



## Valuers Bill.

### Second Reading

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [8.21 p.m.]: I move:

That this bill be now read a second time.

As the speech is lengthy, and given that it has already been delivered in the other House, I seek leave to incorporate it in *Hansard*.

#### Leave granted.

The bill I introduce today will improve the efficiency and flexibility of the system for regulating valuers in New South Wales.

The work of valuers involves assessing the value of property, especially in real property transactions, where a purchase is being made with a loan from a financial institution. A valuer's work may include consideration of the location of a property, any planned developments in the area, and the condition of the property. A valuer may act as consultant to, and liaise with, solicitors, surveyors, town planners, architects, accountants, property developers and financiers.

Valuers are currently regulated under the *Valuers Registration Act 1975*. This Act establishes an occupational licensing regime for valuers, and provides for the Office of Fair Trading to register valuers who have completed an approved course of study and met prescribed practical experience requirements.

The Act also contains disciplinary provisions which may be exercised against valuers who do not comply with appropriate standards of conduct.

This bill retains the registration system for valuers, but streamlines the existing system so as to improve its efficiency and flexibility.

The proposals in the bill are based in part on the recommendations of a National Competition Policy review of the *Valuers Registration Act 1975*, and in part on issues which were raised following completion of the review.

In retaining the existing registration system for valuers, the Bill recognises the changes which have occurred in financial markets since the early 1980s. In particular, as more consumers seek to acquire investments to provide financial security and retirement income, and homes are increasingly used to secure credit for other purposes, the Australian Property Institute (API) has reported an increase in the number of individual consumers engaging valuers directly. This contrasts with past practice, when valuers were almost always engaged by third parties such as financial institutions and solicitors.

The API has reported that the proportion of direct consumer work is growing rapidly and valuation practices are increasingly seeking work from consumers.

The API has indicated that individual consumers seek valuations in relation to a range of matters, such as:

- property settlements after divorce;
- pre-nuptial agreements;
- entry into, and renewal of, leases;
- acquisition and resumption of property by governments;
- capital gains tax assessments;
- asset valuation for business entities;
- payment of stamp duty;

- purchase of real property;
- pre-purchase inspection of off-the-plan properties; and
- purchases where debt funding is not required.

In light of the increasing use of valuers by individual consumers, retention of a registration system is considered necessary. Such a system provides consumers with the protection of knowing that a valuer possesses the necessary qualifications to practice and has not been disqualified.

The bill's provisions fall into three broad categories:

- Definitions;
- Registration; and
- Complaints, disciplinary action and enforcement.

I will now take the opportunity to outline some of the main provisions in the bill.

### **Definitions**

The bill provides that a valuer is a person who values property for a fee or reward. Property is defined as:

- land, including any estate or interest in land;
- an exclusive right to the separate occupation of land, a building or part of a building;
- an access licence under the Water Management Act 2000; or
- any other property that is prescribed by the regulations as property for the purposes of the Bill.

This definition of valuation moves beyond that in the existing Valuers Registration Act by acknowledging that valuers may value property other than real property. The change reflects changes in the industry which have seen valuers move into new practice areas.

For example, as honourable members would be aware, legislative changes have been made to make water access rights tradeable. Accordingly, in response to a request during consultation, the bill explicitly recognises access rights as a property right.

### **Registration**

The bill prohibits a person from practising or advertising as a valuer unless the person is registered as a valuer. A person carrying out duties as a student valuer under the supervision of a registered valuer is not required to be registered.

The bill also provides that a corporation must not practice or advertise as a valuer unless at least one director or employee is a registered valuer. Furthermore, a corporation must not provide a valuation of any property unless the valuation is signed by a registered valuer.

The requirements for registration as a valuer are that a person must:

- be at least 18 years of age;
- be a fit and proper person to be registered;
- have the qualifications approved by the Commissioner of the Office of Fair Trading; and
- not be a disqualified person.

The bill differs from the current *Valuers Registration Act* in providing for the qualifications for practice as a valuer to be approved by the Commissioner for Fair Trading rather than prescribed by the Minister for Fair Trading. This will enable the required qualifications to be more readily amended in response to changing market circumstances.

The bill also provides that the Commissioner for Fair Trading may approve qualifications by reference to any one or more of the following:

- completion of a course of study;
- completion of a period of training in valuing property;
- attainment of a standard of competency in valuing property; or
- registration under the existing *Valuers Registration Act* or under a law of another Australian jurisdiction that is approved by the Minister for Fair Trading.

This provision differs from the existing qualification requirements in allowing for registration on the basis of achievement of a standard of competency, as an alternative to completion of a course of study or a period of training. The introduction of competency standards will bring flexibility to the qualification system by acknowledging that competency in valuation can be achieved through different pathways.

The existing registration system provides for five categories of valuer:

- an associate real estate valuer;
- a practising real estate valuer;
- a non-practising real estate valuer;
- an associate valuer of licensed premises; and
- a valuer of licensed premises.

The bill removes these categories and instead provides for only one category of registered valuer, whilst giving the Commissioner for Fair Trading power to impose conditions on registration which are appropriate to the particular circumstances of individual valuers.

The bill also provides that mandatory rules of conduct for valuers may be prescribed in the Regulations.

The bill provides an expanded list of grounds for disqualification from registration. The current Act provides that, in order to take action, the Commissioner for Fair Trading must be satisfied after inquiry that a registered real estate valuer has been convicted of a crime or offence or has been guilty of misconduct in a professional respect.

