# Valuation of Land and Other Legislation Amendment Bill 2010

# Explanatory Notes

## General Outline

## Policy Objectives

The objectives of the Bill are to amend the *Valuation of Land Act 1944* (VOLA) to:

- clarify the definition of unimproved value and the associated terminology
- provide for a more focussed process of objection designed to resolve disputes more efficiently at the objection stage
- allow for the use of a schedule of valuations (the general valuation schedule) and an adjustment factor in the statutory valuation process

The objectives of the Bill are to amend the *Water Act 2000* to:

- recognise that environmental risk management plans, introduced through the *Great Barrier Reef Protection Amendment Act 2009,* may fulfil components of the land and water management plan requirements; and
- provide flexibility for irrigators to defer the requirement to have an approved land and water management plan, and allow the chief executive to approve deferrals for extended periods.

## Reasons for the Policy Objectives

### Valuation of Land

The VOLA is an Act which makes provision for determining the valuation of land for rating and taxing purposes and for matters incidental thereto and consequent thereon as appears from the short heading to the Act.

The essential policy which lies behind the Act is to provide for a process which enables the valuation of land to be carried out equitably, efficiently and fairly.

When land valuation for rating and taxing purposes commenced, a policy decision was taken to adopt the value of the land component in an improved property as the basis for taxation.

The policy intent in Queensland has been to value the land component at that amount which represents the value of the land as developed at the date of valuation. In undertaking that process the expression "*unimproved value"* has been adopted. This was not intended to convey that the land be valued as though it had not been developed and accordingly should be assessed only by comparison with sales of vacant or unimproved land.

Rather, the expression was a term with a special definition designed to describe the value of the land component to be attributed to improved property. As unimproved value is a highly technical concept, litigation as to what precisely was intended has proliferated.

In one of the earliest cases, *Commissioner of Land Tax v Nathan* (1913) CLR 654, the High Court accepted that the proven success of the previous development of the land was to be taken into account in its valuation and the deduction method of valuation was appropriate to that end. That method entails that the value of improvements is subtracted from the improved value of land. Under the deduction method the development premium or "profit and risk" associated with the past successful development of land is included in the value of the land. Where the added value of improvements is deducted from improved value, the development premium remains with the value of the land.

However, subsequently, the Privy Council in *Toohey's Ltd v Valuer General* [1925] A.C. 439 repudiated the deduction approach to the valuation of land. The Australian Parliament intervened in 1930 with amendments to reintroduce the *Nathan* approach at a Federal level, which were applied in Queensland. The amendments were not carried forward in the other states.

A further complication arose when a concept described as "*intangible improvements*" was enacted in 2003 with the encouragement of the Property Council of Australia (PCA). The concept was inconsistent with general concepts of land valuation, and consequently the provisions were retrospectively removed in the subsequent 2008 amending legislation.

In December 2009, the Court of Appeal of the Supreme Court of Queensland (the Court) handed down its decision in *Chief Executive, Department of Natural Resources & Mines v Kent Street Pty Ltd* [2009] QCA 399 (Pacific Fair QCA). The Court rejected an appeal by the chief executive against the decision of the Land Appeal Court in *Kent Street Pty Ltd & Ors v Department of Natural Resources & Mines* [2008] QLAC 221 (Pacific Fair LAC).

In that decision the Land Appeal Court (LAC) determined that the definition of "unimproved value of land" in relation to improved land required that the land be treated as though it were vacant and unimproved, and that any development premium or profit and risk associated with its previous development was to be excluded from the "unimproved value" of the improved land. In the Pacific Fair decision the LAC also concluded that the benefit of leases of improvements entered into was to be disregarded in arriving at the "unimproved value".

This decision, if applied, would introduce an inequity between different property types. In a residential property valuation, the sale price of all of the lots in a residential subdivision will generally be more than the total of the englobo land and development costs. The difference is the development premium which is realised at the time of the sale of the lots.

Commercial property, in contrast, is usually developed for a purpose and leased to tenants, but no separate valuation of the leased premises is made as effectively occurs for residential property when lots are subdivided and sold. Nevertheless, the development premium in the case of commercial property is directly realised through the use of land for the purpose of the lease and so should be reflected in the unimproved valuation of the land if it is to be correctly assessed at its 'highest and best use'.

For commercial property, the same concept of a development premium should apply as it does for the land value of the subdivided lots of a residential subdivision. If it is not allowed for in the valuation of the commercial land, it would result in fundamentally different valuation principles being applied to commercial land, as opposed to other land types, such as residential land. It would also result in a sudden and material change in the total valuation base used by governments to determine rates and land taxation regimes.

The amendments seek to strengthen the application of VOLA to commercial properties to overcome the lack of equity between valuations of different types of properties.

The increase in value of land is a function of supply and demand. As demand for land increases with population growth, so does its value. It was not the intention of the Parliament or Government in the 2008 amendments that one part of the land owning community (home owners) should abruptly bear a significantly greater proportion of rate and land taxation revenue measures, through the introduction of different valuation principles for commercial property. The Bill redresses the inequality by ensuring that commercial and industrial properties are appropriately valued.

When amendments were made in 2008, the intention was to provide further clarity as to the approach to land valuation which had been in historic use under the Act.

The Government's policy in introducing the 2008 amendments was to clarify that the historically successful development of land was not to be ignored in determining unimproved value whether that valuation was arrived at by the deduction method of valuation under section 3(2) or by comparison with sales under section 3(1)(b).

The Government did not have a policy direction in the 2008 amendments that there should be a change in the valuation of land as developed. However, the Court of Appeal's interpretation of the VOLA after those amendments, has not resulted in the policy intention being given effect to. Indeed the court decision, if not addressed by the measures in this Bill, would result in a fundamental change in policy by not permitting the past successful development of the land to be allowed for in determining its unimproved value.

Two provisions which were initially proposed as part of the 2008 amendments were not included in the amendments as enacted as a result of concerns raised by the PCA. The PCA expressed concern that elements of a business conducted on the land might be included in the unimproved value of the land and there might in fact be a risk in realising the use of the land, or continuing the use of the land for a purpose for which it was being used at the date of valuation. To avoid unintended consequences of concern to the PCA, the two provisions were removed during consideration in detail.

The policy of successive governments since 1944, has always been to value land as developed. Once the land has been successfully developed, its value increases because risks associated with its development have been overcome. That is a matter of history. Where leases or agreements are in place, that is not a separate business but is a reflection of the use of the

land. Entering into leases, is part of that use and a reflection of the past successful development of the land.

The current amendments make it clear that there is no greater risk in realising the use of the land, or continuing the use of the land for any purpose for which it is being used at the date to which the valuation applies. This does not mean that there is no risk recognised as was proposed in 2008. This simply recognises that there is no greater risk than that which already exists.

Profit and Risk

The policy intent of these amendments is to ensure that the development premium or profit and risk associated with the historically proven success of development associated with the land is to be included in its unimproved value whether assessed under section 3(1)(b) or section 3(2), and that the previously applied valuation approach by the chief executive can be continued.

Improved value

Improved value is a term intended to comprehend the market value of a property as improved. Because property uses vary so considerably it is necessary to give further guidance to assist in the valuation process. In Pacific Fair LAC, it was suggested that improved value might be approached on the basis that it did not include a component for "*goodwill*". At the same time it was concluded that the added value of leases in place in relation to the property should not be included in its unimproved value.

Each of those views runs counter to the policy underlying the VOLA. Where the highest value use of the land is that it may be used as a regional shopping centre, in order for such use to be made it is necessary that tenancies of shops be offered for lease to individual retailers.

This form of development is indistinguishable from other forms of development in principle. In each case the net income able to be derived from the land as developed will affect its market price. The circumstance that shopping centre tenants lease their shops rather than buying the freehold does not affect the fundamental driver of the value of the land, namely the income able to be derived from it by the owner.

Recording "unimproved value"

The Bill provides for landowners to supply information that will assist in determining the valuation of the property. Land owning entities with reporting requirements as to their assets and liabilities already obtain

market valuations of their land as improved. Such valuations provide a prima facie measure of the value of the land as improved. Such entities also have sophisticated systems in place to record depreciation of improvements for income tax purposes. Again, such records can be used to provide a prima facie measure of the depreciated value of those improvements and hence to derive their added value. It is reasonable that such information, imposed under other legislation, also be made available to arrive at a correct valuation for rating and taxing purposes. The Bill recognises the advantages of using such requirements in the VOLA.

Arriving at "*unimproved value*"

Amendments are necessary to confirm and put beyond doubt what is and is not included in the land value and to enable the chief executive of the Department of Environment and Resource Management (DERM) to confidently issue valuations.

A number of rules for assessing "*unimproved value"* are prescribed in the Bill.

