

## **LAND VALUATION BILL 2012**

### **EXPLANATORY NOTES**

#### **General Outline**

The *Land Valuation Bill 2012* will provide a regime for the valuation of Norfolk Island land which will, as well as providing for the first time a comprehensive, current and even-handed picture of land value, also provide a valuable tool in helping to understand the economy of the Island by establishing a basis for any future form of taxation or rating of land based upon its value that may be established.

The Bill itself does not levy any form of tax or rate but is a tool to establish the basis for so-doing through separate legislation at an appropriate time.

The objectives of the Bill are to—

- Establish the post of valuer-general to be responsible for valuing land in Norfolk Island.
- Establish the form of valuations that are made using the unimproved value (often referred to as UV) and improved capital value (ICV).
- Introducing regular valuation cycle whereby every property will be valued each year having regard to market movements and less often by means of physical inspection.
- Provide for the maintenance of a roll of land values.
- Provide an objections and appeal process.

The various provisions of the Bill are as follows—

#### ***Chapter 1 Preliminary***

**Clauses 1-4** set out the short title of the Act; provide for assent upon gazettal subject to the commencement of provisions concerning the Administrative Appeals Tribunal that require regulations be made by the AAT before they can become effective; provides for a dictionary of terms in the Schedule; and set out brief purposes of the Bill.

#### ***Chapter 2 Valuations***

Part 1 Valuer-general - Valuations and their purposes

Valuer-general

**Clause 5** provides for the appointment of a valuer-general by the Minister. The valuer-general must be a valuer (as defined) but cannot be dismissed by the Minister without the approval of the Legislative Assembly.

*Valuer-general to make valuations*

**Clause 6** requires the valuer-general to make valuations of Norfolk Island land in accordance with the Bill.

*Statutory purposes of valuation*

**Clause 7** sets out that the valuations are to be used if any enactment provides for land to be taxed by way of land tax or a rating system, to assess an owner's liability under any such legislation.

*Part 2 Valuation methodologies**Division 1 General provisions**What is the value of land*

**Clause 8** provides that the value of and is its unimproved value or its improved capital value.

*Division 2 Improved capital value and unimproved value**Subdivision 1 Preliminary**What division 2 is about*

**Clause 9** defines the improved capital value and unimproved value of land.

*Land taken to be granted in fee simple.*

**Clause 10** clarifies that for the purposes of the Act all land is taken to be granted in fee simple but later provisions deal with Crown leases.

*What is the land's expected realisation*

**Clause 11** clarifies that the expected realisation for the land is the capital sum which the unencumbered parcel held in fee simple might be expected to sell for if the sale was negotiated as a bona fide sale.

*What is a bona fide sale*

**Clause 12** clarifies that a bona fide sale is a sale made on such reasonable terms that a bona fide seller and buyer would require assuming willing but not anxious parties, a reasonable period in which to negotiate the sale and that the property was reasonably exposed in the market. In considering if the terms and conditions are reasonable regard must be had to the land's location and the state of the market for similar lands. The clause also provides that if there is a sale of the property being valued and the sale meets the bona fide test it may be considered to be a bona fide sale for the purposes of the Act.

*Subdivision 2 Improved capital value of improved land**What is the improved capital value of improved land*

**Clause 13** clarifies that if land is improved its improved capital value is its expected realisation under a bona fide sale. This provision may be varied by other provisions of the chapter.

*What is the improved capital value of stratum*

**Clause 14** provides for the values of land that is held under a stratum system.

*Assumptions for existing uses*

**Clause 15** assumes that land may or may continue to be used, for a purpose for which it was or could be used, on the valuation day and that improvements allow it to continue to be used for any existing use.

The clause also clarifies that the assumptions do not prevent the valuer-general from having regard to any other purpose for which the land may be used or when deciding the improved capital value of the land.

*Subdivision 4 unimproved value of improved land**What is the unimproved value of improved land*

**Clause 16** provides that if land is improved, its unimproved value is the expected realisation under a bona fide sale assuming there are no improvements.

*Unimproved value of stratum*

**Clause 17** provides for the methodology of assessing the unimproved value of a stratum.

*Unimproved value of a Crown lease*

**Clause 18** provides that the unimproved value of a Crown leasehold ignores any improvements made other than by the Commonwealth or the Administration, assumes that the lease has 99 years to run and that the rent is nominal.

*Assumptions for existing users*

**Clause 19** assumes that unimproved land may be used for the purpose for which it is used or for which it could be used when valued.

*What is the improved capital value and unimproved value of unimproved land*

**Clause 20** notes that if land is unimproved both its unimproved value and improved capital value are the expected realisation under bona fide sale.

*Part 3 Periodic Valuations**Division 1 General provisions**General duty to make periodic valuations*

**Clause 21** requires the valuer-general to make a valuation of all land before a date fixed by the Minister after which an annual assessment of the value of land having regard to market prices or (where applicable actual sale prices) is to be made with an assessment following inspection of all land made every 5 years.

*Duration of annual valuation*

**Clause 22** states that an annual valuation takes effect from the next 30 June after its making. An annual valuation continues in effect until the next annual valuation of the land takes effect.

The valuation amount may be amended as provided for in the maintenance provisions of the Bill or as a result of any objection or appeal decision.

