146]

2.5.5.1 Submitter views

Various submitters raised concerns about the extension of disclosure requirements to agents and representatives.[147] Grant Jackson and FA Pidgeon & Son P/L submitted in respect of this additional power for the chairperson:

> The proposal to extend the power to information of a third party is unreasonable and in practicality will not be successful. It is unreasonable to expect a landowner to have control over other parties who may hold information not necessarily in their possession. It is instructive that the proposal is directed solely to the landowner, implying that government disclose all information in an open and transparent manner. That is inconsistent with my experience and involvement. The proposal invites a "fishing expedition" approach to be adopted. That should be avoided. It can only lead to dispute over what is deemed relevant, what a party has control over and access to. A clear breach of the FLP. [148]

The PCA submitted:

> While it may be reasonable for an objector to provide relevant information in its possession, this does not extend to information held by an agent or representative that does not belong to the objector. A lawyer, valuer or other professional acting as an agent or representative for an objector will typically owe a duty of confidentiality to individual clients and in the case of lawyers, may owe further duties in relation to legal professional privilege.
>
> Agents representing owners are often in possession of confidential information relating to different clients. That information must be kept confidential from other clients. For instance, an agent may have access to turnover information on different businesses for different clients who are in competition. The clients have confidence in the agent not to disclose confidential information. The proposed changes are such that for an objection to be considered the agent may be compelled to provide turnover information relating to both clients.
>
> There are well understood and utilized professional codes of conduct in place that outline what information can and cannot be disclosed by valuers. This proposed changed is a departure from this and likely to put the profession in an ethical and legal predicament.[149]

[145] Statement of compatibility, p 2.

[146] Statement of compatibility, p 6.

[147] See submissions 6, 7, 9, 10, 30 and 31.

[148] Submission 30, p 1, and Submission 31, p 1.

[149] Submission 47, p 9.

A letter signed by 12 senior Queensland valuers stated:

> [they are] extremely concerned by the overreaching provisions regarding to information requests that extend to demanding information not necessarily relating to a particular client, but another client of the firm thus breaching our obligations of confidentiality for all clients.[150]

The QLS recommended that Clauses 44 and 47 be redrafted to ensure that the chairperson may only request further information relevant to the valuation and/or objection.[151]

2.5.5.2 Departmental response

The department stated:

> Owners engage representatives or agents to prepare an objection on their behalf because they do not have, the time, skill, or desire to object themselves. An owner relies on their agent or representative to establish suitable grounds and provide evidence that support those grounds. The owner may or may not possess the information that their agent or representative seeks to rely on. It is reasonable for a representative or agent [to] disclose any evidence that supports their alternate valuation. The disclosure obligations only apply to relevant documents in the custody, possession, or power of the objector, representative or agent. Ensuring all relevant documentation is disclosed prior to conduct of a conference ensures parties participate in good faith.[152]

The department additionally noted:

> The request is limited to the extent reasonable to facilitate a resolution. Examples of possible further information might include contractual information in relation to the subject property and / or sales evidence. The information is only used for a legitimate purpose and is not made publicly available. The provision does not compulsorily require that the information be disclosed. As such, an agent representing owners can choose not to comply.
>
> It is reasonable to extend the request for information to all parties involved in the objection, where information in the possession, custody or power of the agent or representative is being relied on to support the objection grounds. An agent or representative should consider the appropriateness of taking on that role where there could be a conflict of interest with another client/s….
>
> If a party, or an agent or representative of a party, cannot disclose the information due to its confidential or private nature, the chairperson may take this into consideration and amend the request. The confidential and / or private nature of the information will be dealt with in accordance with existing legislative frameworks relating to privacy and confidentiality.[153]

Committee comment

Neither the LV Act nor the Bill clarify whether the use of 'representative' in clauses 44, 47 and 51 means personal representative or legal representative. This should be clarified to understand the scope of who might be bound by these additional disclosure requirements, notwithstanding the limits on the human rights of any agent or representative that we have identified below.

We note that the statement of compatibility does not acknowledge the effect of these new disclosure provisions on a landowner's agents or representatives. The question of whether the limitation on agents' and representatives' rights is reasonable and demonstrably justified is separate to the question of whether the limitation on parties' rights is reasonable and demonstrably justified. Therefore, the statement of compatibility should have considered the factors in section 13(2) of the *Human Rights Act 2019* (HRA) separately in relation to agents and representatives.

150 Submission 28, p 3.

151 Submission 45, p 5.

152 Department of Resources, correspondence, 16 October 2023, p 20.

153 Department of Resources, correspondence, 16 October 2023, p 26.

One of the factors in section13(2) of the HRA is whether there are less restrictive and reasonably available ways to achieve the purpose of the proposal. Limiting the disclosure obligations in clauses 44, 47 and 51 to parties (and not extending this obligation to parties' agents and representatives) would not compromise the legislative purpose because if a document is relevant to the application, the parties would likely be capable of obtaining it so that their disclosure obligations can be met.

