

**STANDING COMMITTEE ON PUBLIC ADMINISTRATION
AND FINANCE**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 10 NOVEMBER 2003**

Members

**Hon Barry House (Chairman
Hon Ed Dermer (Deputy Chairman)
Hon Murray Criddle
Hon John Fischer
Hon Dee Margetts
Hon Ken Travers
Hon Sue Ellery**

Committee met at 1.00 pm**FENNER, MR GARY****Valuer General, Valuation Services,
Department of Land Information,
examined:**

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. You have signed a document entitled "Information for Witnesses"; have you read and understood that document?

Mr Fenner: Yes, I have.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones, which are for recording, not for amplification. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Welcome once again, Gary. Would you like to make an opening statement to the committee?

Mr Fenner: The first point I would like to clarify is that on 11 March 2002 as Valuer General I made a submission through my then minister and I would just like an indication as to whether that is on record. I have brought along copies and that might be easier than my recounting what we documented.

The CHAIRMAN: The submission does not appear to have reached the committee. Would you like to table it now and identify it for us?

Mr Fenner: It was addressed to my then minister, the honourable Minister for Planning and Infrastructure. As you would be aware, we have now come under the Minister for Land Information, Hon Nick Griffiths. The submission is headed "Standing Committee on Public Administration and Finance" and comments on a number of the terms of reference that you have.

The CHAIRMAN: Thanks very much for that submission. Could you explain for our benefit, because it is a bit mystifying, why we have not received that submission? Did you submit it to the minister's office?

Mr Fenner: My understanding was if I wanted to make a submission to this committee that it had to be through the minister's office, so I did that. I do not think there is anything controversial in the submission. It is really just a helpful submission with some suggestions to improve existing legislative provisions and some views of our office on the administration of the acquisition of land, on which we provide advice.

The CHAIRMAN: That is something that the committee might want to follow up later. In the meantime, on behalf of the committee I will ask you a few questions and then individual members may have questions. Firstly, could you please explain the process that the Valuer General's Office goes through whenever it is asked to value a property that a state government agency wishes to

acquire? How does the process differ for land that is to be acquired by compulsory acquisition rather than through a negotiated agreement?

Mr Fenner: If it is a negotiated agreement there will generally be a set of valuation instructions from the agency that wishes to purchase the land; normally that would ask for a market value. Sometimes those instructions include assumptions that we should take into account in carrying out that valuation exercise; at other times it is simply referred to as market value. In other cases, when land is to be compulsorily acquired and the full Land Administration Act is to be implemented, we would value the land in accordance with that Act, which differs from market value to the extent of a series of add-ons starting with market value and adding on any loss or damage related to removal expenses, disruption and reinstatement; that is, section 241(6). Interestingly enough, that section covers removal expenses, disruption and reinstatement of a business, and there is a catch-all phrase under section 241(6)(e), which includes any facts that the acquiring authority or court considers it just to take into account. That section gives a fair amount of discretion for dealing with unforeseen events that may come up in carrying out the exercise of providing a valuation for compulsory acquisition. In addition to that, section 241(7)(a) deals with severance of the land taken. Severance is in its simplified form an additional amount that is calculated for the reduction in value of a property that was severed into two portions. You can imagine a farming property. There are some classic examples on the Great Eastern Highway bypass road where farms were cut in half and underpasses and so forth put in but they still had an impact on properties and disrupted activities; therefore, an additional sum would be calculated to make allowance for that. In addition, the Land Administration Act provides for any reduction in the value of adjoining land due to the taking of the subject land. Under the old Public Works Act, that would have been termed injurious affection. I believe the drafting authorities in their wisdom decided to reword it in plainer English. I am not sure whether the end result has made it plainer for practitioners, mainly because the valuers in the profession relied on court precedents and, of course, all the court precedents referred to injurious affection. Then we had this new terminology which referred to a reduction in value of land. Although it is clear to me - and it is probably clear to most people reading it - that it refers to a reduction in value, many members of my profession and some judges have had difficulties in the sense that they did not have any precedent to help them measure that new set of words. However, from my point of view and from a practical point of view, I have not changed my view of it: it is still injurious affection and it is measured by looking at a reduction in value. Of course, on top of that comes a solatium. A number of minor sections of the Act deal with special circumstances, which I will not go through at this stage. Examples of injurious affection can be noise, loss of views, vibrations, smell and zoning changes. Until recently, or the past couple of years, the interpretation of that was on a fairly strict basis: the injury had to occur on the land taken. That was based on an old English case that effectively limited compensation to that which occurred on the exact piece of land that was taken from an individual. If there was, say, aircraft noise from an airport that occurred above the ground or somewhere else, the individual could not get compensation for that; or if the piece of land taken off the property for a major highway was simply a truncation of a corner but the actual noise and so forth was not occurring on that land, then you would not get any compensation for the major effect of those works. However, a recent Queensland case has loosened that interpretation, and I think loosened it for the better, to allow assessors and valuers to take into account the overall impact of the works. There is still some debate among the profession and judges about that, but I think the concept has merit. Obviously from where I sit I look at compensation as being an attempt by the Crown to put the owner in a compulsory acquisition back in the position he was in prior to the action occurring, so far as money can do it. As to how we assess value, the simplest method that valuers rely on is a direct comparison with comparable sales evidence. That is the time held relied-on method of all valuers. However, in some more complicated exercises, when a business is involved valuers will rely on the capitalisation of income streams to assess the value, and in some very specialised properties they may resort to looking at the replacement cost. One example of that would be a property for which

there was not a market, possibly a church or some specialist facility, and a valuer would have to look at some sort of reinstatement principle.

That is a very quick run through of how we would go about it. Obviously, in assessing compensation, our office would try to err on the generous side. The courts have directed us to do that, and if there is any doubt we must give it to the person who has been dispossessed. Obviously not all dispossessed owners would agree that we do that, but that is what we set out to do. There are some issues. Ken Pettit did a review for Main Roads that addressed some of the issues you raised of a voluntary purchase versus a compulsory acquisition. I have not brought a copy of that review with me; in fact, I could not lay my hands on one as I walked out the door. However, effectively he recommended to Main Roads at the time that they should embody all the same principles, whether or not they were resorting to compulsory acquisitions, simply arguing or trying to reach agreement by voluntary agreement, so that a person who negotiated a sale of a property to an acquiring or resuming authority would be in no worse position than a person who let the law run its full course and the land was compulsorily acquired.