As difficulties have arisen from use of the expression "*unimproved value",* it having been treated as conveying the idea that the value of the land is to be assessed on the basis that the land was unimproved, rather than the unimproved value being assessed as mandated by section 3, the Bill makes specific provision for the expression "*unimproved value"* to be applied as defined, notwithstanding that the expression may otherwise convey a different concept.

The Bond Rate

Pacific Fair LAC also determined to change the approach to the adoption of the long-term bond rate in the analysis of improvements which had been applied after the decision in *Determination of Valuer General v Shire of Esk* (1972) 39 CLLR 130. The amendments confirm the historical approach to the adoption of the bond rate that is published by the Reserve Bank of Australia in relation to Government bonds for a 10 year period on borrowed funds that have not been repaid.

Invisible Improvements

Pacific Fair LAC also determined that "*invisible improvements"* was a term which was used interchangeably with the term "*intangible improvements"*. This approach departed from previous decisions of the Land Court and Land Appeal Court in relation to what was meant by the expression "*invisible improvements"*.

The Land Court in *Amoco Australia Pty Ltd v The Valuer-General* (1977) 4 QLCR 427 had decided that "*invisible improvements"* were physical improvements which may not be readily apparent such as drainage, reclamation and filling which merge (i.e. lose their character or identity) with the land. That decision was later followed and applied in a number of decisions of the Land Appeal Court including *Daikyo (North Queensland) Pty Ltd v The Chief Executive* (1993) 14 QLCR 466.

Each of those matters is also addressed by the Bill.

**Introduction of a general schedule of valuations, streamlining objection processes and adjustment factor**

Streamline the valuation objection process:

To provide equity, an objection process is provided for in the VOLA to enable landowners to challenge their valuation if they believe it is incorrect. A landowner dissatisfied with the result on objection can then appeal to the Land Court, from there to the Land Appeal Court and then to the Court of Appeal on matters of law.

Currently, landowners are able to provide a basic, generic objection in any form. There is no requirement for the landowner to provide specific grounds of objection or associated supporting documentation. This forces the chief executive's delegate (the delegate) to make a decision on an objection without appropriate grounds or supporting documentation. This can result in an objection decision not truly reflective of all the circumstances affecting the value. This then leads to the landowner or their representative contesting the matter in the Land Court.

Representatives for a landowner can object on behalf of a landowner without disclosing the landowner's signature on the objection form. This means generic objections are often lodged in bulk, in advance of landholders knowing about or agreeing to the objection.

The current objection and appeal process is inefficient and resource-intensive. The ongoing litigation relating to valuations in Queensland has reinforced the need for modernisation and streamlining of valuation objection processes.

The Legislature has recognised that the community cannot afford the expense of litigation in relation to matters that can be resolved by a process of provision of information on a less formal basis. There are pre-court procedure requirements imposed upon claimants set out in the *Personal*

*Injuries Proceedings Act 2002, Motor Accident Insurance Act 1994 (Qld)* and the *Workers' Rehabilitation and Compensation Act 2003*.

Failure to comply with those pre-procedure requirements precludes a claimant from instituting proceedings unless otherwise authorised by the Court. A cognate but slightly different approach has been taken in relation to appealing against State taxation assessments in the *Taxation Administration Act 2001* (Qld) under s. 65.

Thus, the Legislature has considered it appropriate, in the interests of minimizing the extent of litigation, for most disputes in Queensland, that claimants provide information and engage in meaningful settlement negotiations before being permitted to institute court proceedings. Land owners called upon to meet their share of community costs should not be treated more tenderly than an injured person in a wheelchair.

In other legislation the Parliament has also required that applications for administrative decisions be made properly in order to promote efficiency in decision making processes and to ensure efficiency in terms of the time and resources of all parties. Under the *Sustainable Planning Act 2009* applications are required to be properly made. The Court of Appeal in *Barro Group v Redland Shire Council* [2009] QCA 310 identified the advantages to the community of adopting such an approach.

Recent experience involving very substantial valuation appeals has demonstrated that the present system is unduly cumbersome and expensive for land owners and for the chief executive. This is a consequence of the objection process presently in place not having kept pace with the increasing complexity of valuations and property management. In almost every other area of dispute resolution, steps have been taken to ensure that only the real issues in dispute are to be litigated, identification of contentions, disclosure of documents, compulsory conferences and other negotiation processes are required before parties in dispute can resort to litigation.

The amendments will allow for the proper management of a more information rich objection process. To allow partial recovery of the costs of the objection process in the future, the amendments will include the power for the chief executive to set a lodgement fee associated with the objection process. The fee will be prescribed in regulation. There will be no fee associated with the lodgement of objections against the annual valuations issuing in 2010.

The Bill incorporates those concepts as part of this reform.

Appeal proceedings:

When an appeal is lodged the Land Court resolves the dispute between the parties. However, the new objection process is designed to identify all of the issues raised by the objector so the chief executive can make an informed decision and give to the objector reasons for that decision. Because the information will be supplied as part of the new objection process, any appeal made thereafter will be limited to the grounds of objection.

The chief executive has access to many skilled and highly professional valuers who are engaged in the important task of assessing land value for rating and land tax purposes in Queensland. Such valuers are required to be familiar with current construction costs, rates of depreciation and the added value of improvements on land. They are also involved in the litigation before the Land Court. Such litigation needs to be conducted efficiently and fairly, but bearing in mind that the landowner is seeking to overturn a valuation made by the chief executive for the community as a whole.

Accordingly, in order to achieve the policy objective of appropriately assessing the added value of improvements, provision has been made in the Bill for a certificate by the chief executive to be sufficient evidence of improved value and the value of improvements for the purposes of the Act. In order to displace such a certificate a landowner will have to demonstrate to the court's satisfaction that some different amount is the correct amount. In the absence of the Land Court being able to determine what such other amount should be, the certificate will prevail.

General Valuation Schedule:

Every year, DERM's State Valuation Services (SVS) undertakes a market survey of each local government area on behalf of the chief executive. The chief executive's decision as to which local governments are to receive a valuation is based on consideration of the results of the market survey; consultation with the local government and appropriate local/industry groups; impact on land tax and rental; the length of time since a valuation was done; how the level of valuations compare between local governments and the overall five year program of valuations.

The consideration of these criteria is a lengthy and complex process and there is no certainty as to which local governments are going to receive a valuation in any given year.

Currently, on average, the SVS values each large local government every one to three years. Other smaller local governments which have less market movement, smaller populations or are located in distant parts of the State are valued every three to five years.

Local governments are frustrated by the lack of certainty as to when they will receive a valuation and are confused by the criteria used by the chief executive in the decision making process. Whilst local governments are consulted as part of the process they are unable to forward plan on the basis that they are guaranteed to receive a valuation in a certain year as the decision is only made some months before the valuation actually issues.

To provide the certainty sought by local governments it is proposed to introduce a general valuation schedule that will document when revaluations will be provided to local governments for up to 10 years in advance. Local governments will know in advance when a general valuation will occur and will be able to forward plan accordingly. Local governments will be valued at three, four or five yearly intervals. Criteria for the allocation of local governments to particular intervals included existing frequency of valuations, location, size and historical and anticipated market activity.

A set general valuation schedule will provide certainty for local governments and allow the department to better allocate and manage valuation resources.

Adjustment factor:

The introduction of a general valuation schedule will mean that local governments will receive valuations at three, four or five yearly intervals.

In those years where valuations are not provided and there has been substantial movement in the property market, local governments may be concerned that the valuations that they are utilising for the assessment of general rates do not reflect the existing level of the market. The Office of State Revenue (OSR) and the State Land Asset Management (SLAM) rental assessment area of DERM would have similar concerns.

To allow for local governments, OSR and SLAM to base their revenue assessments on more appropriate levels of value, in those years when a general valuation is not provided, the chief executive will publish an adjustment factor that will be applied to the existing valuation to adjust it to more closely reflect the market level for that year. There will be no

grievance rights against the figure resulting from the adjustment factor as it is not a valuation and landowners will not receive a valuation notice.

Whenever an adjustment factor is provided it will reflect the change that has occurred in the property market since the last general valuation was made. Where there has been a less than 10% change in the market since either the last general valuation or adjustment factor was made (whichever is the later), an adjustment factor will not be provided. Where a factor is not provided, the existing general valuation or adjustment factor will continue to apply.

When a factor is provided the chief executive must publish a notice in either the government gazette or on DERM's website that details the factor, the name of the relevant local government area and the grouping of lands to which the factor applies. The notice must be published by 31 March.

The adjustment factors will be determined by conducting an analysis of the property market within the local government area. To assist with this process, the chief executive will request submissions from appropriate stakeholder representatives. These may include local governments, professional and property industry organisations and other government agencies. The chief executive may also form an advisory panel of stakeholders to provide advice on factors.

