A POLICY FRAMEWORK
FOR LAND ACQUISITION AND LAND VALUATION IN A LAND REFORM CONTEXT
AND FOR THE ESTABLISHMENT OF THE OFFICE OF THE VALUER-GENERAL

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# POLICY FRAMEWORK FOR LAND ACQUISITION AND LAND VALUATION
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EXECUTIVE SUMMARY

The Land Summit in 2005, inter alia, rejected the willing-buyer willing-seller approach to land reform and advocated a more active use of the instrument of expropriation. It also recommended that the State should actively intervene in the market.

The Green Paper on Land reform made specific recommendations with regard to the establishment of an Office of the Valuer-General as a mechanism to address some of the challenges outlined above. The Green Paper stated that the Valuer-General will be a statutory office responsible for:

- the provision of fair and consistent land values for rating and taxing purposes;
- determining financial compensation in cases of land expropriation, under the Expropriation Act or any other policy and legislation, in compliance with the constitution;
- the provision of specialist valuation and property-related advice to government
- setting norms and standards, and monitoring service delivery;
- undertaking market and sales analysis;
- setting guidelines, norms and standards required to validate the integrity of the valuation data; and,
- creating and maintaining a data-base of valuation information.

The policy framework seeks to enhance the capacity of the State to realise fair value from its efforts to acquire, dispose and manage land for purposes of land reform, restitution and other development policy processes (e.g. rating, taxation, etc). The policy proposes improvements in the approaches to and methods of land valuation, collection of better land market information and the more effective regulation of the property valuation industry.

In view of this, this document develops policy in two distinct areas, namely:

- Policy as it relates to land valuation and land acquisition by government for land reform and
- Policy with respect to the functions and structure of the OVG.
With regard to valuation and land acquisition for land reform the following policy options were considered:

- To continue with the historical practice of land acquisitions on the basis of market value or to implement the provisions of the Constitution which provide for the payment of ‘just and equitable’ compensation.
- To continue land acquisition on the basis of the willing-buyer and willing-seller principle or to make greater use of expropriation.

With respect to the establishment of the OVG, the following policy options were considered:

- To establish a new institution or strengthen existing institutions (DPW and SACPVP).
- To establish OVG for land reform only or OVG to serve the entire government.
- To have an autonomous OVG or place the OVG within the civil service.
- To have an OVG with an operational mandate or one that acts only as a final authority or regulator/ombudsman.
- To make the OVG a compulsory service or merely advisory to other spheres of government.
- Whether or not the OVG should intervene in (private) land markets/transactions.

The Policy document makes Policy recommendations regarding

- land valuation and land acquisition in a land reform context;
- the establishment of the OVG;
- enhancement of land market information analysis and policy formulation

The Policy proposes that Government should stop the practice of using market value as the sole basis for determining compensation for land acquired for land reform purposes. Rather, it is proposed that the provisions of the Constitution, that compensation should be just and equitable, be implemented.

The Policy proposes that government should make greater use of expropriation in its land acquisition strategy, as part of a suite of other interventions. This however will need to be carefully thought through in order to mitigate potential adverse consequences.

The Policy proposes the establishment of the Office of the Valuer General as an autonomous statutory body and final authority on land and property valuation,
outside of the civil service. The OVG is to be set up under its own legislation, and shall have a policy, regulatory and information management mandate that provides a compulsory service to all organs of government. The OVG shall report to the Minister of Rural Development and Land Reform who shall, in cooperation with Ministers with vested interests in land and property, exercise executive oversight and policy guidance.
POLICY FRAMEWORK FOR LAND ACQUISITION AND LAND VALUATION IN A LAND REFORM CONTEXT

1. INTRODUCTION

The Constitution allows for expropriation of land in the public interest or for a public purpose. The Constitution also, in section 25(3), allows the payment of compensation for property acquired in the public interest by government, on bases other than, or in addition to market value. These bases include the ‘current use of the property’, ‘the history of the acquisition and use of the property’, ‘the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property’ and ‘the purpose of the expropriation’.

Section 25(3) appears to allow for the acquisition of land by government at below market value, a critical consideration in circumstances of the high prices that government has historically paid in the land reform process. It follows that this section, together with greater use of expropriation, holds the key to an accelerated land acquisition programme.

Although there have been various attempts over the years to give practical effect to section 25(3), these have had limited success in terms of implementation. The potential of this section to help lower the cost of land acquisition in aid of the land reform process has, therefore, remained unexplored. Similarly, there has been limited use of the powers for expropriation by government, thus limiting the potential of this tool to help speed up the land reform process.

2. PROBLEM STATEMENT

Two problems related to the issue of valuations in terms of the land reform process are of particular salience to the land acquisition strategy for land reform. These are the slow pace of land reform and the high land prices paid by government. In terms of the former, it is recognised that greater use of expropriation may provide a solution. There has however been very little use of expropriation up to this point, in part due to the lack of a deliberate and coherent policy and strategy, as well as technical capacity constraints.
The high land prices paid by government, on the other hand, are closely associated with a compensation regime based exclusively on market value. Market value is, however, problematic, especially when used for the determination of compensation for land acquisition in the land reform context. Market value is based on the willing-buyer willing-seller principle. It is established by a process of comparison, of prices paid for similar properties in the market. This reliance on transaction prices as the basis of valuation leads to the significant result that factors not intrinsic to the land’s productivity exerting a huge influence on its market value. That is to say, prices paid for land, and thus market value, do not depend entirely on the current use and condition of the property. Instead, factors such as ‘potential’ and ‘highest and best use’ determine the going rate. Prices for agricultural properties, for example, may reflect the effect of the going rate for alternative, even non-agricultural uses, such as township residential development. This is particularly evident on the fringes of urban areas.

A particularly egregious problem with market value arises when prices paid merely represent speculative behaviour, causing price bubbles and distortions in markets. Speculative behaviour may result in a rift between price and value, with prices decoupling from the fundamental or intrinsic worth of property, thereby undermining market value as a basis for just and equitable compensation.

This later problem is partly responsible for some of the criticism levelled at the willing-buyer willing-seller approach to land acquisition. It is generally accepted that the presence of government in the land market in South Africa, ostensibly with unlimited resources at its disposal, have served to attract speculative behaviour on the part of some landowners, causing price distortions. This behaviour has been manifest in a propensity to hold out for much higher than the landowners’ own reservation prices in cases where government was the buyer. This has arguably contributed to high land prices, and ultimately to the cost of land reform.

Less known, but equally problematic has been a flawed understanding of the concept of market value as it relates to land acquisitions by government. There is evidence to suggest that prices paid by government have been used as evidence for market value in subsequent transactions.
'Market value' determined in this way fails the standard tests of market value. First, government cannot be conceived as a willing buyer envisaged in the definition of market value. Rather, government is compelled by the constitution, legislation and a political-moral imperative to enter the market and acquire land for land reform. Second, government fits the description of a special buyer. Government uses taxpayers’ funds to purchase land, acquired from the fiscus on terms ordinarily not available to private citizens. These funds are spent by civil servants who have no personal financial stake in the transactions they authorise and who, as a result, may be inclined to be over-generous or less diligent in their assessment of value for money. It is clear that government cannot be placed on a similar footing with private citizens when it comes to market behaviour. Finally, government does not necessarily have the luxury of unlimited time in which to conclude negotiations. Pressures arising from the budgetary cycle and from the need to meet targets means that transactions may be need to be consummated in relatively short time periods, creating incentives for higher offer prices.

The special character of government in the land market necessarily results in a propensity to pay higher than lower prices. This combined with the effect of speculative behaviour on the part of landowners and middlemen alluded to above means that government may have been paying higher prices than is just and equitable.

