

# Submission to LINZ: Occupational Regulation of Valuers

26 August 2014 – Ben Johnson

I am employed by Westpac New Zealand Limited (“Westpac”) as a Senior Manager, Property Risk. I am a Registered Valuer. My role involves;

- Oversight of property and valuation related policy, internal training and analysis of property sectors for the Bank.
- Review of higher quantum, difficult or problem valuation reports prepared by external parties.
- Joint management of the Property IQ Residential Valuation Ordering Service and implementation of this service within Westpac.
- Relationship management with Valuers and preparation of Valuation Panels.

I have prepared this submission personally, however I have had regard to the outcomes and experiences that I have had in my current role.

I consider myself an active valuer notwithstanding my employment within a bank and essentially removed from the public. I maintain an Annual Practicing Certificate and undertake valuations of residential and commercial property on a daily basis, albeit most often on a desktop basis and in support of or to challenge externally prepared valuation reports.

Note that the views within this submission are my own, and reflect my thoughts on the current and proposed process from the point of view of my current employment. The views within are not necessarily the views of Westpac.

Westpac and banks in general, are significant consumers of Registered Valuation advice, with our internal estimates suggesting Westpac seek or are provided with over 150 valuations per week on average. As such a significant component of our business is dependent on proper and efficient functioning of the Valuer regime.

I have reviewed the Discussion Document dated 1 July 2014 as prepared by LINZ and have considered the questions within. Prior to my formal comment on these questions I believe some key themes and/or context is required as set out below:

## Registration Process

1. The existing pathway to registration as a valuer is a very thorough process involving university study, practical experience requirements and finally an entry examination and verbal test of a potential valuer’s property knowledge by senior peers.
2. I support the requirement for valuers to obtain University qualifications in property, and I consider the current entry examination format a suitable test for potential valuers.
3. I do not support maintaining the minimum age requirement of 23, or the requirement for valuers to have three-year’s practical experience prior to seeking registration.
4. The current age and practical experience requirements serves as a significant barrier to entry to the profession, and at present this may be seen as a less attractive career path on face value than similar fields in accountancy, law or engineering.
5. Refresh of the industry with new entrants is an important part of the viability of the current system. I have estimated the average age of active Registered Valuers at around 50<sup>1</sup>, which at best is an age profile likely to resist change, and at worst could result in shortages of suitable valuers.
6. I am aware of areas of the country where there are no new valuers coming through and sectors such as agricultural valuation where there are now shortages of active valuers.
7. My support would be to reduce the time mandated for registration as a Valuer, however to maintain a high knowledge ‘hurdle’ to ensure that any impact on valuer quality is minimised.
8. One issue that results from having a long practical experience period is the use and misrepresentation of graduate/unregistered valuers by some valuation firms. In these cases a Registered Valuer may not necessarily inspect a property, however confirm the unregistered valuers opinion of the property’s value. In some cases the situation will be stated within disclaimers, although not in all cases.
9. In context of this comment I am aware of a unregistered valuer operating in a different city to Registered Valuer supervision, and in one extreme case one Registered Valuer running a team of six (plus) unregistered valuers.

10. If the Registration process were to be shortened, there would be less incentive for firms to require graduate valuers to generate their own income, and less risk to the consumer of being misled as to a valuers qualification or otherwise.

### **Registration Renewal**

11. At present once a valuer is registered there are no further checks on a valuers competence or knowledge as long as the annual registration fee is paid and Continuing Professional Development ("CPD") requirements are complied with.
12. The CPD program as exists currently is largely a self-determined process, with twenty hours of professional development required and self-certified annually. Five hours of this is required to be via Property Institute events, ten hours minimum of property related topics and five hours can be to non-property related topics.
13. Able to be deducted from required CPD credits are the time spent serving on Institute or National Committees, Boards and Tribunals.
14. The Discussion Document proposes revising the CPD programme to require a declaration by valuers that they have complied with the CPD requirements, plus formalising the CPD education requirements within legislation.
15. I consider that the current system has shortcomings where the checks as to compliance are limited and I do not fully agree with the credits for serving on institute boards etc. I consider the LINZ proposal to require self-declaration is not significantly different from the current process and will still lead to potential shortcomings with ongoing education of members.
16. I would support active monitoring of the CPD process, improvement in content requirements and checks around non-compliance by a statutory body or government department.
17. Given the additional work flow required from both valuers and regulator to comply with this regime, it will be important the reporting timeframe is increased from annually to say three yearly to minimise both time and cost implications.

### **Complaints against Valuers**

18. The vast majority of valuations received by Westpac are of a good standard and genuine issues are rare. Even rarer still are circumstances requiring a formal complaint against the valuer to be lodged.
19. I have been involved in the tail end of one complaint against a valuer taken by Westpac to the Valuers Registration Board. The case itself and the findings are worthy of a brief synopsis as follows:
  - June 2008 Valuation concluding a value of \$1,500,000 for a block of vacant residential land completed and provided for mortgage security.
  - Westpac advanced \$975,000 as a mortgage on the property.
  - May 2009 the property was sold for \$287,000 via mortgagee sale (gross loss before costs of \$688,000).
  - July 2009 Westpac instructed peer reviews by senior valuers at independent valuation firms which concluded \$725,000 and \$692,000, both retrospective to the June 2008 original valuation date.
  - December 2011 Complaint against valuer lodged with Valuer General.
  - April 2013 the Valuers Registration Board confirmed there were reasonable grounds for a formal hearing into the matter.
  - January 2014 Westpac are advised of a hearing due in February 2014.
  - February 2014 Westpac advised verbally of the outcome of the hearing by the Valuer General. The valuer was found guilty and fined \$6,500 plus costs. The valuer is allowed to remain in practice and is still employed within the Auckland market.
20. So the issues I have observed in relation to the above summarised case and the process associated are;
  - Significant delay in conclusion of the complaint, over two years.
  - Unsatisfactory communication during the complaint process as to progress.
  - No justification of the decision or note of the findings of the Valuers Registration Board to explain the outcome of the case.
  - Penalty imposed insignificant in relation to the actual loss (acknowledge further remedies are available).
  - No sanctions imposed on the valuer in question, with the valuer able to continue work through and after the complaint process.
  - No public notification of the complaint or complaint outcome.

