Queensland

Explanatory Notes for SL 2003 No. 194

Valuers Registration Act 1992

VALUERS REGISTRATION REGULATION 2003

GENERAL OUTLINE

Short title

The regulation will be known as the *Valuers Registration Regulation 2003*.

Authorising Law

Valuers Registration Act 1992

The general authorising provisions are:

- Section 66(1) of the Act enables the Governor in Council to make regulations for the purposes of the *Valuers Registration Act 1992*;
- Section 66(2) provides that a regulation may prescribe a code of professional conduct for valuers.

Other relevant authorising sections are:

- Section 27 enables a person, upon payment of a prescribed fee, to inspect the register of the office of the board;
- Section 29 enables application for including a prescribed fee and registration as a valuer;
- Sections 30(b)(i) and 36B(1)(b) provides for certificate of competence or CPD compliance certificate issued by a prescribed institute;

- Section 34 requires a certificate of registration to be issued on registration;
- Section 36B requires a registered valuer to provide proof of prescribed Continued Professional Development (CPD) upon renewal of registration;
- Section 36(1) enables the charging of a prescribed roll fee;
- Section 36(2) enables the charging of a prescribed late fee;
- Section 36B(2) permits the charging of a late fee under a regulation;
- Section 40 enables the restoration of registration as a valuer after removal under Section 37 subject to a fee prescribed by regulation;
- Section 42B permits the recording of specialist retail valuers and the charging of a fee prescribed by regulation;
- Section 42FA requires a registered valuer on the list of specialist retail valuers to pay the prescribed fee and furnish a statement on CPD relating to retail valuation upon renewal of registration;
- Section 42GB(2) enables the restoration of recording on the list of specialist retail valuers and the charging of a fee prescribed by regulation;

Policy Objectives of the Regulation

As described in the accompanying *Regulatory Impact Statement—Valuers Registration Regulation 2003*, the main purpose of the *Valuers Registration Act 1992* is to provide for:

- membership of and procedures for the Valuers Registration Board;
- the registration of land valuers and specialist retail valuers;
- dealing with complaints against valuers and disciplinary matters;
- miscellaneous provisions dealing with a variety of offences, the power to make regulations for the administration of the Act; and, transitional arrangements sections dealing with registered valuers in existence prior to the commencement of the Act on 1 May 1992.

The policy objective of the Regulation is to maintain public confidence that valuers are skilled in their profession and will continue to meet certain published standards, and that the Valuers Registration Board, on behalf of Government, will ensure professional standards are maintained by taking appropriate disciplinary action where warranted.

Way in which the policy objective is to be achieved by regulation

The Regulation provides for the responsibilities and obligations of registered valuers and specialist retail valuers with regard to:

- Duty to client;
- Professional fees;
- Professional responsibility;
- Continuing professional development;
- Prescribed institutes; and,
- Schedule of fees.

Any other approach would leave the administrative requirements in the activities of the Board and the requirements of registered valuers and specialist retail valuers only partly described in the principal Act, thereby limiting the effective implementation of the *Valuers Registration Act 1992*.

Consistency With Authorising Law

The Regulation is consistent with the objectives of the principal Act, which is to maintain the necessary community protection mechanisms and flexibility for valuers and users of valuation services. The Regulation provides the necessary operational framework for the achievement of the objectives of the Act.

Alternatives

Two options were considered as detailed in the Regulatory Impact Statement (RIS). These were:

Option 1: No regulation—'doing nothing', i.e. allowing the current Regulation to expire and not adopting other measures.

Option 2: Remaking the Regulation (with appropriate amendments).

Under Option 1, the administration of the Valuers Registration Act would become ineffective since many parts of the Act would be difficult to implement. Of key concern is the difficulty of enforcing the 'Code Of Professional Conduct' and Continued Professional Development by valuers in a dynamic market environment. This would leave users of valuation services vulnerable to sub-standard practice with significant variations in their ability to manage the financial and social risks associated with a drop in the quality of valuation service.

In addition, this option would leave the administrative requirements in the activities of the Board and the requirements of registered valuers and specialist retail valuers only partly described in the principal Act. The inclusion of the necessary machinery (that is, operational issues) in the principal Act is not a reasonable solution to the policy problem being addressed, given also the complex administrative and procedural costs as well as legal requirements involved with amending principal Acts.

Consequently, this option was rejected.

The preferred option is Option 2 (remaking the regulation). With regulation dealing with the registration, competency and professional conduct of valuers, continued improvements in the average quality of valuation services is expected. Pending the next anticipated National Competition Policy review of the *Valuers Registration Act 1992* and Regulation, Regulation is the most effective way of ensuring continued consumer protection, certainty and transparency in valuation services. It reflects the current market environment and maintains the desire for public confidence in the valuation profession and the protection of consumers who seek advice for example on purchasing, selling or investing in property portfolios. Any possible erosion of the standards of valuers by reducing regulation would seem to work against the desire to have a better informed public when dealing with possible property fraud.

