



# Senate Select Committee on Superannuation and Financial Services

## Main Inquiry Reference (a)

**Submission No. 200**

**Submittor:** Valuers Registration Board  
Mr L G Rae  
Chairman  
GPO Box 44A  
HOBART TAS 7001  
 - (03) 6233 3844  
 - (03) 6233 6775

**SUBMISSION: TO THE SENATE SELECT COMMITTEE ON  
SUPERANNUATION AND FINANCIAL SERVICES**

PREPARED BY: LG RAE,  
CHAIRMAN, VALUERS REGISTRATION BOARD  
13 JUNE 2001

**BACKGROUND**

The Valuers Registration Board (VRB) operates in accordance with the terms of the *Valuers Registration Act 1974*, a copy of which is included with this document. As at 23 February 2001 there were 143 valuers registered to practice in Tasmania, including 92 from Tasmania, 39 from Victoria, 6 from New South Wales, 5 from Queensland and 1 from South Australia. The number has changed only marginally since this date.

**1. Valuers Registration Board**

The Board comprises the Valuer General (Chairman), a nominee of the Australian Property Institute (API) and a person experienced in valuation, nominated by the Minister.

While there are no qualified legal representatives on the Board, on request, the Solicitor-General's Office will provide an officer to attend meetings to assist the Board with advice on matters of a legal nature.

**2. Registration of Valuers in Tasmania**

- (i) A person is entitled to be granted registration if he/she has completed the prescribed courses of study and training and has passed the prescribed examinations.
- (ii) The Board may, at its discretion, grant registration to a person holding qualifications as recognised by the API or such other professional organisations of valuers, whereby a person has passed the necessary examinations set down by the institution.
- (iii) The Board may also grant registration to a person with at least 10 years practical experience in valuation, providing they pass such tests as required by the VRB.
- (iv) Limited registration may be granted whereby a valuer will be restricted to the valuation of a certain class or classes of property. Such limitations may also specify the district or districts in which the Valuer may practice.

### **3. Cancellation of Registration**

The Board may cancel registration:

- where it is satisfied the valuer had been registered as the result of fraudulent information or misrepresentation;
- where a valuer is guilty of misconduct;
- where a valuer has been convicted of an offence of such a nature that it is undesirable in the public interest for him/her to continue making valuations in this State; and
- if the valuer is incapable of conducting himself/herself as a valuer.

### **4. Penalties**

The Board, by way of discipline, may:

- admonish a valuer;
- require the valuer to pay the Board's costs;
- impose a fine not exceeding 5 penalty units (5 @ \$100);
- suspend a valuer's registration for an appropriate term; and
- cancel registration.

Appeal provisions apply.

### **5. Regulations**

With respect to "misconduct" by a valuer, the Valuers Registration Regulations (including various amendments) did previously set out a Code of Ethics to be applied to valuers. However, in 1992, the Code of Ethics was rescinded from the Regulations. I am unaware of the reasons for the removal of the Code of Ethics from the Regulations, but I am of the opinion it has created a deficiency in the Board's ability to successfully prosecute a case.

### **6. Recent Experiences of the Board**

On reviewing the VRB files it is evident the number of written complaints received, up until the last few years, would have averaged less than two a year. In more recent times this figure would have increased to approximately three complaints a year. It should be noted that the VRB Secretary may have also received some general enquiries by phone, but a complaint is not formally registered until it is lodged in writing.

Over the years the majority of the complaints investigated by VRB have been of a minor nature and have been typically lodged by a consumer that has been unhappy with both the general service provided by the Valuer and the quantum of the fee charged for the service. Other duties attended to by the VRB include complaints lodged by registered valuers concern the charging for the provision of valuation services by non registered valuers.

In most of the examples mentioned the Board has been able to address the issues to the general satisfaction of the parties concerned.

Complaints of a more serious nature have included claims of collusion between valuers and of valuers not acting in the best interests of the consumer. In these cases, after due investigation, or on receipt of legal advice, the claims have been dismissed.

