

# **TRANSPORT AND RESOURCES COMMITTEE**

## **REPORT NO. 44**

### **LAND VALUATION AMENDMENT BILL 2023**

### **QUEENSLAND GOVERNMENT RESPONSE**

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#### **INTRODUCTION**

On 23 August 2023, the Land Valuation Amendment Bill 2023 (the Bill) was introduced to Parliament.

The Bill was subsequently referred to the Transport and Resources Committee (the Committee), with the Committee presenting its report on 24 November 2023.

The Department of Resources has undertaken further consultation with key industry stakeholders which has informed the Queensland Government's response to the recommendations made by the Committee, which is provided below.

#### **RESPONSE TO RECOMMENDATIONS**

##### **Recommendation 1**

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

##### **Government Response**

The Government thanks the Committee for this recommendation.

##### **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.

##### **Government Response**

The Government supports this recommendation in principle.

Since the release of the Committee's report, the Department of Resources has met with key industry stakeholders in relation to the concerns raised about the potential for any statutory guidelines to fetter or diminish the discretion of the Land Court of Queensland (Land Court) in deciding a matter.

In response, amendments are proposed to be introduced during the consideration in detail stage of the debate of the Bill to ensure a statutory guideline made will not fetter or diminish the discretion of the Land Court, or limit objection or appeal rights.

The key objectives of the proposed statutory guidelines have been to promote and support greater state-wide consistency in valuation practice and transparency of operational practices, particularly for more complex property types or asset classes. As such, the guidelines will be a technical document, providing methodologies for how valuations are to be assessed for statutory purposes under the Act and are responsive to changes in the property sector and professional practice.

The guidelines may assist the Land Court in focussing more on the evidence of the case rather than arguments about the appropriate methodology to be applied. This will support an overarching objective of a more efficient and effective objections process and reducing matters that proceed to the Land Court.

The valuer-general has also committed to further work with stakeholders in developing the proposed statutory guidelines and has stated that it will be based on the existing manual titled '*Statutory Valuation Procedures and Practices under the Land Valuation Act 2010*' which was originally developed through extensive consultation with stakeholders.

### **Recommendation 3**

The committee recommends the Minister reconsiders Clause 6A(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.

### **Government Response**

The Government supports the intent of this recommendation.

Amendments are proposed to the Bill, to be moved during consideration in detail, that will give effect to the intent of this recommendation and address the concerns of stakeholders, to promote industry confidence and provide greater transparency of consultation processes for when the valuer-general is making, amending, or replacing a statutory guideline.

It is proposed to amend Clause 5 (new section 6A) to mandate the valuer-general to consult with and have regard to the views of any person the valuer-general considers appropriate.

Amendments proposed to Clause 5 (new section 6A) will also require the valuer-general to consult with the Minister when developing any statutory guideline.

The proposed amendment will be consistent with the *Land Valuation Act 2010* (Land Valuation Act) which requires the valuer-general to exercise independent judgement when performing their functions and not be subject to direction from anyone else (including the Minister). The proposed amendment is intended to be consistent with the policy intent of Clause 5 and preserve the valuer-general's independence and the valuer-general's ability to make a guideline in the way they consider appropriate, and provide the necessary oversight that stakeholders are seeking.

### **Recommendation 4**

The committee recommends 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.

## **Government Response**

The Government supports this recommendation.

The Department of Resources has undertaken further substantive consultation with industry stakeholders to provide greater understanding of the policy rationale of all amendments proposed to be implemented by the Bill. Simultaneous substantive consultation has been undertaken by the valuer-general in relation to the development of a statutory guideline.

Departmental consultation included consultation in relation to Clause 27 regarding the practical application of this clause and when the exception to the annual valuation requirement may be exercised in a local government area experiencing an 'unusual circumstance' (i.e., extreme climatic conditions). Additional clarification will be provided regarding the use of this clause, where appropriate, such as in the statutory guideline or other operational policy, to provide examples of when this provision may be used and the considerations of the valuer-general.

## **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.

## **Government Response**

The Government notes the Committee's recommendation.