In the event that an agent or representative is in possession of a document that is relevant to a valuation (clause 44) or objection (clauses 47 and 51), and the party is not able to obtain that document, a provision that compelled production of specific documents would be sufficient to achieve the purpose.

Since non-parties have no interest in the proceedings, it would not be reasonable to limit their human rights to the same extent as the parties to an objection. Any concerns about obtaining all the information relevant to a decision by a chairperson or the VG can be mitigated by the provision of a specific production clause in the LV Act. While we note advice from the department that the provisions do not compulsorily require that the agent or representative disclose the information, the result of non-disclosure is a notice from the chairperson that the conference will not proceed or will be ended. Since the requirement to produce documents or provide further information extends to parties' agents and representatives, it is possible that relevant documents and information may not be provided through no fault of the parties, resulting in a decision to not hold, or to end, an objection conference.

Further, there is no indication in clauses 44 and 47 as to how the matter will be resolved if a chairperson decides to not hold, or to end, an objection conference. The statement of compatibility indicates that in these circumstances, the VG can still decide the objection and the chairperson can still draft a report, and that a landowner may appeal to the Land Court of Queensland if they disagree with the decision. However, the practical effect of these clauses is that a landowner could have their access to an alternative dispute resolution pathway limited by the actions of a third party. This may not be a reasonable limitation on the landowner's right to a fair hearing. For these reasons, the committee unanimously makes the following recommendation.

Recommendation 5

The committee recommends the Minister should consider amending the Statement of Compatibility to address any potential breach of the human rights of agents and representatives by clauses 44, 47 and 51 of the Bill which apply requirements for disclosure by a party's agent or representative. If this breach is not reasonable or justified, the Minister should consider amending those clauses to remove the requirements for disclosure by agents and representatives.

Recommendation 6

The committee recommends the Minister should consider amending the Statement of Compatibility to address any potential breach of the human rights of parties by clauses 44 and 47 of the Bill which propose to allow the chairperson to decide not to hold an objection conference or to end an objection conference.

2.5.6 Chairperson's written report

Clause 49 of the Bill provides that a chairperson must provide a written report about the objection conference. This report may include the chairperson's opinion of any matter the chairperson considers appropriate. Clause 54 of the Bill then allows the VG to have regard to the written report in deciding the objection. The explanatory notes state:

> This amendment is intended to improve conference outcomes by expanding the functions of the chairperson to ensure that the chairperson has the powers necessary to facilitate the resolution of an objection. The report will inform the objector about matters relevant to their objection (e.g., merits) and may inform the valuer-general's objection decision.[154]

The statement of compatibility states:

> Providing a copy of the written conference report to both parties will assist to inform the objector about matters relevant to their objection and may inform the valuer-general's objection decision...
>
> The report only relates to the chairperson's opinion about agreed facts, the chairperson's assessment of objection grounds, the information provided by the parties, and the merits of the objection and recommendations about the valuation. The report will not reveal matters discussed by parties during the conference, so as not to upset the without prejudice nature of the conferences. The report will not interfere with the de novo court hearing.[155]

2.5.6.1 Submitter views

The QLS submitted that the chairperson's written report about the conference should not be admissible in any proceedings.[156] The PCA did not support the proposal on the basis that it is contrary to the role of the chairperson under the LV Act:

> As is plainly acknowledged by the Bill and Explanatory Notes, an objection is decided by the Valuer-General and not by the independent chairperson or parties reaching or negotiating an outcome at the objection conference.
>
> The view of the independent chairperson on the merits of the objection is irrelevant to the determination of the objection and is not binding on the parties. The imposition of a requirement on the chairperson to prepare a report addressing the chairperson's assessment of the objection grounds, the information provided by the parties, or the merit of the objection therefore serves no purpose and is of no utility.
>
> It is submitted that this unnecessarily and unreasonably imposes an onus burden on the chairperson without any practical benefit.[157]

2.5.6.2 Departmental response

In respect of the proposal to require the chairperson to prepare a written report, the department submitted:

> The report is intended to inform the objector about matters relevant to their objection and may inform the Valuer-General's objection decision. It will serve no further purpose. The report only relates to the chairperson's opinion or assessment of the agreed facts, the chairperson's assessment of objection grounds, other information provided by the parties, and the merits of the objection and any recommendations about the valuation. The report will not reveal matters discussed by parties during the conference, so as not to upset the without prejudice nature of the conferences.
>
> The report may inform the Valuer-General's decision and the objector's response to the Valuer-General's decision, whether to appeal or not. If the reasons for the objection decision provide greater clarity to the objector, there will likely be fewer appeals to the Land Court.[158]

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154 Explanatory notes, p 17.