The factor will become effective on the 30 June after it was published and remain in effect until it is replaced by either a general valuation or another adjustment factor. The factor must be applied to the existing valuation to adjust it to more closely reflect the market level for that year. The adjusted figure must be used by the revenue gatherers for the assessment of rates, land tax and State land rental.

Currently, section 37 of the VOLA provides the chief executive with the authority to not provide an annual valuation in an area if it is not possible to provide it because of unusual circumstances. This authority was first introduced in 2004 and has been used twice since. The first instance was because of industrial action by departmental valuers and the second because of the global financial crisis and extreme weather conditions impacting landowners in parts of Queensland. In both instances, the chief executive had no control over the existence and impact of the unusual circumstance. Without the authority to not provide an annual valuation in these situations, the chief executive would have acted unlawfully in not providing it.

This authority has been replicated in both the general valuation and adjustment factor provisions. An unusual circumstance that previously stopped the provision of an annual valuation would have the same impact on a general valuation and the ability for the chief executive to provide an adjustment factor.

The application of the adjustment factor will mitigate market fluctuations that occur in the years between general valuations. When the next general valuation is made any substantial change in valuation that has occurred since the last general valuation will be more acceptable because of the application of adjustment factors to the valuations in the intervening years. Property owners will be more aware of changes that have occurred in the property market in the years between general valuations and will be less surprised by the level of the new valuation.

## Water Act 2000

The land and water management plan framework in the *Water Act 2000* regulates water use where there is a risk of land and water degradation. Under this framework an approved land and water management plan is often required before water can be used for irrigation.

The *Great Barrier Reef Protection Amendment Act 2009* introduced a requirement for environmental risk management plans under the *Environmental Protection Act 1994*. These plans deal with similar property management issues and land management practices as land and water management plans, as a mechanism to ensure protection of the Great Barrier Reef. This new framework recognises these linkages by allowing land and water management plans, and other equivalent documentation, to be submitted for environmental risk management plan accreditation. The Bill simply aligns the land and water management plan framework by making an equivalent recognition in the *Water Act 2000*. These amendments will ensure that irrigators are not required to duplicate existing effort by preparing multiple plans.

In addition, the existing land and water management plan framework allows an irrigator to seek a deferral for having an approved plan. The requirement to have an approved plan in place may be deferred for a period of up to one year on approval of the chief executive; however after this period it is an offence for the landholder to use water for irrigation without an approved plan. Requiring a land and water management plan where risk of land or water degradation is low creates unnecessary regulatory burden on irrigators, and administrative burden for the Government to approve and

administer low risk plans. The Bill amends the *Water Act 2000* to provide flexibility for irrigators to defer the requirement to have an approved plan, and allows the chief executive to approve deferrals for extended periods.

## How the Policy Objectives will be achieved

The policy objectives are achieved by amending the VOLA to:

- change the provisions which provide for unimproved value and how it is to be assessed;
- introduce a new process for the making of objections to valuations and confine appeals to the grounds of objection and further, providing that on an appeal against a decision on objection, the issues before the Land Court are refined so as to focus on real valuation issues and not peripheral issues;
- introduce a general valuation schedule of local governments to receive general valuations at 3, 4 or 5 yearly intervals. The schedule will be included in the *Valuation of Land Regulation 2003;*
- allow for the provision of an adjustment factor to revenue gatherers for those years when a general valuation is not provided; and
- other various complementary amendments.

and amending the Water Act 2000 to:

- Recognise that environmental risk management plans under the *Environmental Protection Act 1994*, introduced through the *Great Barrier Reef Protection Amendment Act 2009,* may fulfil components of the land and water management plan requirements; and
- allow the chief executive to approve deferral, for up to two years, of the requirement to have an approved land and water management plan, and for subsequent deferrals to be approved where the chief executive considers appropriate.

## Alternatives to the Bill

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

## Estimated administrative Cost to the Government for implementation

Initially, the amendments will require an increased investment in administrative and valuer resources required to allow for the proper management of the more information intensive objection process, but this will be undertaken within existing resources. However, it is anticipated there could be substantial savings for land owners and the DERM in conducting litigation in the Land Court.

The application of the adjustment factor will require changes to the Queensland Valuation and Sales computer system (QVAS) and other procedural changes. These costs will be absorbed within the existing QVAS budget.

There will be no additional administrative cost to the Government for implementing amendments to the *Water Act 2000*.

## Consistency with Fundamental Legislative Principles

The Bill does infringe some fundamental legislative principles.

Unimproved Value:

The amendments in relation to unimproved value are retrospective. New section 105 provides for retrospectivity of some of the amendments to a valuation in effect at any time on or from 30 June 2002. This is required to ensure that there is continuity and certainty.

The chief executive has previously proceeded on the basis that:

1. in analysing improvements the long term bond rate was to be applied;
2. in considering the nature of "*invisible improvements*", the VOLA was to be construed as applying to physical improvements which may not be readily apparent, such as drainage, reclamation and filling, which merge (i.e. lose their character or identity) with the land;
3. in considering the value of a developed property the fact that it "*has been successfully developed"* does not have to be ignored.

The retrospective amendments are necessary to confirm the valuations previously issued and provide certainty for the future.

In terms of efficiency, the Pacific Fair LAC decision will have a significant impact on the chief executive and the departmental valuers engaged in valuations who will be required, if the amendments are not retrospective, to

proceed on the basis that what had previously been accepted as appropriate process, should be discarded, and a new process engaged in. That leads to a great deal of inefficiency and will also result in anomalous and inequitable valuations.

Without retrospective changes to the Act in that respect, the Pacific Fair LAC's conclusions regarding the determination of unimproved value would have to be applied to other commercial, industrial and multi-unit properties, exposing the State and local governments to significant repayment of land tax and rates charged on the basis on the established valuations approaches.

Unusual circumstances – not providing general valuation and adjustment factor:

Currently, section 37 of the VOLA provides the chief executive with the authority to not provide an annual valuation in an area if it is not possible to provide it because of unusual circumstances. This authority was first introduced in 2004 and has been used twice since. The first instance was because of industrial action by departmental valuers and the second because of the global financial crisis and extreme weather conditions impacting landowners in parts of Queensland. In both instances, the chief executive had no control over the existence and impact of the unusual circumstance.

Without the authority to not provide an annual valuation in these situations, the chief executive would have acted unlawfully in not providing it. This authority has been replicated in both the general valuation and adjustment factor provisions. An unusual circumstance that previously stopped the provision of an annual valuation would have the same impact on a general valuation. The adjustment factor is a new process being introduced by this Bill but the ability for the chief executive to provide this could also be impacted by an unusual circumstance.

Objection Process:

Where the chief executive considers that the landowner is likely to possess certain information that could be relevant in making a reasoned objection decision, the chief executive may request the landowner to provide this information. This includes information such as a draft valuation report or draft town planning report or a record of discussions with purchasers, vendors or agents about the owner’s land or other land.

Information of this type can support different levels of value— valuations can be produced for different purposes and support different levels of value. This information could have a major influence on the chief executive's ability to determine an accurate and informed objection decision—without the information, the decision could be severely compromised. To encourage the supply of this information, when the landowner does possess the information and refuses to supply it, the objection will lapse. If the landowner states that the information is not in their possession, the objection will be determined based on the existing information. However, the landowner will be required to complete a statutory declaration to certify that the information in not in their possession.

This is considered necessary as in the past the chief executive has requested information during the objection process in an attempt to make more informed, accurate decisions on objection but in many cases owners simply refused to provide the information. Without appropriate information being provided, objection decisions have been based solely on information in the chief executive's possession at that time. Information was subsequently provided after matters had reached the Land Court. If the information had been provided when requested during the objection process, decisions would have reflected the impact of that information, owners would have confidence that relevant information had been taken into account and matters may not have progressed to the Land Court.

There is no specific appeal right included in the provisions for an objector to appeal against the chief executive's decision to make the requirement for information. However, the objector can request a review of the decision under the *Judicial Review Act 1991*. If before the 28 day period allowed for the supply of information has expired, the decision to make the requirement is stayed by either the Supreme Court, then the objection cannot be lapsed.

Restriction on the Land Court declaring whether a document is an objection:

Section 33 of the Land Court Act 2000 is being amended to exclude the Land Court from making decisions about whether or not a document that purports to be an objection under the VOLA is a properly made objection under that Act. However, the provision does not prevent the Supreme Court from granting declaratory or other relief under the *Judicial Review Act 1991*.

The objection process is managed by the chief executive within the legislative framework provided under the VOLA. Once a decision on objection is issued, an owner, if dissatisfied with the decision, may lodge an appeal to the Land Court which then has jurisdiction to consider the appeal. In the past some landowners who have not lodged an objection or lodged objections that were out of time and therefore invalid, have attempted to lodge appeals directly with the Land Court. The department has then been forced to argue the jurisdiction of these matters before the Court. The Land Court is a specialised valuation court and it is inappropriate that it engage in administrative review of the process of objection. The Supreme Court, in contrast, is a court with great experience in dealing with administrative review. That separation has worked well to date and is consolidated by the Bill.

