

## LAND VALUATION AMENDMENT BILL 2023

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## Submission Against The Land Valuation Amendment Bill 2023

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## Contents

<b>1.</b>	<b>Introduction</b>	<b>3</b>
<b>2.</b>	<b>Large Format Retail Association</b>	<b>3</b>
<b>3.</b>	<b>LFRA's Position</b>	<b>5</b>
3.1	Introduction of binding Guidelines	5
3.2	Changes to the definition of "unencumbered"	6
3.3	Changes to making deduction applications	7
3.4	Changes to the objection process	7
	<b>3.4.1 Changes to the content of an objection</b>	<b>8</b>
	<b>3.4.2 Changes to objection conferences</b>	<b>8</b>
<b>4.</b>	<b>Conclusion</b>	<b>9</b>

## 1. Introduction

This submission, contained herein outlines the Large Format Retail Association's (LFRA) response to the Land Valuation Amendment Bill 2023 (**the Bill**).

The Bill was introduced into Queensland Parliament on 23<sup>rd</sup> 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.

## 2. Large Format Retail Association

The LFRA is the national peak industry body which represents the interests of Large Format Retailers, investors, developers, owners and service suppliers to the Large Format Retail ('LFR') industry.

The LFRA has a clear policy agenda centred around energy, sustainability, competition policy and urban planning. Specifically, in relation to competition policy and urban planning, the LFRA advocates for reform of Australia's planning and zoning regimes across Australia to provide **clarity, consistency, and certainty** for the Large Format Retail sector. The LFRA's policy agenda encourages investment and employment growth and opportunities. Good urban planning, sustainability initiatives, smart competition policy, and sustainable and cheaper energy underpin our agenda.

### 2.1 Large Format Retail Key Metrics

Demand assessment economists, Deep End Services, estimates the following approximate key industry metrics for Queensland for the year ending 30<sup>th</sup> June 2023:

Key Industry Metrics	Queensland
Large Format Retail percentage of total retail sales	23.9%
Large Format Retail sales	\$ 20.63 billion
Number of direct employees in Large Format Retail	41,135
Number of indirect employees in Large Format Retail	51,089
Total number of employees both directly and indirectly in Large Format Retail	92,224
Large Format Retail floor space	4,180,338 square metres which equates to approximately 35% of all retail floor space

## 2.2 Large Format Retail Membership

The LFRA was established in 1999. As at today, the LFRA's membership includes some of Australia's largest and most respected Large Format Retailers including the 71 individual business brands listed in the following table:

ABS Automotive Service Centres	Domayne	My Pet Warehouse
Adairs	Early Settler	Oakland Mowers
Adairs Kids	Fernwood Women's Health Club	Officeworks
Amart Furniture	Fitness Cartel	Opposite Lock
Anaconda	Focus on Furniture	OZ Design Furniture
Animates	Harris Scarfe	Petbarn
Autobarn	Harris Scarfe Home	PETstock
Autopro	Harvey Norman	Pillow Talk
Baby Bunting	House	Planet Fitness
Barbeques Galore	House Bed & Bath	Provincial Home Living
BCF	IKEA	Rebel
Beacon Lighting	Jaycar Electronics Group	Reece
Beacon Trade	JB Hi-Fi	Revo Fitness
Beaumont Tiles	JB Hi-Fi Home	Robins Kitchen
Bedshed	Joyce Mayne	RSEA
Best Friends	Kitchen Connection	Secret Sofa
Bunnings	Kitchen Warehouse	Sleepys
Burnsco	Lincraft	SPACE
Chemist Warehouse	Macpac	Spotlight
City Farmers	Midas Auto Service Experts	Supercheap Auto
Clark Rubber	Mitre 10	The Good Guys
Costco	Mocka	Tool Kit Depot
Decathlon	Mountain Designs	Total Tools
De Rucci	My House	Tradelink

The LFRA is supported by the following 92 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