[1.15 pm]

I substantially agree with that outcome as well, except when someone's property was already on the market and the owners were clearly prepared to sell the property at market value at the time.

The CHAIRMAN: Could you provide that document to the committee at some later stage?

Mr Fenner: I would be surprised if a copy of it was not available.

The CHAIRMAN: It is all right, the committee has a copy.

I will ask a couple of other questions, some of which you have answered indirectly and which you might like to answer more specifically. How does the process of valuation differ when it is for the purposes of settling a claim for injurious affection under the Town Planning and Development Act 1928?

Mr Fenner: In my experience, the Valuer General's Office has not been involved in providing that type of advice to the Department for Planning and Infrastructure. I understand that in the past the department has largely relied on the market valuer as the measuring stick. That has led to a significant issue. Properties that were to be compulsorily acquired would have got all the add-ons that went with the Land Administration Act. In regard to the quantification, there could be a significant difference in the amount of money that is available. Another issue of planning acquisition is that acquisitions often do not always occur when it suits the owners. Therefore, a property can be blighted for a significant time under that legislation. The onus of getting the Department for Planning and Infrastructure to acquire the land is one of the owner pushing for something to happen. The land can be reserved, but there is no compulsion on the Crown to do anything about it until the timing suits the department. Obviously, owners in that position must try to make something happen. From what I have observed, it is not easy for the owner to bring those matters to a head if he wants to move on and take his money out of the property and put it elsewhere. I am not sure if I have answered the question.

The CHAIRMAN: How is compensation determined for easements acquired for public works, such as electricity, transmission lines and water pipelines?

Mr Fenner: In the remote areas, the Valuer General's Office is largely looking at the loss of utility that occurs to the land. For instance, with regard to an underground gas pipeline, only a small fraction of the value might be lost. That may have only a little impact on a grazier, for example. However, the impact of an underground pipeline may have more of an effect - but not a significant effect - on a farmer who grows crops. A long-term effect for crop farmers is that often the topsoil is left under the ground while the subsoil remains on top. That can be an issue in cropping areas.

Easements that involve powerlines in cropping areas can have a significantly greater impact because many farmers rely on aerial spraying to fertilise their crops and to spray weeds. Therefore, the impact can be far wider than the easement, depending on the type of powerlines involved. I looked at some examples in Kondinin where the higher powerlines seemed to have a lesser effect because the crop dusting pilots were happy to fly underneath them, which amazed me.

Hon KEN TRAVERS: They have so much fun that they do it for free.

Mr Fenner: I heard one gentleman say that. Obviously, the more intensive the activity that the land is used for, the greater loss the landowner will suffer. From an administrative point of view only, for consistency our office looked at some percentages with regard to powerlines. A problem we had in dealing with many of these issues was to take a consistent approach. For the benefit of the committee, the average payout for land used for grazing and remote cropping, for example, used to sit at about 20 per cent. However, the payouts ranged up to 50 per cent for land that was used more intensively, for example, in the south west and so forth.

Hon DEE MARGETTS: Is that 50 per cent calculated on the value of the easement itself?

Mr Fenner: It is calculated on the base land value. However, in the latest acquisitions, the payout has been 100 per cent. I am trying to put it into perspective for the committee. Everyone has moved ground on these issues. For the recent widening of the corridor for the gas pipeline, the payouts have been 100 per cent of the land value plus any injurious affection that occurred as a result of the land being taken. Acquisitions closer to Perth may have affected the subdivision potential or other potential, which meant that there were add-ons to the payout. The amounts paid for land in the metropolitan area can be significantly above the market value of the land.

The CHAIRMAN: I am sure someone will ask a question about the word “potential” later.

Hon KEN TRAVERS: Are you saying that the owners were paid the full value of the land as if the land had been purchased, even though only an easement had been bought?

Mr Fenner: That is right. For example, the new gas pipeline is a corridor rather than an easement. That brought about the shift in the amount of the payout. It was envisaged that the Government would acquire a service corridor, which had the potential to have multiple gas pipelines rather than just one and may, in my view, be considered to be the corridor for all sorts of things in the future.

Hon KEN TRAVERS: Does the easement that was bought allow that to occur for a range of issues?

Mr Fenner: The current documentation allows for up to three gas pipelines.

Hon KEN TRAVERS: Would a further easement be required to do those other things; for example, if a powerline were to be built over the top of it?

Mr Fenner: That is my understanding. That would be considered further injurious affection that could not have been measured at the time the decision to apply the easement was originally taken.

The CHAIRMAN: Would it be practical to reduce the wide variations in valuations arrived at by different valuers by amending legislation to introduce a more proscriptive, standard valuation process?

Mr Fenner: That is certainly possible. In my submission, the office has worked its way through a number of Acts and has made such recommendations. The issue that must be balanced is that we are dealing with the public purse. If, for example, the Act were amended for the acquisition of powerline easements, which prescribe that injurious affection occasioned by the aesthetic effect of the powerline is not taken into account, that would increase the amount of the payouts. That must be balanced against the equity of what is a proper assessment of it. That balancing act will need to be taken into account.

The CHAIRMAN: How broadly does the Valuer General's Office treat government planning policies such as Bush Forever when it undertakes valuations for voluntary or compulsory acquisitions, particularly in areas like Southern River where a rural zoned block that is right next door to a heavily developed urban zoned block can be subject to Bush Forever requirements?

Mr Fenner: I have made some comments on Bush Forever in my submission. However, Bush Forever is one of those well and truly worthy concepts, but it creates some losers in the exercise, as do clearing restrictions in rural areas. Although thoughts are being given to provide rate relief and even trade-offs on development to compensate landowners that have had land preserved under the Bush Forever scheme, I am not aware that the office has had any requests that refer to anything other than providing market value. I am not aware of any situations in which a property subject to Bush Forever has been either acquired or otherwise on a valuation instruction that was not at the market value.