With the introduction of more formal objection requirements to improve the quality and robustness of the objection decision making process there is a concern that some landowners may attempt to lodge objections that do not meet the requirements and then argue their validity in the Land Court. This is against the intent of the changes to the objection process – providing full and frank disclosure during the objection process to assist and improve the decision making process.

Evidentiary Certificates:

The purpose of the certificates, consistent with the established requirement that the appellant bears the onus to displace the valuation in place on objection, is to be evidence of the facts set out in the certificates. As an appellant conventionally must show on appeal that the facts arrived at previously were wrong, those facts need to be established by evidence before the Court. The reasons given by the chief executive accordingly, will be able to be supplemented by such certificates, when an appeal is heard. Before issuing a certificate the chief executive will need to consider the grounds of appeal.

In order to achieve the policy objective of appropriately assessing unimproved value, provision has been made in the Bill for a certificate by the chief executive to be sufficient evidence of the improved value and the value of improvements for the purposes of the VOLA. Unless other evidence led in the case enables the Land Court to affirmatively come to the conclusion that another amount which it determines should be assessed as being the amount of improved value or the value of improvements, the certificates will stand.

On the hearing of the appeal the chief executive will be able to tender certificates in evidence without further proof to establish the improved value and the value of improvements of a property for the purposes of section 3. Information which is provided to the chief executive as part of the objection process may be tendered by the chief executive without the necessity for formal proof and will be evidence of the matters and opinions set out in such information. This form of proof reflects the feature that such information was provided by the appellant as reliable, will have been adopted by the appellant in other contexts e.g. financial reporting, and will have been part of the basis upon which the objection has been decided.

No Appeal Rights – Adjustment Factor:

The market adjustment factor is not a valuation. Its application results in a figure that will more closely reflect market levels – whether the market has increased or decreased since the last valuation. This will allow local governments and the OSR to assess revenue on more current levels. Before fixing an adjustment factor the chief executive must seek submissions from stakeholders, and consider the submissions. These stakeholders can include representatives from local governments, professional and property industry representative organisations and other government agencies. The chief executive must review the content of these submissions and take them into consideration when determining the adjustment factors.

The chief executive may also form an advisory panel of stakeholders to provide advice about the fixing of adjustment factors.

Landowners rights are preserved by ensuring that they have full objection and appeal rights whenever general valuations issue. Rights are also preserved by the fact that the fixing of an adjustment factor would be subject to a review under the *Judicial Review Act 1991.*

The provision of adjustment factors in those years when general valuations are not made provides an enhanced service to local governments and the OSR. The use of adjustment factors will lessen the impact of market movement between general valuations. This will lessen the impact on property owners at the next general valuation. Local governments have the ability to mitigate the impacts of market movement by utilising differential rating solutions.

There are no fundamental legislative principle issues in relation to the amendment to the *Water Act 2000.*

## Consultation

### Community and industry stakeholders

The Local Government Association of Queensland (LGAQ) has been consulted on certain amendments to the VOLA.

Discussions were also held with Valuer-Generals in other Australian jurisdictions, particularly the Valuer-General of Tasmania, relating to the proposed introduction of an adjustment factor. Discussions were also held with the President, Registrar and Judicial Registrar of the Queensland Land Court relating to the grievance process.

### Government

A Steering Committee was established and has met regularly which comprised the Assistant Director-General, Land and Vegetation Division, of the Department of Environment and Resource Management as Chair of the Committee; the Deputy Director-General, Policy, Department of the Premier and Cabinet; and the Assistant Under Treasurer, Resources, Queensland Treasury, to oversee the valuations review.

Consultation has also occurred with the Department of Justice and Attorney-General, Crown Law, the Department of the Premier and Cabinet, Treasury, the Office of State Revenue, Department of Employment, Economic Development and Innovation (Mines and Energy) and the Department of Infrastructure and Planning (Local Government), for the valuation matters.

The Department of Employment, Economic Development and Innovation (Primary Industry and Fisheries) and the Department of Premier and Cabinet (Environment and Resources) have been consulted on the amendments to the *Water Act 2000*.

## Results of consultation

### Community and industry stakeholders

The LGAQ are supportive of the amendments in relation to the rolling schedule and adjustment factor.

**Government**

JAG has been consulted in relation to the valuation objection process, and is supportive of the new procedures. All issues raised during consultation have been addressed.

All agencies are supportive of the *Water Act 2000* amendments.

# Notes on Provisions

## Part 1 Preliminary

### 1 Short title

*Clause 1* sets out the short title of the Act as the *Valuation of Land and Other Legislation Amendment Act 2010*.

### 2 Commencement

*Clause 2* provides that the amendments relating to the clarification of the definition of unimproved value commence on Assent.

The objection management process will commence on the date of issue of the 2010 valuation. This will ensure that the objection management process will apply to those annual valuations.

The amendments relating to the general valuation schedule of valuations and the adjustment factor will commence at a date fixed by proclamation to allow time for local governments and the OSR to prepare for the changes.

# Part 2 Amendment of Valuation of Land Act 1944

## 3 Act amended

*Clause 3* states that this part amends the *Valuation of Land Act 1944*.

## 4 Amendment of s 2 (Definitions)

*Clause 4* removes definitions that have become redundant, amends definitions and inserts new definitions required because of amendments in this Bill.

'annual valuation' is no longer required because annual valuations are being replaced by general valuations.

'approved form' is being corrected to reference section 97 of the Act. That section provides the approval authority.

'petroleum lease' is being removed because it will be separately defined in section 7 of the Act.

'adjustment factor' references new defining section 46A(2) and is required for the introduction of adjustment factors.

'bona fide sale' is being defined to clarify that only genuine, "arms length" sales are used for the purposes of valuation.

'bond rate' provides that it is the rate published by the Reserve Bank of Australia in relation to Government bonds for a 10 year period on borrowed funds that have not been repaid. This definition is required to clarify the historical application of the bond rate to the analysis of sales.

'date of valuation' provides for the date at which valuations are assessed (currently 1 October in any year).

'general valuation' references the new general valuation schedule.

'general valuation schedule' references new section 36A(1) where the creation of the schedule is authorised.

'GHG lease' is an existing definition that for consistency is being moved here from section 26.

'infrastructure charges' are charges payable under the *Sustainable Planning Act 2009* or similar charges under any other Act. This definition

is required to clarify the historical inclusion of the added value of infrastructure charges in unimproved value.

'infrastructure construction' is building infrastructure on or off the land as authorised by the *Sustainable Planning Act 2009* or any other Act. This definition is required because the term is referenced in the meaning of unimproved value in s 3.

'objector' is a new term describing the person who made the objection.

'objector's land' The definition is required because various section in the new objection processes reference the term.

'properly made objection' is an objection that complies with the requirements of s 42A and 52AA.

## 5 Amendment of s 3 (Meaning of *unimproved value*)

*Clause 5* is designed to ensure that the Spencer test of value is that which is applied to the sales required under both ss. 3(1) and 3(2). This is a change made in conjunction with the amendments to s. 4 and is designed to reinforce that the market value for the sale of property is the result of the sale.

Subsection 3(2) and (2A) have been amended to address precisely the position of improved land and to bring the process referred to in line with the new definition of the date of valuation.

The narrowing of the assumption to the "*instant in time"* is included in order to make it plain that it is a valuation assumption which affects the process at a particular instant in time rather than there being some situation where at the beginning of one day there is a position to be displaced at the end of the same day or some other time. This concern arises from observations in *Pacific Fair QCA*.

The consequence of the assumption required by section 3(1)(b) is that the hypothetical purchaser is free to immediately develop the land in a manner differing from its existing development.

Section 3(2B)(c) has been introduced to ensure that development premium generated by the making or use of improvements on the land is addressed, so that the unimproved value of land as developed includes that premium. The two different formulations used in s. 3(1)(b) and s. 3(2) for improved land are designed to establish the highest value of the land. The point of

including s. 3(2) is to identify a lower limit below which the unimproved value of the land as developed cannot go.

Section 3(2C) as formerly phrased was inappropriate as there was no reason for any assumption to be made in relation to s. 3(2).

The addition of s. 3(4)(c) is designed to articulate how the land is to be valued in its condition as then developed. The land is presumed to be able to be applied to the particular use to which is then being applied without any additional risks but if in fact there are risks for the future for the land as improved and developed to that stage, that is not to be artificially discounted. Because the intent is that the assumption entails the notional absence of the improvements but that nothing else is to be displaced, this provision has been included to ensure that, in the process of arriving at the unimproved value of improved land, there is a recognition of the market value of the land as developed. The refinement of the provision from the original 2008 Bill by changing from no risk to the current form is designed only to avoid a nil risk approach in favour of the risk actually present in the property as developed.