Accord Property	Deluca	MPG Funds Management
ADCO Constructions	Deep End Services	Moray & Agnew Lawyers
Advantage All Development	Development Directive	National Storage
Advent Security Services	DOME Property Group	Newmark Capital Limited
Agora Property Group	Edgewise Insurance Brokers	Norman Asset Delivery
Aigle Royal Properties	Ethos Urban	Onefin
Albion Property	Re Grow Development Group	Perth Airport
Amphis Commercial	FTI Consulting	Photon Energy Group
Architectus/Conrad Gargett	Gazcorp	Planning Solutions
Arise Developments	Gibb Group	Properties and Pathways
AsheMorgan	Geon Property	Ranfurlie Asset Management
Arkadia	Greenfields Development	Realmark Commercial
AXIMA Logistics	Grosvenor Engineering Group	Redpath Partners
AXIOM Properties Limited	HLC Constructions	Re-Grow Capital Group
Baycrown Property Group	Home Co.	Savers
Bayleys	Humich Group	Schaffer Corporation
Bentleigh Group	Investore	Sentinel Group Australia
Birdsong Legal	Jape Group Australia	Signify

Blueprint	JVL Investment Group	SolarEdge
Buchan	Knapp Property Group	Stockland
Burgess Rawson	Leedwell Property	Stonebridge Property Group
BWP Trust	Leffler Simes Architects	Terrace Tower Group
CBRE	Lester Group	Titanium Property Investment
Centuria	Leyton Property	TK Maxx
Charter Hall	LVX Global	Transact Capital
Cherry Energy Solutions	Mainbrace Constructions	Troon Group
Citinova	Major Media	Tutch
Colliers International	Marked Property	Upstream Energy
Coombes Property Group	McGees Property	Vend Property
COVA Group	McMullin	Walker Corporation
CV Media & Signage	Meyer Shircore Architects	

The LFRA is a key stakeholder in the planning and zoning laws that affect this sector of the retail industry and is actively involved across Australia in reviews of planning policy and planning regulations; proactively engaging with planning authorities across the nation to promote and achieve greater **clarity, consistency and certainty** within and across all planning frameworks.

### 3. LFRA's Position

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

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

- The introduction of binding statutory Guidelines for land valuations;
- Changes to the definition of the term '*unencumbered*';
- Changes to the process of making applications for deducting site improvements; and
- Changes to the process of dealing with landowner objections for land valuations.

These matters are discussed in detail in the following sections.

#### 3.1 Introduction of Binding Guidelines

The value of land is determined through a robust valuation methodology which has been established and tested through common law. Clause 5 of the Bill will:

- Empower the Valuer-General to set binding statutory Guidelines land valuations;
- Allow the Valuer General to update or amend the Guidelines with immediate effect;
- Not require the Valuer-General to undertake any consultation or provide advance notification of amendments to the Guidelines; and
- Override common law and impact on the Land Court's ability to exercise its powers in determining a valuation objection.

In reviewing the Bill and Explanatory Notes, the LFRA understands that the Guidelines are intended to provide the Valuer-General flexibility in evolving renewable and mining sectors. However, due consideration has not been given to the ramifications of binding statutory Guidelines and minimal detail is provided on the scope and transparency of the Guidelines, including how they will operate and be applied. The LFRA believes this information is critical and should be known before such powers are given to the Valuer-General.

Due to their statutory nature, the Guidelines will be binding on the Valuer-General, landowners and arguably the Land Court. The introduction of binding Guidelines may subvert the valuation process which has been engrained through common law (and its' continual evolution) by removing the ability of the court to determine the right (or wrong) way for determining a valuation objection. This will curtail landowners' abilities to effectively object to an onerous valuation. The ability to determine process will be removed, and instead be determined by the Valuer-General. This has the potential to allow the Valuer-General to amend the Guidelines on an objection as it is proceeding to Court to remove grounds for objection, effectively removing the rights of a land owner to challenge a valuation. Granting the Valuer-General the power to make Guidelines will affect the Land Court's ability to exercise its powers.

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.

Based on the above, the LFRA believe that any valuation Guidelines introduced should not be binding. Instead, Guidelines should be non-binding and set out the basis on which the Valuer-General determines valuation matters, and which the Court may have regard to. This will preserve the role of the Land Court in determining land values on appeal and retain a fair and transparent valuation process.