*Division 2 Access to information about annual valuations**Valuation roll information to be available for inspection*

**Clause 23** provides that valuation roll information must be made available at least 3 months before the 30 June on which the valuation is to take effect.

*Time and place for inspection*

**Clause 24** provides that a copy of the annual valuation roll will be available for inspection free of charge at the office of the Registrar of Titles or another office of the Administration during public business hours or at another place and at such times stated in a public notice published in the Gazette.

*Division 3 Notices about annual valuations**Public notice*

**Clause 25** provides that—

- the valuer-general must give a public notice in the Gazette that an annual valuation has been made;
- the valuation roll containing information about the valuations will be available for inspection by anyone without payment of a fee for a stated period of not less than 60 days;

- when the period starts and ends; and
- where the information may be inspected.

The clause also provides that, as well as the public notice, the valuer-general may advertise that the valuation information is available in any other way as the valuer-general considers appropriate.

#### *Valuation notice to owner*

**Clause 26** provides that the valuer-general must give a land owner a valuation notice of the annual valuation and that the notice must be given as soon as is practical after the valuation is made but not later than 31 March in the year that the valuation will take effect.

#### *Requirements for valuation notice*

**Clause 27** sets out that the following information must be included in the valuation notice—

- the amount of the valuation;
- the basis on which the valuation is made;
- the valuation day;
- the day of issue of the valuation notice;
- the day the valuation becomes effective;
- that an owner may object to the amount within 60 days of the date of issue; and
- how the objection may be made.

#### *Part 4 Amending valuations*

##### *Division 1 General provisions*

##### *What division 1 is about*

**Clause 28** states that the provisions contained in this division detail the circumstances in which an existing valuation can be amended by another valuation.

##### *Amending period*

**Clause 29** establishes the period in which an amending valuation can be first made effective by the valuer-general.

If the valuation to be amended is an annual valuation that has yet to come into effect but does not come into effect until 30 June of that year – there may be a need to amend the valuation after it has first been issued then the effective date cannot be amended – it must be effective from the next 30 June.

If an existing valuation is being amended then the period in which the amending valuation can be made effective commences from the day the valuer-general is amending the valuation and goes back as far as three years.

##### *Fixing day of effect of amending valuation*

**Clause 30** requires the valuer-general to fix a date of effect for an amending valuation. For clarity if the amendment is caused by the registration of a plan of subdivision, the day of effect must be the day the plan was lodged. This is consistent with land registry procedures. For other situations (detailed in the following clauses) where an amendment to a valuation is required, the effective date should be the later of either—

- the day of amendment (when the event causing the amendment actually occurred); or
- the beginning of the period described in the previous clause (3 years before the existing annual valuation, etc).

The maximum period for an effective date for an amending valuation is consistent with the period allowed for the creation of new valuations.

*Division 2 General types of amendment**Separate valuations*

**Clause 31** allows the valuer-general to separately value parcels or lots and issue valuations when circumstances require the separation. These circumstances include where the valuer-general has determined a requirement to declare a separate part of a lot because part is being used for a different purpose that is a public purpose or the land has been subdivided.

*Adjoining parcels in same valuation*

**Clause 32** allows the valuer-general to amend a valuation of two or more adjoining parcels if one or more of the parcels is sold. So, if a valuation consists of more than one parcel because they are in the same ownership and a parcel is sold, separate valuations must be able to be provided for what has been sold and what is remaining.

*Public work, service or undertaking*

**Clause 33** allows a valuation to be amended if the valuer-general considers it has been affected by public works, services or undertakings.

*Damage from adverse natural cause*

**Clause 34** provides for a valuation to be amended if the valuer-general considers that a flood, cyclone or some other natural disaster has caused permanent damage to the land that has affected its value.

The clause also requires that an owner must apply to the valuer-general within six months of the damage occurring. A particular event may be very localised and it is important that the owner provide advice and details of what has occurred to enable the valuer-general to make a proper assessment.

*Loss or acquisition of right relating to land*

**Clause 35** allows the valuer-general to alter a valuation if right has been lost and the value of the right was part of the valuation.

It is important that the valuation be amended to reflect the loss of the right. Alternatively, if a right has been acquired and the valuer-general considers that the acquisition adds value then the value should also be amended to reflect this.

*Amendment for uniformity with comparable parcels*

**Clause 36** allows a valuation to be amended if the valuer-general considers it is necessary to achieve uniformity with valuations for other comparable land. If it is determined that a valuation is “out of line” with valuations of other comparable land then it should be amended to be “in line” with those other valuations.

*General power to correct error or omission*

**Clause 37** allows the valuer-general to correct a valuation that is affected by an error or omission. Where it becomes known that a valuation is incorrect it should be corrected.

*Chapter 3 Objections to valuations**Part 1 Making objections**Division 1 Objection right**Right to object*

**Clause 38** provides the right for an owner to object to a valuation of the owner’s land. Only one objection can be made against a particular valuation. Where an objection is made against

a valuation of land for a statutory purpose, an owner can only object to a valuation of the same land for a different statutory purpose where the valuations are different.

#### *New owners*

**Clause 39** applies when a new owner purchases land after a valuation notice has been issued to the previous owner. Where the previous owner had objected to the valuation, the new owner has the right to carry on the objection. Where the previous owner did not lodge an objection, the new owner has the right to lodge an objection but must do so within the time frames that applied when the notice was actually issued.