The proviso to section 3(4) can operate in conjunction with section 3(1)(b) and be relied upon to ensure that the full value of land is assessed and not reduced because of any detriment to the land in consequence of past development or use.

Section 3(5) adds a number of reinforcements of the policy intent to include all of the value which has accrued following past development of the land.

Accordingly, the benefit of a lease, agreement for lease or any other instrument of any type relating to land or improvements which enhances the value of the land as unimproved or improved is included in the unimproved value. The matters referred to in subsection 5(a) are intended to be comprehensive and to affect all land.

The reference to there being no deduction for goodwill is designed to be comprehensive to address a suggestion made in *Lilac Pty Ltd v Department of Natural Resources and Water* [2008] QSC 220 at paragraphs [35] and [36] and in *Pacific Fair LAC* at paragraphs [104] to [115]. that *"improved value"* of land as contemplated under the VOLA should not include some component for "*goodwill"* comprising the difference in anticipated sale price between a fully tenanted commercial building and an identical but vacant building. The approach of the Bill is to identify that no such exclusion was intended and that the concept of improved value is to be

equated with the market value of the land as developed. The management of the landowner's interest in land and improvements to derive rent does not involve any element of "*goodwill"* as was suggested in those cases. The cost of property management is a well understood expense and is ordinarily allowed for by way of deduction from gross rentals received to derive the net maintainable income which is commonly capitalised to assess the market value of improved commercial land.

Similarly, subsection 5(b)(iii) addresses the suggestion that the land might be valued as being other than what it is, that is developed and improved land which is more valuable because of that history of development and the presence of the improvements.

Subsection 5(b)(iv) responds directly to the need to provide further prescription so as to provide mandatory instruction as to the kinds of sales which are used as comparators in cases where the methodology which is deployed involves a process of induction or deduction from comparable sales. It provides instruction as to adding an additional amount to allow for the difference in the level of value able to be deduced from a sale of vacant or lightly improved land, or sales for redevelopment, so as to adjust for the development premium inherent in the value of the land as improved which is being valued. Land which has not been developed to the same extent as the property to be valued under the VOLA will not contain the development premium as it is the incentive for a buyer of the development site to take the risk of carrying out the development and thereby profit. In contrast the improved property to be valued has already been developed and the premium in undertaking the risks associated with its past development has been realised.

The benefit to the land of payment of any infrastructure charges or of infrastructure construction is to be included in its "unimproved value". This provision has been introduced because of the approach to assessment of the increase in value of the land that happened in connection with planning approvals which was adopted in *Pacific Fair LAC* in which no account was taken of the payment of infrastructure charges or of infrastructure construction. This brings the position in line with the previous authority under the VOLA including *Galli Developments (Qld) Pty Ltd v Chief Executive* (1997-1998) 17 QLCR 205.

The addition of subsection 5(c) is designed to ensure that the expression "*unimproved value"* does not reflect a level of value on the basis that the land is itself unimproved in the sense of being vacant or having had no improvements constructed on it. Rather, the expression is a term which is

the subject of a special definition designed to articulate the level of value which represents the value of the land as then developed. It is for this reason that subsection 3(2) works hand in hand with s. 3(1)(b) in order to ensure that the value of the land as developed is assessed as its unimproved value for the purposes of the VOLA.

## 6 Amendment of s 4 (Meaning of *improved value*)

*Clause 6* amends the meaning of improved value to reinforce that it is the market value of a property as improved.

## 7 Amendment of s 5 (Meaning of *value of improvements*)

*Clause 7* amends the meaning of the value of improvements to clarify that concept.

In subsection 5(1) the word "*physical"* has been added immediately before the expression "*improvements"*. This has been done to ensure that the amount for the improvements which is to be deducted for the purpose of the calculation to be done under subsection 3(2), with the aid of the definitions in ss. 4 and 5 of *"improved value"* and *"value of improvements"* respectively, is limited to the physical improvements on land. Accordingly, no allowance is to be made for any risks associated with having developed the land in terms of market risk, building risk, planning risk or any other risk.

The process of assessment under the VOLA proceeds on the basis that it is known what has been constructed, how it has been constructed and how the market has responded to the development, and accordingly nothing should be allowed for contingencies or risks which have already been overcome by the process of construction and development. The only additional amount to be allowed for beyond the depreciated cost of construction of the physical improvements is an amount for holding costs as defined.

This is specifically addressed in s. 5(2) which sets a limit to the amount to be allowed for the value of improvements. That limit is identified by the amount which is the price payable for construction of the physical improvements but reduced by discounting for the condition, age, physical and economical obsolescence, or any other factor diminishing the value of the physical improvements. Such other factors will vary depending upon the nature of the particular improvements but will include circumstances where technology has overtaken the particular improvements which were constructed as a matter of history: e.g. where they would now be made of

different materials so that there was more efficiency in the construction process in terms of speed or cost or otherwise.

The allowance to be made for holding costs is to be limited to the time it would take to construct improvements of a nature and efficiency equivalent to the existing improvements up to the date of valuation. This has been introduced to ensure that there is no "*mismatch"* between the cost to be calculated and the improved value as it stands as at the date of valuation.

This is further confirmed in subsection 5(3)(b) where no allowance for escalation in costs after the date of valuation is to be made. Subsection 3 otherwise provides a limit by reference to the depreciated value of the improvements recorded in the books of account of the landowner which are current at the date of valuation, again making an allowance for holding costs over the time it would take to have had constructed such improvements or improvements of a nature and efficiency equivalent to such improvements.

Subsection 4 introduces a definition of "*holding costs"* which limits such holding costs to rates, land tax and the interest cost of the bond rate of applying funds for the construction of physical improvements and holding the land during the construction period for the construction of such improvements.

## 8 Amendment of s 6 (Meaning of *improvements*)

*Clause 8* amends the meaning of invisible improvements to define that they are physical improvements which may not be readily apparent such as drainage, reclamation and fill.

A new subsection (5) is to be added to section 6 to provide for a definition of "*invisible improvements"*. This is responsive to some observations in *Pacific Fair LAC* as to the nature of invisible improvements. Historically, they have been characterised as physical improvements which may not be readily apparent because they have merged with the land and lost their character or identity. They include things such as fill, clearing and drainage. The definition is one which was suggested to be made by the Land Court in *Amoco Australia Pty Ltd v The Valuer General* (1977) 4 QLCR 427. The reason for introducing the definition is to avoid any suggested linkage between invisible improvements and intangible improvements. There is an inconsistency between land value and "*intangible"* improvements and the VOLA proceeds on the basis that all of

the benefits associated with the development of land are within the unimproved value of the land provided for under s. 3.

## 9 Amendment of s 7 (Meaning of *owner*)

*Clause 9* amends the meaning of owner to reflect DERM's historical approach to providing valuations in the name of the lessee of a petroleum lease and a lessee of land leased from a local government that holds the land under a lease from the State.

DERM has always provided valuations for these in the name of the lessee but the VOLA was not clear. Greenhouse gas injection and storage leases have also been included, as valuations for these leases should be consistent with the other leases and also be in the name of the lessee.

For efficiency and clarity, section 7 will also include the chief executive of the department that administers the *Housing Act 2003* as an owner of land leased by that chief executive. This requirement was previously included under section 9 but is being moved here to improve the structure of the Act.

## 10 Amendment of s 8 (Meaning of *subdivide*)

*Clause 10* includes a lease from a local government that holds the land under a lease from the State in the meaning of 'subdivide'. This mirrors the inclusion of the 'lessee' as an 'owner' under clause 9 and reflects the department's current business practice.

## 11 Omission of s 9 (Housing chief executive as owner)

*Clause 11* removes existing section 9. The content of section has been moved to section 7 under clause 9 for reasons of efficiency and clarity.

## 12 Omission of s 10 (Reference to valuer-general)

*Clause 12* removes existing section 10. Section 10 is being removed because the reference to Valuer-General is redundant.

## 13 Amendment of s 20 (Chief Executive to fix date of valuations or alterations of valuations)

*Clause 13* amends the heading of section 20 to clarify that the section deals with the determination of the date of effect of valuations.

## 14 Amendment of s 21 (Omissions from valuations)

*Clause 14* substitutes 'annual valuation' with 'general valuation' as the introduction of general valuations will replace annual valuations.

## 15 Amendment of s 23 (Chief Executive may value stratum or volumetric lot)

*Clause 15* amends the section to allow for the valuation of stratum or volumetric lots in line with other land. This mirrors the amendments being made to s 3 to clarify the meaning of unimproved value.

