

Land Valuation Amendment Bill 2023

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Scott Stewart, Minister for Resources make this statement of compatibility with respect to the Land Valuation Amendment Bill 2023.

In my opinion, the Land Valuation Amendment Bill 2023 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Land Valuation Amendment Bill 2023 (the Bill) amends the *Land Valuation Act 2010* (the Act) to improve the administration and operation of the statutory land valuation framework in Queensland. The legislative improvements will ensure the framework provides for contemporary, transparent, and accurate valuations along with procedurally fair and efficient objections processes.

The Bill introduces a head of power for the valuer-general to make and publish statutory guidelines about any matter relating to the administration of the Act or valuation practice. This will provide state-wide consistency in valuation practice for complex property types, and transparency of operational practices, as well as other procedural matters relevant to determining statutory land valuations.

The Bill provides for procedurally fair, effective and efficient objection processes by removing the arbitrary threshold for when the valuer-general must offer an objection conference. This ensures the most appropriate mechanism is used to resolve an objection, regardless of the quantum of the valuation, and enables the chairperson to request further information from an objector to support their objection. Other changes will require the chairperson of an objection conference to provide a written report about the conference to inform the objector and valuer-general about matters relevant to the objection.

The Bill also provides greater certainty for landowners about what land is subject to a valuation and introduces an applicant-led process so that landowners have flexibility to decide if they want to apply for their non-adjointing farming lots or parcels to be combined. The Bill also makes amendments so that declared parcels and balance lands will be treated the same as other lands so that they are able to be combined with other land where the prescribed criteria are met.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I consider the following human rights are limited by the Land Valuation Amendment Bill 2023:

Right to a fair hearing (section 31)

The clauses of the Bill that are relevant to this right include:

- When objection conference may or must be held - clause 38.

Right to privacy (section 25)

The clauses of the Bill that are relevant to this right include:

- Non-adjoining farming lots or parcels - clause 22.
- Written conference report - clauses 43, 49 and 54.
- Chairperson may require further information - clause 47.
- Valuer-general may require further information - clause 51.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Right to a fair hearing

(a) the nature of the right

The right to a fair hearing provides for parties to be heard and to respond to allegations made against them, and requires courts be unbiased and independent. This right applies to procedural fairness, not only the fairness of a decision or judgement of a court or tribunal.

Clause 38 of the Bill limits this right by changing the requirement for when an objection conference may be held by removing the requirement for the valuer-general to offer an objection conference when a valuation is greater than \$5 million. This change could potentially limit access to objection conferences that previously would have been offered, however there are other mechanisms to facilitate the resolution of an objection.

While this provision relates to the holding of objection conferences, and not strictly a court or tribunal process, it nevertheless involves an independent exchange of opinion and information which are designed to afford procedural fairness.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Changing the requirements for when an objection conference may be held allows for the efficient allocation of conference resources towards objections that would benefit from an objection conference. Other mechanisms are available to resolve less-complex objections, such as informal conferences, and will continue to be used.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting the right to a fair hearing by removing the \$5 million value threshold ensures the most appropriate mechanism is used to gather all evidence required to make an objection decision regardless of the quantum of a valuation.

The \$5 million threshold is not sufficiently indicative of when an objection conference will be beneficial in resolving an objection. It instead requires an assessment of a broader range of factors (for example, the availability and quality of evidence, complexity of planning requirements, and highest and best use) in addition to the valuation amount.

This change provides the valuer-general discretion to offer an objection conference to any objector if their objection application is properly made, not just those that are valued at or above \$5 million. Other mechanisms are available to resolve less-complex objections, such as informal conferences, and these will continue to be used.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

This proposal is considered the best way to achieve the purpose effectively. An alternative, for example, may be to instead require the valuer-general to offer a conference to all objectors. This would be less restrictive on human rights, as it would greatly expand the access to all objectors. However, this would unnecessarily increase the number of objection conferences for objections that could be resolved in other more efficient ways, causing delays to the resolution of objections.

It is essential that objections are resolved as quickly as possible through the most efficient means as valuations underpin the assessment of land tax, local government rates and state land rental liabilities. 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. This uncertainty impacts on the ability of landowners and local governments to plan and manage their budgets, as well as the valuer-general's capacity to deliver the annual valuation program.

The proposal will be tailored by developing published criteria, in consultation with stakeholders, for when the valuer-general may invite the objector to participate in an independently chaired objection conference.

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.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While the proposed amendment may potentially limit a person's right to a fair hearing, it is expected that on balance the proposed amendments will minimise the impact on a person's

right as it ensures the most appropriate mechanism is used to gather all evidence required to make an objection decision regardless of the quantum of a valuation.

A small number of objectors who previously would have been offered an objection conference due to the quantum of their valuation may no longer be offered an objection conference. However, this will enable the allocation of resources to offer objection conferences based on complexity, and potentially promote fair hearing rights to a different group of objectors. That benefit outweighs any limitation from removing the mandatory requirement.