Going back to my earlier comments, the individuals to which I referred would not have received additional compensation related to disturbance to business or lack of amenity of their site or any of the add-ons that went with disturbance of an individual's lifestyle that was associated with losing some rights. It is an interesting issue because the value of some small lots in the south west that are preserved under the Bush Forever scheme has not necessarily been reduced. It is not necessarily a disadvantage to owners. Some property owners have found that clearing restrictions have had a positive benefit. There are situations in which the clearing and Bush Forever restrictions that have been imposed do not necessarily disadvantage the property owner, depending on how much of the property is affected by it. That was a fairly round about way of answering the question. I am sorry for that.

Hon DEE MARGETTS: I refer to land clearing and also to the efforts people have put into land care, agroforestry, shelter belts and so on over some decades. Are there any moves to reassess the concept of the classification of unimproved land, which can be remnant vegetation? You mentioned that it can be a benefit. Recently, people who work in government tree-establishment areas have told me that the banks are telling people who are involved in sustainable grazing and deep-rooted perennials and trees that the banks will reduce people's access to credit or devalue their properties with regard to their ability to borrow, or will even reduce the amounts they are allowed to borrow.

[1.30 pm]

Real estate agents operate on that basis. I was wondering whether - in the end it is a matter of perception - that might be the case for educating both the financial system, real estate agents and others to understand that in the medium to long term the property may well be improved. What is the situation with unimproved land value when improved land value might be degraded, waterlogged or saline prone? So-called unimproved land attached to a rural property may make sure that property is sustainable in the medium to long term. It might make the property more valuable rather than just be a dotted line over which there appears to be very little value.

Mr Fenner: There are two levels to your question. Primarily, I agree that it is a matter of the proportion of the property and the location of the unimproved land which determines the value of the property. Anything between 10 and 20 per cent uncleared land on a property probably enhances its value. The area up to that level does not appear to have a negative effect on value.

Hon DEE MARGETTS: Are you talking strictly market value at this stage?

Mr Fenner: Yes. It depends on the locality. If it is in a locality in which cropping is largely the focus, when those properties are sold they are often sold based on the arable area, so there is less of an understanding, to quote you, of possibly the value of the bush in those areas in some respects because people consider the area they can crop when they purchase their property. I think that is changing. In the south west of the State where grazing is predominant, there is a greater

understanding of the value of bush to stock management and the importance of the balance on a property. That is evidenced by the greater amount of bush to be found in those areas.

I am not sure what you are getting at in regard to the operation of the Valuer General's office concerning rating and taxing. We have largely taken out of taxable values the uncleared portion of any property that exceeds 20 per cent. Anyone who owns a property containing an area greater than 20 per cent uncleared land is not penalised from a rating point of view. We have put almost nominal value on that proportion of the property, particularly in those lower and medium rainfall areas where productivity is affected.

There has been some talk of changing the definition of rating value for rural land from "unimproved value" to a concept of "site value" or "improved value". It has some merit and we are trialling it in some of the closer-in shires. We are doing a few sample shires with a view to assessing what effect it has on the distribution of rate burden within the shire. I am not sure whether I have answered your question. I have tried to cover two aspects of unimproved value.

Hon DEE MARGETTS: I am trying to get at the fact that people have put decades of work into trying to improve catchments by a range of land care initiatives and there is an ironic counterpoint to that inasmuch as banks and financial institutions, and hence real estate agents, are considering it to be less valuable than land that might have been devaluing itself over the medium term because of salinity and rising water tables.

Mr Fenner: I would be surprised if a properly trained valuer with a knowledge of farming practices would put a lesser value on a property because of those activities. I have seen some extreme examples in which people have put in drainage banks that might have been a bit over the top and caused the property to be a bit difficult to work. Time will tell whether they have enhanced the value of the property by retaining water higher in the catchment for better utilisation of water or whether they have lessened the value. I have not seen evidence of the proposition that properties have been lessened in value and that banks would look at it that way.

Hon DEE MARGETTS: I have been told that by two different people over the past few days, and I found it interesting. What do you consider to be the proper training for, say, a new bank manager in a regional area who is responsible for loan extensions, overdrafts, and recommendations to his or her financial institution. What might a manager need to understand to be able to give good advice about whether finance should be extended or otherwise?

Mr Fenner: Historically, the major banks used to employ trained rural valuers who had either university or Muresk Agriculture College training. I am qualified to speak on that aspect, but I will not comment on what bank managers should or should not know. Historically, the banks have employed such people. As in many areas, they have cut back on the number of people they employ. I am aware that is the process, but I think it is false economy. However, to my knowledge, at the end of the day, the banks have always employed a number of rural valuers. That is not the case these days. Either UWA or Muresk Agriculture College - or as I do in trying to employ valuers for my rural operation - try to employ a lot of ex-farmers who understand what has been involved on the farming side of things. It is only a smaller specialised area but it helps if they have some background before they gain their valuation qualifications. As to the bank manager, I am a bit out of my ground.

Hon DEE MARGETTS: Do you think that the role of the Valuer General competes with the private sector or is there something special and important about the role of the Valuer General that needs to be independent? Do you need to be a qualified or an accredited valuer to do that job in the best interests of the community?

Mr Fenner: I think the Valuer General should be a valuer. I stated that before to a competitive neutrality committee hearing here, so I will stick with that. Either that or he should have significant

experience in that field. It is a specialist area. I believe that in order to do the job properly the Valuer General needs to understand what is involved and the theory and practice of that profession.

Hon MURRAY CRIDDLE: On the issue of Bush Forever, quite a few people have said they bought a block in the early days as a superannuation or whatever long-term investment and because Bush Forever has come in over the top, they have lost the opportunity to gain from that investment. What are your comments on that regarding the value of those properties? Is it within your parameters to know that they have been in some way penalised?