As a result of further consultation undertaken by the Department of Resources with industry and the valuer-general, it is proposed to remove Clause 47 of the Bill that would provide the chairperson with an ability to request further information from the parties (valuer-general or objector) or their agent or representative. Of concern is that Clause 47 has the potential to adversely impact the voluntary nature of conferences and the ability of a chairperson to conduct an objection conference quickly and with as little formality and technicality as possible (s. 128).

Noting the above, it is the Government's view that the Statement of Compatibility does not require amendment because the Third-Party Disclosure Clauses (Clauses 44 and 51) do not arbitrarily interfere with agents or representatives' privacy rights and therefore do not limit the right to privacy under section 25(a) of the *Human Rights Act 2019* (HR Act). Given this view, the conclusion in the Statement of Compatibility that the Bill is compatible with human rights remains accurate.

## **Proposed Third-Party Disclosure Clauses**

Currently, Chapter 3 of the Land Valuation Act permits a landowner to object to a valuation of their land and prescribes a process for how objections are dealt with. As part of this process, a landowner is required to set out the grounds of their objection to the valuation, as well as the information that they seek to rely on to establish each objection ground (s. 113(d) and (e)).

Under the Act, an agent or representative may lodge an objection on behalf of a landowner (with consent) (s. 112), or after an objection has been lodged by a landowner, the owner may

be represented by an agent or other representative at an objection conference (s. 129); they usually charge a fee for service.

In many cases, a landowner will engage the services of an agent or representative because the agent has access to market data and comparable properties, relevant subject matter expertise and local insight and knowledge. These may inform the grounds on which the objection is made.

Chapter 3, Part 3 of the Land Valuation Act provides for objection conferences which assist in the resolution of an objection. An objection conference is designed to facilitate the resolution of an objection by encouraging the parties to exchange information to inform the valuer-general when making an objection decision (Clause 36). Effective conferences are reliant on full and equal disclosure of relevant information between the parties. Facilitating this exchange is the primary function of the chairperson.

An objection conference is a voluntary process through which the objector, or their agent or representative, are able to support the grounds of the objection by providing all relevant information relied upon to make the objection.

If an objection conference does not proceed, the valuer-general may still consider and make decisions about a properly made objection. In doing so, the valuer-general is empowered under sections 135 and 136 of the Land Valuation Act to issue an information request requiring an objector to provide further information which is relevant to deciding an objection. As with the objection conference, the ability for the valuer-general to make an informed decision on the objection would be undermined where information relevant to the objection was not able to be obtained by the objector from their agent or representative who may have advised the landowner and made the objection on their behalf.

### Human Rights impacts

As set out in the Statement of Compatibility, which was tabled with the Bill, requests for further information by the valuer-general, or the disclosure obligations applying to third party agents in an objection conference, impacts the right to privacy where any information that is requested and/or provided contains personal information.

The Committee has noted that the justification for impacting the right to privacy for requests made to 'parties' is different from the impact on 'non-parties' such as agents or representatives. However, as set out above, the agents or representatives of the landowner are typically engaged for a fee to provide expert advice on the valuation, lodge an objection application on the landowner's behalf, and represent the landowner in an objection conference. It is not the case that they are uninterested parties, given they have either provided the relevant information and/or drafted the grounds of the objection, or have been engaged to represent the best interests of the landowner in the objection conference process.

Further, as only natural persons, not commercial or other incorporated entities, are afforded the protection of human rights (s. 11 HR Act), the extent to which the Third-Party Disclosure Clauses interfere with privacy rights is limited to the potential disclosure by agents and representatives of personal information of individuals (whether themselves or third-parties). In the Government's view, the Statement of Compatibility considers these impacts on personal information.

However, as the Committee has suggested a less restrictive and reasonably available alternative of providing disclosure obligations for parties only and a specific provision to compel production of specific documents, it is necessary to consider whether such an alternative would impact the conclusions on compatibility.

As set out in the Statement of Compatibility, the purpose of Clause 51 is to “ensure relevant information is available for deciding an objection, which will reduce errors in decision-making and ultimately reduce the number of appeals to the Land Court,” and the purpose of Clause 44 is to “encourage the full exchange of opinion of the parties, including a full disclosure of information relating to the objection.” These purposes apply equally in respect of potential interferences with the privacy rights of agents and representatives where they have voluntarily taken on the role of representing the landowner in the objection process.