Right to privacy

(a) the nature of the right

The right to privacy protects personal information and data collection and protects the privacy of people in Queensland from unlawful or arbitrary interference such as when something is lawful, but also unreasonable, unnecessary or disproportionate.

The introduction of an application process to combine a valuation for non-adjoining farming lots or parcels (clause 22) and requiring the chairperson to prepare a written report about an objection conference (clauses 43, 49 and 54), limits the right to privacy as these processes require information that includes personal information. Enabling the chairperson (clause 47) and the valuer-general (clause 51) to request further information, which may include personal information, will also limit the right to privacy.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

It is important that valuations produced by the valuer-general have the confidence of landowners and prospective landowners. The public expects that valuations are accurate and relative to each other to provide a fair basis for the equitable distribution of tax liability. The proper valuation of land provides landowners with certainty so they can budget for future outgoings. Reduced errors in decision-making will also reduce the number of appeals to the Land Court.

Application to combine non-adjoining farming lots or parcels

An applicant-led process gives the landowner flexibility to decide if they want to apply for their lots or parcels to be combined and it will minimise errors in the valuer-general's decision-making which can lead to over or under payment of rates by landowners.

Requiring the chairperson to prepare a written report about an objection conference

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.

Valuer-general's request for further information

Allowing an information notice to be served on all objectors and their agent or representative ensures 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.

Enabling the chairperson to request further information

Allowing the chairperson to require a party to give further information encourages the full exchange of opinion of the parties, including a full disclosure of information relating to the objection. After a conference has already started, the chairperson may request further information, other than information subject of legal professional privilege, where the information is likely to be in the custody, possession or power of a party or an agent or representative of a party, and that information is likely to facilitate the resolution of the objection.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Obtaining information is critical for the valuer-general to correctly determine valuations. The scope of information required is not arbitrary and is restricted to that which is necessary to decide an application or an objection on the grounds put forward by the objector, or to assist in the resolution of an objection. The information is only used for a legitimate purpose and is not made publicly available.

Minimising errors in the valuer-general's decision-making will minimise unnecessary over or underpayment of rates and land tax by landowners and will also reduce the likelihood of appeals to the Land Court.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

This proposal is considered the best way to achieve the purpose effectively. An alternative, for example, may be to instead require the valuer-general to make valuation decisions without all available information. This would be less restrictive on human rights, as it would not require the provision of personal information. However, this would not be as effective in achieving the purpose of producing accurate and uniform land valuations to provide landowners with certainty.

Application to combine non-adjoining farming lots or parcels

An application can be made at any time if the existing criteria are met, and no application fee will apply. The valuer-general must decide the application within 60 days of receiving an application. The information required is at the lower end of personal information, and it would be accompanied by a privacy collection statement and subject to the requirements of the *Information Privacy Act 2009 (Qld)*.

Requiring the chairperson to prepare a written report about an objection conference

If the valuer-general invites an objector to participate in an objection conference the objector may decline the offer. If the invitation is accepted, the chairperson must prepare a written report about the conference. 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.

Valuer-general's request for further information

The request for information applies to information that the valuer-general considers will likely be relevant to deciding an objection. The information required is at the lower end of personal information with examples of possible further information including a valuation report, a town planning report, information about a stated type of cost associated with a development.

The objector will be able to provide a statutory declaration if they do not possess the required information, and the information requirement will continue to be a decision subject to internal review, with further appeal to the Queensland Civil and Administrative Tribunal.

Enabling the chairperson to request further information

If an objector accepts an invitation to participate in an objection conference, they are required to disclose any information relevant to the objection to the chairperson prior to the conference starting. If after a conference has started the chairperson considers further information is in the possession of the objector and is likely to facilitate the resolution of the objection, the chairperson may, under clause 46, require further information.

There is no less restrictive way to achieve the purpose as it is consistent with the purpose of an objection conference as provided for under section 126 of the Act, which is to encourage full exchange of opinion of the parties including full disclosure of information relating to the objection. This is also consistent with section 149 which provides that the objector has the onus of proving the objector's case. The information is used for a legitimate purpose which is to resolve the objection, lodged by the objector.

If an objector does not provide the information, then the chairperson could end the conference. 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.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While the proposed amendments may potentially limit a person's right to privacy, it is expected that on balance the proposed amendments will minimise the impact on a person's right to privacy.

Landowners will be required to provide information that may include some personal information to support their application or objection. However, this will ensure accurate and robust valuations that will reduce the likelihood of appeals to the Land Court and contribute to a stable valuation and taxation framework. This benefit outweighs any limitation from requiring personal information.

Conclusion

In my opinion, the Land Valuation Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is

reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

SCOTT STEWART
MINISTER FOR RESOURCES

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