#### *When objection for one statutory purpose can be used for another*

**Clause 40** requires that where an objection has been lodged against a valuation and—

- there is another valuation for the same land; and
- the same amount for another statutory purpose,

the objection automatically applies to the other valuation as well.

#### *Objection can be made only under this Part*

**Clause 41** clearly states that an objection can only be made under this Part of the Bill. The provisions relevant to objections are contained within this Part of the Bill.

#### *Division 2 Period for objection*

##### *Usual objection period*

**Clause 42** specifies that an objection can only be made if lodged within 60 days after the day of issue of the valuation.

The provision also requires that objections must be properly made.

#### *Late objections*

**Clause 42** provides for an owner to lodge an objection within one year of the issue day of the valuation. Valid reasons for the lodgement of late objection include—

- the owner's mental or physical incapacity;
- extreme circumstance; or
- extraordinary emergency.

The provision also allows the valuer-general to accept a late objection for other reasons considered satisfactory in the circumstances.

The objection is still required to be properly made and the valuer-general can request information relating to the reasons for late lodgement at the same time as the issue of either a correction notice (where the objection is not properly made) or an acknowledgement of the objection being properly made.

#### *Division 3 Properly made objections*

##### *What is a properly made objection*

**Clause 44** provides information on what is a properly made objection. The objection must be in the approved form and—

- signed by the objector (if signed by a representative it must be accompanied by the objector's written consent);
- comply with the objection requirements detailed in the next clause; and
- be accompanied by the fee prescribed under a regulation.

The approved form must include information on what is required on the form and that an objection cannot be considered if it is not properly made.

An objection must provide relevant information for at least one of the grounds to be properly made.

*Required content of objections*

**Clause 45** details the required content of objections. Requirements for an objection have been streamlined with the removal of those that related to the assessment of the value of improvements. An objection must include—

- a service address;
- information that identifies the land;
- the valuation sought by the objector (only mandatory if the valuation is greater than \$250,000 or the amount prescribed);
- grounds of objection and associated information (the objector may include expert opinion evidence if relevant); and
- information relating to a sale (if a ground concerns the comparability of a sale).

The objector may also object to the day of effect associated with the valuation.

*Part 2 Initial assessment of objections for defects*

*Division 1 Assessment and notice of decision*

*Initial assessment*

**Clause 46** requires that the valuer-general must assess each objection to determine if it is properly made or defective.

*Notice of decision if no defect*

**Clause 47** requires that where an objection is assessed as not being defective, the valuer-general may give the objector notice of the decision.

*Correction notice if objection defective*

**Clause 48** requires the valuer-general to issue a correction notice to an objector when an objection has been determined as defective. The correction notice must include—

- the day of issue;
- the decision;
- details of any defect; and
- that the objector has 21 days from the day of issue to correct the objection.

Defects can include where an objection states no particulars for a ground. Where only some of the grounds are noncompliant, the objector has the opportunity to remove these from the objection if they desire.

*Division 2 Consequence of noncompliance with correction notice*

*Application of division 2*

**Clause 49** provides that the provisions included in division 2 apply to an objection if a correction notice has been issued and the objector doesn't comply with the correction notice.

*Failure to correct not properly made objection*

**Clause 50** provides that if the assessment decision by the valuer-general is that the objection is not properly made then it has never been properly made.

*Notice of consequence*

**Clause 51** requires the valuer-general to advise the objector within 28 days of the consequences (that the objection is not properly made) of not complying with the correction notice.

*Part 3 Conferences about properly made objections**Division 1 Preliminary**What Part 3 is about*

**Clause 52** provides that the provisions contained in Part 3 apply to the holding of objection conferences about properly made objections. This clause also states the purposes of a conference which include—

- encouraging settlement of disputes by facilitating negotiations between the parties;
- promoting an open exchange of information;
- provision of information relating to the legislation; and
- helping to settle the dispute in any other way.

*Conditions for holding conference*

**Clause 53** clarifies that an objection conference can not be held for an objection if it is not properly made or has already been decided by the valuer-general.

*Division 2 When objection conference may or must be held**Conference by agreement*

**Clause 54** provides for an objection conference by agreement of the parties where the valuation is \$2m or less.

*When conference is required*

**Clause 55** requires the valuer-general to offer an objector a conference where the valuation is more than \$2m or such greater.

*Division 3 Preliminary steps for required conference**Subdivision 1 Preliminary**Application of division 3*

**Clause 56** states that the provisions contained in division 3 relate to objection conferences for properties with valuations more than \$2m where an objector has accepted the conference offer. These provisions relate to the separate appointment of a chairperson for these conferences and the associated functions and responsibilities of the chairperson.

Properties with valuations of this complexity will benefit by having a chairperson to facilitate the exchange of information and ideas between the parties and assist with resolution.

*Subdivision 2 Chairperson**Appointment of chairperson*

**Clause 57** requires the valuer-general to appoint an independent chairperson for objection conferences related to properties with valuations of more than \$2m.

A chairperson may be appointed generally or for—

- a particular conference;
- for a period and terms determined by the valuer-general.

*Chairperson's functions*

**Clause 58** details the chairperson's functions. These include—

- arranging the conference;
- encouraging a full exchange of opinion and full disclosure of information relating to the objection; and
- making recommendations to either party about matters raised.