The willing-buyer willing-seller approach to land acquisition, the central pillar of a compensation regime based on market value, has been severely criticised by a number of stakeholders as responsible for the high land prices paid by government, thereby standing in the way of faster land reform. The discussion above provides some justification for this criticism. It does however, appear that this criticism has, by far and large, confused matters by conflating two separate issues. These are willing-buyer willing-seller as an approach to land acquisition, and willing-buyer willing-seller as a basis for determining compensation. The alternative to the former is expropriation, which on a traditional reading of the Expropriation Act leads straight back to market value, and potentially even higher prices because of the requirement to add solatium and compensation for financial loss. Ditching the willing-buyer willing-seller approach in favour of expropriation as the dominant method for land acquisition is therefore not a solution to the problem of high prices, at least as long as the Expropriation Act remains unaligned with the constitution.
On the other hand, there is a clear alternative to the willing-buyer willing-seller principle and market value as a basis for determining compensation. This is the ‘just and equitable’ compensation regime referred to on Section 25(3) of the Constitution.

3. POLICY PROPOSALS

To help deal with the twin problems of high land prices and the slow pace of land acquisition, the following proposals are being made. Firstly, it is proposed that, as soon as possible, Government stops the practice of using market value as the only basis of compensation and begin implementing the provisions Section 25(3) of the Constitution which prescribe that compensation should be just and equitable. To make the provisions of Section 25(3) operational will require technical work, some of which has been already commissioned and is the subject of a separate discussion document.

Secondly, it is proposed that government makes greater use of expropriation in its land acquisition strategy, against the payment of just and equitable compensation in line with the constitution. It is however recognized that expropriation in general has the potential for creating uncertainty and could be have negative economic consequences if carried out in a haphazard or ad hoc manner. To help mitigate these potential problems will require that specific criteria for expropriation be identified and published in advance. Further, areas in which expropriation will be exercised will need to be designated in advance.

In addition to expropriation, it is recommended that the State should use appropriate legislation to, in a concerted and systematic manner, seek the forfeiture, without compensation, of all land that is being used for criminal purposes or land that had been acquired illegally. With regard to cases where land had been obtained illegally and improvements without the necessary authorisation subsequently added, the normal public and private law rules should apply as regards these improvements. These rules provide for, amongst others the removal of movable improvements by the owner thereof and the compulsory demolition of unauthorised buildings (without compensation being payable).
4. LEGISLATIVE IMPLICATIONS

These policy proposals will require legislative, policy and technical measures to create the enabling environment for successful implementation, as well as to help mitigate potential adverse effects. The required interventions, with legislative implications, are in respect of the following:

Amendment of the Expropriation Act, 1975: This needs to be amended to bring it in line with section 25(3) with which it is in conflict. Market value is at the centre of compensation under the Expropriation Act, whereas these proposals relegate it, and replace it with just and equitable compensation. The Expropriation Act in its current form provides for more than market value compensation (to include financial loss and *solatium*), whereas section 25(3) permits less than market value compensation. Landowners will therefore have a strong incentive to go the route of the Expropriation Act. Any attempt to circumvent this act will most likely generate a very litigious environment.

Aligning the Expropriation Act with section 25(3) will yield an additional benefit, in that it could make the need for expropriation less likely. A landowner who is aware that compensation has been determined in terms consistent with the Expropriation Act is more likely to accept a negotiated offer, than go for the route of expropriation which will, in the end, yield the same result. This will, therefore, facilitate a proactive land acquisition programme based on negotiated settlement.

Legislating the definition of market value: The international definition of market value should be domesticated in appropriate legislation, and interpreted to specifically exclude prices paid by government as evidence for market value. This will have the immediate effect of aligning prices paid by government with those of the private sector in those cases where market value is the basis of transaction and thereby help to control price speculation.

Guarantees to financial institutions: Just and equitable compensation may lie below market value. Given that most lending by banks and other financial institutions is with reference to a market value base, the change to just and equitable compensation will have implications for the collateral value of existing debt. This will in turn impact negatively on the capital adequacy of these institutions, and on their
ability to provide credit to the agricultural sector. This could have serious implications for food security and agricultural/rural employment.

In order to mitigate these potential effects, government should automatically guarantee the difference between just and equitable compensation determined in terms Section 25(3) and market value. Thus where mortgaged land has been acquired at less than market value, government should pay directly the financial institution concerned the difference between the purchase price and the outstanding amount, up to a maximum of the market value of the property. This guarantee will allow the financial institutions to continue lending to the agricultural sector on the basis of market value.

POLICY FRAMEWORK FOR THE ESTABLISHMENT OF THE OFFICE OF THE VALUER-GENERAL

1. INTRODUCTION

The market mechanism remains the primary means in South Africa by which government, households and firms obtain access to land and property, and of its disposition. At the heart of the market mechanism is the acquisition, pricing and valuation function. The magnitude of market prices do not only indicate government of supply and demand in property markets at particular points in time, but also provide powerful incentives, as well as constraints, as the government, households and organisations respond to their varying levels to make policy, consumption and investment decisions. For government in particular, the level of market prices, in an environment of limited resources, is a crucial constraining variable that determines the extent to which it may access land and property resources in pursuit of various socio-economic objectives, including land reform.

The measurement and reporting of market value is particularly important. Given the nature of land and property markets, and the general lack of centralised trading where market prices may be observed, the valuation function assumes a critical role. Proper estimates of property value are essential in producing sound judgements about the acquisition, use and disposition of property. The determination of market value provides the basis for essential economic and social activities like land acquisition, the trading of property, the taxation of property and its use as collateral etc. ‘Accurate’ and realistic value estimates are therefore important to the
implementation of public policy, fair compensation in expropriation, fairness in rating and taxation, the functioning of mortgage markets and the financial system, and the economy as a whole.

It is clear from the foregoing that the definition and measurement of market value has important economic and social consequences. This implies that it is in the public interest that government has at its disposal appropriate institutions with the mandate and capacity to render independent and objective advice on matters relating to valuation of land and property. This policy framework establishes the case for the creation of the Office of the Valuer General (OVG), identifies the policy objectives for this office and proposes its mandate, roles and functions. The policy framework also identifies the position of the OVG within public service structures, and clarifies its relationship with other institutions and government departments with an interest in property valuation, and with the general public. Finally it reflects on the possible legislative implications of the establishment of the office.

2. BACKGROUND AND OVERVIEW/CONTEXT

2.1 Background to the land reform process

The historical context to the land reform process is well documented, and need not be repeated in great detail here. The primary objective of the land reform process has been to rectify historical injustices, in terms of which more than a third of the population has been confined to a mere 13% of the land area, and occupy land on relatively precarious tenure. The reform process has established three programmes, namely, initiatives to redistribute land (‘land redistribution’), measures to restore property appropriated through racially discriminatory laws and polices (‘land restitution’) and a programme to reform the manner in which property is actually held (‘land tenure reform’).

In practice, land redistribution has involved the transfer of white-owned commercial farmland to previously disadvantaged persons. Land restitution relates to the process of settling claims for land lost by disposed parties either in the form of land restitution or financial compensation, while land tenure reform aims to provide more secure rights to people in living under communal tenure, especially in the former homelands, and to farm dwellers living on commercial farms.

A central feature of the land redistribution and land restitution programme has been the acquisition of land on the basis of the ‘willing buyer willing seller’ (i.e. demand–
driven and market–based) model, predominantly based upon the historical value at the time of dispossession. Through these programmes, the Government has set the target of delivering 30% of commercial agricultural land, or about 25 million hectares, by 2015. To date only a quarter of the 30% target has been reached.