Mr Fenner: Each case must be treated on its merits. However, there are clearly examples in which people have been significantly disadvantaged by Bush Forever. I suppose it is like any other land-use change that results from legislation. A zoning change can create a windfall or a loss. Similarly, Bush Forever affects property values. However, I understand that at this time there is no provision for compensation in those cases.

Hon MURRAY CRIDDLE: Do you think there should be?

Mr Fenner: As I said earlier, Governments must balance the need for compensation against the requirements to meet budget targets. It is a political decision to go down one path or another.

Hon MURRAY CRIDDLE: From my brief reading of this submission, it is a very handy document.

Hon ED DERMER: If I recollect correctly, you said in your introductory comments that it is your practice whenever in doubt to err to the benefit of the landholder. Is that correct?

Mr Fenner: It is based on what the courts would do should the matter proceed to court. Therefore, if the valuation is based on a range of property sales, it would not be based on the lower end of the range; we would try to bring it above the mid-point of the range of property sales that were being used as comparable evidence.

Hon ED DERMER: Is it correct to say that a figure that was higher up the range, or in a sense anticipated what the courts were likely to do, would mean that the matter was less likely to end up in court?

Mr Fenner: It makes sense to reach agreement as often as possible without putting the public purse at risk. Quite often, the cost of court proceedings and so forth will exceed the savings. However, there must be a limit on how far we shift to reach agreement.

Hon ED DERMER: Have you received feedback from any of the acquiring agencies on this policy of leaning towards the higher end of a possible valuation?

Mr Fenner: We provide advice. In recent years, the agencies have usually done their own negotiations. They often refer back to us and ask whether we can review the valuation in a particular case to take into account additional circumstances or to reach agreement. At that time, we would review all the information we had and indicate whether it was going too far or agreement could be reached because the figure is satisfactory.

Hon ED DERMER: This is a hypothetical question: in terms of fairness to landholders, for the benefit of the general public to whom the facility will be of benefit, would it be helpful for your office to be involved in negotiations?

Mr Fenner: It is a two-edged sword in many respects. The independence of our office in the valuation process could be compromised if we ended up in the negotiation side of it. On the other hand, obviously the valuer who has carried out the valuation, has an intimate knowledge of the property and has probably benefited from interviewing the owner and so forth. I think I would support possibly the valuer being in attendance at the negotiation stage but not necessarily being directly linked with the acquiring authority because, in many respects, it is a difficult task to convince the public that we have carried out the valuation independent of the Government's outcomes. I think if it were part of the negotiating team, that task would become more difficult.

[1.45 pm]

Hon ED DERMER: If your officers were in attendance but not actually involved in negotiating, would the purpose then be to provide private advice to the acquiring agency after the meeting was concluded? What purpose would you see in an officer of yours attending in a passive way?

Mr Fenner: I would see it as providing information to both sides. Interestingly enough, when the catchment areas were being established we did, in fact, play that role with the Farmers Federation chairing the meetings. It appeared to work pretty well; there were hundreds of settlements reached over a period of time by putting all the cards on the table - for want of a better way of describing it - and trying to make sure that the acquiring authority and the landowner had access to good information on the subject. That was a special set of circumstances but it did work well.

Hon ED DERMER: If I understand correctly, you envisage a role in which the valuer is providing information to both sides of the negotiations and the information is provided openly in front of both sides at the same time.

Mr Fenner: I believe that would be a role that I would endorse, yes. It is in keeping with the way I see our office functioning.

Hon KEN TRAVERS: I have quite a few questions. I want to go through a number of different issues that have been raised. It strikes me with the valuation process that there would be some benefit in having a standardised process for valuations regardless of which agency is conducting it or whether it is for injurious affection or outright purchase of land. It strikes me that there seems to be a process of secrecy. One of the areas I would be keen to look at is the idea of when rights to land are required, the Valuer General prepares a valuation and the agency funds the affected party to get its valuation. It is proposed that the valuations are exchanged between the two parties and, if there are differences, the two valuers negotiate or discuss why they have taken their respective approaches. It strikes me that there is a science to valuation. Although assumptions will be made, evidence should be provided to support the conclusions. Would that be a fair assessment? Could you see that process working?

Mr Fenner: That was pretty much the process that occurred in 700 or 800 water supply settlements in country areas. I appreciate why some of the agencies have been reluctant to release the information. It is primarily because there is a relatively small number of private sector valuers who will not do a valuation or not put it on the table. That has been their argument. My view is that we may as well release it because as soon as a matter becomes subject to a court it will be exchanged as a matter of information exchange anyway. The reason agencies have been reluctant is that a private valuer will start with our valuation and make sure that his is somewhere up here so that the final agreement is somewhere in the middle. It becomes a win-win. I have been dealing with that for 30 years.

Hon KEN TRAVERS: The point I am making is that you would do your valuation and, at the same time, the agency would fund the affected party to get a valuation, not talk to a valuer. They would have to provide a written valuation of what they think the land is worth. They can choose whoever they like but the evaluations would be exchanged. I am not suggesting that the Government does its valuation and then hands it over for the other party to comment on. I am suggesting that the two valuations be obtained in writing and signed by the licensed valuers. A meeting is then held at which the valuations are swapped. After the parties look at them they can discuss the different assumptions made.

Hon ED DERMER: A double-blind almost.

Mr Fenner: That largely happens. Main Roads certainly follows that process as does the Water Corporation. I am not aware of any that do not provide the facility for a disaffected owner.

Hon KEN TRAVERS: No. I am talking about a very formalised process. I am interested whether you can see any problems in that or when it may not assist getting a resolution. The problem we

have is that people get two different valuations and they do not know what is the valuation of the other side. In the case you just mentioned, most agencies do not provide copies of their valuations to the other parties; they keep them confidential.

Mr Fenner: My own experience is that they have provided valuations, but there may be other examples. My understanding is that the only situation where they have not provided a copy of our valuation is when the valuer on the other side has not provided a valuation. My own experience is that they have. As to the validity of the process, I think that anything that progresses these matters without going to court is a significant advantage. I believe that for most valuers it could lead to an agreement and resolution but, unfortunately, there are a number of valuers for whom it would not work.