It is interesting to note that since the 18 May 2001 Senate Select Committee hearing in Hobart the VRB has received two items of correspondence concerning a registered valuer and his involvement in the solicitors' mortgage funds. On legal advice the Board has advised the authors that it is unable to determine complaints made against registered valuers. However, both parties have been invited to particularise the specific allegations of misconduct to the VRB so that it may then inquire into the matter, in accordance with the provisions of the *Valuers Registration Act 1974*.

To date no further correspondence has been received on the matter.

## 7. CONCLUSIONS

Since the VRB was first established in 1974 no registered valuer has been fined or has had his/her registration suspended. At best, penalties have included admonishments or mild rebukes. To balance the equation it may be argued the Act was designed to control poor practice by valuers and where cases of negligence or fraud existed such punishments would be enforced by common law through the court system.

However, it may be reasonable to conclude the VRB is no longer capable of achieving the enforcement role envisaged when the *Valuers Registration Act 1974* was passed by Parliament.

Reasons for the lessening of the Board's disciplinary role will include:

- an inability to compensate aggrieved consumers;
- the more recent development of consumer and fair trading acts which provide increased protection for consumers;
- a lack of adequate regulations (code of ethics) and legislative authority to enable the VRB to successfully sustain a finding against a valuer wishing to litigate the matter further; and
- consumer scepticism of peer group review panels.

## CURRENT ROLE OF THE VALUERS REGISTRATION BOARD

The future of the Valuers Registration Board is somewhat limited given that it is the intention of Cabinet to abolish the Board, repeal the *Valuers Registration Act 1974* and replace the Act with a system of negative registration. This system will be modelled on current South Australian legislation.

The decision to repeal the Act follows a number of studies, reports and consumer submissions and will, I believe, provide for a superior process and greater consumer acceptance.

The new Act will define the term "land valuer", outline a code of conduct, identify offences and provide a process for lodging and dealing with complaints. The Director of Consumer Affairs and Fair Trading will administer the complaints mechanism within the new Act, in accordance with the principles of the *Fair Trading Act 1990*.

LG Rae

Chairman  
Valuers Registration Board

**ATTACHMENT:** Copy of *Valuers Registration Act 1974*



Tasmania

Requested: 13 Jun 2001 Consolidated at: 13 Jun 2001

<a href="#">Home</a>	<a href="#">Search</a>	<a href="#">Acts A-Z</a>	<a href="#">Stat Rules A-Z</a>	<a href="#">Help</a>	<a href="#">Disclaimer</a>
----------------------	------------------------	------------------------------	------------------------------------	----------------------	----------------------------



## Valuers Registration Act 1974

An Act to regulate the registration of valuers, to amend the Land Valuation Act 1971, and for matters incidental thereto

[Royal Assent 21 November 1974]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### PART I - PRELIMINARY

#### Short title

1. This Act may be cited as the Valuers Registration Act 1974.

#### Interpretation

2. In this Act, unless the contrary intention appears –

"Board" means the Valuers Registration Board established under this Act;

"practising certificate" means a certificate issued under section 15;

"register" means the Register of Valuers required to be kept under section 10;

"registered valuer" means a person who has been granted a registration that is subsisting and is not for the time being suspended;

"registration" means registration under this Act.

## PART II - ADMINISTRATION

### Valuers Registration Board

3. (1) There shall be established a Valuers Registration Board which shall be a body corporate with perpetual succession and a common seal.

(2) Subject to section 4, the Board shall consist of the Valuer-General or in his absence the Deputy Valuer-General who shall be the chairman and two other members appointed by the Governor, of whom –

(a) one shall be a nominee of the Commonwealth Institute of Valuers selected from a panel of 3 names submitted by the Tasmanian division of that Institute; and

(b) one shall be a person experienced in valuation nominated by the Minister.

(3) Where the Tasmanian division of the Commonwealth Institute of Valuers ceases to exist, or ceases to exist under that name, the Governor may, by order, declare that this section shall have effect as if references therein to that body were references to a body specified in the order, and this section shall, on the coming into force of that order, have effect accordingly.

(4) Members of the Board are not, as such, subject to the State Service Act 2000, but a State Service officer or State Service employee may hold office as a member of the Board in conjunction with State Service employment.