2.2 Challenges/problems in the land reform process

There is a general consensus that the land reform process has not made satisfactory progress relative to set targets. Overall, the principal weaknesses identified include “the slow pace of land redistribution, the failure to impact significantly on the land tenure systems prevailing on commercial farms and in the communal areas, and the widespread perception that what redistribution of land has taken place has not been translated into improvements in agricultural productivity or livelihood” (Lahiff, 2008).

With regard to the restitution programme, specific problems that have been experienced include lack of appropriate settlement models, institutional constraints, related to staffing problems and overly bureaucratic and centralised procurement systems, conflicts in communities and land holding challenges amongst traditional authorities and Communal Property Associations.

The problems experienced with land redistribution includelengthy project cycles, excessive bureaucracy and reliance on outside consultants to formulate project plans without real participation by the beneficiaries themselves, over-centralisation of the decision-making process, and low levels of complementary support services.

A critical issue in both restitution and redistribution is that of escalating land prices. Escalating land prices have contributed significantly to the slow pace of land redistribution. This has in turn raised questions about the efficacy of the entire market-based land reform process and the government’s ability to participate therein without influencing the market and thus the land prices.

Questions are increasingly being asked whether market-assisted land reform, based on the principle of willing-buyer-willing-seller, can deliver at the required scale and whether there needs to be greater government intervention, including more willingness to use expropriation. It has been argued that letting the market alone determine the pace of land reform delivery is not desirable. Under this approach, government is challenged to address, amongst other things, the following issues:

- High land prices that continuously pose a cost barrier to poor land reform beneficiaries as well as government.
• Acquisition of property without government as a willing buyer or occupier increasing the value either directly or indirectly.
• Scarcity of viable commercial agricultural land.
• Unwillingness on the part of present owners of commercial agricultural land to sell.
• Acquisition of land through the open market offers no assurances that the most appropriate land, in terms of quality and location, will be acquired, at an affordable price or at the required scale
• Government has not used its powers of expropriation in suitable instances to expropriate commercial agricultural land where it is needed for land redistribution; and
• In those instances where commercial farmers sell land there are bureaucratic structures that prolong the sale of land resulting in not being an attractive option to landowners.

One of the problems identified in government’s implementation of land reform programmes is the issue of valuations. By virtue of the willing-buyer-willing-seller principle, market value principles are applied when government acquires land for land reform purposes. Government is concerned that the principle of market value is not interpreted correctly and applied in a uniform manner. Further, it has become apparent that there is a need to properly analyse and aggressively implement the framework of how to deal with land valuations and determine market value referred to in section 25(3) of the Constitution.

3. PROBLEM STATEMENT

Over the last 18 years the State has not been able to redistribute productive assets to the benefit of the historically marginalised people. The result is that income inequality, poverty and unemployment have escalated. The OVG will be at the cutting-edge of the redistributive outlook of Government, during this second phase of the transition from colonialism and apartheid to a national democratic society. It will be critical in pursuing the strategy of the CRDP, which is ‘rapid and fundamental change in the relations of land, livestock, cropping and community’. More specifically, the need for the OVG arises from, and is expected to deal with the following problems:

3.1 High land prices/ Acquisition of land at above market prices

Government has, in the context of the land reform process and as outlined above, been pursuing a land acquisition strategy based on the ‘willing-buyer willing-seller’ model. In essence this has meant the purchase of land in the open market at ‘market
value’. It has however become increasingly apparent that in some instances government has been acquiring land at prices significantly higher than the going rate for similar property in the private market. This represents a needless wastage of scarce public resources, resources that could have been more usefully deployed elsewhere in the land reform programme, and in accelerating the process.

The problem of high cost of land acquisition emanates from a number of sources. High property prices have occurred *inter alia* through market forces, as well as through challenges in the process of conducting valuations for land acquisition purposes. On the one hand, and probably one of the most significant is the presence of government in the land market, ostensibly with unlimited resources at its disposal, appears to have attracted speculative behaviour on the part of some landowners, causing price distortions. This behaviour has been manifest in a propensity to hold out for much higher than the landowners’ own reservation prices in cases where government was the buyer or in fact may well be the only buyer.

In many instances, government has not always applied the principle of market value correctly, for example by not providing clear guidelines for valuation for land reform purposes and specific instructions to valuers in that regard and often using inexperienced negotiators in transactions. Furthermore, there is some evidence of ethical problems which have presented themselves by way of improper or hurried valuations, conflict of interest and collusive behaviour on the part of some service providers and State employees. These problems have raised questions about the quality, independence and objectivity of valuation advice available to the government. All these will have an effect on the valuations.

### 3.2 Weaknesses in the legislative and regulatory framework

In addition to the high cost of land acquisition, gaps and weaknesses exist in the legislative and regulatory framework underpinning the valuation industry, as it relates to acquisition of land by government. The Constitution in Section 25(3), for instance, provides for compensation on grounds other than, or in addition to market value. Other than the Land Claims Court and the case law that emanates there from, there is an absence of a competent organ of government to lead further development and/or clarification of the legislative framework, review valuation methodologies that can be introduced and compile standards required giving practical effect to this section. The potential of this section to help lower the cost of land acquisition in aid of the land reform process has, therefore, remained unexplored.
Property valuers would, where applicable, apply valuation methodology either through the professional standards i.e. International Valuation Standards (IVS) or through a wide body of Court cases that may guide the process. Where standards are applied e.g. IVSC, there is a lack of a policy and legislative framework within government that ensures and facilitates the correct interpretation thereof. Where the government is not involved, there is a lack of ensuring adherence and compliance as adopted for South Africa. A challenge that has also been mooted relates to the correct application of all comparable transactions in conducting a valuation, for example noting where government has been transacting how that has influenced the market and appropriate use of such transaction as a comparative sale.

3.3 Extent of valuation problems in other spheres of government

The foregoing problems, grounded as they are in the land reform process, raise questions about their pervasiveness in other spheres of Government. Municipal property rates, for example, represent one of the largest sources of revenue for local authorities, requiring regular valuations for their assessment. Costs associated with the procurement of property valuation services tend to be a significant proportion of the overall cost of tax administration in this sphere of Government. The quality of valuation services available to the local authorities, on the other hand, directly affects yields from this source of revenue, impacting their ability to provide social services.

3.4 Capacity of government to understand land markets

More broadly, these problems expose a gap in terms of the capacity of government to interpret the price dynamics of land and property markets at various scales, as a basis for formulating strategic interventions in these markets, in furtherance of various socio-economic objectives, including the creation of an inclusionary society. It is common cause, for instance, that an overwhelming majority of South Africans are unable to access decent formal housing on account of escalating property prices and a shortage of well-located land.

Currently, raw land and property market data is collected by various public and private sector bodies, including the Deeds Registries, Stats SA, the South African Property Owners Association (SAPOA), the Investment Property Databank (IPD), Windeed etc. Government does not have a mechanism for the collation and analysis of this data to aid the formulation and/or implementation of policy, increasing risks that opportunities and mechanisms for intervention go unperceived. All relevant
data to perform proper valuations are also not readily available in Deeds office information and often through the delay in registration process.

The problems and issues presented above make a strong case for the establishment of the Office of the Valuer General (OVG), as an apex institution to advise government on all matters related to valuation and the functioning of land and property markets.

### 4. POLICY OBJECTIVES

#### 4.1 Policy objectives in land and property transactions

For a variety of reasons, primarily in the context of the land reform process, but also in the ordinary course of running government, it regularly engages in transactions in land and property. In these transactions, government could either be on the demand (i.e. buy) side or the supply (i.e. sell) side. On the demand side, government could be buying, expropriating or leasing land and property. On the supply side it could be engaged in the disposal or leasing of public property. In both roles, government expends or uses considerable amounts of public resources. It goes without saying that it is in the public interest that these resources are judiciously employed.