The encouragement and facilitation provided by the chairperson will assist with the resolution of disputes associated with more complex valuations.

*Disclosure by parties before conference held*

**Clause 59** provides for disclosure by the parties before a conference is held. As discussed previously, the exchange of information prior to a conference being held should assist with the resolution of disputes associated with more complex valuations.

The provision requires the chairperson to give all parties notice to provide information relevant to the valuation within 14 days. If the chairperson is then satisfied that all parties have complied with the disclosure, copies will be provided to the other party. The chairperson will then arrange the objection conference. If the chairperson is not satisfied that both parties have complied with the disclosure requirement the objection conference cannot be held. The chairperson may allow the noncompliant party extra time to be able to comply with the requirement if it appears likely that they will comply.

*Subdivision 3 Holding objection conference*

*Conduct of conference*

**Clause 60** details how an objection conference must be conducted. It is important to allow flexibility and provide an environment conducive to the exchange of views and information. To achieve this, the conference chairperson may—

- accept information from anyone and distribute it to anyone for the purpose of the conference; and
- adjourn or end the conference at any time.

*Attendance and representation*

**Clause 61** provides clarification as to who may attend a conference and provide representation. The provision allows a person who is not a party to participate in a conference if the chairperson is satisfied the person may assist with the resolution of any issues relating to the objection. If required, an interpreter may be used in a conference.

The chairperson may also allow a party to be represented by an agent or other representative if the chairperson believes that they are needed to help the process. The chairperson may impose conditions on representation to ensure that the other party is not disadvantaged. The approval for representation would then be subject to those conditions being complied with.

*Division 4 Miscellaneous provisions*

*Grounds not limited at conference*

**Clause 62** ensures that the objection conference is not limited to the objection grounds. It is important to allow the conference flexibility in its content to provide as much opportunity for resolution as possible.

*Evidence*

**Clause 63** ensures that anything said or done about an objection in a conference is inadmissible in any proceeding. This allows parties at the conference to be frank about their issues with the knowledge that the conference environment is completely confidential.

*Part 3 Further Information*

*Division 1 When objector may give further information*

*Response to valuer-general's invitation*

**Clause 64** provides for the valuer-general to invite an objector (whether an objection conference has been held or not) to provide further written information that supports or clarifies the objection grounds.

Under the clause, the objector has 28 days from the issue of the invitation to provide the information (with agreement the period can be extended by another 14 days). In the course of reviewing the objection the valuer-general may have realised that the objector may have further information that could assist in making a more appropriate decision on the objection. This provision allows the valuer-general to request that information.

*Giving information within 28 days after objection conference*

**Clause 65** the opportunity for an objector to supply further written information that supports their grounds of objection or raises a proposed new objection ground within 28 days of the conference ending. After a conference an objector may realise that they have further information to offer and this provision provides for this.

*Use of further information given*

**Clause 66** provides that when further information is supplied by an objector after an objection conference or in response to an invitation by the valuer-general, the information can be considered by the valuer-general in deciding the objection.

The clause also provides that the information is admissible in any proceeding about the objection. It is important that as much information as possible is given to the valuer general.

*Division 2 When objector must give further information*

*Application of division 2*

**Clause 67** states that the provisions in this division provide for when an objector must give further information. This requirement can only apply when an objection is against a valuation of more than \$2m (or a higher amount if prescribed) and where the valuer-general considers that the information is likely to be—

- in the objector's custody, possession or power; and
- will be relevant to deciding the objection.

This does not include information the subject of legal professional privilege. Valuations of more than \$2m are of a complex nature. It is important that the valuer-general make as accurate a decision as possible and to inform the process the valuer-general must have access to information relevant to the valuation.

*Valuer-general may require further information*

**Clause 68** provides the authority for the valuer-general to issue a notice to require the objector to provide the further information.

*Period to comply with information requirement*

**Clause 69** requires an objector to whom an information requirement has been given to comply with the requirement within 28 days after the day the requirement notice was issued. If, within the 28 day period the objector and the valuer general agree the period may be extended a further 14 days.

*Conditions for making information requirement*

**Clause 70** details the conditions for an information requirement. The requirement must describe the further information required to be given and state—

- the date of the requirement; and
- when the requirement must be complied with.

Because of the serious nature of an information requirement, an objector must be made aware of the time they have available to respond to the requirement.

*Notice of lapsing of objection for noncompliance with information requirement*

**Clause 71** applies if the valuer-general considers an objector hasn't complied with an information requirement. In this situation the valuer-general may give the objector a notice that details the information required to comply with the requirement and that unless the information is provided in 28 days the objection will lapse and not be considered.

The information the subject of an information requirement could dramatically improve the quality of an objection decision. The properties subject to a requirement (valuation objected to greater than \$2m) are of a complex nature and the information is required to assist the valuer-general to make an informed decision.

*Objection generally lapses if lapsing notice contravened*

**Clause 72** provides that an objection will lapse if the objector does not reply to a lapsing notice within 28 days and provide the outstanding information required. Once lapsed the valuer-general is not required to further consider the objection

*Exceptions to lapsing*

**Clause 73** details circumstances when an objection cannot be lapsed. These include:

- where the outstanding information would, at common law, be privileged from production in a proceeding; or
- within the required period the objector provides a statutory declaration stating that the outstanding information is not in the objector's possession.