(5) The Board shall pay to the members thereof such remuneration and travelling or other allowances as the Governor determines but no remuneration or allowances shall be paid to a member who is a State Service officer or State Service employee except with the approval of the Head of the State Service Agency in which the officer or employee is employed.

### Term of office and removal of members of the Board

4. (1) This section does not apply to the chairman of the Board.

(2) Subject to this section a member of the Board, unless he sooner resigns or is removed from office or otherwise ceases to hold office, continues in office for a period of 3 years from the date on which he was last appointed a member of the Board.

(3) Where a member of the Board dies or ceases to hold office otherwise than by reason of the effluxion of time, the Governor may appoint a person, having the same qualification and nominated in the same manner as the vacating member, to fill the vacant office for the remainder of the term for which the vacating member was so appointed.

(4) The Governor may remove from office any member of the Board who he is satisfied –

(a) has become permanently incapable of carrying out the duties of his office;

(b) has misconducted himself in the performance of the duties of his office;

(c) has, without leave of the Board, been absent from three or more consecutive meetings

of the Board;

(d) has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors;

(e) has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member of the Board; or

(f) being a registered valuer, his registration under this Act is cancelled or suspended or his name is, for any reason, removed from the register kept under this Act.

(5) A member of the Board shall not be removed from office otherwise than in accordance with this section.

### Proceedings of the Board

5. (1) The chairman of the Board, or, if he is absent or there is no chairman, such one of the other members present as they may choose, shall preside at meetings of the Board.

(2) The chairman or other person presiding at a meeting of the Board has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Board, that matter stands adjourned to the next meeting of the Board.

(3) Two members of the Board constitute a quorum at any meeting of the Board.

(4) Subject to this Act the Board may regulate its own proceedings.

### Registrar and other officers

6. (1) The Board may, with the approval of the Minister, appoint a person to be the registrar and secretary of the Board and such other officers as the Board may consider necessary for the purpose of the administration of this Act, and may pay to that person and those other officers such remuneration as the Board may, with the approval of the Minister, determine.

(2) The Board may, with the approval of the Head of a State Service Agency, appoint a State Service officer or State Service employee employed in that Agency to be registrar and secretary of the Board, and that officer or employee may hold that office in conjunction with State Service employment.

(3) The Board may make arrangements with the Head of a State Service Agency for such State Service officers and State Service employees employed in that Agency as may be considered necessary to be made available to the Board to enable it to perform its functions, and such officers and employees may, in conjunction with State Service employment, serve the Board in any capacity.

(3A) The Board shall pay to the Public Account such sum as may be determined by the Treasurer for the Service of a State Service officer or State Service employee made available under subsection (3), and the Treasurer may reimburse that sum to the Agency in which the officer or employee is employed.

### Inspectors

7. (1) The Board may appoint persons to be inspectors for the purposes of this Act.



(2) A person appointed by the Board under section 6(1) may be appointed an inspector under this section.

(3) No State Service officer or State Service employee may be appointed an inspector under this section except with the approval of the State Service Commissioner given on the recommendation of the Minister; but such an officer or employee so appointed may hold office as an inspector in conjunction with State Service employment.

(4) An inspector shall carry out such inquiries and investigations as the Board may direct for the purpose of ascertaining in any particular case whether or not the provisions of this Act are being complied with.

### Finances of Board

8. (1) The fees paid under this Act shall be paid to the Board and shall be applied by it in defraying the expenses incurred by it in the exercise of its functions.

(2) The Board shall keep such accounts as may be prescribed.

(3) The accounts of the Board are subject to the Financial Management and Audit Act 1990.

## PART III - REGISTRATION OF VALUERS AND CONTROL OF PRACTICE OF VALUATION

### *Division I - Registration of valuers*

#### Commencement

9. This Part shall commence on a day to be fixed by proclamation.

#### Register of Valuers

10. (1) The registrar shall maintain a register to be called the Register of Valuers in which he shall enter particulars of –

(a) the grant of registration to any person (including particulars of the qualifications entitling his registration), the date of the grant of that registration, and the address of the place of abode of that person;

(b) the change in the name and address of a registered valuer;

(c) the cancellation of the registration of any person and the date of that cancellation;

(d) the suspension of any registration and the period of that suspension;

(e) the restoration of any registration and the date of that restoration; and

(f) the death of any registered valuer.