155 Statement of compatibility, pp 4-5.

156 Submission 45, p 5.

157 Submission 47, pp 7-8.

158 Department of Resources, correspondence, 16 October 2023, pp 26-27.

Regarding the VG being able to consider the chairperson's written report, the department submitted the proposal:

> … will provide a stronger link between the objection made and the objection decision notice given. The amendment will also guide best practice and transparency of the Valuer-General's reasoning that is given in an objection decision notice. If the reasons for the objection decision provide greater clarity to the objector, there will likely be the need for fewer appeals. The report will serve to inform the Valuer-General if further information is required, before making a decision.
>
> One of the intentions of the chairperson's report is to provide advice to the Valuer-General particularly where agreement is reached between the parties as to an agreed valuation amount. The Valuer-General as the primary decision-maker under the Act should have access to the outcome of objection conferences to ensure the quality of each decision and the effectiveness of the independently chaired conference process in seeking resolution of the matter. As the power to decide objections does not rest with the independent chairperson a connection is required between the process and the decision to ensure merit of any subsequent decision.[159]

Committee comment

We note that Clause 49 allows the chairperson to include matters of personal opinion, as well as information provided by the parties, in their written report. This could encompass individuals' personal information, as well as any personal views of the chairperson that may be prejudicial to a landowner or a third party.

A chairperson's written report may limit the rights of parties, and other named individuals, to privacy and reputation, under section 25 of the HRA. The Bill is silent as to who will have access to the report and whether there are any limitations on what information can be included in a report. The statement of compatibility states that the report will not 'reveal matters discussed by the parties during the conference, so as not to upset the without prejudice nature of the conferences'; however, no legislative guidance is provided to the chairperson on these matters. In terms of whether there are less restrictive ways of achieving the purpose, as drafted, the Bill specifies no limitations on the inclusion of personal information or prejudicial information. A less restrictive alternative would be to include a provision which states that conference reports will be kept confidential, or will only be accessed by certain persons (e.g. 'the parties'). Reasonable steps should be taken to ensure that personal information, contained in the chairperson's written report including any information that is, or may be, prejudicial to a party, remains confidential.

We note that the report could inform the VG's decision regarding the objection. By implication, this means that such a report could form part of the materials available to the Land Court of Queensland when dealing with an appeal. We note the department submitted that objection conferences have a without prejudice nature. There appears to be some tension between these 2 notions that requires clarification. For this reason, the committee unanimously makes the following recommendation.

Recommendation 7

The committee recommends the Minister reconsiders clause 49 of the Bill to provide that the chairperson's written report must be kept confidential or can only be accessed by certain parties. Consideration should also be given to providing that any report made under this clause is without prejudice.

2.5.7 Admissibility of evidence

Clause 50 of the Bill clarifies that the inadmissibility of evidence of anything said during an objection conference in any proceeding does not apply to documents or information given to the chairperson

[159] Department of Resources, correspondence, 16 October 2023, pp 22-23.

before a conference is started or in response to the chairperson's request for further information. These documents or information are admissible in any proceeding, ensuring if a matter is appealed, the Land Court of Queensland has access to all information that informed the parties' positions.[160]

2.5.7.1 Submitter views

The QLS, PCA and LFRA all expressed reservations about this proposal. The QLS submitted:

> Evidence, including documents or information, produced at or for the purpose of the conference should either be protected by the operation of section 131 of the Act or an implied undertaking to only use the documents for the purpose of the objection. Further, the drafting should also refer to disclosure which occurs during a conference which is adjourned.[161]

The PCA submitted the distinction being applied between things said in a conference and documents produced in a conference is artificial and illogical. The PCA further submitted:

> … the justification provided in support of the change is misguided and misrepresents the role of the Land Court. In an appeal, the scope of the appeal is determined by the grounds of appeal filed by the objector. The 'reasons' for the decision of the Valuer-General on the objection, including the information provided in the course of an objection conference are not the subject of the appeal.
>
> Whether or not information provided in an objection conference is relevant to a ground of appeal in the Land Court will depend on the facts and circumstances of each individual case. There is a strong public policy interest in ensuring that anything said or done in an objection conference is inadmissible in any proceedings to promote the full and frank disclosure of information to assist the resolution of an objection.
>
> Providing that information or documents given in an objection conference are potentially admissible in any proceeding will likely deter parties from providing information that may be commercially sensitive or confidential in nature.[162]

2.5.7.2 Departmental response

The department submitted:

> Documents or information disclosed for a conference is not without prejudice, unlike evidence of anything said by a person in an objection conference, so as not to limit or affect the admissibility in a proceeding of a document or information given to the chairperson. This is consistent with the Land Court's application of the without prejudice principle, which only applies to the conference itself and not disclosure which occurs before a conference, and to the chairperson's request for information.[163]

Committee comment

We reiterate our previous observation that there appears to be some tension between the department's characterisation of objection conferences as without prejudice and amendments proposed in this Bill. This proposal to make documents produced during an objection conference legally admissible evidence appears to be a further point of tension that would benefit from clarification from the department during further consultation on the Bill.