To ensure that the public interest in land and property transactions is protected when government is acting as buyer, it is a policy objective that the overriding consideration for the Office of the Valuer General would be to ensure that government obtains “value for money” for public resources, i.e. “optimisation of the return on investment in respect of an immovable asset in relation to functional, financial, economic and social return, wherever possible” (Government Immovable Asset Management Act - GIAMA). This consideration extends to those circumstances, such as municipal property rating and taxation, where the quantum of market value determines the revenue that is due to any sphere of government. “Fair and consistent”values in this context is not merely about ethical considerations, but is about prudent stewardship of public resources.

#### 4.2 Policy objective with respect to markets and the valuation industry

Recognising the critical role that land and property markets play in society and the economy, it is also an objective of policy that these markets are both efficient and equitable. This means that it is in the public interest that, inter alia, detailed information about how these markets work be collated and analysed, so as to aid policy making by government, and consumption and investment decisions by households and firms. It is a policy objective that this industry is well regulated,
operates according to best practice in terms of norms and standards, and is sensitive to the South African environment.

5. EVALUATION OF OPTIONS

5.1 Identification of alternatives

Given the problem statement and policy objectives, it is proposed that the Office of the Valuer-General be established, to act as a final authority on the valuation of land and property and to be responsible for the provision of valuation and property market advice to government. It is recognised that establishing the OVG is a costly undertaking and must therefore be justified as the best option relative to possible alternatives. The alternative course of action would be to strengthen, or make better use, of existing institutions, particularly the property valuation function within the Department of Public Works (DPW), and mechanisms available within the South African Council of the Property Valuers Profession (SACPVP).

5.2 Strengthening the DPW

There exists capacity within the DPW for valuation and property market advisory services. This capacity is however very limited on account of a lack of a critical mass of staff with the requisite skills and experience. Further, the valuation function, in particular, is overshadowed by the DPW’s overall mandate and lacks sufficient clout. Critically, the institutional framework under which it operates is not designed for the scope and depth necessary to tackle the problems identified above, and to make the function effective across the entire government system. In theory, such a framework could be created, but would radically alter the current mandate of the DPW. Any cost savings relative to the current proposal would therefore be very minimal, if at all, and could potentially be disruptive for the DPW. It also would lose the advantage for institutional design provided by starting on a ‘clean slate’.

5.3 Greater usage of SACPVP disciplinary mechanisms

It has been suggested by some stakeholders that concerns regarding the quality of valuations and ethical conduct of private valuers could be addressed by improving the quality of appointed valuers with the requisite expertise, and by greater use of the SACPVP’s disciplinary mechanism. In addition, these suggestions would not address policy and legislative issues, which are outside the jurisdictional competence of the SACPVP but could be addressed internally with ensuring the correct selection
criteria of the service provider through acceptable Terms of Reference. Such an approach would not, in any case, be effective in circumstances where government lacks sufficient internal capacity to detect valuation malpractices and to competently ‘prosecute’ wrongdoers.

5.4 The preferred option

It is clear, therefore, that the best course of action, given the problem statement and policy objectives, would be the creation of a new institution. Such a course of action would allow the creation of an institution unconstrained by historical structural issues, one whose design will be able to take into account current international best practice, whilst remaining grounded in the realities of the South African context.

There is, as the section on ‘international Experience’ demonstrates, ample international precedent for this proposal. Similar offices exist in, among others, Australia, Ghana, Hong Kong, Namibia, New Zealand and the United Kingdom. Indeed, it is somewhat of an anomaly that such an office does not yet exist in South Africa.

6. MANDATE

Two issues, relating to the possible mandate of the Office of the Valuer-General present themselves regarding the scope of responsibility for this office.

6.1 Land Valuer-General versus Valuer-General

First is the question of nomenclature. The Green Paper describes the office as the LandValuer-General. Given the historical location of the land reform process on agricultural land in mostly rural areas, describing the office as such connotes an exclusive focus on land, as opposed to property more generally. However, it is the case that it is not possible, in law as well as in valuation practice, to make a useful distinction between land on one hand and property (i.e. including improvements) on the other. Valuations for the most part encompass immovable property i.e. both land and improvements. Further, valuation methodology does not discriminate between the two constituents of property. The case can easily made, therefore, that the appropriate name for this office is the Office of the Valuer-General, to encompass property in its entirety.
6.2 Broad versus narrow mandate

Less straightforward is the question about whether the Office of the Valuer-General should have an exclusive focus on valuations for land reform in the DRDLR, or whether it should provide a more broad valuation and property advisory service across the entire government system. This question is germane, in part because a wider mandate would obviously have cost implications, and will inevitably require the OVG to intrude on the functions and domain of already existing government departments, such as Public Works.

On balance, the case for a broader mandate appears to be stronger than a narrower focus on land reform. Four reasons can be cited in support. First, and as the problem statement identifies, there is a gap at the top of government regarding a competent organ to advise government on matters of valuation specifically, and on property markets in general. It follows therefore that, sooner or later, such an organ, to serve the entire government, would have to be created. Secondly, and again as the problem statement argues, problems regarding property valuation instruction and methodology are, prima facie, likely to be much more widespread than in the DRDLR.

The third reason why the OVG should have a broader mandate relates to economies of scale. The cost of creating and sustaining the OVG, even for the narrow purpose of land reform, will be considerable. Having established such an office at great cost, it stands to economic reason that its expertise should be used much more widely. Indeed, the marginal cost of extending its mandate beyond land reform would be relatively low. On the other hand, there would be a very high opportunity cost to taxpayers if its mandate were to be restricted to land reform only.

The final reason in support of a broad mandate arises from the view held in the DRDLR that land reform is not going to be a permanent feature of South African society. Land reform is a project that shall come to an end at some point. It is incumbent, therefore, that institutions being created to support that process must ideally be designed to outlast it. Sustainability of the OVG beyond land reform necessarily implies that it must have a broad mandate.

7. ROLE, FUNCTIONS AND POWERS OF THE OVG

7.1 Basic principles

The basic role of the Office of the Valuer General is to act as a final authority on matters of land and property valuation where the government is a party or has an interest. The OVG shall, in addition, provide specialist valuation services and
property market advice to government. The primary purpose for the Office is to create norms and standards for the determination of just and equitable compensation for land acquired for land reform and in the public interest, and to ensure their enforcement. In executing its mandate, the OVG shall be subject to the following fundamental principles. First, the OVG shall not ‘manipulate’ property prices or impose values on the market place. Second, the OVG cannot, and shall not, oust the jurisdiction of the courts in the adjudication of disputes with government as to the amount of compensation payable or owing. Thirdly, the OVG shall ensure that compensation paid reflects an equitable balance between interests of the public and those of individuals or corporates.

The OVG shall have power to determine just and equitable compensation, or any other type of value, as the circumstances may require, in all cases where government has an interest, in accordance with recognised valuation methodology and professional valuation practice and standards applied in the country, and in line with relevant legislation and the constitution. The valuer general and senior valuation officials in the OVG shall be registered professional valuers or professional associated valuers, registered with the South African Council of the Property Valuers Profession (SACPVP), in accordance with the Property Valuers Profession Act of 2000.

As registered persons, it is implied that professional valuers in the OVG, as individuals, will be subject to the normal disciplinary procedures of the SACPVP. Thus any aggrieved member of the public would be able to bring a charge of misconduct to the Council against any professional valuer in the OVG. It is envisaged that the effect of being struck off the Council register would result in the individual(s) concerned unable to act as professional valuer for government. Further, members of the public shall have recourse to an appeal mechanism, described more fully below and, if necessary, to the court system.

**7.2 Specific functions**

The specific functions of the OVG shall include the following:

7.2.1 The setting of norms and standards for the determination of just and equitable compensation in line with the Constitution.