(2) The Board may cause to be entered in the register particulars of any change in the qualification possessed by a registered valuer, but no particulars shall be entered in the register

pursuant to this subsection except on the application of the person to whom they relate.

(3) The Board may, if it considers it appropriate, cause a copy of the register, so far as it relates to persons who are registered valuers at that time, to be published in the *Gazette*.

(4) The register shall be made available at all reasonable times for inspection by any person at the office of the Board.

(5) Subject to subsection (6), the production of a copy of the *Gazette* containing a copy of the register is sufficient evidence, unless the contrary is shown, of the subsistence of the registration indicated therein and that no other registrations subsist.

(6) Production of a document purporting to be a certified copy of an entry in the register signed by the registrar is sufficient evidence, unless the contrary is shown, that that entry was duly made in the register.

### Persons entitled to be registered

11. (1) Subject to this section, a person is entitled to be granted registration if he –

(a) holds, immediately before the commencement of this Act, a certificate of competency as a valuer granted under section 9 of the *Land Valuation Act 1971*; or

(b) has completed, to the satisfaction of the Board, the prescribed courses of study and training and passed the prescribed examinations.

(2) The Board may, in its absolute discretion, grant registration to any person who –

(a) holds a certificate or diploma in valuation granted to him by the Commonwealth Institute of Valuers or such other institute of valuers as the Board may determine, the certificate or diploma having been granted to that person upon his passing examinations conducted by that institute; or

(b) has had at least 10 years' practical experience in the valuation of land and passes such test (if any) as the Board may determine as a prerequisite for his registration as a valuer.

(3) Where the Board is of the opinion that any person seeking registration as a valuer is capable of making valuations of land only within a certain part or certain parts of this State it may grant registration to that person limited to that part or parts of this State as are specified in the register and the registration shall have effect accordingly.

(4) Where a person is entitled to registration the Board shall, on application made by him and on payment of the prescribed fee, after that person makes a declaration in the prescribed form that he will make every valuation impartially and truly, grant him that registration if it is satisfied that he is of good fame and character.

### Cancellation and suspension of registration

12. (1) Where the Board is satisfied, on an inquiry under this section, that the registration of any person, or the restoration or the removal of the suspension of the registration of any person, has been obtained by fraud or misrepresentation, it may cancel that registration.

(2) Where the Board is satisfied, on an inquiry under this section, that a registered valuer –

- (a) has been guilty of misconduct in a professional respect;
- (b) has been convicted (whether before or after the grant of his registration and whether in this State or elsewhere) of an offence of such a nature that it is undesirable in the public interest for him to make valuations in this State;
- (c) is, by reason of his taking intoxicating liquor to excess or of his habitual taking of drugs, incapable of conducting himself as a valuer; or
- (d) is suffering from mental disorder of such a nature or degree as to render him incapable of properly conducting himself as a valuer —

it may do the following acts or things or any of them, that is to say:

- (e) Admonish or reprimand him;
- (f) Require him to pay the costs of and incidental to the inquiry by the Board;
- (g) Impose on him a fine not exceeding 5 penalty units;
- (h) Suspend his registration for such period as it thinks fit; or
- (i) Cancel his registration.

(2A) Regulations under this Act may prescribe a code of ethics to be observed by registered valuers, and, without prejudice to the generality of subsection (2)(a), a failure to comply with, or a contravention of, the code of ethics shall be deemed to constitute misconduct in a professional respect.

(3) The Board may hold an inquiry for the purpose of this section by serving on the registered valuer in respect of whom the inquiry is to be held a notice in writing specifying the matter in relation to which the inquiry is to be held and requiring him to appear before the Board, on the holding of the inquiry, at such place and at such time as may be specified in the notice, to show cause why his registration should not be cancelled or suspended.

(4) Where a registered valuer does not hold a subsisting practising certificate the Board may serve on him a notice in writing stating that it intends to cancel his registration unless, within one month of the service of the notice, he applies for the issue of a practising certificate, and if he fails within that period to apply for the issue of the certificate the Board may cancel his registration.

