

Executive summary

Introduction

The Committee has identified significant concerns surrounding the volatility of land values, the transparency surrounding valuation methodologies, the procedural fairness currently afforded to landholders and the governance framework of the valuation system. Instances of rolled forward valuation reports regarding compulsory acquisitions in Leppington, inadequate engagement with Hornsby Council regarding the acquisition of Hornsby Quarry and undisclosed methodologies for the valuation of the Perilya Mine in Broken Hill have raised significant issues to do with the valuation system. Likewise, what is strongly felt by many who made submissions to the Committee is a systemic failure to afford landholders a fair hearing, to provide transparency surrounding the valuation methodologies and to treat landholders with the respect, dignity and fairness, to which they are entitled, has significantly and detrimentally impacted landholders.

This is a system in need of paradigm shift, so that treating landholders fairly and respectfully is seen as a complementary, indeed a necessary, element of an effective and impartial valuation system. Accordingly, the Committee recommends a new process for objections and compulsory acquisitions that affords landholders procedural fairness; a clearer approach to valuation methodologies based on objective criteria or rules (a rules-based approach); and a new governance framework that replaces the Valuer General with a Valuation Commission. The Committee also recommends three year averaging of council rate valuations to dampen the material and significant volatility in the valuation system.

This report addresses the terms of reference for the Committee's Inquiry into the land valuation system, as well as those for the Committee's eighth general meeting with the Valuer General. The report is structured across three sections. The first summarises a set of case studies that have arisen during the course of the Inquiry. The second outlines the diagnostic of the valuation system undertaken as part of this Inquiry. The third outlines the reforms required. Those sections are summarised below.

Case studies

The Committee has recorded four case studies arising during the Inquiry, the Leppington Compulsory Acquisitions, the Hornsby Quarry valuation, the Mid-Western regional valuations and the Perilya Mines litigation. The case studies highlight issues associated with both compulsory acquisition valuations and rating and taxing valuations. The Leppington and Hornsby Quarry case studies raise concerns regarding transparency, procedural fairness, landholder engagement, dispute resolution, and the costs associated with the appeal process. The Perilya Mine and Mid-Western Regional Council case studies relate to rating and taxing valuations, and raise concerns about valuation integrity and quality control mechanisms, as well as demonstrating the significant impact that valuation decisions can have on local communities.

Diagnostic of the valuation system

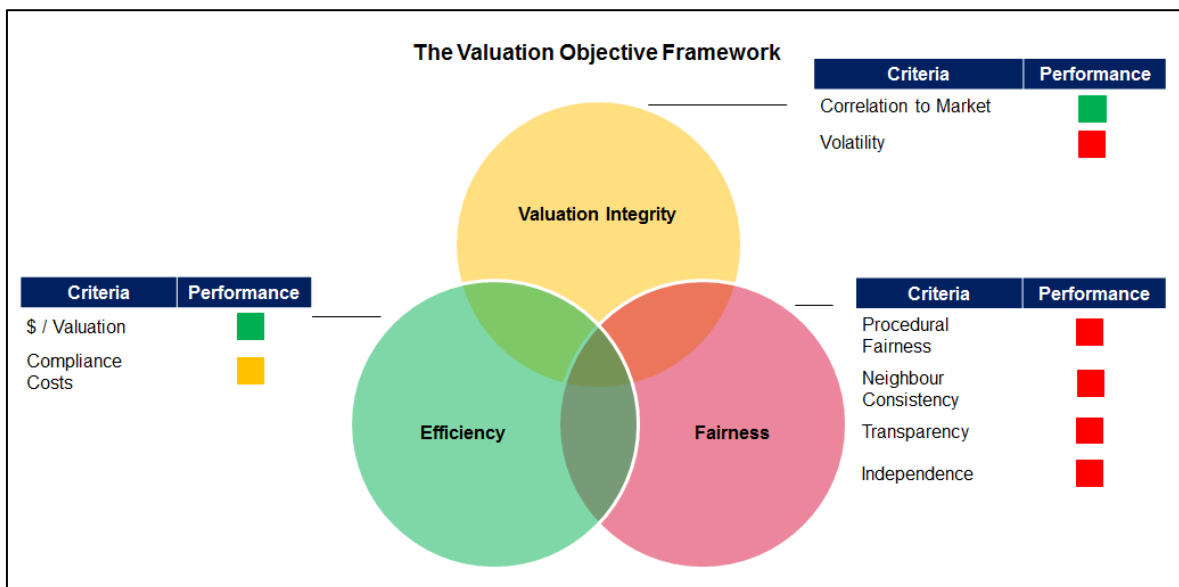
The Committee assessed the valuation system according to three performance objectives:

1. Valuation Integrity,
2. Fairness, and
3. Efficiency.

To test the extent to which the valuation system is delivering on its performance objectives, the Committee considered a range of criteria, to determine the system’s integrity, fairness and efficiency. The criteria are summarised in the table below:

Objective	Criteria
1. Valuation Integrity	1. Volatility in Valuations
	2. Correlation to Market
2. Fairness	1. Procedural Fairness
	2. Consistency in valuations amongst similar properties
	3. Transparency
	4. Independence
3. Efficiency	1. \$ / Valuation
	2. Compliance Costs

The Committee’s high-level assessment is that while the system is broadly efficient, the system is not treating landholders with the fairness to which they are entitled and that volatility in valuations is significantly undermining its integrity.



The full reasoning for this assessment is contained in the table below:

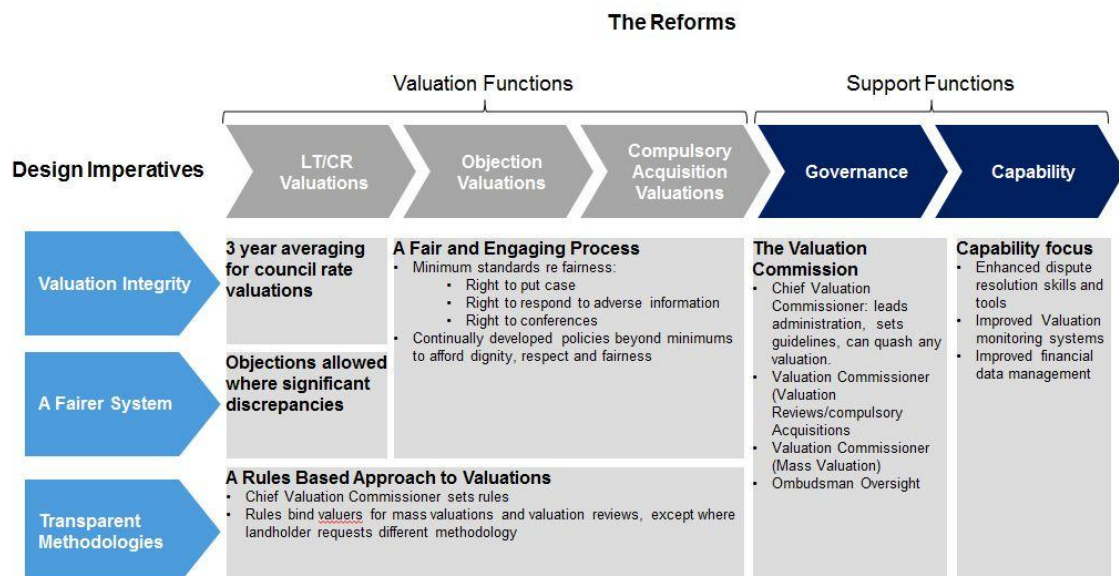
Criteria	Assessment	Reasoning
Volatility in Valuations	Red	There is material volatility in the valuations, with a number of cases of extreme volatility

Correlation to Market	■	The valuations currently show a strong correlation to the market
Procedural Fairness	■	Procedural fairness is not accorded at the objection stage or in the compulsory acquisition process
Consistency in valuations amongst similar properties	■	There are a number of submissions that have been received showing material inconsistency between property valuations. This is compounded by the inability to seek remedy on this basis.
Transparency	■	Valuation guidelines are not published, leaving the methodologies extremely opaque.
Independence	■	The independence of the valuation function from executive government has been undermined through LPI performing functions that should be performed by the Valuer General. The public's perception of objection valuers also raises independence concerns.
\$ / Valuation	■	The Valuation system is currently extremely cost effective.
Compliance Costs	■	Compliance costs are low, until a person seeks remedy, at which point they escalate rapidly.

The Committee's reforms

The reforms outlined in this report are designed to remedy the most significant problems identified in Part 2. In developing its recommendations, the Committee took into consideration three design imperatives: increased valuation integrity, fairness and transparent methodologies.