These are obviously valid reasons for not supplying information and when they apply an objection should not be lapsed.

*Deferral of lapsing*

**Clause 74** provides the conditions when an objection is lapsed. An objection generally lapses if the objector has been given a lapsing notice and has not complied within 28 days of the date of the notice. Once the objection lapses the valuer-general is not required to consider the objection. Subsequent clauses describe the situations where an objection can not be lapsed.

*Part 5 Amendments**Amendment by objector only under this Part*

**Clause 75** states that an objector can only amend an objection under the provisions contained in this Part. This is important to maintain due process for amendments to the objection after the original objection is lodged.

*Amendment in response to correction notice*

**Clause 76** provides for an objection to be amended as a result of the content of a correction notice. If an objector has returned a correction notice the objection should be amended to reflect the content of the correction notice.

*Other permitted amendments*

**Clause 77** describes other information that can be amended on the objection.

The clause provides that amendments can be made to information that—

- identifies the land;
- the objector's service address; and
- the valuation sought by the objector.

An objection ground, associated particulars and other information that the objector is seeking to rely on can be withdrawn or amended to reflect matters raised in further information provided by the objector. The objection cannot be amended so that it would not be properly made or to have a noncompliant ground.

Under the clause, depending on the information, an amendment must be made either before the objection has been decided or at the same time as when the further information has been supplied.

It is important to provide for various "housekeeping" amendments to an objection such as amendments to service addresses and property identification information prior to the objection being decided. When an objector has provided further information they must also be allowed to request that their objection be amended to reflect the further information.

*How to amend*

**Clause 78** requires that an amendment to an objection can only be allowed when made by signed notice to the valuer-general. An objection is an important document and any requests for amendment should be in writing to ensure the integrity of the objection.

*Part 6 Deciding properly made objections**Considering objection*

**Clause 79** requires the valuer-general to consider and decide a properly made objection. The decision should be made at the appropriate point in the objection stage. This could be after the objector has provided further information.

*Objector bears the onus of proof*

**Clause 80** requires the objector to prove their case in an objection. It is reasonable to expect that when an objection is lodged it is accompanied by the information, grounds and associated evidence that support why the objector believes the valuation is wrong.

*Decision*

**Clause 81** details the parameters available to the valuer-general in deciding an objection. These include—

- allowing the objection to the extent the valuer-general considers appropriate;
- disallowing the objection; and
- disallowing the objection and changing the amount of the valuation.

If the objector disagrees with the objection decision the objector may appeal to the Administrative Appeals Tribunal.

*Notice of objection decision*

**Clause 82** requires the valuer-general to provide a written notice of the objection decision as soon as practicable. The provision also details the contents of an objection decision, which include—

- the issue day;
- reasons for the decision;
- details of the objector's right to appeal to the Administrative Appeals Tribunal; and
- the period for an appeal.

*Part 7 Miscellaneous provisions**Objection or appeal does not affect valuation*

**Clause 83** ensures that a valuation can be used for a purpose described in clause 7 even though objection and appeals may have been made against the valuation.

*Address for service for objections*

**Clause 84** clarifies that the appropriate address for service for any notice relating to the objection is the address for service nominated on the objection. There should be one address for service even though there may be more than one owner/objector. This is an important point of clarification as the objection may be lodged by an agent or representative of the owner with a different service address than the owner's service address on the valuation roll. The provision also provides the flexibility for the valuer-general to provide an objection related notice in another way – this could be by email if the valuer-general has the capacity to provide this service and the objector has requested it.

*Adjustment if valuation changed on objection or appeal*

**Clause 85** requires that where a valuation has been adjusted by an objection or appeal decision, an appropriate adjustment must be made to any land tax, rate or rental under any Act that uses the valuation in order to reflect the change in valuation.

**Chapter 4 Valuation appeals***Part 1 Appeal to Administrative Appeals Tribunal**Appeal right*

**Clause 86** gives an objector a right of appeal to the Administrative Appeals Tribunal against the objection decision for the objection. However, the objector cannot appeal if—

- the valuation sought was less than the valuation and the decision was to change the valuation to an amount that is equal to or less than the valuation sought;
- the valuation sought was more than the valuation and the decision was to change the valuation to the valuation sought;
- the objection is not properly made;
- the valuer-general has not made a decision yet whether an objection is properly made; or
- the appeal would be against a comparable valuation reduction to a valuation.

*New owners*

**Clause 87** provides for persons who—

- became owners of land; and
- have given an ownership change notice after an objection decision notice for an objection for the land has been issued to the former owner.

Under the clause, the new owner is—

- taken to have received the objection decision notice when it was issued to the former owner; and
- is provided with a right to appeal if the former owner has not already appealed against the objection.

If there is an existing appeal, the new owner becomes the appellant and may carry on the appeal in the new owner's name.

*Part 2 Starting appeal**How to appeal*

**Clause 88** provides how an appeal is started – reference must be had to the Rules of the AAT.

The clause provides that an appeal cannot be started after 60 days after the day of issue stated in the objection decision notice except as provided in clause 107.