In the Government’s view, requiring disclosure from parties only, and providing for a specific power to compel production, would not be as effective in ensuring that relevant information is available for deciding an objection (either via an objection conference or by the valuer-general).

Agents are specialist property consultants or advisors who lodge and manage objections, including objection conferences, on behalf of landowners and are the primary source of the information in support of the objection. Conferences are an administrative, non-judicial, mechanism, facilitated by an independent chairperson, designed to encourage the exchange information. It gives objectors (through their agent or representative) an opportunity to present the information and data that supports their grounds of objection and to understand how the land valuation was determined. Unlike other mediation processes, the purpose of an objection conference is not to reach a commercial settlement but rather focuses on the exchange of information to inform the valuer-general's objection decision.

An agent or representative for the objector should be prepared to disclose relevant information to support any assertions made to the objection grounds. This is consistent with section 149 of the Act which provides that the objector (a party) has the onus of proving the objector’s case. Without this information, a conference is superfluous, and risks the valuer-general making an objection decision in the absence of all relevant information, increasing appeals to the Land Court, which is contrary to the purpose of these amendments. Given the role of the agent or representative, and the purpose of objection conferences, the proposed alternative would not be as effective in achieving the purpose. As the proposed alternative is not as effective in achieving the purpose, it is not a valid alternative for the purposes of section 13(2)(d) of the HR Act.

Further, the Third-Party Disclosure Clauses are appropriately tailored to achieve this purpose.

First, replacement section 127 (Clause 44) limits disclosure to those documents relevant to the valuation and the disclosure notice provides examples of specific documents / information that this may include. The scope of information required is not arbitrary because it is limited to information that is relevant to the valuation to which the owner has objected. It is informed by the grounds of objection and is restricted to that which is necessary to assist in the resolution of an objection. The information is used only for the purpose of the objection process under the Land Valuation Act.

Second, any information disclosed is subject to confidentiality. Parties currently sign a conference agreement prior to engaging in the conference. An agreement includes a requirement for confidentiality for documents subject to a disclosure notice. Confidential information will be subject to existing legislative frameworks relating to privacy and confidentiality.

Third, if an agent or representative reasonably considers that compliance with a disclosure request (Clause 44) or information request (Clause 51) will not be possible because it may breach confidentiality obligations owed to other clients, nothing in the Bill compels production of the information, nor prevents the agent or representative from raising these issues, through

the objector, with the chairperson. The provisions of the Bill, if passed, do not preclude the possibility that the chairperson could amend the disclosure request or otherwise consider themselves 'satisfied' that the request has been complied with as far as reasonably able.

Given the role of the agent or representative in the objection process as a proxy for an objector and as the primary source of the objector's evidence in support of their objection – often for financial remuneration – the Government considers the Clauses strike a fair balance between the potential interference with privacy of agents, representatives and third-parties and the purpose of resolving objections under the Land Valuation Act.

For these reasons, the Government considers that the Bill is compatible with human rights, as set out in the Statement of Compatibility, and that no further amendments to the Statement of Compatibility are required.

### **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.

### **Government Response**

The Government notes the Committee's recommendation.

As stated above in the response to recommendation 5, it is proposed to remove Clause 47 of the Bill which would give the chairperson the ability to request further information after a conference has started. This clause has the potential to adversely impact the voluntary nature and conduct of conferences. With the removal of this clause, it is important that the objector disclose all relevant information prior to a conference starting to discharge the onus of proving the objector's case (s. 149).

Noting the above, in response to this recommendation, the Government has reviewed the Statement of Compatibility for the Bill for any human rights issues in relation to a right to a fair hearing, in circumstances where a chairperson may decide not to hold an objection conference (Clause 44). It is the Government's view that the Statement of Compatibility does not require amendment.

The Committee has commented that a landowner may have their access to an alternative dispute resolution pathway limited by the actions of their agent or representative. This may not be a reasonable limitation on the landowner's right to a fair hearing.