160 Explanatory notes, p 17.

161 Submission 45, p 5.

162 Submission 47, pp 9-10.

163 Department of Resources, correspondence, 16 October 2023, p 27.

2.6 Separating deduction applications from objection applications

Clause 9 of the Bill proposes to change the way a deduction application may be made. They will no longer be a valid ground of objection; instead, the LV Act will require them to be made separately in an approved form. The explanatory notes state:

> This amendment will encourage landowners to make deduction applications as soon as practical following the making of site improvements when required documentary evidence is readily available. This will avoid information being lost or misplaced while waiting for the next valuation to be issued which may be some years after works are completed.
>
> Further, lodging a deduction application with an objection confuses an administrative matter with the making of a valuation. While a deduction for site improvements may reduce (adjust) a valuation, it is a separate process and does not affect how the (unadjusted) valuation is determined. There are no efficiency gains in coupling its consideration with an objections process and, in some cases, it can delay an objection decision while the accompanying evidence is being assessed.[164]

Clause 57 of the Bill provides internal review rights and external review to QCAT.

The explanatory notes state that this proposal might breach FLP regarding the principles of natural justice because the proposal removes an objection right; however, the proposal is necessary to decouple a deduction application (an administrative matter) from an objection process which is a separate process. Further, the explanatory notes state the amendment will lead to a more efficient and timely resolution of applications.[165]

2.6.1 Submitter views

Some submitters, including the form submitters, raised concerns that this proposal would increase process steps and costs for landowners because separate applications would be required for a deduction and objection.[166]

Timing of applications was also a theme of submitter concerns. The PCA submitted:

> One of the simpler methods of making an application for a DSI [deduction for site improvements] is to do so at the time of making an objection or simply as the sole ground for objection. There seems to be no valid reason why this avenue is to be removed. Whilst the costs associated with improvements to the land are a consideration, it is the value the improvements add to the land that is the allowance. It is value related and, the value often has regard to the Site Improved Value first. The added value is the difference between the Site Value and the Unimproved Value. Therefore, the two are inextricably tied together and therefore should remain so.[167]

CCPA, also on behalf of Savills and CBRE, submitted that deduction applications only apply to the next valuation that is issued for the local government area, which may have been reasonable when the valuation was made annually but that is no longer the case:

> The VG has already announced that valuations will not issue as at 1 October 2023 for effect from 30 June 2024 in a number of LGA's including Brisbane and Logan. For owners in those LGA's recently completed improvements to the land will not be considered un□l the VG decides to next value those LGA's.
>
> The current provision is that a DSI may be lodged as part of an objection against the Site Value. This opportunity is being removed and the DSI must be separately lodged. The timing of making an

[164] Explanatory notes, p 9.

[165] Explanatory notes, p 4.

[166] See, for example, submissions 23, 29, 51, 53 and 54.

[167] Submission 47, p 5.

> application is therefore critical. There is encouragement for the SVS to inflate a Site Value before making the DSI application.[168]

Harvey Norman agreed with the idea that landowners will receive no benefit from early submission of the deduction for site improvements (DSI).[169]

The issue of appropriate timing for a deduction application is additionally raised by the PCA. The PCA submitted that it is apparent that the underlying reason for this amendment is to facilitate the VG being encouraged to amend the site value based on information being provided in the DSI before making the deduction for site improvements and thus transparently making the adjustment. It is therefore important that both the site value that applies before the DSI is applied and the DSI can be considered concurrently.[170]

2.6.2 Departmental response

Regarding submitter concerns about the decoupling of deduction and objection applications, the department submitted:

> A DSI decision is primarily administrative and is separate to the valuation of the land. While the outcome of a DSI will impact the taxable and rateable quantum of the valuation, it is a separate decision. A DSI may reduce (adjust) a valuation but does not affect how the (unadjusted) valuation is determined. There is no efficiency in considering it as part of the objections process. Nor is there efficiency in the Land Court considering a DSI in conjunction with a valuation objection.
>
> Often DSI applications are not supported by sufficient evidence, or the supporting evidence requires technical analysis to discern how it supports the claim. This often means unnecessarily lengthy exchanges with the Valuer-General to understand what is being claimed, delaying the application decision or the objection decision where the DSI is lodged as part of an objection.[171]

The department also disputed that the proposal will increase costs to landowners, as it makes no change to the substantive requirements of a DSI application and charges no application fee. The department maintained there will be no impact on landowner rights or increased regulatory burden.[172]

In response to the PCA submission about the need to consider both applications concurrently, the department submitted:

> In theory, the Valuer-General increases the site value of a property to consider the added value of these improvements as soon as these improvements are made. In practice, the Valuer-General may not become aware that improvements have been made until a deduction for site improvement application is made or when a valuer inspects the property, for example as part of the annual valuation program….
>
> The Valuer-General must decide to grant (including partially) or refuse each deduction for site application made. If the site improvements subject of the application had not been included in the existing valuation a new maintenance valuation (under section 95) will be issued allowing for the new improvements and adjusting the valuation by the added value of the site improvements. The landowner has objection rights if they disagree with the maintenance valuation, which will not extend to consideration of the deduction for site improvements.[173]

168 Submission 6, p 11.

169 Submission 29, p 4.

170 Submission 47, p 5.

171 Department of Resources, correspondence, 16 October 2023, p 29.

172 Department of Resources, correspondence, 16 October 2023, p 29.

173 Department of Resources, correspondence, 16 October 2023, p 31.

Committee comment

The proposal to decouple deduction applications from the objections process raises natural justice issues. The explanatory notes indicate the amendments are designed to streamline the statutory valuations framework and while there are instances where individuals may be subjected to changed processes, in the case of decoupling deduction applications, there do not appear to be any fundamental changes to an individual's right to be heard or significant limits on procedural fairness. There remain avenues for internal and external review for decisions made under the LV Act. While we note concerns from submitters regarding additional costs, the department indicated there will be none.