*Late filing*

**Clause 89** provides for the late filing of a valuation appeal notice (the notice). The Administrative Appeals Tribunal can only hear the appeal if the notice was filed less than 1 year after the objection decision notice was issued and the appellant satisfies the Tribunal there was a reasonable excuse for filing the notice within that period.

*Part 3 Amending valuations in response to appeal**Application of Part 3*

**Clause 90** provides that this Part applies if a copy of a valuation appeal notice has been served on the valuer-general.

*Power to amend*

**Clause 91** gives a discretion to the valuer-general, by notice to the appellant and the Land Court, to amend the valuation sought (an appeal response). The discretion applies provided the notice is given at least 14 days before the hearing of the appeal. An appeal response amendment does not change the day of effect of the valuation amended.

*Amendment to valuation sought ends appeal*

**Clause 92** provides that if an appeal response amendment is to the valuation sought, the appeal ends. If this occurs, the Administrative Appeals Tribunal has the discretion to make a costs order under clause 119.

*Effect of other reductions*

**Clause 93** provides that if the valuer-general amends the valuation other than to the valuation sought by the appellant, the appellant may accept the valuation by giving notice, given at least 7 days before the hearing of the appeal, to the valuer-general and the Administrative Appeals Tribunal. If notice by the appellant is given, the appeal ends. If the appellant does not give an acceptance notice the valuation as reduced is taken to be the valuation appealed against.

*Order on valuation appeal*

**Clause 94** provides for the content of the order the Administrative Appeals Tribunal may give on appeal. The Administrative Appeals Tribunal may—

- confirm the valuation appealed against; or
- reduce or increase the valuation to the amount it considers necessary to correctly make the valuation under this Act.

*Costs*

**Clause 95** provides that each party to a valuation must bear the party's costs.

*Part 6 Miscellaneous provisions**Member not disqualified for owning land*

**Clause 96** provides that a member is not disqualified from hearing a valuation appeal merely because the member owns land subject to a valuation.

*Chapter 5 Valuation roll and related matters**Part 1 Keeping valuation roll**Requirement to keep valuation roll*

**Clause 97** requires the valuer-general must establish a valuation roll for Norfolk Island and that the roll is to be maintained and made available by the Registrar of Titles.

*Requirements for valuation roll*

**Clause 98** requires that the valuation roll must state relevant information concerning each valuation in the relevant local government area. The information includes the:

- date of valuation and date of effect for the valuation;

- owner's name and address;
- land's area;
- land's location; and
- land's description.

*How valuation roll may be kept*

**Clause 99** allow the valuation roll to be kept in multiple formats provided the content is identical thus it may be kept in a printed form as well as in an electronic format.

*When valuation roll must be amended*

**Clause 100** ensures that the valuer-general must amend the valuation roll to reflect changes to the information contained in the roll.

*Part 2 Valuation roll information and other information*

*Obligation to give certified copy*

**Clause 101** enables the valuer-general to provide a certified copy of valuation roll information on payment of the required fee.

*Exchange of information*

**Clause 102** allows the valuer-general to supply relevant valuation roll information to the Administration or to the Commonwealth as may be agreed

*Other information*

**Clause 103** allows the valuer-general to supply information contained in an ownership change notice on payment of the required fee. The provision also enables the supply of valuation related statistical information on payment of a reasonable fee (no more than the actual cost of giving the statistics).

*Part 3 Distributing valuation rolls*

*Supplying copies of valuation roll*

**Clause 104** requires the provision of valuation roll information. When an annual valuation is completed the valuer-general must supply the relevant valuation roll information to—

- the office (if there is one) of the Administration responsible for the collection of land tax or rates; and
- any person administering an Act who needs the roll to administer the Act.

For an annual valuation the information must be supplied at least 3 months before the annual valuation first takes effect.

**Chapter 6 Provisions about the valuer-general**

*Part 1 Functions and powers*

*General functions and powers*

**Clause 105** provides for the general functions and powers of the valuer-general. These include—

- making valuations;
- dealing with objections and appeals;
- maintaining the valuation roll; and
- any other functions required of the valuer-general under an Act.



*Power to contract to supply bulk data or microfiche data*

**Clause 106** provides the power for the valuer-general to enter into contracts to supply bulk data (at least 20% of parcels on Norfolk Island) in any format. Valuation roll information is an important tool for the property industry and the economy of Norfolk Island.

The provision ensures that any contract allows the valuer-general to exclude certain information or limit its use if the valuer-general is satisfied that including the information could result in its inappropriate disclosure or use. If this exclusion occurs, the contract must also prohibit the disclosure or limit the distribution or use of the information that has already been provided.

The provision also provides for the fees associated with the supply of information under the contract to be those agreed to in the contract.

*Power to assess value other than for a valuation*

**Clause 107** allows the valuer-general to assess the value of land or personal property on payment of the prescribed fee. Assessments may be of land's—

- unimproved value;
- improved capital value; or
- the value of improvements on the land.

*Use by trustee of assessment by valuer-general*

**Clause 108** allows for the use by a trustee of an assessment of value provided by the valuer-general under clause 134 to lend money secured by the property the subject of the assessment request. However this does not apply if the trustee was directed otherwise.

*Independence in performing functions*

**Clause 109** states clearly that the valuer-general must exercise an independent judgement in performing functions and is not subject to direction from anyone else.