Hon KEN TRAVERS: You mentioned that you were paying 100 per cent of the land value for the purchase of land on the gas lines. I assume that if that were creating any form of separation it would be included on top of that for the gas corridor.

Mr Fenner: Normally there is not a severance because they are only taking a corridor. There is often injurious affection, which would be paid on top of that. There may be a situation where additional land was blighted from building on because you may not be able to have a house within so many meters of a gas line. In the case of some agricultural properties a person cannot obviously fire a rifle over it and that may impact on the management of vermin to a small extent.

Hon DEE MARGETTS: There was the weight of equipment as well.

Mr Fenner: I have seen examples where tired tractor drivers have crashed into pylons on a public property and therefore there were extra insurance costs that farmers had to incur. There is a whole list of things that are, in my view, valid to claim. Some of them are fairly remote but still valid.

Hon KEN TRAVERS: If you wanted to use a corridor for another purpose, you would have to repurchase a new easement on top of that even though you have paid the full land value plus any money for injurious affection. Is that right in terms of what you were describing earlier?

Mr Fenner: I believe that is the correct interpretation. Interestingly enough, some of the easement documents are not that prescriptive. For instance, if I were negotiating a settlement I would insist that the easement document said that, for instance, the gas pipeline had to be underground. I think you will find that the standard document does not say things like that. An astute person would insist that the document did say it had to be underground. To be fair to the existing legislation, there is provision for subsequent claims should additional injurious affection occur. I believe there is still provision there for someone to come back and have a second bite at the cherry.

Hon KEN TRAVERS: That is the circumstance with gas pipelines. What is the circumstance with powerlines and easements?

Mr Fenner: The standard powerlines with wooden poles do not require an easement. They have the right to put them on properties without any compensation or any easement. The 330 kVA ones require easements, and an easement is taken with the land under the pylon originally paid for at 100 per cent plus any skirt. If a person is trying to drive a plough around a pylon, there is additional area in addition to the area lost that a person cannot crop on. That is a 100 per cent cost.

Hon KEN TRAVERS: For the cost of the easement? What is the process of determining the valuation of the easement?

Mr Fenner: I would expect that the precedent set by the gas line proposals will end up following through to any new powerlines. I have not done any additional work for Western Power.

Hon KEN TRAVERS: What is the current practice?

Mr Fenner: The existing practice, on the last ones we did, would have represented about 30 per cent of market value on the easement area and 100 per cent on the land that could not be used.

Once we get into the metropolitan area it would be close to 100 per cent, but if land was subdivisible or could be built on it would be 100 per cent plus any other losses or damage.

Hon KEN TRAVERS: That would be 100 per cent of the area that could not be built on.

Mr Fenner: With this sort of valuation exercise, the exercise the valuer goes through is called the before valuation and the after valuation. On the assumption that the taking had not occurred, the valuer values the property and he values it again with the easement through it. At the end of the day, that is the concept. The percentages I referred to were more to get some consistency, but that is the concept applied as you get closer to the metropolitan area. It becomes more important in that scenario.

Hon KEN TRAVERS: I would think with any urban area.

Mr Fenner: Any urban area has the potential for loss; it becomes greater.

Hon KEN TRAVERS: You mentioned earlier that you saw people who were disadvantaged by Bush Forever. Do you have examples of that?

Mr Fenner: I am aware that there would be people who have had their property affected by that. I cannot give examples.

Hon KEN TRAVERS: What do you mean by disadvantage?

Mr Fenner: Clearly, if you had a two-hectare property that could be split into two one-hectare parcels and one of them happened to be 100 per cent Bush Forever, there would be no approval for subdivision. Therefore, you would lose value under the restriction of Bush Forever.

Hon KEN TRAVERS: Would they not be entitled to injurious affection?

Mr Fenner: I have not seen any legislation that supports the Bush Forever concept.

Hon KEN TRAVERS: If people sought subdivision, and they were entitled to under a town planning scheme and existing legislation, but were denied that because of a policy of the department - which Bush Forever is - surely that would invoke injurious affection under the Act.

Mr Fenner: Quite often those things are discretionary in town planning schemes. I could give an example of something in a rural area where you may be able to subdivide to an average of 40-hectare lots. If a scheme specifically said that you could have one-hectare subdivision but you did not in that case because of Bush Forever, you may be able to. I am not aware of any compensation rights under any specific legislation.

Hon KEN TRAVERS: You would be able to continue to use the land for the purpose for which you originally purchased it?

Mr Fenner: Certainly, for the purpose for which it was originally purchased, except if the original intention was to clear it and put in a market garden, for example. In that case, you could not.

Hon KEN TRAVERS: Is that not one of the issues of valuation? The chairman mentioned the question of potential. When you are valuing do you do so on what you are currently entitled to do or what is the potential?

[2.00 pm]

Mr Fenner: The valuation theory is that any property should be valued on its highest and best use. Obviously, the market will indicate that highest and best use. Coming back to your earlier question, quite often it is not a matter of what the specific zoning is on a property on a particular day. When dealing with compensation, a valuer looks at the possibilities the property had. A person may buy a property, which, when he looked at it, was on the urban fringe, with a view for greater subdivision potential. However, for the greater good of the community, suddenly that potential is taken away. That is the issue about which those who are unhappy about clearing restrictions and that sort of thing are concerned.

Hon KEN TRAVERS: On that point, how would you value that property? As I understand it, if a person's land is covered by Bush Forever, ultimately it will be purchased as part of the Government's estate.

Mr Fenner: The last time I read Bush Forever - I must admit that was about 12 or 18 months ago - there were different localities. In some areas there would be attempts within funding limits to purchase properties and there were others where concessional rating and other concessions would be negotiated. That is the last reading of Bush Forever proposal I recollect reading.

Hon KEN TRAVERS: If, for instance, the Government wanted to purchase a piece of land in Southern River - I think that example was used earlier, so I will stick with it - that was zoned rural and you did a valuation on it, even if the neighbouring properties had been rezoned urban but in the MRS it was still zoned rural on that block of land, how would you determine the value on that land? Would it be at the urban or rural value?