Notwithstanding this, we can see that if the landowner has engaged a lawyer to complete these applications, there would likely be additional costs. We note that we have not reviewed the approved form that the proposal for deduction applications will now require to be completed, so we are unable to clarify whether this proposal results in complex, additional process steps.

2.7 Right of appeal to the Queensland Civil and Administrative Tribunal

Clause 57 provides for 3 new decisions subject to internal review – a decision about a DSI application; a decision about the added value of site improvements; and a decision not to include non-adjoining lots or parcels used for farming in the same valuation. These decisions may be subject to external review by QCAT.[174] Under the *Queensland Civil and Administrative Tribunal Act 2009*, there is no automatic right to legal representation; QCAT must authorise a party to have such representation.

2.7.1 Submitter views

Some submitters criticised the direction of external reviews to QCAT on the basis that it is not a specialist tribunal with experience in land valuations.[175] Regarding the workload of QCAT, a representative from Colin Biggers & Paisley Lawyers submitted:

> There are some aspects of the bill, for example any deductions for site improvements, that are dealt with by the Land Court. The bill proposes that they will be dealt with by QCAT, so there is potential there for those disputes to shift and for that to increase. There are some additional concerns in terms of whether or not the Land Court is the best jurisdiction, as a specialist valuation tribunal, to deal with that. There is a question about whether or not QCAT would be aptly resourced to deal with those types of disputes.[176]

Regarding appeals arising from decisions about DSIs, CCPA, also on behalf of Savills and CBRE, submitted:

> Partially compliant provisions need to be retained. An application for a Deduction for Site Improvement (DSI) could be partially compliant just because the Valuer-General does not agree with part of the claim. The other 90% of the claim could be accepted by the Valuer-General. This is why DSI's need to remain as an objection ground and dealt with in the Land Court. QCAT is not a specialist tribunal, the Land Court is a specialist tribunal. The added value is being debated and only valuers can decide this which is why the Land Court is the appropriate court.[177]

There was also a concern that providing a right of external review to QCAT for matters which had previously been dealt with by the Land Court could create duplicate processes and cross-jurisdictional issues. A representative of the QLS submitted:

> I think in this particular proposal in the bill there are certain administrative decisions that are now with QCAT and that were with the objection process. The objection process will still be there

[174] Explanatory notes, p 18.

[175] See, for example, submissions 6, 46 and 47.

[176] Public hearing transcript, Brisbane, 9 October 2023, p 22.

[177] Submission 6, p 10.

> necessarily, so now you may end up having matters across QCAT and the Land Court. I do not think you will see a significant diminution of work across either of those two courts. What you may see now is some extra matters going one way or the other.[178]

QLS additionally noted that QCAT proceedings do not permit legal representation for landowners seeking external review of land valuation matters:

> QLS suggests that, given the significance of the outcome of deduction decisions, as well as the complexity involved in such decisions, it would be imperative that any legislation referring these matters to QCAT provide that an applicant is entitled to legal representation as of right in this jurisdiction. In our view, in those circumstances, both the Tribunal and the parties would be greatly assisted by legal representation.[179]

A representative of Colin Biggers & Paisley Lawyers stated:

> From my experience, the DSI - or the deduction for site improvement disputes - that I get involved in are generally quite complicated and take some time and are quite specialist. From my perspective, having the ability to have lawyers involved in that process helps both the Valuer-General and helps the ultimate decision-maker. If you shift it to QCAT, you are not necessarily entitled to be legal representation from the outset to deal with that.[180]

2.7.2 Departmental response

The department disputed that DSI decisions are complex. It submitted that these decisions are administrative in nature and do not require the technical expertise of a valuer or specialist court.[181] Regarding submitter concerns that the proposal to direct external review rights to QCAT in some matters will lead to a lack of a landowner right to legal representation, the department submitted:

> Matters in relation to deductions for site improvements that may be referred for review often relate to what constitutes a site improvement for the purposes of the Act. These matters are primarily questions of fact, with neither novelty nor obvious legal complexity. Questions which might come before the QCAT for adjudication generally do not necessitate input from a legal representative. To provide for legal representation as of right in this jurisdiction may add unnecessary complexity, and much greater delay and cost, to reasonably straightforward administrative matters.
>
> If there were complex questions of fact or law; or, that the presence of a legal representative in the proceeding would promote procedural fairness or assist the Tribunal to a material degree to achieve its statutory objects; or advance the interests of justice as contemplated by the Act, then the QCAT has the ability to grant leave for representation.[182]

Committee comment

The proposal to direct external rights of review to QCAT in some land valuation matters raises a natural justice issue if it impacts a landowner's right to be heard or imposes other limits on procedural fairness. We note that the justification for the redirection of some external review processes to QCAT has not been particularly strongly put by the department. We note various submissions, including from the department, regarding how extensive the workload of land valuation matters is for the Land Court of Queensland. This might be one rationale for the Bill's nomination of QCAT for some matters, but it is not entirely clear.