## 16 Amendment of s 26 (Valuation of petroleum leases and GHG leases)

*Clause 16* removes the definition of GHG lease from section 26. The definition has now been included with the definitions under section 2.

## 17 Amendment of s 27 (Valuation of prescribed land)

*Clause 17* substitutes references to 'annual valuation' with 'general valuation'. When general valuations commence they will replace annual valuations.

## 18 Amendment of s 28 (Alteration of valuation in force or to come into force)

*Clause 18* substitutes references to 'annual valuation' with 'general valuation'. When general valuations commence they will replace annual valuations.

## 19 Amendment of s 34 (Lands to be included in 1 valuation)

*Clause 19* amends section 34 to provide for a separate valuation for a lease from a local government that is leasing the land from the State. This reflects DERM's historical approach to providing valuations of land in these circumstances and mirrors existing provisions that deal with a lease from a government owned corporation and a lease from another department that are, in turn, leasing from the State.

### 20 Amendment of s 35 (Separate valuation)

*Clause 20* amends section 35 to ensure that separate valuations are provided for a lease from a local government that holds the land under a lease from the State. This reflects DERM's historical approach to providing valuations of land in these circumstances and mirrors existing provisions that deal with a lease from a government owned corporation and a lease from another department that are, in turn, leasing from the State.

### 21 Replacement of pt 4, hdg (Annual valuations)

## Part 4 General valuations

## Division 1 Making general valuations

### 36A Schedule of areas to be valued

*Clause 21* replaces the existing heading for Part 4 of the VOLA (Annual Valuations) with General Valuations. The clause introduces the concept of a general valuation schedule and to provide the certainty to local governments introduces a general valuation schedule that will document when general valuations will be provided to local governments for up to 10 years in advance. Local governments will know in advance when a general valuation will occur and will be able to forward plan accordingly.

The general valuation schedule will provide that areas are subject to a general valuation at—

(a) 3 yearly intervals for Brisbane, Bundaberg, Burdekin, Cairns, Cassowary Coast, Fraser Coast, Gladstone, Gold Coast, Goondiwindi, Gympie, Hinchinbrook, Ipswich, Lockyer Valley, Logan, Mackay, Moreton Bay, North Burnett, Redlands, Rockhampton, Scenic Rim, Somerset, South Burnett, Southern Downs, Sunshine Coast, Tablelands, Toowoomba, Townsville, Western Downs and Whitsunday; and

(b) 4 yearly intervals for Balonne, Banana, Central Highlands, Charters Towers, Isaac and Maranoa; and

(c) for any other area—5 years.

If a general valuation is unable to be provided because of an unusual circumstance there will be a requirement to amend the general valuation schedule to adjust the years and/or intervals in which local governments are scheduled to receive general valuations. An unusual circumstance could be extreme climatic conditions, industrial action or computer failure.

The schedule will be contained in the *Valuation of Land Regulation 2003* and this clause provides the ability to amend the schedule in the regulation. If a general valuation cannot be provided for a year because of an unusual circumstance then the schedule must be amended to allow this.

Unless the years/intervals are adjusted in the schedule those local governments that had been scheduled to receive a general valuation would not receive one for another three, four or five years (depending on their existing intervals). As an example, when the unusual circumstance was declared for annual valuations in 2009, many of those local governments that were scheduled to receive an annual valuation in 2009 were rescheduled to receive one in 2010 – the ability to amend the general valuation schedule will provide this same flexibility for general valuations and allow for local governments to be rescheduled.

## 22 Replacement of ss 37–39

*Clause 22* removes existing sections 37–39 and replaces them with provisions relevant to general valuations. This clause requires the chief executive to provide general valuation in accordance with the general valuation schedule. The schedule is explained under clause 23.

The requirements for general valuations detailed in this clause mirror many of the existing requirements for annual valuations.

The general valuation must become effective for local government rates, State land tax and State land rental from the next 30 June after the valuations are issued and remains effective (unless the valuation has to be altered because of changes to the land, objection or appeal decisions) until the next general valuation becomes effective.

Where the unimproved value of land included the value of a water licence and the water licence is lost because of a resource operations plan within one year before 30 June when a general valuation becomes effective, the unimproved valuation is not to be altered to reflect the loss until the next 30 June. This mirrors the existing provision and ensures that there is at least a year before the valuation is altered to reflect the water licence loss to

provide time for local governments to take into consideration anticipated valuation changes in their budgetary deliberations.

### 23 Amendment of s 40 (Particulars of annual valuation to be available for inspection)

*Clause 23* replaces references to 'annual valuation' with 'general valuation'. The clause also makes an amendment that allows the chief executive to display particulars of valuations in a form the chief executive thinks fit. Currently, valuation displays are provided in hard copy in various locations within a local government area. The chief executive has received requests from property owners that displays be made available on the internet. This alteration provides the flexibility for the chief executive to provide the display via the internet in the future.

### 24 Amendment of s 41 (Advertisements)

*Clause 24* replaces a reference to 'annual valuation' with 'general valuation'.

### 25 Amendment of s 41A (Notice to owners about valuations)

*Clause 25* replaces references to 'annual valuation' with 'general valuation'.

### 26 Replacement of ss 42 and 43

## Division 2 Objections and Appeals

*Clause 26* replaces the existing objection lodgement and consideration provisions with others that will contribute to a more robust objections process.

Currently, landowners are able to provide a basic, generic objection in any form. There is no requirement for the landowner to provide specific grounds of objection or associated supporting documentation. This forces the chief executive's delegate to make a decision on an objection without appropriate grounds or supporting documentation. This can then lead to the landowner or their representative contesting the matter in the Land Court.

These provisions will encourage the inclusion of the appropriate information at the beginning of the objection process. The provisions include:

- The introduction of an approved objection form that will require the inclusion of relevant information. The initial objection period will remain at 45 days, however where the form is deficient, owners will be advised and provided with another 14 days to rectify faults to correct the objection. Information that will be required to be provided includes:
    - The owner's signature or if the objection is signed by an agent, it must be accompanied by the owner's written consent for the agent to act on their behalf.
    - Information that allows the property to be identified.
    - Address for service of any notices concerning the objection.
    - The amount of the valuation sought by the owner.
    - The owner's grounds of objection to the valuation and the facts and circumstances that are the basis for the grounds.
    - Information that the owner seeks to rely on to establish the facts and circumstances.
    - Where the owner has included a comparison with a sale as part of their grounds they should include the following:
        - full details of the sale
        - comparison between relevant attributes of the owner's land and the land included in the sale
        - why the owner believes the sale is relevant to the valuation of the owner's land.
    - where a ground of objection concerns the value of improvements of the objector's land, the ground must state all of the following
        - any market value as improved recorded in the objector's books of account on the date of valuation
        - the improved value contended for
        - the amount of the replacement cost of the improvements contended for.

These provisions mirror an existing requirement that where a valuation made for rating is the same as a valuation made for either rental or land tax purposes for the same property and an objection is lodged against one, then the objection applies to both valuations.

Where the purported objection does not comply with the objection requirements the chief executive can not accept the objection and must notify the owner that the document is not a properly made objection and will not be considered as an objection. The owner will be advised of the areas of non-compliance and allowed 14 days to provide the information that corrects their objection. If the objection is not corrected then the objector will be notified within 28 days that the objection is not properly made and can not be considered.

The chief executive is required to consider and decide all valid properly made objections and can either allow, disallow or disallow the objection and change the amount of the valuation. As soon as practicable after the decision is made the objector must be provided with a written notice of the decision.

The amendments will require an increased investment in administrative and valuer resources required to allow for the proper management of the more information intensive objection process. To allow for the allocation of more resources to the objection process in the future, the amendments will include the power for the chief executive to set a fee associated with the objection process. The fee will be prescribed in regulation. There will be no fee associated with the lodgement of objections against the annual valuations issuing in 2010.

## 27 Amendment of s 43A (Conference about objection to valuation)

*Clause 27* amends the term 'owner' to 'objector' and 'appellant' where applicable for clarity and consistency.

## 28 Amendment of s 43B (Chairperson of conference)

*Clause 28* amends the term 'owner' to 'objector'

## 29 Insertion of new ss 43BA–43BD

*Clause 29* introduces new provisions that provide for further information to be provided in relation to an objection and to allow for the objection to be

amended. These provisions will encourage the provision of the appropriate information at the beginning and during the objection process. An improvement in the quality of the objection process will provide landowners with more confidence in the robustness of the process and potentially reduce the number of objections that progress to appeals.

If a conference occurs the objector may within 14 days after the conference ends give the chief executive further written information. An objector may also be provided an opportunity by the chief executive to provide further written information at any time in writing.

The delegate can invite an owner to provide more information relative to the objection within 14 days of the request. This period can be extended by another 14 days by mutual agreement between the owner and the chief executive's delegate.