Benefits and costs of implementing the subordinate legislation

A qualitative assessment, detailed in the Regulatory Impact Statement, indicates the following benefits and costs:

1. Benefits to government through—

a. reliable valuation data, reducing the exposure to financial risks associated with calculating land tax levels, rating, checking the value of assets or assessing pension eligibility (social security), determining rental values in addition to calculating the amount of disbursement of funds to the State under the Commonwealth Grants Commission.

b. certainty on the level of competency required by valuers—intangible benefits in public confidence in valuers and therefore, reduced consumer risks in the property market.

c. the Valuers Registration Board would continue to be largely self-funded;

d. more effective implementation of the requirements of the *Valuers Registration Act 1992*, and effective framework for enforcing a code of conduct for valuers and dealing with complaints and contraventions;

e. savings for government through a reduction in grievances as a result of continued consumer protection by maintaining quality of valuation services—no other policy or regulatory instruments would be required;

f. savings for government in that the Valuers Registration Board would provide an alternative, low cost and easily accessible framework for complaints by injured parties.

2. Costs to government through—

a. advertising and printing of the Regulation;

b. recurrent administrative charges.

3. Benefits to Special Interest Groups through—

a. certainty on level of competency required for valuers—performance based registration; practising valuers would maintain their skills in delivering services to the market place;

b. the image of the valuation profession would not be at risk—public confidence in valuers would be maintained; and, valuers are therefore less likely to face financial pressure from Professional Indemnity insurance;

c. reduced risk to real estate agents of exposure to sub-standard service and, although it is expected that this group would continue managing its own risks.

4. Costs to Special Interest Groups through—

a. registration fees, totalling about $100,000 annually;

b. Continued Professional Development (CPD), a minimum of 10 hours annually of formal and informal education/training activities.

5. Benefits to Business through—

a. wider consumer protection measures afforded by the Regulation;

6. Costs to Business through—

a. potentially a small increase in professional fees as valuers pass on Consumer Price Index (CPI) adjusted fees to users of valuation services.

7. Benefits to the General Community through—

a. continued consumer protection, namely in the form of quality of service, an assurance on the level of competency for valuers, increased public awareness of the risks associated with the choice of valuer;

b. limited search costs for consumers in evaluating service providers.

c. significantly reduced risks associated with the erosion of public confidence in valuers are reduced—registered valuers would remain tied to enforceable Code of Professional Conduct and Continued Professional Development requirements under the Regulations;

d. reduced financial risks through certainty on professional charges by valuers—although professional fees are not regulated, valuers would be bound by the Code of Professional Conduct on the application of fees;

e. cost effective alternative for redress after a loss has been incurred.

8. Costs to the General Community through—

a. potentially, CPI fee increases being passed on to users of valuation services.

Costs would be higher if the 'no regulation' option was adopted. The overall impact on all stakeholders is estimated as (H-) High Negative Impact outweighing any benefits some stakeholders would experience. Negative impacts would arise from a drop in the quality of services, the uncertainty associated with the level of competency of valuers and professional fees in addition to the lack of knowledge about valuation.

The qualitative cost-benefit assessment confirms that the preferred alternative (Option 2—remake of the regulation) is indeed the only realistic alternative. It delivers the most net public benefits by ensuring continued consumer protection, thus overall, significantly reducing the social and financial risks to those who give and use valuation services. Any possible erosion of the standards of valuers by reducing regulation would seem to work against the desire to have a better informed public when dealing with possible property fraud and reduce public confidence in valuation.

Consistency with fundamental legislative principles

The remaking of the Regulation will be consistent with Fundamental Legislative Principles.

Consultation

In accordance with the requirements of the *Statutory Instruments Act 1992*, a Regulatory Impact Statement was released for public comment for four weeks. The Regulatory Impact Statement was notified in the Queensland Government Gazette of 6 June 2003 (No. 33, page 397) and The Courier Mail of 6 June 2003. The closing date for written responses was 7 July 2003. In addition, the remake of the regulation was published on the Department of Natural Resources and Mines and the Department of State Development (Queensland Regulations Have your Say) websites.

Key stakeholders were sent free copies of the Regulatory Impact Statement and others were distributed on request.

Federal Government

- *Commerce Queensland*

  This office was consulted mainly in regard to issues associated with the use of valuation information.

State Government

The following State Government agencies were consulted:

- *Business Regulation Reform Unit (BRRU), Department of State Development*

BRRU was consulted on the drafting of the Regulatory Impact Statement, which outlined the content of and issues associated with the regulation.

- *Department of Treasury*

  The Department of Treasury was consulted mainly in regard to the issues of land taxation and the level of statutory valuation fees.