*Part 2 Miscellaneous provisions**Right of appearance*

**Clause 110** allows that in any proceeding concerning the valuer-general, the valuer-general may appear personally or be represented by a lawyer or a public sector employee.

*Delegation*

**Clause 111** provides for the delegation of the valuer-general's functions to an appropriately qualified person.

Examples of appropriately qualified persons include registered valuers.

**Chapter 7 Authorised persons***Part 1 General matters about authorised persons**Division 1 Appointment**Functions*

**Clause 112** provides that the functions of authorised persons include helping the valuer-general decide land values;

*Division 2 - Appointment*

*Appointment and qualifications*

**Clause 113** empowers the valuer-general to appoint authorised persons but only if satisfied the person has the necessary expertise or experience to be an authorised person.

*Appointment conditions and limit on powers*

**Clause 114** specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice given to the authorised person or in a regulation. The instrument of appointment, the signed notice or a regulation, may limit the powers of an authorised person.

*When authorised person ceases to hold office*

**Clause 115** establishes the conditions for which an authorised person ceases to hold office.

*Resignation*

**Clause 116** provides that an authorised person may resign by signed notice given to the valuer-general.

*Division 3 Identity cards**Issue of identity card*

**Clause 117** requires the valuer-general to issue an identity card to each authorised person. The identity card must—

- contain a recent photo of the person;
- contain a copy of their signature;
- identify them as an authorised person under the Act; and
- state the expiry date of the card.

The clause does not prevent a single identity card being issued to a person for this Act and other purposes.

*Production or display of identity card*

**Clause 118** when an authorised person exercises a power under the Act in relation to a person, the authorised person must—

- produce the authorised person's identity card for inspection before exercising the power;
- or
- have the identity card on display and clearly visible to the person while the authorised person is exercising the power.

The clause provides that when it is impractical to comply with these requirements, the authorised person must produce their identity card for inspection by the person at the first reasonable opportunity.

*Return of identity card*

**Clause 119** requires an authorised person to return the authorised person's identity card within 21 days of ceasing to be an authorised person.

*Part 2 Entry to places**Valuer-general to have access to buildings, documents, etc*

**Clause 120** gives the valuer-general and authorised persons the entitlement to enter (at all reasonable times) lands buildings and places as well as access to books and papers for the purposes of the Act. Copies of documents may be made and extracts taken of documents. Notice must be given of intent to have access and persons who hinder or obstruct the valuer-general or authorised persons commit an offence.

*Part 3 Other powers**Division 1 Powers after entry**Application of division 1*

**Clause 121** provides that this division applies where an authorised officer may enter or has entered a place under section 144.

*General powers after entering places*

**Clause 122** establishes the general powers available to an authorised person after they have entered a place. Those powers enable the authorised person to—

- inspect, test, photograph or film anything at the place;
- copy a document;
- examine, inspect, or film, photograph, videotape or otherwise copy or record an image of a document;
- take into or onto the place any person or equipment and materials reasonably required for exercising the authorised person's powers. The general powers may be exercised to the extent given in the occupiers consent.

*Division 2 Information obtaining power**Power to require information*

**Clause 123** empowers an authorised person to acquire information that is needed to perform the authorised person's functions. The authorised person may, by notice, require that the information be given at a stated reasonable time and place. The notice must include a warning that it is an offence not to comply with the notice.

*Information stored on computer*

**Clause 124** provides that if information required by an authorised officer is stored on a computer, the requirement includes a duty to give a clear written reproduction of the information.

*Offence to contravene an authorised person's information requirement*

**Clause 125** provides that it is an offence not to comply with an authorised officer's information requirement. The clause provides that it is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual.

*Part 4 Miscellaneous provisions**Division 1 Damage in exercising powers**Subdivision 1 Duty to avoid**Duty to avoid damage*

**Clause 126** requires an authorised officer, when exercising a power, to take all reasonable steps to ensure that the authorised officer causes as little inconvenience and does as little damage as possible.

*Subdivision 2 Notice of damage**Application of subdivision 2*

**Clause 127** provides that this subdivision applies if an authorised person exercising a power under the Act or a person acting under the direction of an authorised person damages something. The subdivision does not apply to damage the authorised person—

- considers is trivial;
- if there is no-one apparently in possession of the thing; or
- the thing has been abandoned.

*Requirement to give notice*

**Clause 128** requires an authorised person to give notice if the authorised person damages something when exercising or purporting to exercise a power. The notice must be given to the person who appears to be the owner or person in possession of the thing. If it is not reasonably practicable to give a notice to a person, the notice may be left where the damage happened in a conspicuous position and in a reasonably secure way.

The giving of the notice may be delayed if the authorised person reasonably suspects giving the notice may frustrate or otherwise hinder the performance of the authorised person's functions. The delay may be only for so long as the authorised officer continues to have reasonable suspicion and remains in the vicinity of the place.

*Content of notice*

**Clause 129** provides that a notice of damage must state the particulars of the damage and that the person who suffered the damage may claim compensation under the Act. The notice may include a statement of belief by the authorised officer that the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person.

*Division 2 Compensation**Compensation because of exercise of powers*

**Clause 130** provides that a person is entitled to claim compensation from the Administration if the person incurs a cost, damage or loss because of the exercise, or purported exercise, of a power by or for an authorised person.