The application of the design imperatives is depicted in the diagram below. The chart shows the major functions associated with the administration of the valuation system, and how the principles have been applied to those fields to develop meaningful reform:



These initiatives interlink, with the governance framework aligning to the new fields of expertise required. It does this by creating centralised teams under Valuation Commissioners. These teams allow the development of the necessary capability to effectively resolve disputes and develop well understood and accurate methodologies. Disaggregating the Valuer General’s function in this way also allows for the structural separation of the valuation review and original valuation stages, which is consistent with international best practice.

The central reforms are discussed in more detail below:

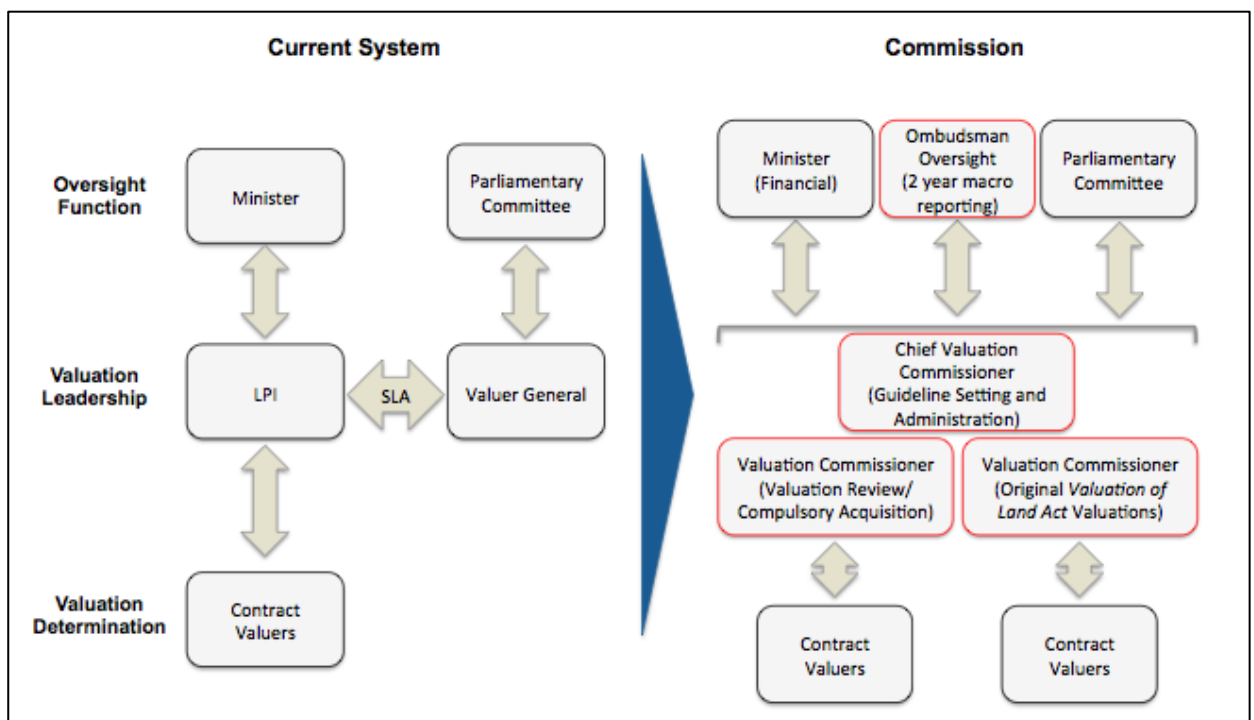
The governance framework

The Committee recommends a Valuation Commission be established. The Commission model involves two Valuation Commissioners and a Chief Valuation Commissioner. All Commissioners should be independent statutory appointments.

The Chief Valuation Commissioner would be responsible for setting valuation guidelines, leading the valuation system, administrative and resourcing/investment decisions required to run a broad system and have powers to order new valuations by either of the other Commissioners. The Chief Valuation Commissioner would also be party to any litigation in the same way the Valuer General is now.

One Valuation Commissioner would be responsible for the original *Valuation of Land Act* valuations, the other for valuation reviews and compulsory acquisition valuations. This structure ensures the separation of the original valuation process and valuation reviews, this represents best practice and is in place in Internal Revenue Services (IRS) in the United States.

The system also involves Ombudsman oversight, including a macro review every two years to provide accountability. The structure is summarised below:



A rules-based approach

The Committee recommends that the Chief Valuation Commissioner issue Public Guidelines for the valuation of land in NSW. Those guidelines will clearly state:

1. The methodologies; and
2. The circumstances in which they are applied.

The guidelines will be binding on valuers in certain circumstances. Those circumstances are described below.