### 3.2 Changes to the Definition of 'Unencumbered'

Section 17 of the Land Valuation Act defines unencumbered to mean (emphasis added): *unencumbered by any lease, agreement for lease, mortgage or other charge.*

It is detailed under Clause 6 of the Bill that it is proposed to remove 'agreement for lease' from this definition. Consideration of whether an agreement for lease should be included in a land valuation has already been determined by the Court of Appeal, through their decision to uphold the findings of the Land Appeal Court in '*Chief Executive, Department of Natural Resources and Mines v Kent Street Pty Ltd [2009] QCA 399*' (and all subsequent case law which has also applied this decision). The Court found in this case that the inclusion of the value of an agreement for lease in the unimproved value of land was inconsistent with the Valuation of Land Act. The inclusion of this Clause 6 within the Bill shows an intention of the Valuer-General to circumnavigate the

findings of the Court (which further supports the concerns raised by the LFRA under 4.1 above).

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 the LFRA is concerned that the introduction of this uncertainty will prejudice the landowner, particularly where the valuer general applies value to an agreement for lease.

The proposed amendment will result in increased land valuations for all retail and commercial properties, directly impacting the LFRA's members and leading to higher rates and land tax payable by landowners. These land valuations will be artificially inflated and in direct conflict with law as determined by the Courts.

Therefore, the LFRA believes that the definition of the term *'unencumbered'* should not change from that already defined under section 17 of the Land Valuation Act.

### 3.3 Changes to Making Deduction Applications

A Deduction for Site Improvements (DSI) application can be made by the landowner for the value of works undertaken by the landowner to improve the land (and therefore improving the value of the land). Clauses 9 to 12 of the Bill identify a range of proposed amendments to the process of making applications for deducting site improvements.

Clause 9 will see the deduction application process separated from the objection process. It is understood that the purpose of this amendment to encourage landowners to make deduction applications in a timely manner following the making of site improvements when documentary evidence is readily available.

Notwithstanding, the separation of DSI applications from the objection process represents another unnecessary and costly change which landowners will be burdened with. The provision of separate applications requires collating separate documentation and retaining professional services in order to prepare and manage the objection and application processes separately.

Furthermore, as land valuations are no longer issued annually for each local government area, the landowner 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, the LFRA do not support Clause 9 of the Bill.

### 3.4 Changes to the Objection Process

A number of changes to the objection process are proposed under the Bill. Of key concern by the LFRA is:

- Clause 32: Changes to the content of an objection; and



- Clause 37: Changes to an objection conference.

Both clauses are considered in the following sections.

### 3.4.1 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 and all objections will need to include the following, in order to be deemed properly made:

- The valuation sought for the land;
- At least one (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 proposed requirement will bring forward the cost burden of making an objection 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, the LFRA believes the objection process should require that an alternate valuation be provided only where the amount disputed exceeds the nominated sum.

### 3.4.2 Changes to Objection Conferences

Clause 37 of the Bill identifies proposed changes to objection conferences, also known as independently chaired conferences. Under the current legislation, the Valuer-General is able to invite a landowner to participate in an independently chaired conference where the valuation is in excess of \$5 million. The Bill proposes to remove this \$5 million threshold.

Historically, this nominated value was used as a measure to identify more complex situations which would benefit from an objection conference. The LFRA

understands that the rationale for this proposed change is that this nominated value is not always an accurate measure of a complex situation.

The removal of the \$5 million threshold will also likely result in objections of property which holds a substantial value not being given appropriate consideration. Poor decisions on objections from the Valuer-General will result in additional parties pursuing an appeal through the Land Court instead.

Under the current 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, the LFRA believes 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.

#### 4. Conclusion

Based on the above points, the LFRA submits the following in representations to the Committee relation to the proposed amendments under the Bill:

- 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.
- 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.
- 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.
- 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.

- 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.

Please contact the LFRA's Chief Executive Officer, [REDACTED] or [REDACTED] should you wish to discuss any aspect of this submission.