For properties with an unimproved valuation of more than two million dollars, where the delegate considers that relevant information is likely to be in the objector's possession, the delegate can request the information be provided. The owner has 28 days from the date of the request to provide the information with an option, by mutual agreement, to extend by another 14 days. If the objector does not respond within the required period, the objector will be advised that if they do not respond within 14 days the objection will lapse. If the owner provides a statutory declaration that states that the information is not in their possession, then the objection can not be lapsed.

Where information has been provided by the owner after the objection has been lodged, the owner can request that the information be included as part of the objection and describe how they believe the information affects the existing grounds and supporting information in the objection.

## 30 Amendment of s 43C (Effect on objection of change in valuation)

*Clause 30* replaces the 'annual valuation' reference with 'general valuation' and for clarity and consistency also amends the term 'owner' to 'objector' and 'appellant' where applicable.

## 31 Amendment of s 44 (Late Objection)

*Clause 31* amends the section to clarify that the chief executive can accept a late objection if satisfied that the persons failure to lodge the objection

was due to the persons mental or physical incapacity, an extreme circumstance or an extraordinary emergency.

### 32 Replacement of s 45 (Appeal)

*Clause 32* replaces s 45 to set out the process for lodging an appeal and advising DERM of the appeal and includes a provision that where the amount sought by the objector was agreed to on the objection decision, no appeal can be lodged.

It is also sets out the requirements for a notice of appeal including that the only grounds stated in the objection can be valid grounds of appeal.

The new objection process is designed to identify all of the issues raised by the objector so the chief executive can make an informed decision and give to the objector reasons for that decision. Because the information will be supplied as part of the new objection process, any appeal made thereafter will be limited to the grounds of objection.

### 33 Insertion of new pt 4, div 3

## Division 3 Adjustment factors if general valuation not made

*Clause 33* inserts a new division 3 under part 4 after section 46 of the VOLA to provide the provisions necessary to implement the adjustment factor.

The introduction of a general valuation schedule will mean that local governments will receive valuations at three, four or five yearly intervals.

In those years where valuations are not provided local governments may be concerned that the valuations that they are utilising for the assessment of general rates do not reflect the existing level of the market. The OSR and the SLAM rental assessment area of DERM would have similar concerns.

To allow for rates, land tax and State land rental to be assessed on more appropriate levels of value, in those years when a general valuation is not provided for a local government area, the chief executive will provide an adjustment factor or factors for the area before 31 March.

Whenever an adjustment factor is provided it will reflect the change that has occurred in the property market since the last general valuation was made. Where there has been a less than 10% change in the market since either the last general valuation or adjustment factor was made (whichever is the later), an adjustment factor will not be provided. Where a factor is not provided, the existing general valuation or adjustment factor will continue to apply. There can be one factor supplied for all properties in an area or a number of factors based on groupings of land determined by criteria that the chief executive considers appropriate. These criteria could include land use and locality names.

When a factor is provided the chief executive must publish a notice in either the government gazette or DERM's website that details the factor, the name of the relevant local government area and the grouping of lands to which the factor applies. The notice must be published by 31 March.

The adjustment factors will be determined by conducting an analysis of the property market within the local government area. To assist with this process, the chief executive will request submissions from appropriate stakeholder representatives. These may include local governments, professional and property industry organisations and other government agencies. The chief executive may also form an advisory panel of stakeholders to provide advice on factors.

The factor will become effective on the 30 June after it was published and remain in effect until it is replaced by either a general valuation or another adjustment factor. The factor must be applied to the existing valuation to adjust it to more closely reflect the market level for that year. The adjusted figure must be used by the revenue gatherers for the assessment of rates, land tax and State land rental. There will be no objection rights against the figure resulting from the application of the adjustment factor as it is not a valuation.

The provisions also allow for adjustment factors not to be provided where an unusual circumstance applies. This mirrors a provision applying to the general valuation schedule.

The application of the adjustment factor will mitigate market fluctuations that occur in the years between general valuations. When the next general valuation is made any substantial change in valuation that has occurred since the last general valuation will be more acceptable because of the application of adjustment factors to the valuations in the intervening years—property owners will be more aware of changes that have occurred

in the property market in the years between general valuations and will be less surprised by the level of the new valuation.

### 34 Amendment of s 47 (Valuation rolls—particulars and form)

*Clause 34* replaces the reference to 'annual valuations' with 'general valuations'

### 35 Amendment of pt 6, hdg (Notice of valuation (other than annual) and objections)

*Clause 35* amends the heading of part 6 of the VOLA by replacing 'annual' with 'general'.

### 36 Amendment of s 50 (Notice of valuation (other than annual))

*Clause 36* amends the heading for section 50 by replacing 'annual' with 'general' and inserts the requirement that the notice must contain the date of valuation, date of issue, advice of the 45 day timeframe to lodge an objection and how an owner can lodge an objection.

### 37 Replacement of s 52 (Objections to valuation)

*Clause 37* allows the amended and new objection provisions to apply to valuations other than general valuations (interim). Interim valuations are valuations undertaken by the SVS between general valuations to reflect changes in the value of properties for such things as subdivision, area amendments, zoning changes etc.

### 38 Amendment of s 52A (Late objections to valuation)

*Clause 38* allows the amended and new provisions to apply to valuations other than general valuations (interim) refer to Clause 34 for explanation.

### 39 Amendments of s 53 (Consideration of objections)

*Clause 39* allows the amended and new provisions to apply to valuations other than general valuations (interim). The section also requires that information given under section 20 of the Judicial Review Act is to be considered as being without prejudice.

The section amends the term 'owner' to 'objector' or 'appellant' where applicable for clarity and consistency.

## 40 Insertion of new ss 53A-53D

*Clause 40* allows the amended and new provisions to apply to valuations other than general valuations (interim) refer to Clause 32 for explanation.

## 41 Amendment of s 54 (Notice to objector)

*Clause 41* renumbers s 54(1)(A) to (3) to 54(3) to (6) with the amendment of the term 'owner' to 'objector' where applicable for clarity and consistency. It also ensures that a notice of objection decision includes the date of issue of notice.

## 42 Replacement of s 55 (Appeal against the chief executive's decision on an objection)

*Clause 42* allows the amended and new provisions to apply to valuations other than general valuations (interim) refer to Clause 35 for explanation.

## 43 Amendment of s 56 (How to start an appeal)

*Clause 43* clarifies that an appeal against an interim valuation must state the grounds of appeal, the amount the appellant seeks for the valuation and that the stated grounds of appeal can only include grounds included in the objection.

The new objection process is designed to identify all of the issues raised by the objector so the chief executive can make an informed decision and give to the objector reasons for that decision. Because the information will be supplied as part of the new objection process, any appeal made thereafter will be limited to the grounds of objection.

## 44 Amendment of s 57 (Late filing)

*Clause 44* replaces the reference to 'owner' with 'appellant' for consistency and clarity and renumbers the section from 55(2) to be s 55(3).

## 45 Amendment of s 58 (Defect in notice of appeal—action of registrar)

*Clause 45* replaces the reference to 'owner' with 'appellant' for consistency and clarity.

## 46 Insertion of new s 63A

*Clause 46* clarifies that the hearing of an appeal must be limited to the grounds stated in the notice of appeal, the burden of proving all or any of the grounds is on the appellant and the appeal is by way of a rehearing.

47 Amendment of s 64 (Appeal to Land Appeal Court)

*Clause 47* replaces 'owner' with 'objector' for consistency and clarity.

## 48 Amendment of s 65 (Appeal to Court of Appeal)

*Clause 48* replaces 'owner' with 'objector' for consistency and clarity.

## 49 Amendment of s 72 (Purposes for which valuation to be used)

*Clause 49* adds a note to section 72 to reference section 46F which relates to valuations being adjusted by adjustment factors. This ensures that for the purposes of the *Land Tax Act 1915*, *Local Government Act 1993*, *City of Brisbane Act 1924* and *Land Act 1994* valuations must be adjusted by the adjustment factor and the resulting figure must be used by revenue gatherers.

## 50 Amendment of s 84 (Address for service)

*Clause 50* clarifies that the address for service of any notice related to an objection is the address for service stated in the objection and the chief executive is correct in sending any objection related notice to that address. These amendments also provide the flexibility for the chief executive to provide a notice by other appropriate means as allowed under section 39 of the *Acts Interpretation Act 1954*.

## 51 Amendment of s 96 (Evidence)

*Clause 51* replaces the term 'annual valuation' with 'general valuation'.

For an appeal the chief executive may again consider the operation of section 3(2) and come to an informed conclusion as to the improved value of the land and the value of improvements.

On the hearing of the appeal the chief executive will be able to tender certificates in evidence without further proof to establish the improved value and the value of improvements of a property for the purposes of section 3.