Stage	Effect
Initial-Valuation for Land tax and Council Rates	Binding on valuers except where there has been a successful application to apply a different valuation.
Initial-Valuation for Compulsory Acquisition and Valuation Reviews	Binding on valuers, except where a landholder makes an application to apply an alternate methodology.
Land and Environment Court	Guidelines do not apply in any way, but judges required to identify where they depart from the guideline, why and in what way. That is so that the guidelines may be amended appropriately

Objections and compulsory acquisition valuations

The Committee recommends the present objection system be replaced with a Valuation Review mechanism. A similar system will also apply to compulsory acquisition valuations. It shall provide for minimum protections for landholders. Such threshold protections include the right to make submissions, to see all adverse material and to respond. Those entitlements should be statutorily protected. The Committee also recommends a statutory right to a conference after the original submission and after any response to the preliminary valuation report.

Beyond these entitlements, it is necessary that a strong dispute resolution capability be developed. That is, valuers and others who interact with landholders should have the skills, temperament and tools to engage with landholders in a way that shows respect, dignity, and fairness to landholders.

Other reforms

Other reforms recommended by the Committee include:

- Valuation integrity:
 - changed timing of valuations and
 - recommendations regarding water front properties and GST.

- Valuation reviews
 - new grounds for valuation review/objections,
- Courts, tribunals and appeals:
 - allowing landholders to appeal to the Administrative Decisions Tribunal or the Land and Environment Court and
 - expanding the jurisdiction of the Land and Environment Court to consider administrative errors.
- Public reporting – improved reporting of Key Performance Indicators.
- Technology – improving the IT systems required to maintain sufficient financial and operational data required to audit, monitor and improve the valuation system.

Valuation criterion

The Committee considered the valuation criterion for land valuations conducted for rating and taxing purposes and found that the current definition of Land Value is the most appropriate.

List of Findings and Recommendations

VALUATION COMMISSION _____	68
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RECOMMENDATION 1 _____	68
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That the NSW Government establish a Valuation Commission, headed by a Chief Valuation Commissioner, responsible for the land valuation functions which are currently undertaken by the Office of the Valuer General and Land and Property Information. This Commission will also support the implementation of the rules-based approach to valuation methodologies and new valuation review and compulsory acquisition systems.

VALUATION INTEGRITY _____	73
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RECOMMENDATION 2 _____	73
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That the Chief Valuation Commissioner issue public guidelines for the valuation of land in NSW, including land tax and council rate valuations and compulsory acquisition valuations. The guidelines should clearly state:

1. The methodologies for valuing land; and
2. The circumstances in which those methodologies are applied.

That the guidelines be recognised by legislation, though their formulation should not be contained in the legislation to allow the flexible development of the methodologies.

RECOMMENDATION 3 _____	73
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That the public guidelines for the valuation of land be binding on valuers, except:

1. For original rating and taxing valuations, where there has previously been a successful valuation review and the reason for departing from the original valuation is still current;
2. For compulsory acquisition valuations and for valuation review, where a landholder requests to apply an alternate methodology;

That the guidelines do not apply to the Land and Environment Court in any way, but that judges be required to identify where they depart from the guidelines, so that the guidelines may be amended appropriately.

RECOMMENDATION 4 _____	74
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That the Chief Valuation Commissioner review the public guidelines for the valuation of land in NSW annually.

RECOMMENDATION 5 _____	75
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That the NSW Government introduce a mechanism whereby council rates are determined on the average of the last three year's land valuations.

RECOMMENDATION 6 _____	75
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That the NSW Government ensure that:

1. Landholders are entitled to a valuation review if the application for review is lodged within three months of, the latest of either: the Valuation Notice, Rates Notice or Land Tax Assessment that refers to the valuation. But that right should not accrue again if the valuation is used for a future Rates Notice or Land Tax Assessment.

2. Landholders who do not seek a valuation review within the three month limit may nonetheless apply to the relevant Valuation Commissioner for a review, who shall have the discretion to grant the application.

RECOMMENDATION 7 _____ 77

That the Minister for Finance and Services introduce amendments to section 14B of the *Valuation of Land Act 1916* to change the base date for general valuations from 1 July to 1 March in the valuing year.