Mr Fenner: Most likely the valuer would look at that specific property and consider what would have been the most likely scenario and whether it would occur in a short or long period, without that particular Bush Forever proposal. He would use that in carrying out the valuation. Obviously, if it was his judgment that it was right for a zoning change and that a zoning change would occur within a short period, he would rely on property sales that were similarly right for a zoning change and obviously would have most likely been at a higher rate per hectare sale price. If the likelihood of a zoning change was remote and it was likely to remain rural for a long period, the valuer would compare sales of property that had a similar remote chance of a rezoning. Value judgments about the potential of a property to change in its land use have always been taken into account. Equally, some rural zonings allow a range of activities. I know of rural areas with a rural zoning in which caravan parks can be established. There are a range of uses that may affect what a property can be used for under rural zoning.

Hon KEN TRAVERS: As the valuer, how do you determine that, because surely the MRS is part of a government process? If something is zoned rural under the MRS, its likelihood without the extensive process of being rezoned urban is significant, and you could also overlay issues that relate to the Environmental Protection Act, for instance, because environmental values may preclude urban development being allowed. I am trying to understand what a valuer would do to make those types of value judgment assessments.

Mr Fenner: If it were affected by a restriction that did not have the capability of providing compensation, as a valuer and a potential buyer you would pay a lot less for it. There are some areas in which your rights as a property owner are unaffected and there are other areas where they are affected. Some environmental provisions affect people's property rights and so do things like Bush Forever. I am not with one group or the other in the exercise, but that is the reality. There are other situations in which compensation is clearly prescribed under legislation and, therefore, the value is preserved. If there were not, I expect the value would be diminished.

Hon KEN TRAVERS: The point I am trying to understand is that often land will have both its current value under its current authorised use, what you already have under the existing necessary planning and legislation to allow you to do what you want to do on it, and then there is a speculative value, which is effectively about its potential. Correct me if it is not a fair comment, but depending on a land's potential, particularly in urban areas or around urban centres and regional spots, a speculative value will be factored into that land over and above its current existing use.

Mr Fenner: Speculation is a fairly emotive term, but it is a judgment that a buyer or an owner of a property would make that he clearly would not sell a piece of land for base rural value if he were well and truly aware that within a short period it had the potential to be rezoned for another use. As a valuer you may well -

Hon KEN TRAVERS: However, you seek to have it rezoned for another use; you are taking a punt and speculating whether that will occur. You take that risk when you purchase the land.

Mr Fenner: Absolutely. Valuers go through the exercise of allowing for that risk in determining their valuation. There are two ways of carrying out a valuation on land on the fringe of urban development: the first is to find a similar piece of land that is on the fringe of urban development that has been sold and to make a direct comparison between the sold property and the property being valued. The second option that valuers use in carrying out that exercise is a hypothetical subdivision of the land. In carrying out that hypothetical subdivision, if the likelihood of that land being subdivided were 10 years away, all the numbers in the exercise would be run through either a discounted cash flow or discounted basis to the 10-year period versus say another one that was within four or five or maybe two years of fitting into a more intensive use. Therefore, the greater the time frame the greater the risk, the greater the discount, and the less of a time frame between when the current use and potential use occurred then you would have a higher value. However, it would obviously be less than the property that was already zoned and useable for that higher use.

The CHAIRMAN: Can I use another term? I refer to “reasonable expectation”. I am talking about the type of people who are not land developers but who perhaps owned a property on the urban fringes for a period. That is where we can use the term “speculation”. In terms of other people, such as long-term residents, they claim they have a reasonable expectation of realising at a higher value on their property at some point in time. Do you see a distinction between those types of terms? I am talking about situations in which the rules have changed in the meantime with Bush Forever or a planning document that puts a freeway through the middle of their property. It may even be an SEC transmission line. Is that factored in? Do you see that as a right?

Mr Fenner: For the past 100 or so years it has been a matter of reasonable observation that as the city grew there was reasonable probability that if you bought land on the fringe it would have that potential. Interestingly enough, things have changed and the prospect of the Perth city growing forever has changed. Planners and citizens are starting to question that as a concept. What we have thought for the past 120 years may not be a valid or reasonable assumption for the next 100 years. There is a limit to how far Perth can sprawl and a limit to how far people should take that assumption. I am trying to present a balanced view. People made an assumption about what they can or cannot do on the basis of what happened over the past 120 years and a lot of people are questioning whether that will necessarily happen in the next 120 years. That is something valuers will have to seriously look at when making those types of judgments. At a recent property investment seminar, I said that the reasons people invest in property are changing. Transport and a range of new things affect the potential of a property and people should consider those. Major transport, railway lines and those types of things are increasing in a changing society. It is not necessarily just because you are on the fringe of the city that you have that potential, but it has been for the past 120 years. That has not been the case in other areas. For example, in the Swan Valley they have specifically and rightly restricted urban sprawl to maintain the amenity of the Swan Valley for grape growing. That is a good example of sound planning and best use of our limited quality agricultural land. In that scenario, I would not have thought that someone in the Swan Valley would make the same assumption as someone who was in one of the major urban sprawl corridors.

Hon KEN TRAVERS: Arguably, when they bought their land they could have because the Swan Valley Act was passed only in 1996 or 1994.

Mr Fenner: I have contributed to a number of studies in that area where there is a higher risk of obtaining urban subdivision in the Swan Valley to another area as a valuer. A good valuer knows what planners and environmental people think and would take into account the weight of information around the place when making a decision.

Hon KEN TRAVERS: In terms of land that is zoned rural in Southern River, if the Government wants to purchase land for Bush Forever purposes, would it be normal to have it valued at the same value as the urban land surrounding it?

Mr Fenner: No, it would not be. It would be valued less than the urban land because, as you said, it is rural land and it has the potential in the short or long-term future - I am not aware of specific circumstances - to -

Hon KEN TRAVERS: In effect you would have a rural value sitting at one end of the scale and an urban value sitting at the other and the job of the valuer for that particular piece of land would be to make an assessment about how likely it is as to where you move along that continuum between those two values -

Mr Fenner: That is a good way of putting it.