Before deciding to be represented by an agent, an owner should consider the suitability and skill of the agent. Landowners should review the Land Court's *Practice Direction 2017/05 – Representation by agents*, available on the Department of Resources' and Land Court's websites. In some cases, agents (unlike lawyers) are not required to have professional indemnity insurance, meaning an owner may find it difficult to get compensation if serious errors are made by the agent. An agent may also not have to accept any responsibility for the outcome of the objection or any further legal proceedings. This is a risk the owner accepts, noting however, an agent should act in the best interests of their principal. An agent's authority can be specifically created and limited by the terms of the agency agreement.

The legal obligation to produce documents rests with the parties. A party is defined as the valuer-general or the objector (landowner). The objector must provide the information that is in their custody, possession or power, and the custody, possession or power of their agent or

representative. An agent must carry out the instructions of its principal (the objector). An agent that is paid for their work is required to exercise the degree of care, skill and diligence that is reasonably necessary for the proper performance of their obligations.

Given the above, the risk that an owner may have their access to an alternative dispute resolution pathway limited by the actions of their agent or representative is effectively mitigated. This risk is mitigated by the owner's control of the flow of documents, opportunity to apply diligence in choosing an agent and power to set agency relationship parameters.

The Committee also commented in its report that the result of non-disclosure is a notice from the chairperson that the conference will not proceed.

Where there are genuine attempts to comply with a disclosure request, a conference would proceed. The purpose of the amendment to Clause 44 is to reduce matters proceeding to the Land Court.

It should be noted that if a conference is not held, the valuer-general must still decide the objection (ss. 147 and 150) and give notice of that decision as soon as practicable, including the reasons for the decision (s. 151).

An objector may appeal to the Land Court against the objection decision for the objection (s. 155). If a conference is not held the Land Court is likely to offer a preliminary conference or other alternative dispute resolution process prior to a hearing.

### **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.

### **Government Response**

The Government notes the Committee's recommendation and is supportive in-part for the reasons outlined below.

The independent chairperson's report is kept confidential, as is current practice. Clause 49 of the Bill provides mandatory authority for the independent chairperson to only give their conference report to the valuer-general and the objector.

The Government does not consider it necessary to expand the without prejudice provision (Clause 50) to include the independent chairperson's report. Implementation work to update departmental procedural documents for objection conferences would ensure the documents continue to support and guide a chairperson when carrying out their functions under the Land Valuation Act and in protecting the confidentiality of information shared by parties.

Procedural documents include the chairperson's terms of reference and the conference agreement signed by the chairperson and all parties. Implementation work will include appropriate training for chairpersons to ensure compliance with the 'without prejudice' requirements (Clause 50) - for instance guidance provided to ensure that a conference report does not reveal confidential matters discussed by parties during the conference, so as not to upset the without prejudice nature of the conferences. The report will also not interfere with the *de novo* court hearing.

After further consultation with stakeholders in relation to this clause, it is proposed to make an amendment in consideration in detail to remove the discretion for a chairperson to provide an opinion on any matters (i.e., examples of matters are provided in Clause 49) that may be included in a chairperson's conference report.

Removing the discretion for a chairperson to provide their opinion in a conference report on any matter the chairperson considers appropriate will support the overall intent of Clause 50 of the Bill (section 131 of the Land Valuation Act) that provides evidence of anything said in an objection conference is inadmissible in any proceeding.

### **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.

### **Government Response**

The Government thanks the Committee for this recommendation; however, the Government is not proposing to move forward with the amendments in the Bill related to deduction for site improvement applications.

Amendments are proposed to be moved during consideration in detail to Clause 57 (and other related clauses under the Bill) to remove the changes related to deduction for site improvement applications and added value to retain the status quo in response to concerns raised by stakeholders during the Committee's Inquiry. Site improvement deduction application decisions will remain as an objection ground with referral to the Land Court. There is no change to the existing process for applications lodged outside of the objection process.

Concerns were raised by stakeholders that the proposed changes in the Bill will not achieve the policy intent and will simply shift complex matters from one court to another. Stakeholders also agree that changes are required to the process for applying for a deduction for site improvements and have offered to work with the Department of Resources to identify opportunities to streamline and improve the deduction application process.

An administrative approach will assist in meeting the policy intent for simpler objection processes related to deductions for site improvements and ensure deduction applications are made as close to when the site improvements are made and paid for by the owner.