7.2.2 The determination of just and equitable compensation when Government is acquiring land for land reform purposes, including by expropriation.

7.2.3 The determination of just and equitable compensation for land restitution purposes.

7.2.4 The determination of value where government (National, Provincial and Local) is required to buy or sell land and/or property.
7.2.5 The determination of market rental value, where government is a lessee or lessor. The determination of just and equitable compensation for expropriation and land restitution purposes.

7.2.6 The provision of specialist valuation and property-related advice to support government policy-making and operations.

7.2.7 Undertaking of land and property market research and sales analyses to support strategic and operational decisions.

7.2.8 The setting of guidelines, norms and standards required to validate the integrity of property market data.

7.2.9 The creation and maintenance of a database of property market information, and

7.2.10 The dissemination of property market information to the public by way of regular publications.

7.3 Powers

The OVG is a strategic interventionist institution. It will not interfere in the normal functions of Departments and municipalities. These organs of government shall however conduct valuations using the norms and standards set by the OVG. It shall be mandatory for all organs of government who wish to acquire, dispose or lease property, or otherwise deal in property, to lodge the associated valuations with the OVG. The OVG shall have power to override valuations done by all spheres of government where these are deemed not to be in line with set norms and standards. It shall be a contravention of public policy to proceed with any land transaction without relevant advice from the OVG and adherence to the OVG’s determination. It is expected that appropriate service level agreements shall be entered into between the OVG and client departments to guarantee minimum service standards, including turn-around times.

It is recognised that provincial governments and the municipalities are autonomous entities. The specific role of the OVG on matters where these bodies ordinarily have jurisdictional competence will therefore have to pass legislative and constitutional muster, and shall be finally developed in close consultation with these stakeholders and as per recommendations from the Regulatory Impact Assessment conducted.

Municipalities are a special case in so far as valuations are concerned. Municipal valuers have two distinct roles. The first role relates to the preparation of valuation rolls by the municipal valuers as an adjunct to the constitutional mandate granted to municipalities to levy property rates. The second role has to do with the valuation of property in support of day-to-day operational activities of municipalities, such as lettings, acquisitions and disposals. The mandate of the OVG with respect to the first role shall necessarily be limited to the setting of norms and standards regarding the
preparation of valuation rolls. The OVG may, in addition, provide technical support on request to those municipalities who lack internal valuation capacity. It is proposed that the OVG’s mandate in the second role shall be compulsory.

8. LOCATION OF THE OVG IN RELATION TO THE PUBLIC SERVICE

Given the foregoing, the question about where, in relation to the public service, to locate the OVG is a critical one. Two basic options are available in this regard, each with its own implications for the mandate of the OVG and design of the organisational structure. The options are either to establish the OVG within government as part of the civil service or to set it up as an autonomous entity of government.

8.1 Autonomous OVG

There is a strong body of opinion that the OVG should be an autonomous body, outside of the civil service, possibly reporting directly to Parliament. For a number of reasons, there is a widely held view that too close an association with the Department of Rural Development and Land Reform, and the land reform process, would predispose the OVG to political interference and lead to the ‘manipulation’ of property prices.

It is important that the OVG be not only independent to exercise professional judgement in pursuit of its mandate, but be perceived to be independent as well. This is crucial for its credibility. This notwithstanding, it has to be said that, for a statutory body, any model selected cannot be totally devoid of some form of political influence.

There is a second reason supporting the argument that the OVG should be independent of the civil service, that of operational efficiency. Given a broad mandate to serve the entire government system, an inability to deal with valuation issues from client departments timeously and cost-effectively could potentially have a detrimental effect on government operations. Being located outside of the civil service may free the OVG from the bureaucratic shackles that often stand in the way of operational efficiency.
An autonomous OVG envisaged as an executive agency of government, could be set up in terms of founding legislation.

8.2 OVG within the civil service

There is a counter-argument that the OVG should be located within the civil service, particularly within the Department of Rural Development and Land Reform. Five reasons could be cited in support of this argument. First is the question of political will. Creating a new institution of the size and scope of the OVG requires strong political support to ensure success, and to ensure that the original vision is sustained. It goes without saying that the DRDLR would be more committed than any other in this regard. Secondly, the OVG’s mandate includes the development of policy and legislation. This is ordinarily possible, or expedient, only from within civil service structures.

The third argument why the OVG should be located within the DRDLR is that of precedent. It is common practice around the world for similar offices to be located within, or report to, ministries responsible for land affairs, together with land surveying and deeds registration functions. Examples include Australia, New Zealand, Namibia and Ghana. Relatedly, the fourth argument is that of best practice. Increasingly around the world, there is a strong drive to integrate land and property information to create national spatial data infrastructures (SDIs). SDIs tend to start with the individual property ‘parcel’ as the basic unit for organising information. Typically, parcel-level (i.e. erf-level) information consists of information about property boundaries from the surveying function, ownership information from the deeds registration function, and value and other information from the valuation function. This information about boundaries, ownership and value is combined, with the aid of GIS technology, into digital databases that are easily accessible by citizens, facilitating the practice of e-governance. Proximity of these three functions in one department or institution assists the process of data integration.

The final argument in support of housing the OVG within the DRDLR is that of economy. This relates to the avoidance of the cost of creating new human resource, finance and other supporting infrastructure for a totally independent OVG.

On balance, it would appear that establishing the OVG as an autonomous organ would be the best course of action. This would be in line with international best practice. It would also be the path of least political resistance, given the unease with
which some sections of society have received the proposed office. There are implications, however, that needs to be taken note of. Firstly, the policy, legislative and industry oversight mandate of the OVG could be weakened considerably. To counteract this there needs to be created special capacity, with this mandate, within the relevant government department. Secondly, mechanisms by which the OVG’s expertise in property markets would systematically be fed into government policy-making and operations, without compromising the autonomy of the OVG, would need careful thought. Finally, an autonomous OVG will require a different organisational structure.

9. RELATIONSHIP WITH OTHER INSTITUTIONS AND GOVERNMENT DEPARTMENTS

The OVG shall report to the Minister of Rural Development and Land Reform who shall, in cooperation with Ministers with vested interests in land and property, exercise executive oversight and policy guidance. The exact nature of the relationship between the OVG and the rest of government is discussed below.

9.1 Relationship with the South African Council of the Property Valuers Profession (SACPVP)

The South African Council of the Property Valuers Profession (SACPVP) has been created in terms of the Property Valuers Profession Act, No. 47 of 2000. In terms of that legislation its key functions are to register various categories of valuers, to maintain that register, to accredit educational programmes and to create and enforce a code of conduct for registered persons. The functions of the SACPVP are therefore restricted to the regulation of the valuation profession, in terms of professional practice and educational standards, in much the same way that the, Quantity Surveyors Council (SAQSA) Engineering Council of South Africa (ECSA) regulates the engineering profession, all under the auspice of the Built Environment Council (BCE)

There shall be a two-way relationship between the OVG and SACPVP. Professional valuers working in the OVG, as individuals, must be registered with the SACPVP as practicing registered persons. They shall, in that respect, be subject to the Council’s normal registration and practice standards. The fact that these professionals are in
the employ of the OVG shall not put them beyond the Council’s authority. Neither shall the creation of the OVG alter the Council’s mandate.

The OVG as an institution shall, on the other hand, have a strategic influence on the Council to the extent that the OVG shall have a policy, legislative, norms and standards-setting mandate. The Valuer-General shall be a member of the Council as provided for in the Property Valuers Profession Act.