If there is a right to legal representation in the Land Court which will no longer apply should certain appeal matters now be directed to QCAT, this appears to constitute a diminishment of the right to a

178 Public hearing transcript, Brisbane, 9 October 2023, p 23.

179 Submission 45, p 2.

180 Public hearing transcript, Brisbane, 9 October 2023, pp 22-23.

181 Department of Resources, correspondence, 16 October 2023, p 29.

182 Department of Resources, correspondence, 16 October 2023, p 31.

fair hearing, without sufficient justification. On that basis, to uphold natural justice, we agree with the Queensland Law Society that a right to legal representation should be provided for in the proposal.

We also agree that any increase in the workload of QCAT needs to be accompanied by an increase in resources to that Tribunal. For the above reasons, the committee unanimously makes the following recommendation.

Recommendation 8

The committee recommends the Minister reconsiders clause 57 to provide that, for decisions which may be subject to external review by the Queensland Civil and Administrative Tribunal, an applicant is entitled to legal representation as a right.

2.8 Combining non-adjoining farming lots into one valuation

Clause 22 of the Bill replaces section 59 of the LV Act, which currently requires the VG to include lots that do not join each other in the same valuation if the following prescribed criteria are met: lots are worked as one business unit and used only for farming; lots are owned by the same person; and if the lots are leased they are all leased to the same person.

Clause 22 will introduce an applicant-led process so if a landowner wants to combine their non-adjoining farming lots into one valuation, they will need to make an application that demonstrates the above criteria are satisfied. This may mean that an individual who previously would have had their lots combined automatically, will now have to make an application to the VG to combine the lots.

The explanatory notes acknowledge that this may raise an issue of natural justice, as the VG may refuse an application.[183] Clause 57(2) provides, however, that a decision of the VG to refuse such an application will be subject to internal review, and external review will also be available through QCAT. The explanatory notes also justify the proposed amendment on the basis that it will provide greater flexibility and autonomy for the landowner, reduce administrative burden for the VG and lead to less administrative errors when combining non-adjoining lots or parcels.[184]

2.8.1 Submitter views

AgForce, as the peak body representing Queensland pastoral producers, supported the proposal which it says will allow rural landowners to make decisions about how their land is valued in line with how they use their lands.[185] AgForce submitted:

> It is more efficient for the landowner to make these decisions rather than the Valuer-General, because in some cases landowners do not want their lands combined – for example, to allow for succession planning or where the diversification of land use is planned and the combining lots do not align with those plans.[186]

The QLS was also supportive of the proposal but recommended further consultation with farmers to ensure they are ready for the amendments including understanding that appeal rights will now lie with QCAT.[187] QLS suggested redrafting this proposal to require the VG to provide a statement of reasons where it decides to not combine lots into one valuation.

183 Explanatory notes, p 4.

184 Explanatory notes, p 12.

185 Submission 22, p 2.

186 Submission 22, p 2.

187 Submission 45, p 3.

Some submitters, including the form submitters, opposed this proposal on the basis that it will increase costs for landowners.[188]

2.8.2 Departmental response

The department provided:

> Under the Bill, if a landowner wants to combine their non-adjoining farming lots or parcels, the owner will be required to complete an application form with any relevant evidence attached to support their application. There is no application fee. Under the existing arrangements this same information is requested by the VG…
>
> This amendment will not increase costs for landowners, rather it provides landowners flexibility to decide how they want their farming lands valued in line with how they use their land.[189]

The department also confirmed that the LV Act already requires a statement of reasons to be supplied because a decision under this proposal would be a decision subject to internal review, for which the LV Act requires a statement of reasons.

Committee comment

We note strong support for the proposal from AgForce as the peak body for rural landholders, who constitute the majority of likely applicants under this proposal.

While this proposal raises issues of natural justice, we consider that any departure from fundamental legislative principles is sufficiently justified in the explanatory notes. The amendments are designed to streamline the statutory valuations framework and while there are instances where individuals may be subjected to changed processes, there do not appear to be any fundamental changes to their right to be heard or significant limits on procedural fairness. Importantly, there remains avenues for internal and external review for decisions made under the LV Act.

