



New South Wales

Valuation of Land Amendment Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Valuation of Land Act 1916* as follows:

- (a) to make it clear that the Valuer-General can make a valuation of land for the purposes of a private agreement at the request of a party to the agreement and to provide that for the purposes of such an agreement a valuation carried out in accordance with the Valuer-General's usual delegation and contract valuer arrangements is deemed to have been carried out by the Valuer-General,
- (b) to affirm the methodology used by the Valuer-General in valuing heritage restricted land by ensuring that the cost of construction of improvements is not to be taken into account in determining the land value of land and to make it clear that there is to be no adjustment of the land value of heritage restricted land except that which results from the specific assumptions required by the Act for such a valuation.

The Bill also amends the *Heritage Act 1977* in relation to the valuation of land on the State Heritage Register to the same effect as the amendments referred to in paragraph (b).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Valuation of Land Act 1916 No 2

Schedule 1 [3] inserts a new section that specifically authorises the Valuer-General to carry out private valuations of land at the request of a party to a private agreement that provides for the valuation to be made by the Valuer-General. Current arrangements under which the Valuer-General delegates the making of a valuation or makes a valuation on the recommendation of a contract valuer will extend to these private valuations, and a valuation made by a delegate or on the recommendation of a contract valuer will operate for the purposes of the private agreement as a valuation made by the Valuer-General. **Schedule 1 [1] and [2]** make consequential amendments.

Schedule 1 [4] affirms the methodology used by the Valuer-General in valuing heritage restricted land by ensuring that the cost of construction of improvements is not to be taken into account in determining the land value of heritage restricted land. The amendment reverses the effect of the decision of the Land and Environment Court in *In Adam Pty Ltd v Valuer-General* [2011] NSWLEC 55 which involved a deduction from land value of a “heritage cost penalty” calculated as the increased cost of construction of improvements on heritage restricted land.

Schedule 1 [5] makes it clear that there is to be no deduction from or other adjustment of the land value of heritage restricted land on account of the effect on land value of any factor concerned with the land being heritage restricted land other than the effect of the assumptions specifically required to be made under the Act for such a valuation.

Schedule 1 [6] inserts a savings and transitional regulation-making power.

Schedule 1 [7] inserts the following transitional provisions for the amendments to be made by the Bill:

- (a) Proposed clause 19 extends the operation of the new section that authorises the Valuer-General to carry out private valuations to private valuations made before the commencement (but not so as to affect any previous court decision).
- (b) Proposed clause 20 validates past valuations of heritage restricted land made on the basis of the methodology that is affirmed by **Schedule 1 [4] and [5]** but not so as to affect any decision in court proceedings commenced before the date of introduction of the Bill into Parliament.

Schedule 2 Amendment of Heritage Act 1977 No 136

Schedule 2 amends the *Heritage Act 1977* in relation to the valuation of land listed on the State Heritage Register to make amendments to the same effect as those made by **Schedule 1 [4] and [5]**. The transitional provision (proposed clause 20) to be inserted by **Schedule 1 [7]** extends to the amendments made by Schedule 2.

First print



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New South Wales

Valuation of Land Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Valuation of Land Act 1916* to provide for the making of private valuations of land by the Valuer-General and to make further provision for the valuation of heritage restricted land; and to amend the *Heritage Act 1977* to make further provision for the valuation of land on the State Heritage Register.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Valuation of Land Amendment Act 2011</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Valuation of Land Act	1
	1916 No 2	2
[1] Section 4 Definitions		3
	Omit “for the purposes of Part 2” from the definition of <i>valuation service</i> in section 4 (1).	4 5
[2] Section 9 Functions of Valuer-General		6
	Insert “authorised or” before “required” in section 9 (1) (d).	7
[3] Section 9A		8
	Insert after section 9:	9
9A Private valuations by Valuer-General		10
(1)	The Valuer-General may make a valuation of land at the request of any person (a <i>private valuation</i>) for the purposes of any agreement or other arrangement between parties (a <i>private agreement</i>) that provides for the valuation to be made by the Valuer-General.	11 12 13 14 15
(2)	The terms of the private agreement do not prevent the Valuer-General from delegating the making of the private valuation or from making the private valuation on the recommendation of a contract valuer.	16 17 18 19
	Note. Section 8 (5) enables the Valuer-General to delegate the making of a private valuation to any person. Section 13H provides for the Valuer-General to make a private valuation on the recommendation of a contract valuer.	20 21 22 23
(3)	A private valuation made by a delegate of the Valuer-General or by the Valuer-General on the recommendation of a contract valuer is, for the purposes of a private agreement, deemed to have been made by the Valuer-General (even if the private agreement provides for the valuation to be made by the Valuer-General as an expert valuer or on the basis of the Valuer-General’s own investigations, skill and judgment).	24 25 26 27 28 29 30
(4)	The making of a private valuation under this section is at the discretion of the Valuer-General and the Valuer-General cannot be required to make a private valuation under this section.	31 32 33

[4] Section 14G Valuation subject to heritage restrictions under EPI	1
Insert after section 14G (1) (c):	2
(d) that the cost of construction of improvements on that land has no effect on its land value, with the result that there is to be no reduction in land value because of any difference between the cost of construction of the improvements referred to in paragraph (b) as new improvements and the cost of construction of other improvements used as a basis for comparison in the determination of land value.	3 4 5 6 7 8 9
[5] Section 14G (1A)	10
Insert after section 14G (1):	11
(1A) When the land value of heritage restricted land is determined on the basis of the assumptions required by this section, there is to be no deduction from or other adjustment of that land value on account of the effect on land value of any factor concerned with the land being heritage restricted land (other than the effect of those assumptions).	12 13 14 15 16 17
[6] Schedule 2 Savings, transitional and other provisions	18
Insert at the end of clause 1 (1):	19
<i>Valuation of Land Amendment Act 2011</i>	20
[7] Schedule 2	21
Insert at the end of the Schedule:	22
Part 7 Provisions consequent on enactment of Valuation of Land Amendment Act 2011	23 24
19 Operation of private valuation amendments	25
Section 9A extends to a private valuation made before the commencement of that section but not so as to affect any decision of a court made before that commencement.	26 27 28

20	Operation of amendments and validation of valuations	1
(1)	The amendments made to section 14G of this Act, and to sections 123 and 125 of the <i>Heritage Act 1977</i> , by the <i>Valuation of Land Amendment Act 2011</i> are taken to have applied, and always to have applied, to any land valuation made before the commencement of this clause.	2 3 4 5 6
(2)	Subclause (1) does not affect any decision made by a court (before or after the commencement of this clause) in proceedings commenced before the date of introduction into Parliament of the Bill for the <i>Valuation of Land Amendment Act 2011</i> .	7 8 9 10

Schedule 2 Amendment of Heritage Act 1977 No 136

[1] Section 123 Definitions

Insert at the end of the definition of *heritage valuation*:

- (d) that the cost of construction of improvements on that land has no effect on its land value, with the result that there is to be no reduction in land value because of any difference between the cost of construction of the improvements referred to in paragraph (b) as new improvements and the cost of construction of other improvements used as a basis for comparison in the determination of land value.

[2] Section 125 Making of heritage valuations with other valuations

Insert at the end of the section:

- (2) When a heritage valuation is made of land, there is to be no allowance made or other adjustment of that valuation on account of the effect on value of any factor concerned with the land being listed on the State Heritage Register, other than an allowance or adjustment resulting from the assumptions required by this Division for a heritage valuation.