LAND VALUATION AMENDMENT BILL 2023

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Submitted by:	Harvey Norman
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22 September 2023

Committee Secretary
Transport and Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Via email: trc@parliament.qld.gov.au

RE: Submission against the Land Valuation Amendment Bill 2023

Dear Sir/Madam,

Reference is made to the Land Valuation Amendment Bill 2023 (**the Bill**) that was introduced into Queensland Parliament on 23 August 2023 by the Minister for Resources. It is understood the Bill amends the *Land Valuation Act 2010* (**the Land Valuation Act**) and proposes changes to the administration and operation of statutory land valuation.

We hereby provide the following submission **against** the Bill, on behalf of Harvey Norman (Yoogalu Pty Limited A.C.N. 002 269 132). The submitter details are provided in Table 1 below.

Table 1 – Submitter details

Author name	Nicole Vastas, Head of Legal (Property)
On behalf of Organisation	Harvey Norman (Yoogalu Pty Limited A.C.N. 002 269 132) – A national public company whose principal activities primarily consist of an integrated retail, franchise, property and digital enterprise
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Harvey Noman Holdings Ltd is a national public company whose principal activities primarily consist of an integrated retail, franchise, property and digital enterprise. Harvey Norman operates under a franchise system in Australia and consistently delivers an unparalleled retail offering to Australian consumers with an extensive product range, cutting-edge technology and market leadership in key product categories.

Harvey Norman Holdings Ltd grants franchises to independent proprietors under three leading brand names – Harvey Norman, Domayne and Joyce Mayne. The proprietors sell products including electrical goods, furniture, computerised communications, bedding and manchester, kitchen appliances, small appliances, bathroom and tiles, carpets and flooring.

The Harvey Norman brand name is a retail icon throughout Australia with a total of 196 franchised complexes, of which 44 are located in Queensland. Brands sold across Harvey Norman franchises throughout Australia are market leaders in the core audio visual and technology segment.

We believe the proposed amendments under the Bill will result in higher land tax and local government rates for landowners, which presents a clear disadvantage for our proprietors in Queensland, now and into the future.

This submission addresses the following four (4) aspects of the Bill:

1. the introduction of binding Guidelines for land valuations;
2. changes to the process of dealing with landowner objections for land valuations;
3. changes to the definition of the term “unencumbered”; and
4. changes to the process of making applications for deducting site improvements.

These matters are discussed in the following sections.

1. Introduction of binding Guidelines

Clause 5 of the Bill indicates that the proposed amendment will empower the Valuer-General to set binding Guidelines for land valuations. We acknowledge the Guidelines are intended to provide consistency in decision-making and State-wide valuation practices for complex situations however minimal detail is provided on the scope and transparency of the Guidelines, including how they will operate and be applied. We believe this information is critical and should be known before such powers are given to the Valuer-General.

The Guidelines do not appear to be required to reflect current industry practice, valuations standards or the legal approach to valuations. Furthermore, 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.

Concerningly, The Valuer-General is not required under the Bill to consult before making a guideline and the Guidelines would take effect immediately upon publication on the department's website. The ability for the Valuer-General to make significant changes to a binding document with no consultation and no advance warning creates opportunity for an inconsistent and turbulent valuation process which is not evidenced through previous practice.

Due to their statutory nature, the Guidelines will be binding on the Valuer-General, landowners and arguably the Land Court. This will curtail landowners’ abilities to effectively object to an onerous valuation. For instance, the explanatory notes for the Bill indicate that if the Guidelines mandate a particular valuation methodology for a particular property type, this will limit the grounds of potential objections and appeals to considering the issue of whether the Guidelines have been properly applied. Granting the Valuer-General the power to make guidelines will affect the Land Court’s ability to exercise its powers.

The introduction of binding Guidelines may subvert the valuation process which has been engrained through common law (and it's continual evolution) by removing the ability of the court to determine the right (or wrong) way for determining a valuation objection. The ability to determine process will be removed, and instead be determined by the Valuer-General.

Based on the above, we belief the Guidelines should **not** be binding. Instead, the Guidelines should be non-binding and set out the basis on which the Valuer-General determines valuation matters. This will preserve the role of the Land Court in determining land values on appeal and retain a fair and transparent valuation process.

2. Changes to the objection process – disclosure requirements

Clauses 30 to 56 of the Bill identify a range of proposed amendments to the process of dealing with landowner objections for land valuations. This submission responds to Clause 32 (changes to the content of an objection) and Clause 37 (changes to an objection conference) in the following sections.

Changes to the content of an objection

Clause 32 of the Bill identifies proposed changes to the content of an objection. Currently, a landowner who objects to a valuation must advise the Valuer-General of the valuation sought where the original valuation is more than $750,000. The Bill proposes to remove the $750,000 threshold, requiring all landowners to state the valuation sought in their objection. The Bill states that any objection will need to include:

- the valuation sought for the land;
- at least 1 ground of objection to the valuation; and
- in relation to each ground of objection, the information the landowner relies on to establish the ground.