RECOMMENDATION 8 _____ 79

That the Minister for Finance and Services review the valuation of land below the high water mark.

RECOMMENDATION 9 _____ 79

That the Minister for Finance and Services introduce amendments to section 14I of the *Valuation of Land Act 1916* to clarify the valuation requirements for valuing Crown Lease restricted land.

RECOMMENDATION 10 _____ 81

That the Minister for Finance and Services review whether or not GST should be included in land valuations. The review should take into account the views of relevant stakeholders and the approaches adopted by other States and Territories of Australia.

VALUATION REVIEWS AND COMPULSORY ACQUISITIONS _____ 91

RECOMMENDATION 11 _____ 91

That the NSW Government introduce a new valuation review mechanism and compulsory acquisition process to replace the current objection system and compulsory acquisition valuation process, and includes the following minimum standards:

1. Landholders are entitled to make submissions to the review;
2. Landholders are entitled to a conference after they make their submission to the review;
3. Landholders are provided with a preliminary valuation review report, along with any other adverse and credible information relevant to the decision;
4. Landholders should be given 30 days to make any further submissions, and if they make further submissions they are entitled to a conference to discuss those submissions;
5. If a landholder makes further submissions on any material in the preliminary valuation report, the submissions should be considered and the landholder should be provided with written reasons for accepting or rejecting the submissions after the conference.

A conference is defined as an oral conversation between the landholder and the valuer in person, on the telephone or via some form of online oral communication system.

That these recommendations be legislated, but until then be adopted as far as possible by the Valuer General as a matter of policy.

RECOMMENDATION 12 _____ 92

That, in the case of compulsory acquisitions, acquiring authorities be afforded the same entitlements as landholders to make submissions, be provided with information and attend conferences, such that:

1. Where this right is exercised, all submissions to the valuer should be shared between the acquiring authority and the landholder, prior to any conference;
2. Both parties should be granted the opportunity to respond in writing and orally to any adverse information raised by the other party which they have not addressed; and
3. There is an opportunity for some form of joint conference, if required.

That these recommendations be legislated.

RECOMMENDATION 13 _____ 92

That landholders be entitled to a valuation review based on the comparison of statutory values of surrounding properties or the rate of change of the land value for their own property, in addition to the existing grounds for objection.

DISPUTE RESOLUTION _____ 92

RECOMMENDATION 14 _____ 92

That the NSW Government establish a dispute resolution system to supplement the processes outlined in recommendations 11 and 12. The dispute resolution system should remain flexible, with the capacity to identify and execute the appropriate mechanism to resolve a dispute, including, but not limited to:

- adding more conferences to the process;
- adding an independent chairperson to a conference;
- having some form of case manager separate to the valuer; and
- having some form of stakeholder statements focused on the key issues, which landholders and valuers agree to at the beginning of the process.

RECOMMENDATION 15 _____ 92

That the Valuation Commission build a strong dispute resolution capability for the land valuation system in New South Wales, by:

- training all relevant personnel in the techniques to handle disputes effectively;
- providing adequate resources to implement and operate the system – including adequate staffing, facilities, equipment and training for specialist dispute handling staff and for all staff;
- keeping records to ensure that the system can be evaluated and to enable strategies to be developed to minimise problems arising; and

- establishing clear policy and objectives and procedural guidelines for the conduct of dispute resolution processes, which are well documented and publicised to make the system accessible to all.

COURTS, TRIBUNALS AND APPEALS _____ 95

RECOMMENDATION 16 _____ 95

That landholders be permitted to seek a merits review of their land valuation. If an objection to the Valuation Commissioner is refused, a claim can be pursued through the Administrative Decisions Tribunal (to become the NSW Civil and Administrative Tribunal on the 1st January 2014) or directly to the NSW Land and Environment Court. Further rights of appeal to other superior courts on errors of law remain as they are now.

RECOMMENDATION 17 _____ 97

That, in light of the case of *Trust Company Limited ATF Opera House Car Park Infrastructure Trust No 1 v The Valuer-General (No 2)* [2011] NSWLEC 34, the Attorney General review the jurisdiction of the Land and Environment Court in Class 3 land valuation matters. The review should consider:

- whether there would be any legal, procedural or administrative barriers to vesting the Land and Environment Court with jurisdiction to deal with administrative errors and grant administrative remedies.
- whether there are any further changes to the Land and Environment Court’s jurisdiction that would result in additional legal efficiencies in Class 3 land valuation matters.

