

LAND VALUATION AMENDMENT BILL 2023

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Committee Secretary
Transport and Resources Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary

Land Valuation Amendment Bill 2023

Thank you for the opportunity to provide feedback on the Land Valuation Amendment Bill 2023 (**the Bill**).

Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting

This response has been compiled with the assistance of members of the QLS Planning and Environment Law Committee and with input from QLS members with substantial expertise in this area.

Clause 5 Valuer-general may make guidelines

Clause 5 inserts a new section 6A and confers the valuer-general with legislative power to make guidelines about any matter relating to the administration of the *Land Valuation Act 2010* (Qld) (**the Act**) or the valuation of land.

Subsection (9) provides that "a guideline is binding in relation to the valuations to which it applies". QLS is concerned that the current drafting may alter the Land Court's role in the valuation process and the law to be applied.

For example, whilst the making of guidelines may improve consistency and transparency, if the guidelines are binding on the Land Court, the current grounds for appeal to the Court may potentially be limited.

It is also unclear what matters will be dealt with in the proposed guidelines. There is the potential for inconsistencies to arise between the guidelines and existing valuation standards and practices, as well as legal precedent, or the Act itself. To support the policy intent, the fundamentals of the valuation framework should be prescribed in the Act.

QLS suggests an appropriate alternative to the binding guidelines would be a non-binding statutory guideline or administrative non-statutory guidance from the department.

QLS strongly recommends that all stakeholders must be consulted before the making of statutory guidelines. Section 6A(3) of the Bill states “*before making a guideline, the valuer-general may consult with, and have regard to the views of, any person the valuer-general considers appropriate*”. In the circumstances, QLS suggests amending this section to state “*the valuer-general **must** consult with...any person the valuer-general consider appropriate*”, to support the legislative intention to ensure transparency and consistency in the statutory land valuation framework.

QLS would welcome the opportunity to provide input on the draft guidelines.

Clause 6 The land’s expected realisation

Clause 6 amends the definition of **unencumbered** in section 17 to omit an ‘agreement for lease’.

QLS does not agree with the proposed amendment. The current drafting in the Act makes it clear that any value added by an agreement for lease is to be excluded from the assessment of the *expected realisation* of land.

In our view the proposed amendment would alter the legal approach to be applied, as the experience of our members who practice in this area is that an agreement for lease can materially affect the land’s value.

Whilst the Explanatory Notes state that the amendment will ‘remove the expectation that a deduction is made simply because an agreement for lease is in place when a property is sold’, QLS considers the policy intention for the change is unclear.

Clause 9 Making deduction application

QLS considers this change to be appropriate. However, we reiterate previous submissions regarding the capacity of the Queensland Civil and Administrative Tribunal (**QCAT**) to accept added workload without additional funding and resourcing.

We also note that QCAT requires the consent of the Tribunal before legal representation of parties is allowed. 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.

Clause 22 Applying for combined valuation for non-adjoining farming lots or parcels

QLS considers the amendments are reasonable and agrees that the process should be 'owner led', but recommends consultation with relevant parties to ensure farmers are properly prepared for the amendments.

Further, to ensure the amendment achieves its stated intent of providing greater flexibility and autonomy for landowners, QLS recommends that upon assent, the department should continue consultation with landowners to understand any practical barriers, including, for example, any delays in QCAT which require additional resourcing. As mentioned above, any additional jurisdiction to QCAT will necessitate the allocation of further funding to support this added workload.

Noting these decisions will be subject to internal and external review to QCAT, QLS recommends drafting of this section should also require that the valuer-general provide reasons where they have decided not to include the lots or parcels in the same value under the new amendments. Alternatively, QLS suggests including scope to request reasons for the decision if required.

If there was a proposal to amend the criteria in section 59 of the Act at a later date, then the appropriateness of QCAT review may need to be reconsidered as it may be that that role is best placed with the Land Court.