- *Office of Parliamentary Counsel (OQPC)*

  OQPC has drafted the regulation.

- *Department of Local Government (DLGP)*

  DLGP was consulted mainly in regard to the mainly in regard to issues associated with the use of valuation information.

- *Department of Main Roads*

  The Department of Main Roads was consulted mainly in regard to issues associated with the use of valuation and sales information.

- *Department of Transport*

  The Department of Transport was consulted mainly in regard to issues associated with the use of valuation and sales information.

- *Other Government agencies*

  The Department of Premiers and Cabinet, and the Valuers Office of Rural Communities were also consulted.

- *Valuers Registration Board (VRB)*

  The VRB was consulted mainly on the content of the Valuers Registration Regulation and associated issues.

Local Government

All local government offices were consulted mainly in regard to valuation services, valuation data and sales information.

Industry

- *Australian Property Institute (API)*

  The API was consulted on the content of the regulation and associated issues.

- *Real Estate Institute of Queensland (REIQ)*

  The REIQ was consulted on the content of the regulation and associated issues.

- *Urban Development Institute of Australia (Queensland)(UDIA)*

  The UDIA was consulted on the content of the regulation and associated issues.

- *Australian Valuation Office (Queensland)*

  The Australian Valuation Office (Queensland) was consulted on the content of the regulation and associated issues.

- *Local Government Association of Queensland (LGAQ)*

  The LGAQ was consulted on the content of the regulation and associated issues.

General Community

The public was consulted on the content of the regulation and associated issues.

Results of Consultation

Government

There is agreement within government on the remaking of the Valuers Registration Regulation is widely supported by government agencies.

Industry

Similarly, industry representatives support the remaking of the *Valuers Registration Regulation 2003*.

NOTES ON PROVISIONS

Section 1 gives the Short Title as the *Valuers Registration Regulation 2003*.

Section 2 provides commencement of the Regulation on 1 September 2003.

Section 3 requires a registered valuer, in making a valuation for a client, to act in the client's interest.

Section 4 binds a registered valuer to keep a client's valuation information confidential unless authorised by the client in writing or by law to disclose information.

Section 5 authorises a registered valuer with a direct or indirect interest, to make a valuation for a client only if details of that interest are disclosed and subsequently the client gives the valuer written permission to make the valuation.

Section 6 requires a registered valuer to display the valuer's certificate of registration in the valuer's place of business at any time the valuer is carrying on the business of a registered valuer.

Section 7 requires a registered valuer, in making a valuation, to conform to the Code of Professional Practice stated in the publication 'Professional Practice' published by the Australian Property Institute.

Section 8 prohibits a registered valuer from making a valuation if the instructions to make the valuation require a predetermined result.

Section 9 prohibits a registered valuer from making a valuation, for which the valuer does not have the qualifications and experience, other than under the supervision of another valuer who has the qualifications and experience.

Section 10 requires a registered valuer who prepares a valuation report to include in the report, details of the valuer's qualifications relevant to the valuation, the valuer's number in the register and sign the report.

Section 11 requires a registered valuer to ensure that an advertisement about a service provided by the valuer does not create false expectations about the result of the service and is not misleading. Additionally, this section prevents a registered valuer from advertising in a way that, directly or indirectly, injures the professional reputation of another valuer or damages the valuation profession.

Section 12 prohibits 12 a registered valuer to make statements about another valuer or the profession that is false, malicious or misleading or, that is intended, directly or indirectly, to injure the professional reputation of the other valuer or to damage the valuation profession.

Section 13 requires that a registered valuer who makes a valuation must not charge, for the valuation, a fee based on a stated outcome or that might reasonably be expected to prejudice the valuer's advice as an independent expert. Additionally, a registered valuer must, if asked by a client, give the client information about the way in which a fee charged for a valuation is calculated.

Section 14 prohibits a registered valuer who makes a valuation to charge a fee contingent on or as a percentage of the amount of compensation to be paid to a person. Additionally, where a valuation is to be used to decide the rates or other charges to be levied on land, a registered valuer is prohibited from charging a fee for valuation that is contingent on the result of a proceeding about the correctness of the valuation.

Section 15 defines the minimum requirements for Continued Professional Development by a registered valuer in accordance with section 36B(1)(a) of the *Valuers Registration Act 1992*.

Section 16 defines that for section 42FA(b) of the *Valuers Registration Act 1992*, the amount of Continued Professional Development for listing as a specialist retail valuer is 5 hours.

Section 17 prescribes the entities recognised as Prescribed Institutes for the purposes of sections 30(b)(i) and 36B(1)(b) of the *Valuers Registration Act 1992*.

Section 18 defines fees payable under the *Valuers Registration Act 1992* as being in the schedule.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Natural Resources and Mines.

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