Hon KEN TRAVERS: Which is obviously where the conflict occurs in terms of people's expectations.

Mr Fenner: Interestingly enough, most of the conflict in compensation valuation does not occur around the land value; rather, it occurs around injurious affection and things that are not quite so quantifiable for the severance and injurious affection. It comes down to a matter of opinion rather than the necessary straight land value. I expect in that scenario the argument would come down to how long it could be used for urban use. Is it one year or seven years, and what is the likelihood of that particular piece of land in Southern River being part of the growth corridor versus other land.

[2.15 pm]

Hon KEN TRAVERS: If it is unlikely, because of its environmental values, to get Environmental Protection Authority approval for subdivision, it may have no more value than it has as an existing rural block.

Mr Fenner: That is correct, but it is not necessarily fair.

Hon KEN TRAVERS: Well, if I buy shares in a dot-com stock and it suddenly does not meet the expectation I had, is that fair?

Mr Fenner: It is a little bit different. I suppose I could look at what the commonwealth Constitution says - that Governments should not take away people's property rights unless it is done under just terms. The Commonwealth has put that in the Constitution, and I personally think that the words "just terms" in the commonwealth legislation is a proper way of dealing with it, because it gives everyone some room to manoeuvre.

Hon KEN TRAVERS: On that point, though, are not the requirements for just terms also contained in the Land Administration Act?

Mr Fenner: No, the Land Administration Act does not talk about just terms, but it is certainly more just than some of the other means by which property is acquired.

Hon DEE MARGETTS: In relation to your request to make a submission to this inquiry, to your knowledge, did your office ever get a response from the minister's office?

Mr Fenner: I am not aware of a response, but I had no reason to think that it had not been forwarded, or was not intended to be forwarded at some future time. I forwarded a copy of the submission last week to my current minister, with the knowledge that I was coming here to appear before this committee. You can see from the date on it that the original proposal was some time ago.

Hon DEE MARGETTS: I would not mind following up the question about the independence of the Valuer General's Office. So much of what we have talked about requires a level of integrity, and people's belief in the system. What would be the risks resulting from successive implementations of aspects of competition policy, and the request by industry not to have to deal

with a body like the Valuer General, in terms of the community's expectations about the emotive issue of land valuation? Do you have a view? If we do not have independent valuers or trained people to whom Governments can turn, can private industry simply take over what your office is doing?

Mr Fenner: In regard to rating and taxing valuation work, I do not believe the private sector could adequately deal with the conflict of interest issues. Not many of the major valuing firms would either have done work or had dealings with the whole State's land database. In that area, the current arrangements are both satisfactory and proper. In the area of compensation, the private sector has played and continues to play a useful role. It is right for the Government to have its own advice on compensation matters, and the purchase of tracts of land for whatever purpose. It is also quite reasonable for Governments to seek a second opinion. Any prudent person would do that. Where large amounts of public money are at stake, that is quite a valid process. The private sector has a useful role to play there. To the best of my ability, I have tried to deliver an independent valuation service. Some members of the public would still be comforted only by having their own advice, which is fair and reasonable.

Hon DEE MARGETTS: So, having an independent Valuer General's Office and a requirement for certain qualifications in that office is one way of trying to avoid some of the potential major conflicts of interest that arise, or may arise?

Mr Fenner: For the rating and taxing system it provides an essential balance for public confidence in that system. In regard to compensation, there is a useful balance.

The CHAIRMAN: You mentioned before that you take, wherever possible, comparable sales to determine valuations. In cases like Wattleup and Hope Valley, where there is a planning instrument that effectively blights people's properties, after a period of time there would be no sales except the compulsory acquisitions by the Government. How do you factor that into the current situation facing that property owner, when he wants to quit his property?

Mr Fenner: Our officers provide advice to LandCorp on a suitable adjustment in value that takes into account evidence of movements in value in areas outside of that Hope Valley area, so that the original base numbers can be factored up in line with the movement in value that would have occurred in other areas. We also provided some advice in Pinjarra, where Alcoa had some problems about what would have happened to land values if the land had not been blighted by the particular problems. That sort of exercise can be done. We have a large database of information and some expertise to extract information to provide that sort of exercise, and we have done it in that case.

The CHAIRMAN: Does LandCorp and, perhaps, the redevelopment agency come to you for advice on those sorts of situations?

Mr Fenner: In that case, they have. They are the only two instances to my knowledge in which we have provided similar advice.

The CHAIRMAN: Do you know whether they have acted on your advice, or ignored your advice?

Mr Fenner: I am not aware of what they have done with the advice.

Hon KEN TRAVERS: I will summarise some of our previous discussions. Would the current valuation practices today take into account reasonable expectations of what that land would be used for in the future, when you value it?

Mr Fenner: Yes.

Hon KEN TRAVERS: The other question that comes up from time to time is that of people getting a land tax assessment, or having property valued for some other government purpose, but finding that when it is valued for the purposes of some form of resumption or easement the valuations are different. Can you give any explanation for that? Would it be possible for the

valuation used for land tax over the previous five years to be used as the mechanism for determining the value of the property for the purposes of compulsory acquisition when it occurs? Is the valuation process completely different?

Mr Fenner: There are two things there. The land tax values are based on the unimproved value for rural land and site value for urban land. They are what I call mass-appraised. Not every property is inspected every year. We have computer systems that record the general features of a property, and the values are adjusted up to allow us to do 700 000 valuations a year. I would not think those valuations are sufficiently precise enough to carry out a compensation valuation, because in the case of compensation, the outcome is far more important to the owner than a simple tax bill. That is probably not quite what I meant, but there is a difference in the precision required for the two exercises, and in the consequences of the two exercises. I would always recommend that, where an owner has been dispossessed of his property, it be fully inspected and properly valued, on a one-on-one basis.

Hon KEN TRAVERS: Where businesses are involved, the other area in which I understand there is something of an argument is the capitalisation approach. You apply a multiplier to work out the value. The multiplier will vary from business to business and the like. Is that correct?