Clause 27 Exceptions to the annual valuation requirement

QLS appreciates the intention of the amendment is to accommodate for '*unusual circumstances*' such as natural disasters, but does not agree with the amendments to section 74 to omit the word '*possible*' and insert the word '*appropriate*'. This gives the valuer-general discretion not to make an annual valuation because of '*unusual circumstances*'. Unless it is not possible to do so, annual valuations should be issued to capture substantial fluctuations in the market (including as a result of flooding), otherwise they will not be acknowledged until the following valuation is issued.

Additionally, QLS considers that widening the provision from only applying to circumstances where a valuation cannot physically or operationally be undertaken, to one where the discretion is much broader, is a significant amendment and notes that "*unusual circumstances*" is only inclusively defined within the Act. QLS suggests that this definition already provides considerable flexibility when considered in the framework of sections 74(1) and 74(2) of the Act.

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.

Clause 31 What is a *properly made* objection

Clause 31 amends section 112 with the intent of streamlining the initial assessment of an objection by removing the properly made partially compliant decision.

We note the amendments to section 113 will require details of the information on which the objector seeks to rely to establish each objection ground. Under the Act, a *properly made* objection is one that complies with all of the requirements under section 113.

Therefore, under the current changes in the Bill, 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.

We therefore query if the proposed amendment, would achieve the desired intent of streamlining the initial objection assessment process.

Clause 32 Required content of objections

QLS recognises the benefit in requiring all objectors to state the valuation sought in an objection as it will help all involved to understand how far apart the respective positions are in the valuations. 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. Further, we recommend these reforms be accompanied by suitable support from the State Valuation Service to assist unrepresented owners in understanding the process. 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).

There should be no cost consequence to the objector if the valuation figure nominated by the objector is substantially lower than the eventual valuation amount. We also suggest deliberation be given to supplementing the objector's nominated valuation with an obligation on the valuer-general to consider whether, having considered the grounds of objection raised, an alternate valuation should result. Even though the valuer-general evidently has the authority to do so, including such an obligation in the drafting would clarify that the valuer-general should not purely reject an objection because the alternative valuation put forward is not justified by the grounds provided by the objector.

Additionally, the drafting of section 113 should include scope for the objector to provide a revised nominated valuation.

Clause 37 Valuer-general may invite objector to participate in conference

QLS notes that the focus of the current drafting of new section 121 provides for the ability for the valuer-general to invite the objector to participate in a conference, but that the converse is not provided for. QLS strongly suggests that this section be amended to ensure that:

- an owner may request an objection conference in all cases; and
- the decision to offer or not offer a conference is made by the valuer-general with reference to published criteria.

These measures should be prescribed in the Act to provide a suitable level of transparency and weight to the criteria. 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.

Clause 43 Chairperson's functions

Section 126 is amended to expand the functions of a chairperson to include preparing a written report about the conference.

As currently drafted, we consider the report should simply be for the benefit of the parties and not be admissible in any proceedings, particularly in circumstances where the drafting in the Bill means that the written report may include the chairperson's opinion of any matter the chairperson consider appropriate.

This would also be consistent with section 131 of the Act which currently provides that evidence of anything said or done about an objection in an objection conference is inadmissible in any proceeding. In this regard, QLS does not support the proposed amendments to section 131 as outlined below.

Clause 47 Chairperson may require further information

New section 128A will enable a chairperson to request further information from either party or an agent or representative of a party to a conference.

Consistent with the scope of disclosure required in new section 127, QLS recommends that the drafting of new section 128A be refined so that the chairperson may only request further information directly relevant to the valuation and/or objection.

Clause 50 Admissibility of evidence

QLS does not agree with amendments to section 131 which seek to clarify 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 before a conference is started (section 127) or in response to the chairperson's request for further information (section 128A).

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.

Clause 54 Considering objection

Clause 54 amends section 147 so that the valuer-general may consider any matter that the valuer-general considers appropriate in deciding the objection, including a written report given by the chairperson of an objection conference to the valuer-general. Practically, the valuer-general will need to produce a statement identifying what was taken into account in deciding the objection and provide that statement to the objector. This statement could then form the basis of an appeal to the Land Court.

QLS reiterates its view that the Chairperson's written report about the conference should not be able to be relied on to decide the objection.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully

[REDACTED]
Chloé Kopilović
President