

Valuers Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal and re-enact the *Valuers Registration Act 1975* with the following changes or additional provisions:

- (a) the qualifications for registration as a valuer will be approved by the Commissioner for Fair Trading in the Department of Commerce (referred to in this Bill as “the Director-General”) rather than by the Minister,
- (b) provision for disqualification from registration (on such grounds as conviction for dishonesty offences, bankruptcy, involvement in the management of an insolvent corporation, mental incapacity and disqualification under a corresponding law),
- (c) registration as a valuer will be able to be granted subject to conditions,
- (d) registration will be for a period of 3 years,
- (e) the Register will be open to public inspection,
- (f) registration procedures will be subject to the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (g) the regulations will be able to prescribe rules of conduct (enforceable as a disciplinary matter) to be observed in the course of practice as a valuer,
- (h) registered valuers will be required to inform clients of the suspension or cancellation of their registration or the imposition of conditions on their registration,
- (i) the Director-General will be able to accept undertakings (enforceable as a disciplinary matter) from a registered valuer as to the manner in which practice as a valuer will be conducted,
- (j) revised procedures for complaints and disciplinary action against registered valuers, including provision for show cause notices, suspension of registration pending disciplinary action and review of disciplinary action by the Administrative Decisions Tribunal,
- (k) provision for the issue by the Director-General of warning notices about the dangers of dealing with a particular valuer,
- (l) provision for conferring on authorised officers powers of entry and inspection and power to obtain information, records and evidence,
- (m) provision for the Director-General to obtain a Supreme Court injunction in connection with a threatened or apprehended contravention of the proposed Act,
- (n) restrictions on disclosure of information obtained in the course of the administration of the proposed Act,
- (o) additional provisions with respect to offences, including provisions for the issue of penalty notices, offences by corporations and authorising the taking of proceedings for offences within 3 years after offences are committed or (with the consent of the Attorney General) at any time.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation (except as provided by the proposed section).

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 creates exceptions from the proposed Act for valuations carried out by architects, engineers and surveyors.

Clause 5 provides that notes do not form part of the proposed Act.

Part 2 Registration

Clause 6 creates offences that prohibit a natural person from practising or advertising as a valuer, or employing a person as a valuer, unless the person is registered as a valuer.

Clause 7 creates offences that prohibit a corporation from practising or advertising as a valuer unless an employee or director of the corporation is registered as a valuer.

Clause 8 sets out the requirements for eligibility for registration as a valuer.

Clause 9 provides for disqualification from registration as a valuer.

Clause 10 provides for the grant of registration as a valuer by the Director-General and for the application to registration as a valuer of provisions of the *Licensing and Registration (Uniform Procedures) Act 2002*.

Clause 11 provides for registration to be granted subject to conditions.

Clause 12 provides that registration as a valuer remains in force for 3 years.

Clause 13 requires a registered valuer to produce his or her certificate of registration on request by a person for whom the valuer values property or enters into an arrangement for the valuation of property.

Clause 14 requires the Director-General to maintain a Register for the purposes of the proposed Act (containing particulars required by the regulations) and for the Register to be open to public inspection.

Clause 15 provides for the cancellation of registration on certain grounds.

Clause 16 requires a valuer to give notice to clients of the suspension or cancellation of the valuer's registration or the imposition of conditions on the valuer's registration.

Clause 17 provides for the regulations to prescribe rules of conduct to be observed in the course of practice as a valuer.

Clause 18 provides for the Director-General to accept undertakings from registered valuers as to the manner in which practise as a valuer will be conducted.

Part 3 Complaints and disciplinary action

Clause 19 lists the grounds for the taking of disciplinary action against a valuer.

Clause 20 lists the kinds of disciplinary action that can be taken against a valuer.

Clause 21 makes it clear that at any stage of disciplinary action the Director-General can decide to take no further action in a matter.

Clause 22 provides for the making of complaints to the Director-General about valuers.

Clause 23 deals with the procedure for the issue of a show cause notice for the taking of disciplinary action against a valuer.

Clause 24 authorises the Director-General to suspend the registration of a valuer who has been issued with a show cause notice pending a determination of whether to take disciplinary action.

Clause 25 authorises the Director-General to make investigations and inquiries into disciplinary matters.

Clause 26 deals with the procedure for the taking of disciplinary action.

Clause 27 provides for the recovery of a monetary penalty imposed by disciplinary action.

Clause 28 provides for the review of disciplinary action by the Administrative Decisions Tribunal.

Clause 29 authorises the Director-General to issue warning notices about risks involved in dealing with specified valuers.

Clause 30 requires the return of a cancelled or suspended certificate of registration.

Part 4 Enforcement

Clause 31 provides for authorised officers under the proposed Act.

Clause 32 confers powers of entry and inspection on authorised officers.

Clause 33 confers power on authorised officers in connection with the obtaining of information and production of records.

Clause 34 creates offences of obstructing or failing to comply with any notice or requirement of an authorised officer.

Clause 35 authorises an authorised officer to take possession of records that constitute evidence.

Clause 36 deals with the issue of search warrants on the application of authorised officers.

Clause 37 provides for the grant of injunctions by the Supreme Court on the application of the Director-General in respect of a threatened or apprehended contravention or continuing contravention of a provision of the proposed Act.

Part 5 Miscellaneous

Clause 38 imposes restrictions on the disclosure of information obtained in connection with the administration or execution of the proposed Act.

Clause 39 provides for the delegation of the Director-General's functions under the proposed Act.

Clause 40 deals with the manner in which a notice or direction in writing under the proposed Act is to be served.

Clause 41 deals with the taking of proceedings for offences under the proposed Act.

Clause 42 authorises the issue of penalty notices for offences under the proposed Act.

Clause 43 allows proceedings for an offence to be taken within 3 years after the offence is alleged to have been committed or (if the Attorney General consents) at any time.

Clause 44 provides for directors of a corporation to be responsible in some circumstances for offences committed by the corporation.

Clause 45 provides for consequential repeals of legislation.

Clause 46 gives effect to Schedule 1 which contains consequential amendments to other Acts.

Clause 47 gives effect to Schedule 2 which contains savings and transitional provisions.

Clause 48 is a general regulation-making power.

Clause 49 is a standard provision dealing with the review by the Minister of the operation of the proposed Act after 5 years.

Schedule 1 Amendment of other Acts

Schedule 1 makes consequential amendments to other Acts.

Schedule 2 Savings and transitional provisions

Schedule 2 contains savings and transitional provisions.