*Provisions for compensation orders*

**Clause 131** provides that a claim for compensation may be made in a proceeding in a court with appropriate jurisdiction. The court must have regard to any relevant offence committed by the claimant and may order payment of compensation only if it is satisfied it is just to make the order. A regulation may prescribe other matters that may or must be taken into account by the court when considering whether it is just to order compensation.

*Division 3 Offences relating to authorised persons**Giving authorised person false or misleading information*

**Clause 132** provides that it is an offence to give an authorised officer a document containing false or misleading information whether or not the information was given in response to an authorised person's information requirement.

*Obstructing authorised person*

**Clause 133** provides that it is an offence to obstruct an authorised person or someone helping an authorised person. If a person has so obstructed and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

- it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- the authorised person considers the person's conduct an obstruction.

*Impersonating authorised person*

**Clause 134** provides that it is an offence to impersonate an authorised officer.

*Derivative use immunity for individual complying with requirement by authorised person*

**Clause 135** applies where a person gives an authorised person information in compliance with an information requirement. The clause provides that disclosed incriminating evidence provided by that person is not admissible in evidence against the individual in a civil or criminal proceeding unless the falsity or misleading nature of the evidence is relevant.

**Chapter 8 Miscellaneous provisions***Part 1 Access by valuer-general to information**Giving Administration information to valuer-general*

**Clause 136** requires Administration entities to provide information to the valuer-general. These are the Registrar of Titles and the Registrar of the Supreme Court and other public sector employees.

*Part 2 Notice of change concerning land**Notice of change of ownership*

**Clause 137** requires that when land changes hands, advice is provided to the valuer-general within 30 days.

*Requirement to fix defective ownership change notice*

**Clause 138** allows the valuer-general to require a person to fix a defect in an ownership change notice within a reasonable period. A penalty is provided for failure to comply. The valuation roll reflects information provided via an ownership change notice and inaccuracies can lead to valuation notices not being sent to the correct owner/address.

*Part 3 General service provisions**General address for service*

**Clause 139** authorises the valuer-general to serve a notice or document at the person's service address. The service address is taken to be the address last notified to the valuer-general. Where there is more than one owner of land, the notice can be provided at the one service address.

*Substituted service*

**Clause 140** allows the valuer-general, in cases where an owner is absent from Norfolk Island and doesn't have a representative to whom a notice can be given, to—

- either post the notice to the last address on the roll;
- place the notice on the land to which it relates; or
- publish a copy of the notice in the gazette.

*Part 4 Legal provisions**Division 1 Proceedings**Offence to give valuer-general false or misleading information*

**Clause 141** provides for an offence where a person knowingly gives false information to the valuer-general.

Any proceeding relating to the offence must start within one year.

*Offences under Act are summary*

**Clause 142** states that an offence against this Act is a summary offence.

*Division 2 Evidentiary provisions**Application of division 2*

**Clause 143** states that division 2 applies to a proceeding under or relating to this Act.

*Valuer-general's appointment and authority*

**Clause 144** provides various evidentiary provisions related to the valuer-general. These include—

- presumptions of a person's appointment as the valuer-general;
- the valuer-general's power to perform functions under an Act; and
- that a document bearing the valuer-general's name was made with the valuer-general's authority.

The provision also requires that judicial notice must be taken of the name and signature of a person who is or was the valuer-general. A document is taken to be signed by the valuer-general if it bears the valuer-general's written, printed or stamped signature (with the valuer-general's authority).

*Certified map or plan*

**Clause 145** states that a valuer-general's certificate concerning a map or plan is evidence of the matters contained in the map or plan.

*Valuation notices*

**Clause 146** clearly states that a certificate stating it is a copy of a valuation notice is evidence of the matters in the notice.

*Publication and availability of valuation roll information*

**Clause 147** provides that a certificate concerning the giving of a public notice about the availability of valuation roll information is evidence of the matter.

*Particular evidentiary provisions for valuation appeals*

**Clause 148** provides for specific evidentiary provisions in relation to valuation appeals. The provision states that a valuer-general's certificate stating a document was received from the appellant during the course of an objection process is evidence of the contents and any associated opinion.

*Other evidentiary provisions*

**Clause 149** provides a general suite of evidentiary provisions associated with valuation and objection related documents, the occurrence of particular actions and a person's service address.

*Part 5 Other provisions**Confidentiality of information*

**Clause 150** is a general provision relating to the confidentiality of information. It ensures that public sector employees (past and present) maintain confidentiality of certain information

*Publication of particular public notices on Administration website*

**Clause 151** details the requirements when public notices are published on the Administration website. The notice must be on the website for at least 10 business days. This provision does not preclude the notice being given in another way as well – depending on the target audience.

*Application of provisions*

**Clause 152** ensures that where any provision applies to another provision for a particular purpose, the other provision applies with necessary changes.

*Approved forms*

**Clause 153** allows the Registrar of Titles to approve forms for use under the relevant provisions in this Bill that are not, or are not required to be, prescribed by Regulation

*Regulation-making power*

**Clause 154** allows for regulations to be made under this Bill. A regulation may be associated with the functions and power of valuers; the valuation roll and relevant fees.

The provision allows for a regulation to be made to extend a period of time associated with an action where it was unable to be completed within a particular period.

*Schedule**Dictionary*

The Schedule provides the dictionary for the Bill.

18 December 2012