2.9 Lots and parcels

The Bill proposes to amend the definition of 'lot' and parcel' in the schedule (dictionary) to the LV Act. The explanatory notes state:

> The definition of 'parcel' is replaced to include any land remaining in a lot after part of the lot is made a declared parcel and therefore subject to Chapter 2, Part 3, Divisions 3 and 4. The new definition no longer includes land that is a lot, to remove the overlap with the definition of 'lot'. Consequently, any provision that refers only to parcel is consequentially amended to refer to both parcel and/or lot…
>
> The definition of 'lot' is amended to ensure that the valuer-general may value all land for which a valuation is required for a statutory purpose. Currently, there are certain non-freehold tenures which are not able to be valued by the valuer-general under the Land Valuation Act as part of the annual valuation program, as they are not included in the definition of 'lot'.
>
> The definition of lot is exhaustive and does not capture all land that requires a valuation for a statutory purpose. The Bill expands the definition to ensure that all lands that require a valuation for a statutory purpose, including lands that are rateable under the Local Government Act 2009 and the City of Brisbane Act 2010 may be valued.[190]

[188] See, for example, submissions 10, 11, 13, 15, 16, 17, 19, 20, 21, 23 and 51.

[189] Department of Resources, correspondence, 16 October 2023, p 32.

[190] Explanatory notes, p 20.

2.9.1 Submitter views

CCPA, also on behalf of Savills and CBRE, submitted:

> Changing the definition of a lot and parcel does not appear to be for any other reason than potentially changing the historic method of valuing.
>
> Contrary to the statement by the Minister, lots and parcels are not a new concept and any attempt to modify these definitions and how they are valued will have unintended consequences.
>
> An example might be a mixed-use development with office, retail or residential where the Valuer General will be able to value the individual components as they have a different use. This will undoubtedly result in a higher Site Value and therefore higher taxes, but lower capital value.[191]

The PCA submitted they have previously advised the department about concerns regarding the associated proposal in clause 53 of the Bill to change when the VG can separately value leased land. The PCA disputed the explanatory notes which state this results in no change to existing practice:

> This change poses many unintended consequences and is likely to result in revenue generation.
>
> Of particular concern is the potential change this definition will have on the valuation approach to mixed use buildings. For example, in the case of a building that incorporates, office, retail and residential apartments, this could result in a separate parcel being declared for every single level, resulting in increased Site Value and therefore higher rates and taxes, but lower Capital Value.[192]

2.9.2 Departmental response

The department stated:

> The separation declaration power is a discretionary power that the Valuer-General uses to recognise that different uses exist on the same lot that reflect different values and different markets or to reflect separate occupation…
>
> The separation declaration may be used in urban lands but is more frequently applicable on rural lands. An urban example is two commercial buildings constructed on one allotment, where the buildings are separately let, adapted for separate occupation, and used for different purposes. The Valuer-General may declare a parcel and provide separate valuations for the declared parcel and the remaining part…
>
> The amendments do not change the way the Valuer-General declares separate parcels after assessment on a case-by-case basis.[193]

The department additionally advised there are a number of considerations that would need to be addressed for the mixed-use example cited by the PCA and CCPA in their submissions to determine if separate parcels would be declared.[194]

Committee comment

As we have observed throughout this report, there is evidently a need for the department to continue consulting with stakeholders regarding the proposals contained in this Bill. The impact of any change to the definition of lots and parcels raised by the PCA and CCPA is one such issue that should be subject to further consultation, as the department itself notes that further consideration of the mixed-use example would need to be addressed.

This now brings our consideration of the Bill to a close. We reiterate the observation that the department has not provided enough justification for a number of the proposals put in this Bill sufficient to address submitter concerns. This reinforces our Recommendation 4 requiring the department to engage in sufficient, substantive consultation when implementing this Bill.

191 Submission 6, p 13.

192 Submission 47, p 6.

193 Department of Resources, correspondence, 16 October 2023, p 34.

194 Department of Resources, correspondence, 16 October 2023, p 34.

Appendix A – Submitters

Sub #	Submitter
1	NAME WITHHELD
2	NAME WITHHELD
3	Nick Barr
4	Andrew Boyd
5	Centennial Property Group
6	Corporate and Commercial Property Advisors
7	Newlink Property Group
8	Acropol Pty Ltd
9	Wee Hur (Australia) Pty Ltd
10	Seeking Enterprises Pty Ltd
11	Richard Shepherd
12	Montague Developments
13	RAM
14	Cameron Early
15	Quality Cattle Co
16	NAME WITHHELD
17	Deborah Lovelock
18	Valuers Registration Board of Queensland
19	Lawnton Country Markets
20	NAME WITHHELD
21	BSC Holdings Pty Ltd
22	AgForce Queensland
23	Phillip Rizzo
24	CONFIDENTIAL
25	NAME WITHHELD
26	Lucas Management Pty Ltd
27	Local Government Association of Qld
28	Savills Australia
29	Harvey Norman
30	Grant Jackson
31	F A Pidgeon & Son Pty Ltd
32	Ciel Holdings Pty Ltd
33	J Osterberg Pty Ltd