Unless other evidence led in the case enables the Land Court to affirmatively come to the conclusion that another amount which it determines should be assessed as being the amount of improved value or the value of improvements, the certificates will stand.

Information which is provided to the chief executive as part of the objection process may also be tendered by the chief executive without the necessity for formal proof and will be evidence of the matters and opinions set out in such information. This form of proof reflects the feature that such information was provided by the appellant as reliable, will have been adopted by the appellant in other contexts e.g. financial reporting, and will have been part of the basis upon which the objection has been decided.

### 52 Insertion of new pt 9, div 5

## Division 5 Transitional provisions for Valuation of Land and Other Legislation Amendment Act 2010

*Clause 52* introduces a new division 5 to part 9 of the VOLA that contains the transitional provisions required for these amendments.

New section 104 contains the relevant definitions required for these transitional provisions.

- *commencement* – is the day the provision actually commences.
- *former* – provides that where a provision referenced in this division is described as 'former', the reference relates to the provision and associated definitions as existing in the VOLA before these amendments.

- *new* – provides that where a provision referenced in this division is described as 'new', the reference relates to the provision and associated definitions as existing in the VOLA after these amendments.
- *post-amended Act* – means this Act as in force from the commencement.
- *pre-amended* Act – means this Act as in force before the commencement.

New section 105 provides for retrospectivity of the amendments to a valuation in effect at any time on or from 30 June 2002. Former sections 3 to 6 which relate to the meaning of unimproved value, meaning of improved value, meaning of value of improvements and meaning of improvements will no longer apply and taken to never have applied. New sections 3 to 6 apply and are taken to have always applied. Section 23 which relates to stratum and volumetric lots no longer applies and taken to never have applied. New section 23 applies and is taken to have always applied.

However, former sections 3 to 6 and 23 continue to apply for the purpose of an appeal decided before the commencement of these amendments. However, new sections 3 to 6 and 23 will apply to a valuation the subject of an appeal that has been started, but not decided.

New section 106 ensures that the lessee of a petroleum lease has always been treated as an owner under the VOLA. These amendments include the lessee of a petroleum lease as an owner. Historically, valuations have been provided for petroleum leases in the name of the lessee and this ratifies the historical approach.

New section 107 allows for the new objection form to be made an approved form and gazetted as such prior to the authorising provisions contained in this Act commencing. The time frames between the relevant authorising provisions commencing and the requirement for the new form could be so narrow that to have the form immediately available there may be a requirement to have it approved and gazetted prior to commencement.

New section 108 ensures that until the ability for the chief executive to fix a date of valuation commences, any reference to date of valuation means the relevant date shown on the valuation notice.

New section 109 ensures that the general valuation schedule does not commence until the valuation that comes into effect on 30 June 2012. This

is to allow time for local governments and the OSR to prepare for the new scheduled frequency of valuations and the implementation of the adjustment factor.

New section 110 ensures that for clarity, any reference to a general valuation in the post-amended Act prior to the general valuation provisions commencing, is taken to be a reference to an annual valuation. The section also provides that when adjustment factors commence in 2012, for those local governments where there has not been a general valuation, the adjustment factor will be applied to the last annual valuation.

New section 111 provides that the new objection requirements will only apply from the issue of the 2010 annual valuation or from a date prescribed by regulation.

New section 112 protects the rights of landowners who have previously lodged an appeal that is yet to be determined. Such appellants will not be bound by the amendments related to appeals.

# Part 3 Amendment of Land Court Act 2000

## 53 Act amended

*Clause 53* states that this part amends the *Land Court Act 2000*.

## 54 Amendment of s 33 (Land Court may make declarations)

*Clause 54* ensures that a proceeding cannot be brought before the Land Court to declare if a document should be considered to be an objection.

The objection process is managed by the chief executive within the legislative framework provided under the VOLA. Once a decision on objection is issued an owner, if dissatisfied with the decision, the owner may lodge an appeal to the Land Court. In the past some owners who have not lodged an objection or lodged objections that were out of time and therefore invalid, have attempted to lodge appeals directly with the Land Court. The department has then been forced to argue the jurisdiction of these matters before the Court.

With the introduction of more formal objection requirements to improve the quality and robustness of the objection decision making process there is a concern that some owners may attempt to lodge objections that do not meet the requirements and then argue their validity in the Land Court. This is against the intent of the changes to the objection process – providing full and frank disclosure during the objection process to assist and improve the decision making process. It is considered that assessment of an administrative decision concerning the validity of an objection would best be determined by a review under the *Judicial Review Act 1991*(JRA). The restriction on the Land Court declaring whether a document is an objection does not affect the Supreme Court's power to grant declaratory relief or any available proceedings under the JRA.

# Part 4 Amendment of Local Government Act 1993

### 55 Act amended

*Clause 55* states that this part amends the *Local Government Act 1993*.

### 56 Amendment of s 996 (Amendment of land record)

*Clause 56* replaces the term 'annual valuation' with 'general valuation' and references 'general valuation' as under the VOLA. The clause also ensures that the definition includes a general valuation as adjusted by an adjustment factor.

# Part 5 Amendment of the Water Act 2000

### 57 Act amended

*Clause 57* states that this part amends the *Water Act 2000*.

## 58 Amendment of s 74 (Applying for approval of land and water management plans)

*Clause 58* amends the section of the Act to provide that the requirement for a land and water management plan to be prepared in accordance with any guidelines approved by the chief executive does not apply for approval of a farm management system as a land and water management plan, or a plan, or part of a plan, comprising an accredited environmental risk management plan under the *Environmental Protection Act 1994*.

This is because an application for approval of a farm management system as a land and water management plan must include a certificate from an organisation that has been approved to provide an accredited farm management system program, equivalent to the land and water management plan requirements. Also, an accredited environmental risk management plan will have been accredited by the chief executive under the *Environmental Protection Act 1994*; as such this component of an application already complies with the content requirements under that Act.

## 59 Insertion of new s 74A

*Clause 59* inserts a new section into the Act in recognition of the linkages between the land and water management plan regulatory framework and other frameworks dealing with land and water degradation issues. New section 74A clarifies that a land and water management plan may be made up of many documents, which may have been prepared for another purpose and which may not be called a land and water management plan. This is to ensure that irrigators are not required to duplicate existing effort. For example, an environmental risk management plan prepared under the *Environmental Protection Act 1994* may deal with the same environmental management issues and satisfy some of the land and water management plan requirements. New section 74A will allow existing documentation, such as an environmental risk management plan, to be submitted for approval as a land and water management plan to the extent it meets the land and water management plan requirements.

## 60 Amendment of s 76 (Criteria for deciding application for approval of land and water management plan)

*Clause 60* amends the Act to provide that the requirement for the chief executive to consider consistency with any guidelines for preparing land and water management plans does not apply for a proposed plan, or part of

a proposed plan, comprising an environmental risk management plan under the *Environmental Protection Act 1994*. This reflects the amendment of section 74 and the insertion of new section 74A which will allow an environmental risk management plan to be submitted for approval as a land and water management plan to the extent it meets the land and water management plan requirements.

### 61 Amendment of s 78 (Amending land and water management plans)

*Clause 61* makes minor amendments to section 78 of the Act to reflect the insertion of new section 78B.

### 62 Amendment of s 78A (Minor or stated amendments of land and water management plan)

*Clause 62* makes a minor amendment to section 78A of the Act to reflect the insertion of new section 78B.

### 63 Insert of new s 78B

*Clause 63* inserts a new section to the Act to make it clear that where an environmental risk management plan prepared under the *Environmental Protection Act 1994*, or components of an environmental risk management plan, is approved as a land and water management plan, or part of a plan, any amendment of the environmental risk management plan under the *Environmental Protection Act 1994* is taken to be an amendment to the land and water management plan. In addition, an environmental risk management plan component of a land and water management plan cannot be amended under the provisions of the Water Act.

### 64 Amendment of s 82 (Deciding application to defer land and water management plan requirements)

*Clause 64* amends the Act to extend the maximum period the requirement to have an approved land and water management plan may be deferred from one year to two years. In addition, the amendment will provide an option for subsequent deferral applications to be made and approved. It is intended that in appropriate instances, for example where the risk of land or water degradation is low, that the option be available to landholders to

further defer the requirement to have an approved land and water management plan in place.

In addition, the amendment provides for the scenario where an application to defer is made prior to the end of an existing deferral period. In this case, if a new deferral is granted, it has effect from the day after the existing deferral period ends. This is to allow for seamless transition between deferral periods.

## 65 Amendment of sch 4 (Dictionary)

*Clause 65* amends schedule 4 of the Act to insert a new definition for *accredited ERMP*. Accredited ERMP means an accredited ERMP under the *Environmental Protection Act 1994*. This new definition reflects the insertion of new clause 74A and new clause 78B which allow for an accredited ERMP to be submitted and approved as a component of a land and water management plan.