9.2 Relationship with the Department of Public Works (DPW)

The Department of Public Works has a four-fold mandate. Firstly, it has a role as ‘the handy man of government’. In that role it is responsible for the maintenance of public infrastructure. Secondly, it acts as ‘asset manager’ for government, ensuring that government’s immovable assets are managed effectively and efficiently. Thirdly, DPW has responsibility to lead the expanded public works programme (EPWP). Finally, the department acts as overall regulator for the built environment professions, via the Council for the Built Environment (CBE) and the Construction Industry Development Board (CIDB).

To support the pursuit of its mandate, the DPW has a valuation function within its structures. It is envisaged that this function shall remain. The Land Affairs Act, 1987 (Act 101 of 1987) will however need to be amended to provide for the dissolution of the Land Affairs Board. Its functions will be subsumed within the OVG in terms of quality assurance of valuations commissioned. Further, and as pointed out above, the DPW is responsible for the administration of the Property Valuers Profession Act. It is expected that this responsibility shall be transferred to the OVG. This will require rationalisation of the accountability framework of the SACPVP within the CBE.

Otherwise, in all other respects, it is not envisaged that the DPW’s mandate will change. Thus the DPW will still be responsible for the acquisition and leasing of property for government. The only difference in this respect is that, all valuations for price or rent to be paid, as the case may be, shall be lodged with, and finally determined, by the OVG.
9.3 Relationship with the Department of Cooperative Governance and Traditional Affairs (CoGTA)

The Department of Cooperative Governance and Traditional Affairs (CoGTA) has an oversight and supporting role with regard to provincial and local government. The envisaged involvement of the OVG in valuation for rates, municipal valuations in general and in valuations for provincial governments will, therefore, require concurrence and facilitation by CoGTA.

CoGTA has responsibility for the implementation of the Municipal Property Rates Act, Act No. 6 of 2004. This legislation regulates the power of municipalities to impose rates on property, and prescribes methods of valuation and procedures for administering the entire process. This includes the procedures for appointing municipal valuers and their qualifications. CoGTA shall continue to retain administrative control of this legislation. The OVG shall however set overall norms and standards for the valuation of property for rates. The OVG may, at the invitation of the Minister or MEC, carry out audits of rating valuations.

9.4 Relationship with municipalities and provincial governments

The right of provincial and local government to run their affairs autonomously from national government is a constitutional right, and shall frame the nature of the relationship between the OVG and this sphere of government. This implies that the nature of this relationship shall be a product of consultation. The exact contours of this relationship shall be informed by, on one hand, the need to ensure that the public interest in land and property transactions is protected whilst, on the other, ensuring that the independence and autonomy of this tier of government is upheld.

In principle, it is envisaged that the OVG shall provide a demand-driven service to provincial governments and municipalities with regard to valuation for rates. This point notwithstanding, it is envisaged that the OVG will play a compulsory role for any other municipal valuations as discussed in the section on functions.

9.5 Relationship with national government departments in general

As described in the functions section, all national governments departments engaging in land and related property transactions shall be obliged to lodge all
valuations regarding price or rent to the OVG. Standard operating procedures shall be amended, or created, to facilitate this. The OVG for its part shall be a service organ to the entire government system. It will be required to provide an effective and efficient service, anchored on appropriate protocols and agreed service-level standards.

10. RELATIONSHIP WITH THE GENERAL PUBLIC

10.1 Basic principles

Organs of government engaging in land and property transactions, such as acquisitions, expropriation, disposals and leasing will in most cases have members of the general public (individuals or corporates) as the other party and shall therefore be guided by determinations of price, or rent (as the case may be), done by the OVG. The OVG, in its dealings with the general public shall be guided by the public service ethos of Batho Pele. That is, the OVG shall provide an efficient, courteous, transparent and responsive service to South African citizens and residents.

10.2 Appeal mechanism

The OVG shall provide for a section which does quality control of all valuations. Members of the public who are dissatisfied with any determination by the OVG shall have, in the first instance, an opportunity to formally present their cases to the relevant office of the OVG. The OVG shall create specific capacity to expeditiously deal with such cases.

If, on further examination by the OVG, there is still no resolution, members of the public shall have a right of appeal to the Courts.

11. LEGISLATIVE IMPLICATIONS

11.1 Summary options for an autonomous OVG

To summarise, the final recommendation is that the OVG be set up as an autonomous executive agency of government. The OVG shall report to the Minister of Rural Development and Land Reform who shall, in cooperation with Ministers
with vested interests in land and property, exercise executive oversight and policy guidance

11.2 Summary case for legislation

To effect the proposals presented in this document, new legislation, and amendments to existing legislation, will need to be enacted. The creation of the OVG, requiring fairly robust powers, is unlikely to be properly accommodated within existing legislation. What follows is a summary discussion of the possible key legislative implications of these proposals:

11.3 Land Valuation Act

This new legislation will provide for the creation and powers of the OVG, whether this office is going to be a stand-alone independent entity or part of the civil service. Unlike legislation with similar names, as found for example in Australia, the Land Valuation Act in South Africa will not have regulation of rating valuations as a central focus. The Municipal Property Rates Act already covers this. Rather, the Land Valuation Act will provide for the role, powers and functions of the OVG.

11.4 Implications for existing and proposed legislation

The proposals in this document have implications, some significant, others relatively minor, for existing and proposed legislation. Relevant legislation includes the following:

- **Property Valuers Profession Act, No. 47 of 2000** – Amended to bring it under the administrative control of the relevant parent Department, to confirm the inclusion of the Valuer-General in the Council for the Property of Valuers Profession and to provide for ensuring adherence and implementation of the adoption by South African valuers of domesticated valuation standards, as prescribed in the Land Valuation Act.

- **Municipal Property Rates Act, Act No. 6 of 2004** – Amended to facilitate the use by municipalities of the OVG as service provider for rating valuations, and to provide for the power of the OVG to set norms and standards for rating valuations.

- **Land Affairs Act, No. 101 of 1987** – Repealed, but incorporating functions into the Land Valuation Act, regarding advice and quality control.

- **Deeds Registries Act, 1937 (as amended)** – Amended, as required, to provide for provision of all relevant information required for conducting valuations.
• **Land Survey Act, No. 8 of 1997** - Amended, as required, to provide for provision of all relevant information required for conducting valuations.

• **Transfer Duty Act, No. 40 of 1949** – Possible amendment to provide for the involvement of the OVG in valuations, implication for definition/measurement of market or fair value, as part of the domestication of valuation standards, prescribed in the Land Valuation Act.
  
  o *The recording of sales of shares and members interests when a sale of property occurs*
  
  o *Where expropriated provide for the basic value and compensation to be recorded*

• **Estate Duty Act, No. 45 of 55** - Possible amendment to provide for the involvement of the OVG in valuations, implication for definition/measurement of market or fair value, as part of the domestication of valuation standards, prescribed in the Land Valuation Act.

• **Administration of Estates Act, No. 66 of 1965**– Amendment to provide for the involvement of the OVG, and the Minister to (a) terminate the appointment of appraisers not registered with the SACPVP (b) Delete the word “appraisers” and replace with “valuer” (being a registered person with the SACPVP) (c) only appoint professional valuers, in the valuation of deceased estates. (the word appraiser and valuer is very confusing - appraiser is a valuer, a terms used in the USA)

• **Expropriation Bill** – Amendment to provide for the determination of proposed compensation by the OVG.

**ANNEXURE A: INTERNATIONAL EXPERIENCE**

1. **Criteria for selection**

A number of countries have government departments or agencies with mandates similar to the one proposed for the OVG. The purpose of this section is, firstly, to demonstrate that the proposed OVG is not a uniquely South African invention and, secondly, to distil appropriate lessons from the experience of other countries. The countries discussed below have been selected on the basis that each has an organ with a national mandate to undertake valuations. The review focuses on the institutional design and specific roles and functions of these organs.