34 NAME WITHHELD
35 CONFIDENTIAL
36 Eumundi Group
37 NAME WITHHELD
38 CONFIDENTIAL
39 CONFIDENTIAL
40 CONFIDENTIAL
41 CONFIDENTIAL
42 Admiralty Quays CS 24592
43 CONFIDENTIAL
44 One Five One Property Group
45 Queensland Law Society
46 Shopping Centre Council of Australia
47 Property Council of Australia
48 Matthew Sorbello
49 Australian Property Institute
50 NAME WITHHELD
51 Colin Biggers Paisley
52 CONFIDENTIAL
53 Large Format Retail Association
54 George Group

Appendix B – Officials at public departmental briefing on 11 September 2023

Department of Resources

- Mr John Groenendyk, Acting Director, Governance, Engagement and Assurance, State Valuation Service
- Mr Lyall Hinrichsen, Executive Director, Lands Policy and Support
- Mr Matthew Meldon, Acting Manager, Lands Policy and Support
- Ms Suzanne Stone, Executive Director, State Valuation Service

Appendix C – Witnesses at public hearing on 9 October 2023

Property Council of Australia

- Ms Jess Caire, Deputy Executive Director Queensland
- Mr Stafford Hopewell, Special Counsel and Property Council Member, Gadens

AgForce Queensland Farmers Ltd

- Mr Michael Guerin, Chief Executive Officer
- Mr John Moore, Rural Land Valuer

Queensland Law Society

- Mr Matt Dunn, General Manager—Advocacy, Guidance and Governance
- Mr Allan Lonergan, Partner, Colin Biggers & Paisley Lawyers

Local Government Association of Queensland

- Ms Alison Smith, Chief Executive Officer
- Mr Glen Beckett, General Manager, Assist

Corporate and Commercial Property Advisers, CBRE Valuations Pty Ltd and Savills Australia

- Mr Allen Crawford, Managing Director, Corporate & Commercial Property Advisors
- Mr Tristan Gasiewski, Director, CBRE Valuations Pty Ltd
- Mr Neil Murphy, National Head of Advisory Statutory Valuations, Savills Australia

Appendix D – Abbreviations and acronyms

Abbreviation	Definition
API	Australian Property Institute
Bill	Land Valuation Amendment Bill 2023
CCPA	Corporate and Commercial Property Advisers
department	Department of Resources
DSI	deduction for site improvements
FLP	fundamental legal principle
HRA	*Human Rights Act 2019*
IVS	International Valuation Standards
Land Court	Land Court of Queensland
LFRA	Large Format Retail Association
LSA	*Legislative Standards Act 1992*
LV Act	*Land Valuation Act 2010*
Manual	Statutory Valuation Procedures and Practices under the Land Valuation Act 2010
NSW	New South Wales
PCA	Property Council of Australia
QCAT	Queensland Civil and Administrative Tribunal
QLD	Queensland
QLS	Queensland Law Society
SA	South Australia
SSCA	Shopping Centre Council of Australia
VG	Valuer-General
Vic	Victoria
VOL Act	*Valuation of Land Act 1944*

Statement of Reservation
LNP Members of the Transport and Resources Committee

LNP Committee Members acknowledge this Bill seems to have sound intent. However, many components of the Bill are concerning and will have significant unintended consequences if passed. The 7 scathing recommendations outlined by this committee prove this.

The main theme, referenced multiple times in the committee's report, emphasises this legislation has had very little consultation and appears to be rushed. Interestingly, this feedback contradicts the government's claims which suggest wide consultation was undertaken. This alone is a serious concern.

In his introductory speech, the Resources Minister stated, *'Let me be clear for the benefit of the House, these changes will have no material impact on rates and property taxes'*. This statement was called into question by submitters who said that by granting the Valuer-General (VG) the power to make statutory guidelines, it will result in higher land taxes and rates for owners and cause property value reductions because of higher outgoings.

We are aware this Bill has the potential to impose onerous regulations and increased costs on property owners. These increased taxes will be no doubt passed on to those who lease commercial property, and their customers, impacting the cost of goods and services in a cost-of-living crisis.

There are also concerns this Bill will give unvetted power to an unelected bureaucrat – the Valuer General. The fact a statutory office holder has the power to make guidelines which would ordinarily rest with the Minister is concerning. The committee has noted that there is no rationale for this, noting the department has not explained why this proposal has been included.

We note what the government has proposed is contrary to long established practice across all states in Australia whereby such guidelines are non-binding practice notes based on the legislation and case law. A number of submitters hold a view that providing the VG with the power to make guidelines would lead to the derogation from legal precedent and accepted valuation practice.

Clause 6a (3) of the Bill provides that before making a guideline, the VG "may" consult with, and have regard to the views of, any person the VG considers appropriate. This must be amended to "must" consult.

The fact this committee, with a majority of government members (with a casting vote), has outlined such scathing recommendations that major elements should be reconsidered or amended, proves this Bill has significant issues.

Lachlan Millar MP
Member for Gregory
Deputy Chair

Bryson Head MP
Member for Callide

Trevor Watts MP
Member for Toowoomba North