GOVERNANCE FRAMEWORK _____ 110

RECOMMENDATION 18 _____ 110

That the Valuation Commission be headed by a Chief Valuation Commissioner (who replaces the current Valuer General) and two subordinate Valuation Commissioners, and that all three Commissioners be independent statutory appointments.

RECOMMENDATION 19 _____ 110

That the Chief Valuation Commissioner be responsible for setting valuation guidelines, leading the valuation system, and administrative and resourcing/investment decisions.

RECOMMENDATION 20 _____ 110

That one Valuation Commissioner be responsible for the management of original land valuations for rating and taxing purposes, and other valuations under the *Valuation of Land Act 1916*; and another Valuation Commissioner be responsible for the management of valuation reviews and compulsory acquisition valuations, under the *Land Acquisition (Just Terms Compensation) Act 1991*.

RECOMMENDATION 21 _____ 110

That the Chief Valuation Commissioner have powers to quash valuations where there has been an error of substance or procedure; and to order new valuations by either of the Valuation Commissioners.

RECOMMENDATION 22 _____ 110

That the Chief Valuation Commissioner be party to any litigation in the same manner the Valuer General is now.

RECOMMENDATION 23 _____ 110

That the role of Ombudsman be extended to oversee the Valuation Commission and its administration of the valuation system;

That the functions of the Ombudsman include inquiring into specific complaints against the Valuation Commission, and a macro assessment of the valuation system;

That the Ombudsman be afforded sufficient powers to obtain information necessary to fulfil his or her functions, (though not the power to alter valuations); and

That the Ombudsman be required to table a report to the Parliament every two years, providing a systemic review of the land valuation system.

That these requirements be legislated.

RECOMMENDATION 24 _____ 111

That the Joint Standing Committee on the Office of the Valuer General be reconstituted to oversight the Valuation Commission once established.

REPORTING _____ 116

RECOMMENDATION 25 _____ 116

That the Valuation Commission produce a separate and detailed annual performance report that reflects state, national and international best practice reporting standards and that this annual performance report be tabled in NSW Parliament.

RECOMMENDATION 26 _____ 116

That practicable and appropriate key performance indicators be developed, relating to the following areas of performance, and be published in the annual performance report tabled in Parliament:

- (a) stakeholder satisfaction and engagement;
- (b) the consistency and accuracy of land valuations across NSW and how the Valuation Commission’s land valuations track against property valuations in the marketplace over time;
- (c) the major sources of land valuation objections including (depending on the associated insight) land value, geography, cause of objection (such as inappropriate methodology, inappropriate sales comparison), etc.
- (d) outcomes of land valuation objections, particularly outcomes that result in changes to land value;
- (e) outcomes of proceedings arising from land valuation objections, particularly outcomes that result in changes to land value.
- (f) key procedural fairness metrics including, but not limited to:

- (i) the effectiveness of different types of conferences/the number of conferences;
- (ii) the time between each conference;
- (iii) landholder satisfaction surveys; and
- (iv) flow through rates to appeal.

RECOMMENDATION 27 _____ 117

That the annual report includes some key financial information and areas of spending including money spent on:

- (a) first instance rating and taxing valuations;
- (b) objection valuations;
- (c) litigation.

This financial information should be consistent with activity based costing provided to this Committee.

CAPABILITY _____ 123

RECOMMENDATION 28 _____ 123

That the Valuation Commission have adequate resources and appropriate systems in place from its inception to carry out its functions and activities in a timely and efficient manner.

RECOMMENDATION 29 _____ 124

That the Valuation Commission ensure that key information concerning the land subject to a non-mass valuation determination is captured, stored and centralised electronically. The information should include:

- the landholder's name,
- the size of the land,
- the purpose of the valuation (valuation review/compulsory acquisition, etc.),
- the valuer's name,
- the valuing firm,
- the valuer(s) responsible for quality control,
- the land's use,
- the reason for objection (where applicable),
- the client (where applicable),
- the size of any alteration in land value (where applicable) and,

- customer satisfaction, determined from surveys (especially after compulsory acquisition or valuation review determinations);

And that the Valuation Commission conduct regular analysis on the effectiveness of the valuation system, using the data collected above, in order to identify the major areas where the valuation system is performing well and where it needs improvement.

VALUATION CRITERION _____ 129

FINDING 1 _____ 129

That land value is the appropriate basis of valuation for rating and taxing purposes.