2. **Australia**
Due to the federal character of Australia, the institutional framework for property valuation is to be found at both national and state level. At the national level, the Australian Valuation Office (AVO) provides valuation and consultancy services to the government. The role of the Australian Valuation Office (AVO) is to provide the Australian Government with policy and strategic advice on valuation and related issues. It is positioned as a commercial business function within the Australian Tax Office. AVO provides the entire range of valuation services to all spheres of government on a commercial-for-fee basis. It does therefore compete with the private sector for government business.

There are six states in the federation: New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. Each of these states have their own office of the Valuer-General. There are a lot of similarities in institutional design and functions, but also some differences

**New South Wales**

The Valuer-General is an independent statutory office with a mandate to oversee the valuation system in New South Wales. The Valuer-General is responsible for:

- the provision of ‘fair, accurate and consistent’ land values for rating and taxing purposes
- the determination of compensation following the compulsory acquisition of land and
- the provision of specialist valuation and property advice to government.

The Valuer-General’s role is to set policy and standards with regard to valuations. Actual valuations are performed by a separate operational entity called Land and Property Information (LPI). There is thus a separation between policy and standard setting on one hand and operational functions on the other. LPI provide a range of valuation services including the management of customer service and provision of information to stakeholders, valuation contracts, the provision of information to contract valuers, the objection review process as well as auditing and ensuring the quality of land values and the day to day management of valuations completed under relevant legislation.

The Valuer-General reports administratively to the Minister for Finance and Services and the Director-General, Department of Finance and Services. This reflects the fact that the Valuer-General’s mandate revolves around revenue matters arising from a focus on valuations for rating and taxing.

The Committee on the Office of the Valuer-General provides parliamentary oversight. The Land Valuation Advisory Group, comprising representatives of the property
industry and other stakeholders, monitors the quality of land values, and provides a channel for communication between the Valuer-General and the property industry.

**Queensland**

The Valuer-General is an independent statutory officer within the Department of Environment and Resource Management and is responsible for managing the operations of government Valuation Service (SVS). SVS is the largest employer of professional valuers in Queensland. With regard to statutory valuations (i.e. for rating, taxing, leasing and other legislated functions) the powers and responsibilities of the Valuer-General include:

- directing, controlling and managing the statutory valuation of land in accordance with relevant legislation
- maintaining the valuation roll
- considering and administrating objections and
- being the respondent in valuation related appeals and provision of evidentiary material.

In addition to statutory valuations, the SVS provides a general valuation and property advisory service to the whole of the government of Queensland. The Valuer-General has further responsibility for policy and legislation relating to valuation, audit and quality assurance and maintains a database of property value information (which can be accessed at a fee). High-level policy decisions relating to the implementation of government initiatives, such as changes to valuation methodology, still rest with the government.

Compared to New South Wales, there is a closer fit between the policy/legislative and operational functions of the Queensland Valuer-General. Another difference is the position of the latter within a ‘land management’, rather than a finance framework. The Queensland Valuer-General falls under the umbrella of the Department of Environment and Resource Management, together with title registration, land survey and other land management functions.

**South Australia**

Government Valuation Office under direction of the Valuer-General is part of a cluster of cognate functions called the Land Services Group (LSG). LSG falls within the Lands and Service SA division of the Department for Transport, Energy and Infrastructure. Like in Queensland, the structuring of government Valuation Office is within a land management framework, albeit housed in a ministry with a different character.
The Land Services Group (LSG) is responsible for key land administration functions in South Australia. The core activities are land titling, land and property valuation, administration of a survey framework and management and provision of land information. LG includes the statutory offices of the Registrar-General, Surveyor-General and the Valuer-General.

The Valuer-General heads the independent State Valuation Office which is primarily responsible for valuation for rates and taxes.

**Tasmania**

The Valuer-General is the statutory officer responsible for establishing and maintaining municipal valuation rolls used for local government rating and tax. The Valuer-General is also responsible for the competitive tendering system which awards contracts for valuation services to the private sector, and for monitoring the quality of valuation services performed by contractors. The process of acquisition of land by government agencies and the assessment of compensation for dispossessed landowners is also administered by the Valuer-General.

The specific responsibilities of the Tasmania Valuer-General are the following:

- the direction, control and management of the valuation of land for rating and taxing in line with relevant legislation
- maintenance of valuation rolls
- custodianship and maintenance of land information data sets
- professional advice to all spheres of government on property issues including acquisitions, disposals, leasing and management of property assets
- formulation of policy and the undertaking of valuation of State land property assets and
- the approving of assessment for compensation for state land acquisition, including expropriation.

Institutionally, the Office of the Valuer-General falls under the Department of Primary Industries, Parks, Water and Environment. Land surveying and title registration functions also fall under this department, but there appears to be no formal overarching structure covering these functions.

**Victoria**

The Valuer-General is the government’s authority on statutory valuations and is head of Valuer-General Victoria (VGV). VGV oversee valuations for State Government property transactions and the making and return of council rating valuations. VGV also values government assets so departments and agencies can complete their financial reporting requirements.
The key responsibilities of the Valuer-General are to:

- perform the responsibilities of the Valuer-General with regard to rating valuations as prescribed in legislation
- review and make recommendations for amendments to the Valuation of Land Act
- set and maintain necessary valuation standards and quality to protect the probity of government property transactions
- manage and audit contract valuation panels for consistency and compliance with standards
- undertake valuations in-house and manage outsourced valuations
- facilitate development projects through provision of expert advice on valuation and land matters to government and industry
- improve and monitor standards of rating authority valuation practice and methodologies
- audit performance of municipal valuation contracts
- Compile databases for audit and research purposes
- coordinate, compile and disseminate data on state-wide property outcomes to municipalities
- inform and educate the industry through publication and distribution of VGV programs and initiatives
- communicate benefits of valuation best practice reforms to local government
- advance industry practices through conferences and education forums, and
- provide Ministerial advice on valuation related issues.

VGV is part of Land Victoria, a cluster of functions in the Department of Sustainability and Environment that includes land surveying and title registration. Land Victoria itself does not appear to be a statutory organ in the manner of Western Australia’s Landgate, discussed below.

**Western Australia**

Landgate is the ‘trading’ name of the Western Australian Land Information Authority, the State’s overarching statutory organ dealing with the provision of land information and geographic data to the government, business and private individuals. Landgate is accountable to the Minister for Lands. Its main objectives and functions are to:

- maintain the quality and integrity of the Government’s location information services (including government’s survey, mapping, titles and valuations functions)
- provide access to location information and
- earn a fair commercial return on government’s location information asset.
Landgate thus combines under one umbrella the land management functions of land surveying, title registration and land valuation. The Valuer-General’s functions, namely, independent oversight of valuations for rating and taxing purposes, and being independent and expert adviser to government in respect of valuation matters, are subsumed into Landgate.

It is not clear whether the office of the Valuer-General has any concrete, separate, existence. Before incorporation into Landgate in 2006, the Valuer-General had the following functions:

- to determine rating and taxing values, complete valuation rolls and consider objections.
- Policy advisory to Government on valuation related matters.

3. Ghana

Ghana provides an interesting African case for the design of a modern institutional framework for land management, within which government valuation function falls. The result of a World Bank project, this institutional framework has been encapsulated in the Lands Commission Act of 2008. The relevant organ, the Land Valuation Division (LVD) is legally established under this legislation. The Land Valuation Division is responsible for all valuations where the Government of Ghana’s interest is at stake. It also performs valuations for the public for all other purposes. Specifically, the functions of the Land Valuation Division are:

- assessing the compensation payable upon acquisition of land by the government
- assessment of stamp duty
- determining the values of properties rented, purchased, sold or leased by or government
- preparation and maintenance of the valuation list for property rating purposes
- valuation of property for the general public at a fee; and
- valuation of property for administration of estate duty.