Mr Fenner: It is not an area that my office particularly specialises in, although we have just started a section to expand out expertise in that area. A number of business multipliers are used in the profession to value things like newsagents and liquor stores. Effectively, though, they are analysed from the sale of the property by looking at what the sale of the property represents as a multiplier of the turnover that the sale represents - seven years gross turnover - or particular factors that are arrived at from that sort of calculation.

Hon KEN TRAVERS: Would they vary from area to area, or are they generic across the State?

Mr Fenner: If the valuer does his analysis carefully, they are reasonably consistent. However, part of the valuer's exercise is to take out the variables, such as management. Quite often these types of enterprises have a large component of owner-occupier management, so you try to do two things in arriving at a suitable multiplier. Firstly, you must arrive at standard management, so that it is neither lousy management nor very good management. It is average management, to come up with a consistent multiplier between what the business would likely sell for. The second thing is to put it into a normal wages situation. There is a third factor quite common in small business; that is, to put back into the exercise all the money that did not go through the books.

Hon KEN TRAVERS: Is it possible that, for instance, down in East Perth, if there was a redevelopment going on, people may have a view that the multiplier would be altered to reflect the fact that that area will have significant growth for a liquor store, or some sort of business that might be seen to benefit from the changing demographics? Is it possible that you would also have to look at sales history in the area to see whether people are paying more in one area than in another.

Mr Fenner: Obviously, any person buying a business in a developing area would look at whether the population catchment might increase. Then you may factor in an additional amount. Unfortunately, many people who invest in that sort of business are buying a job, and quite often they pay more than the numbers should have justified, so you have to be a little careful, particularly in looking at the smaller one and two-man shows.

[2.30 pm]

Hon KEN TRAVERS: You talked about circumstances in which you might compensate for injurious affection, including amenity and aesthetics. You mentioned vibration and a range of other issues. I am interested in getting a sense of how you go about valuing for those effects.

Mr Fenner: One way of looking at it would be this: let us say we were talking about the widening of a local road to a major freeway. You might look at the additional costs associated with double-glazing, soundproofing of the house and possibly demolition or shifting the house further back on

the lot. Access to the lot may need to be improved to reduce the risk of coming onto a high speed road, for instance. You would try to look at a whole range of things for each individual case to measure, so far as money could compensate the person for the loss that had occurred.

Hon KEN TRAVERS: If it were a business, would you look at what its books were doing before and after the event? Is that a possibility? Would you make a sort of down payment and then possibly review it in two or three years time to see whether those changes had had an impact on the business?

Mr Fenner: I would like to say that I could, but unfortunately compensation is usually assessed on the day. Obviously, if there were a delay for some reason and you had the opportunity to look at a before and after situation, that would be the perfect world, but you are not always in the situation where you get to look at the after position of the trading figures.

Hon KEN TRAVERS: Going down the path, if we were to come up with recommendations, you might work out what you expected the compensation to be and pay 90 per cent or even 100 per cent of it and then in three years time review the position to see whether the assumptions you made were correct and maybe top up the compensation. If it were overgenerous, we would have to leave it, but if the original estimate for compensation had been under-generous, compensation could be paid at that point. Do you see a problem with that approach?

Mr Fenner: It is interesting that you raise that question, because it is the very question that has been embodied in the new corridor-type purchases where there is a second bite of the cherry. My own position is that it is administratively messy to have to keep coming back to something later. My preference is to try to assess every eventuality at the time as best I can and pay the compensation once off. I do not say that from the point of view of the dispossessed owner. Clearly, it would be better for the dispossessed owner to keep coming back. If you had had some of those dispossessed owners coming back hundreds of times, because of the cost of administratively handling numerous - small to the Government but probably important to the person - grievances, my view is that it would be cheaper for the public to try to deal with it once and be generous on that one occasion. It will be interesting over the next five to six years to see how the latest gas line situation works out. I think that history will show that it will turn out to be more expensive for Governments to allow this second and third bite at the cherry. That is a personal opinion that I offer to you to help you with your deliberations, I guess based on 30 years experience.

Hon DEE MARGETTS: When you refer to a new method of calculating compensation for a corridor, are you talking about a particular corridor?

Mr Fenner: It is the widening of the gas pipeline corridor from Bunbury to Dampier.

Hon KEN TRAVERS: Are there guidelines for new valuers in your organisation to assist them with the complexities of what they should or should not consider and the basis on which they should make their assessment, or are they expected to have that expertise as part of their professional training?

Mr Fenner: We have had to write policies and guidelines. We also try to start our junior valuers with a more senior staff member. My view is that it would probably be another two or three years before -

Hon ED DERMER: You would let them out on their own.

Mr Fenner: Not so much that, but before we would not have someone else having a second look at what they have done to provide some guidance at the end of the exercise.

Hon KEN TRAVERS: You do have quite extensive internal guidelines, do you?

Mr Fenner: Yes, and of course, as I mentioned earlier on, the courts have provided guidance over the years.

Hon KEN TRAVERS: Is that incorporated into your guidelines?

Mr Fenner: Yes.

Hon KEN TRAVERS: Are the guidelines many or few or is there an issue about their confidentiality?

Mr Fenner: Have a read of my submission. If there are more, I am more than happy to provide additional help. They are more to make sure that the valuer has done all the things that he should have done when carrying out the exercise.

The CHAIRMAN: We will have a look at them. When you are doing a valuation and there is a government department involved, are you required to take into account the capacity to pay from the public purse or any budgetary parameters?

Mr Fenner: No. I think I would be a bit insulted if that were asked of me. I cannot recall any instance when it has in 33 years.

The CHAIRMAN: Do you wish to say anything in summary?

Mr Fenner: I have covered most things, but I am certainly available if you become aware of issues after today and you think I or some of our staff can help the committee. You have a fairly thankless job. It is hard to please everyone when it comes to compensation matters. I can tell you that from experience.

The CHAIRMAN: Thank you very much for your time and your input today and also for your submission, which, from my quick reading, appears to be very pertinent to what we are doing and will be very valuable. We will be in touch if there are any other issues we want to pursue. Thank you very much.

Committee adjourned at 2.37 pm