By contrast, this bill states explicitly that a person is disqualified from registration as a valuer if the person does or does not do certain things. These grounds include, but are not limited to:

- having certain convictions;
- being an undischarged bankrupt;
- being a director or manager of a corporation that is subject to winding-up or for which a controller or administrator has been appointed;
- being mentally incapacitated;
- being disqualified from registration or licensing in another jurisdiction;
- failure to pay a monetary penalty payable under the Act; or
- failure to comply with a direction given under the Act.

**Another important consumer protection measure in the bill is the requirement that a valuer whose registration has been suspended, cancelled or made subject to condition notify his or her clients of this fact within three days.**

The bill also changes the current one year registration system to a three year system. This will lower costs and inconvenience for valuers and the Government.

In keeping with existing practice, a Register is to be kept detailing the particulars of registered valuers. This Register will be available for public inspection.

In order to provide for registration procedures which are consistent with other Government licensing regimes, the bill states that the registration procedures set out in the *Licensing and Registration (Uniform Procedures) Act 2002* are to apply to valuer registrations.

#### **Complaints, disciplinary action and enforcement**

The bill streamlines the existing disciplinary process for valuers, allowing disciplinary matters to be dealt with by administrative means. This will be substantially more efficient and less costly than the existing judicial-style hearing. Appeals on disciplinary matters will be heard by the Administrative Decisions Tribunal rather than the Land and Environment Court.

The grounds for disciplinary action in the bill and the processes for discipline and enforcement mirror those in the *Property, Stock and Business Agents Act 2002*. It is intended that this will reduce costs by establishing consistent processes for property industry professionals licensed by the Office of Fair Trading.

The bill includes expanded grounds for disciplinary action, greater options for disciplinary action and introduces show cause notice provisions. Such provisions require a person to show cause why disciplinary action should not be taken against them. Notices to show cause have been used effectively in other fair trading areas, such as home building, motor dealers and travel agents.

In addition to the show cause provision, notices may be published by the Commissioner for Fair Trading warning persons of particular risks involved in dealing with a specified registered valuer or another person in connection with the activities of valuers.

In conclusion, I would like to emphasise that this bill represents a balanced approach to the regulation of valuers in New South Wales, and will be to the benefit of both consumers and the valuation industry. The bill will retain the consumer protection advantages of a registration system, whilst ensuring that the system does not involve unnecessary expense or restriction of valuers' business practices.

I commend the bill to the House.

**The Hon. MELINDA PAVEY** [8.21 p.m.]: The integrity of the valuation system is a basic fundamental to economic stability of the marketplace. I have engaged the use of valuers on a number of occasions across the State and found them to be of the upmost integrity. However, I have been told of situations where valuations through a particular lending institution favoured a developer to the eventual detriment of investors. In fact, people who put their trust in their financial institution and their builder have lost their life savings through corruption of the process. I have heard of families being broken up through the financial burden placed on them when they have been duded and under pressure to make monthly mortgage payments. Selling simply was not an option because they paid more for the house than it was worth. I know a local valuer who blew the whistle on the scam but it took some time for the financial institution and its valuer to be brought to the attention of the law. So it gives me great pleasure to support this bill, which aims to improve the efficiency and flexibility of the system of regulation of valuers in New South Wales and, most importantly, strengthen consumer protection.

This bill will further strengthen public confidence in the valuation industry and assist the industry to maintain high standards of professionalism. The current Act requires registrations to be renewed each year and provides for several categories of valuers: an associate valuer, a practising real estate valuer, a non-practising real estate valuer, an associate valuer of licensed premises and a valuer of licensed premises.

The bill will retain the registration requirement for valuers but aims to make it easier for the profession by improving efficiency and flexibility of the registration system by replacing the one-year registration with a three-year registration; removing the different categories of registration and instead allowing the Commissioner of the Office of Fair Trading to impose conditions on licenses which are appropriate to the particular circumstances of individual valuers. The bill will also allow the Commissioner of the Office of Fair Trading to specify the qualifications for practising as a valuer in terms of attainment of a standard of competency as an alternative to completion of a course of study or period of training. Commonsense seems to be the order of the day here, and the Opposition commends that.

The introduction of the competency standards will introduce flexibility into the qualification system by acknowledging that competency in valuation can be achieved by different pathways: a more efficient disciplinary system for valuers and consumers allowing disciplinary matters to be dealt with administratively, with an appeal to the Administrative Decisions Tribunal. The Valuers Registration Act has been in existence for more than 25 years and a number of studies, key policy statements and changing attitudes and needs of the community and industry signalled the need for change to take the industry into the future. Many of the changes in the bill are due in part to recommendations of the national competition policy review of the Act.

At the outset I said that valuers play a vital role in the security and integrity of the marketplace, and valuers in New South Wales have a good reputation, with an extremely low incidence of complaints against valuers, and formal disciplinary action is rarely taken against a valuer. Industry groups such as the Australian Property Institute, the Real Estate Institute of New South Wales and the Australian Society of Real Estate Agents and Valuers have played an important role in upholding these high industry standards. In conclusion I will raise one concern, which was brought to my attention by Nigel Boyce of Gunnedah. It is that there may not be enough time to adequately advise valuers of these legislative changes before they are introduced. I ask the Government to consider this

important point and maybe work with industry to ensure that all valuers are made aware of the progress of this bill. I commend the bill to the House.

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