The Lands Commission is operationally independent, and comprises the following divisions, each headed by a director; Survey and Mapping, Land Registration, Land Valuation and Public and Vested Lands Management. This institutional design is in keeping with international best practice, which emphasizes independence and close integration between different functions of land management.
4. Hong Kong SAR

In Hong Kong SAR, the Rating and Valuation Department is government organ responsible for valuations where the government has an interest. It is primarily responsible for the assessment of properties for rates and government rent. Rather uniquely, it is also responsible for maintaining accounts for these and the issuing of demand notices for their collection. The Department is headed by the Commissioner. Its main responsibilities are

- assessment of properties for rates and government rent
- accounting and billing of rates and government rent
- provision of property valuation service to government bureaux/departments,
- provision of property information to government bureaux/departments, public bodies and the private sector and
- provision of advisory and mediatory services to the public on landlord and tenant matters in respect of residential properties.

It has not been possible to ascertain the institutional framework within which the Rating and Valuation Department operates, but it appears to be an independent agency.

5. Namibia

Of all the countries reviewed, Namibia has a socio-political context closest to South Africa’s. Both countries are grappling with the legacies of apartheid in land relations, and both are pursuing extensive land reform programmes. The case of Namibia is instructive in that the country has an Office of the Valuer-General created specifically in the context of land reform. The main tasks of the Valuer-General are

- provision of valuation of all types of property for the purposes of acquisition, disposal, lease, taxation, insurance and mortgage by the government
- management of all government property in line with government financial/commercial and general regulations
- provision of advice to ministries, departments, local authorities, parastatals and other government agencies in matters of valuation and estate management including policy and legislation
- development, maintenance and management of a property market information database to monitor national trends for the use of national policy making on land and market such information to the general public.
The Office of the Valuer-General in Namibia plays a critical role in the land reform process. The office is primarily responsible for the valuation of agricultural land for state acquisition for land resettlement. Namibia also has a tax on agricultural land, with the Valuer-General being responsible for valuations on which the tax is based.

Institutionally, the Valuer-General heads the Directorate of Valuation and Estate Management, which is firmly part of the Namibian civil service. Together with the Surveyor-General and the Deeds Registrar, the Valuer-General is an integral part of the Ministry of Lands and Resettlement.

6. New Zealand

Land Information New Zealand (LINZ) is the New Zealand Government Agency responsible for a range of land management functions, including land titling, geodetic and cadastral surveys and land information. The Valuer-General falls under LINZ but does not carry out property valuations directly. Rather, the primary responsibility of the Valuer-General is to set standards for rating valuations and the maintenance of the valuation roll, and to undertake compliance audits of local authorities. The Valuer-General also

- provides independent quality assurance of valuations for rating purposes
- certifies rating valuations to local authorities
- provides technical advice to government on valuation and the valuation services sector
- monitors and audits the work of the rating valuation services provider and
- is ex-officio chair of the Valuers Registration Board (which is equivalent to the South African Council of the Property Valuers Profession).

In essence the New Zealand Valuer-General is different from all the others reviewed in that the office has a regulatory and quality assurance, rather than, operational role. In terms of institutional set-up, LINZ is accountable to the Ministry of Land Information. The Commissioner of Crown Lands, Registrar-General of Land, Surveyor-General and the Valuer-General are the statutory offices which fall under LINZ.

7. United Kingdom

The Valuation Office Agency (VOA) is the UK government’s authority in property valuations. Institutionally, it is set up as an independent executive agency of Her Majesty’s Revenue and Customs (HMRC) and is headed by a Chief Executive Officer. The VOA
• Values properties for the purpose of council tax and for non-domestic rates in England and Wales
• Provides valuation advice to HMRC in connection with capital gains, inheritance tax and other tax compliance work.

In addition to statutory valuations, the VOA, through its commercial arm, DVS, provides professional property advice across the public sector. DVS services include

• broad property advice, services and consultancy
• a full range of property and regeneration advice
• property, land, plant and machine surveys and valuations
• strategic asset management
• market research, data analysis and reports
• environmental and sustainability services
• acquisitions and disposals
• planning and strategic consultancy

8. Lessons of experience

These country case studies demonstrate that an Office of the Valuer-General is a normal, even critical, requirement for effective government operations. Though the case studies reveal a wide variety of nomenclature, functions and institutional frameworks, it is possible to draw a number of key generalisations that have informed institutional design. Firstly, at a philosophical level, the Office of the Valuer-General can be conceived in terms of three different, albeit overlapping, models, namely a finance/fiscal framework, an infrastructure/built environment framework and a land management framework.

The finance/fiscal framework sees the Office of the Valuer-General primary role as supporting the collection of revenue for government. Under this model, the Valuer-General plays the central role in valuation for rates and taxes. This is the most widely applied model in these case studies, and can be seen for example in most states in Australia, the UK and New Zealand. Adopting this model in South Africa would place the OVG under Treasury or SARS or CoGTA. The infrastructure/built environment framework on the other hand focuses on State property as a physical asset that must be prudently managed. This framework sees that OVG as providing an essential supporting role in property management by way of valuation advice. South Australia has this model, as does South Africa at present in the DPW. Applying this model in South would imply expanding the mandate of the DPW to incorporate the OVG.
The land management framework locates the OVG within a triad of land management functions dealing, respectively, with land rights, land uses and land values. Land management takes a holistic and strategic view of land resources, in both urban and rural settings. The approach emphasises the active management of land resources in pursuit of strategic socio-economic objectives, using a wide range of policy instruments. This is widely considered to be international best practice. Under this framework, the OVG tends to co-located with the Registrar of Deeds and the Surveyor-General in an independent entity. This is the model adopted in the design of the Lands Commission (Ghana), Landgate (Western Australia) and Land Information New Zealand (New Zealand), and less formally, in the Land Services Group (South Australia) and Land Victoria (Victoria). In South Africa this would require the OVG, as part of an independent organ, to report to the DRDLR.

The second generalisation that can be made from the cases studies relates to the balance between the policy and regulatory functions of the OVG on one hand and the operational functions on the other. The tension arises because of the requirement to keep the OVG independent for operational reasons, while ensuring that the office is able to render policy and regulatory advice effectively. In the majority of the cases, the OVG therefore combines both these roles to varying degrees. In New Zealand, however, the Valuer-General has no operational role while in the UK the VOA appears to have no regulatory or policy role.

There is much that South Africa can learn from these case studies. The context within which the OVG in South Africa will function is unique in many respects. For a start, none of the countries surveyed, with the possible exception of Namibia, have such an extensive redistributive land reform programme as South Africa’s. The OVG in South Africa will therefore, as matter of necessity, be heavily involved in valuations for land reform. This contrasts with the focus on valuations for rating and taxation elsewhere. Secondly, none These lessons must however be tempered against the realities of the South African situation of the case studies have government playing such an active role in land and property markets as in South Africa. On account of land acquisitions for land reform, government in South Africa has such been significant player in these markets that it has had a demonstrable and distortionary impact on prices. The country therefore requires an OVG with a unique mandate to deal with the policy, legislative and operational demands of these circumstances.

More generally, the status of South Africa as a developing country means there are special challenges associated with mobilisation of land resources to aid economic development and poverty alleviation. These challenges include weak or immature institutional frameworks underpinning land and property markets. For example, there are no formal institutional mechanisms by which government is able to
leverage the power of, and information available in, these markets to formulate policy and design programmes for social upliftment. The valuation industry is another case in point. It is widely recognised, even within the profession itself, that standards need to be significantly raised.

On balance, therefore, the OVG in South Africa will require a strong policy and regulatory mandate. Further, given the centrality of the land question in the socioeconomic transformation of the country, the OVG in South Africa should ideally be located within a land management paradigm.