### Restoration of registration

13. (1) Where the registration of a person has been suspended or cancelled the Board may, on the application of that person, restore the registration if it is satisfied that to do so would not be contrary to the public interest and is otherwise proper in the circumstances.

(2) Where a registration that has been suspended is restored under this section that suspension ceases to be of further effect.

### Appeal against decisions of the Board

14. (1) A person who is aggrieved by —

- (a) the refusal or failure of the Board to grant him registration;
- (b) the cancellation or suspension by the Board of his registration; or
- (c) the refusal of the Board to restore his registration –

may appeal to the chairman of the Land Valuation Court.

(2) On an appeal under this section the chairman (unless he dismisses the appeal) may –

- (a) in the case of an appeal under subsection (1)(a), by order, direct the Board to grant the appellant registration;
- (b) in the case of an appeal under subsection (1)(b), by order, quash the decision of the Board to which the appeal relates or substitute therefor any other decision that the Board could have made in respect of the matter to which the appeal relates; or
- (c) in the case of an appeal under subsection (1)(c), by order, restore the registration to which the appeal relates –

and the Board shall comply with any order made under this section.

(3) An appeal under this section shall be instituted, heard, and determined, as prescribed.

(4) The decision of the chairman on the hearing of an appeal under this section is final, and is not subject to appeal.

#### **Annual practising certificates**

15. (1) On an application, accompanied by the prescribed fee, being made to the secretary of the Board by a registered valuer the secretary shall issue to him a certificate referred to in this Act as a practising certificate.

(2) A practising certificate –

- (a) if it is issued to a person holding a subsisting practising certificate, has effect for the period of 12 months commencing on 1st January next following the date on which it was issued; and
- (b) in any other case, has effect for the period commencing on the date on which it was issued and ending on 31st December next following.

#### ***Division II - Control of practice of valuation***

##### **Offence to falsely imply that a person is registered valuer**

16. No person shall take or use any name, title, addition, or description falsely implying, or shall otherwise pretend, that he is a registered valuer or that he holds a subsisting practising certificate.

Penalty:

Fine not exceeding 5 penalty units.

### Offences in relation to practice of valuation

17. (1) No person, other than a registered valuer holding a subsisting practising certificate, shall take or use the description "valuer" either alone or in conjunction with any other name, title, or description, unless it is taken or used in such circumstances as to indicate that that person does not make, and does not purport to be qualified to make, valuations of land within the meaning of this Act.

(2) No person shall make a valuation of land for a fee or reward unless he is a registered valuer holding a subsisting practising certificate.

(3) Nothing in this section shall prevent any person engaged in the profession of architecture, engineering, or quantity surveying and not being a registered valuer from making or holding himself out as being qualified to make valuations of land in the course of his profession.

(4) A person who contravenes any provision of this section is guilty of an offence and is liable to a penalty not exceeding 10 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1 penalty unit for each day during which the offence continues.

(5) This section commences on 1st January 1980.

### Unregistered persons not entitled to fees

18. (1) No person, other than a registered valuer holding a subsisting practising certificate, is entitled to sue for, recover, or retain any amount by way of fee or reward for making a valuation of land.

(2) This section shall commence on 1st January 1980.

## PART IV - MISCELLANEOUS

### Service of notices

19. Where a notice is required to be served on any person for the purposes of this Act that notice may be so served –

(a) by delivering it to him personally; or

(b) by sending it by certified mail addressed to him at his usual or last known place of abode or at any institution or other place at which he holds any employment or appointment.

### Regulations

20. The Governor may make regulations for the purposes of this Act.

21. *The amendments effected by this section have been incorporated into the authorised version of the Land Valuation Act 1971.*

### Transition provisions

22. Any person who, immediately preceding the commencement of this Act, held a certificate of competency or a subsisting certificate of qualification granted by the Valuers' Examination Board under section 9 of the Land Valuation Act 1971, shall be deemed to be registered for the purposes of

this Act for the period, not exceeding 12 months from the commencement of this Act, during which he remains unregistered under section 11 of this Act.

<http://www.thelaw.tas.gov.au/fullview/65++1974+AT@EN+2001061300>

13/06/01

RECEIVED TIME 13. JUN. 15:19

PRINT TIME 13. JUN. 15:24