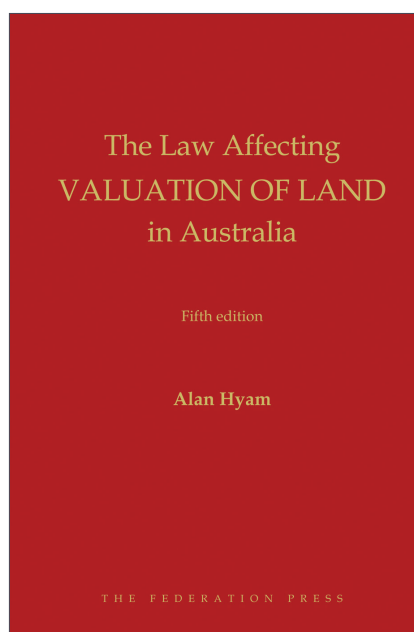


## The Law Affecting Rent Review Determinations (2nd ed); The Law Affecting Valuation of Land in Australia (5th ed)

By A Hyam | The Federation Press | 2014



premises, whether leased or otherwise used by the tenant; GST; permitted use clauses and relation, with highest and best use under planning permissions; any special considerations in rent review in Crown land leases. Chapter 6 expounds special considerations, including commercial implications of balance of term and retail tenancy legislation, for retail shop leases. Chapter 7 describes the history of 'speaking valuations' requiring reasons for rent review determination. Chapter 8 addresses appointment of the valuer, the duties of a valuer in rent review determinations, and the scope of redress by way of compensation for mistakes by the valuer. There are helpful tables and an index.

The book is valuable as a source of relevant case law and, if that is its intended sole purpose, it will continue to be valuable in future editions because it seems to be comprehensively updated. It would be improved in this reviewer's mind if there was a critique of principle, including reasoned discussion of preferred case law where there is lack of clarity or controversy. If that is beyond what the book is intended to do, it would still be improved by some reorganisation so that sub-topics that go together are presented together; for instance, in Chapter 5 the discussion of caps and floors on reviewed rent is interspersed with treatment of improvements which itself overlaps between sub-sections, and ratchets in options are presented later.

The other work updates (since the last edition in 2009) what is a standard respected and comprehensive text in Australia. It does not change the structure of the work. Thus, Chapters 1 and 2 deal with how land (including fixtures and interests in land such as

leases and mortgages) and value are defined in contractual and statutory contexts; the various terminologies used to describe the type of value sought to be ascertained; and the impact of planning permission, statutory constraints and other contextual matters, are expounded. Chapters 3 and 4 describe valuation principles and methods. How specific types of property – rural land, goodwill and business disturbance, subdivision potential, mineral deposits, licensed premises, strata, heritage-listed – are valued is set out in Chapters 5 to 11. Chapters 12 to 18 focus on the specialised principles of valuation for compulsory acquisition. Chapter 19 discusses the qualifications and duties of a valuer, including requirements for expert witness reports and evidence and dealing with comparability and other sources for valuation conclusion. Chapter 20 is titled 'Valuation Appeals Procedure' but also looks at how a court is required to use valuation evidence in its findings. Again, tables and index are helpful.

As with the text on rent review, the approach is essentially that of a casebook. The same comments in relation to greater critique of principle apply. However, the organisation of this text is clear and logical, except perhaps for a greater integration in the final chapter of how a court is entitled to use valuation evidence, which is a little scattered between the description of various review and appellate procedures.

**Reviewed by Gregory Burton SC,  
FCIArb**

Hyam's approach to the specialised topic of rent review is in the form, effectively, of a casebook. Principles are expounded by direct quotation from case law with occasional reference to commentaries.

Thus, Chapter 1 summarises the rationale for rent review by way of expert determination. Chapter 2, titled 'Basis of Assessment', expounds the principles of interpretation and the case law on definitional terms that one is likely to find in rent review clauses. Chapter 3 sets out the controversy in how to take into account lease incentives. Chapter 4 examines the scope of available challenge (largely dependent on the drafting of the rent review mechanism) to an expert determination. Chapter 5 examines how the principles discussed in preceding chapters are applied in relation to specific matters: loan repayments to lessor for tenant works; specific classes of tenant; future rent reviews; caps and floors on reviewed rent, and ratchets in options; lessee improvements, tenants' and other fixtures; symbiotic adjacent