This will 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. Therefore, we believe the objection process should require that an alternate valuation be provided only where the amount disputed exceeds a nominated sum.

Changes to objection conferences

Clause 37 of the Bill identifies proposed changes to objection conferences, also known as independently chaired conferences. Currently, the Valuer-General can invite a landowner to participate in an objection conference if an objection has been properly made and the valuation is at least $5 million. Historically, this nominated value was used as a measure to identify more complex situations which would benefit from an objection conference.

The Bill proposes to remove this $5 million threshold. We acknowledge the rationale for this proposed change because this nominated value is not always an accurate measure of a complex situation. Under this arrangement, landowners can accept or reject an invitation from the Valuer-General to participate in an objection conference. However, any information

provided before an objection conference or required by the chairperson for an objection conference is admissible in further court proceedings. This may deter the participants from having open discussions during the objection conference and consequently hinder or prevent resolution of the objection matter in that setting.

Given the above, we believe that any information disclosed for objection conferences should be disclosed on a without prejudice basis and remain inadmissible in any further court proceedings. Any information provided before an objection conference should remain confidential and be destroyed at the resolution of the conference.

3. Changes to the definition of "unencumbered"

Clause 6 of the Bill details the proposed amendment to the definition of the term "unencumbered" in section 17 of the Land Valuation Act to omit an 'agreement for lease'. The current definition of this term reads as – **"unencumbered** means unencumbered by any lease, agreement for lease, mortgage or other charge", and relates to the term **expected realisation** of land under section 17 of the Land Valuation Act.

Removing an 'agreement for lease' from this term will result in lease agreements contributing to land valuations, when previously they did **not** contribute to land valuations. We believe that land valuations should only reflect the value of underlying land in its unimproved state, and not account for any improvements such as buildings and structures.

Allowing improvements such as buildings and structures to contribute to land valuations will result in higher land valuations, particularly in the case of large developments such as shopping centres and multiple tenancy developments. This will in turn be reflected in higher local government rates to be paid by the landowner.

The proposed amendment would also create conflict with existing court judgements where the matter of unimproved verses improved land value was contested and the unimproved land value was upheld. An example of this matter is the case of *Kent Street Pty Ltd & Ors v Department of Natural Resources and Mines* [2008] QLAC 221 which related to the Pacific Fair Shopping Centre.

Removing an 'agreement for lease' from this definition will introduce uncertainty to the valuation process about how land is to be valued. Furthermore, explanatory notes can be used for interpretation of statute only if there is ambiguity about the meaning of the provision. Given the introduction of guidelines and the proposed changes to the objection process we are concerned that the introduction of this uncertainty will prejudice the landowner, particularly where the valuer general applies value to an agreement for lease.

Therefore, we believe that the definition of the term "unencumbered" should not change from that already defined under section 17 of the Land Valuation Act.

4. Changes to making deduction applications

Clauses 9 to 12 of the Bill identify a range of proposed amendments to the process of making applications for deducting site improvements. This submission responds to Clause 9 (changes to making deduction application). This amendment will see the deduction application process separated from the objection process. We acknowledge the rationale for this amendment to encourage landowners to make deduction applications as soon as practical following the making of site improvements when documentary evidence is readily available.

However, we consider that separating deduction applications from the objection process is likely to increase costs for landowners. Furthermore, as land valuations are no longer issued annually for each local government area, the land owner does not receive any benefit from the submission of the DSI until such time that the Valuer-General next decides to value the relevant Local Government Area. Therefore, we do not support Clause 9 of the Bill.

5. Summary

Based on the above points, we submit the following in relation to the proposed amendments under the Bill:

1. The proposed Guidelines for land valuations should **not** be binding. Instead, the Guidelines should be non-binding and set out the basis on which the Valuer-General determines valuation matters. This will preserve the role of the Land Court in determining land values on appeal and retain a fair and transparent valuation process.

2. The objection process should require that an alternate valuation be provided only where the amount is dispute exceeds a nominated sum. This will ensure that the average person is not further disadvantaged in making a comprehensive and informed objection.

3. Any information disclosed for objection conferences should be disclosed on a without prejudice basis and remain inadmissible in any further court proceedings. This will encourage participants to have open discussions during an objection conference, with the goal of resolving the objection matter in that setting and thus avoid future court proceedings.

4. The definition of the term “unencumbered” should not change from that already defined under section 17 of the Land Valuation Act. This will ensure that land valuations only reflect the underlying land in its unimproved state and remain consistent with previous court judgements.

5. Clause 9 which relates to changes to making deduction applications, should be removed from the Bill, because the proposed changes will lead to increased costs for landowners in dealing with the Valuer-General.

Please contact the undersigned should you wish to discuss any aspect of this submission.

Yours sincerely
HARVEY NORMAN

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Nicole Vastas
Head of Legal – Property