21. Due to reputational and litigation risks associated with the complaint process, Westpac chose to conduct the complaint via a third party solicitor. Significant costs were incurred in running the complaint, exaggerated due to the time delays.
22. As a result, and in part due to the outcome, it has been questioned whether it is financially viable for the bank to run complaints against valuers under the current system except in cases of significant loss.
23. I have received comments from other banks that echo the issues highlighted above.
24. I consider trust in the valuation profession itself is at risk due to the time and resource constraints of the current complaints system. If the complaint process is time and cost restrictive, does not resolve issues, and leaves underperforming valuers in the marketplace the value to consumer and institutions that rely on valuation advice is significantly diminished.

### **Proposed Discipline Process**

25. The LINZ Discussion Document highlights a tiered Complaints Process that I broadly agree with, allowing for quick resolution of simple complaints and full investigation of more serious breaches.
26. I also support the proposal for a broader range of sanctions including warnings, compliance assistance, training requirements and fines up to \$20,000. Notwithstanding the intent of the fine provisions, I would support measures to remove the maximum fine or provide for it to increase with time.
27. One of the issues highlighted in the process with the noted Westpac complaint is the lack of transparency into the complaint, and while the parties involved with the complaint are aware of the findings and the background to the issue, there is no public communication of the complaint or complaint findings.
28. One of the LINZ proposals is for analysis of complaints against valuers and outcomes. I support extending this to provide for successful complaints against valuers and a broad outline of the background/outcome to be published in all cases with named parties for public scrutiny.

### **Proposed Discipline Process – Check Valuations**

29. I review a number of valuations on a daily basis. The majority of valuations I receive are to a high standard and provide the detail required to have confidence in the value based on the information contained within the report and with consideration of the evidence and inputs presented.
30. It is not unusual however for a valuation to be missing key details, to have been undertaken with limited regard to evidence or not present all of the information that may be able to be obtained for a property.
31. In these cases if I can confirm the details I may offer my opinion on the property as an alternative to the valuers assessment. When I do this I undertake my assessment under the confidence that my assessment is for internal purposes, is not disclosed outside the organisation, and no parties other than my own organisation are relying on the conclusion.
32. Review of an existing valuation in isolation and review of a valuation with context of an independently sourced check valuation are two different methodologies. A valuer reviewing an existing valuation in isolation could be prone to making the same errors in analysis or judgement as the original valuer, and due to the nature of the review, could be putting themselves at significant personal risk due to the requirement for the findings to be relied upon as part of the complaint.
33. A check valuation, properly instructed, will involve the tasked valuer undertaking sufficient due diligence on a property to provide a full complying valuation report. In this case the valuer would be undertaking independent review of the property information, comparable sales and the market at the time of the valuation. The valuer would not necessarily be putting themselves at risk as in determining their opinion of value as they would have followed due process and had formed a considered and unbiased opinion.
34. As such I consider check valuations an important part of the valuation complaint process.

### **Valuation Panels and Valuation Ordering Services**

35. Westpac currently maintains a preferred panel of commercial property valuers, a panel of residential valuers and has a current arrangement with Property IQ in relation to their residential valuation ordering service.
36. All of the above measures are recommended approaches to be utilised by our bankers as part of lending best practice, and to assist decision making where a valuer's opinion is required.
37. The use of these systems has been discussed with both local and Australian regulators in terms of our suite of policy, with which we seek to continue business and lend on property both prudently and competitively.

38. The above measures seek to mitigate in part the shortfalls that currently exist within valuer regulation, such as the slow/opaque complaints process, addresses reporting quality through communication with key firms and provides a framework for valuer selection.

### **Cost Implications of Changes**

39. The valuation profession is relatively small, and I am aware there are approximately 900 practicing valuers. The current system is under resourced as evidenced by Westpac's recent experience with a valuation complaint discussed above. The Discussion Document mentions a number of methods to significantly improve the current system, but also introduce significantly more load on the already under resourced NZIV and VRB.
40. A number of the current and especially the proposed functions of the VRB and NZIV are features that are essential to public confidence within the system and are required to maintain efficient operation of the valuers regulatory framework.
41. Not discussed within the LINZ document is how the increased regulatory functions will be funded. Pushing the costs of these extra functions onto a small membership base is likely to be unpopular. Serious consideration should be given to Government funding or absorption of some of the current NZIV roles within LINZ (or similar agency). This would involve Government oversight of functions such as;
- Valuers registration
  - Annual licencing
  - Complaints against valuers
  - Compliance with CPD requirements and audit
42. On this basis the professional association could concentrate on more generic membership services to the industry, such as advocacy, training, standards, publications and resources.

### **Professional Association Membership**

43. I consider that valuers need to be independent and differentiated from other property professionals such as Real Estate Agents. Any merger of associations could impact on the status of Registered Valuers and it would be likely in the Real Estate Agents case that the large agency membership would unfavourably dominate valuer participants and requirements.
44. I would support measures to retain compulsory valuer membership of a professional services association, even if the main current functions of NZIV were to be moved to LINZ.
45. I have no formal opinion on whether PINZ, API (Australian Property Institute) or RICS (Royal Institute of Chartered Surveyors – Global organisation, UK based) is best placed to cater for the needs of local valuers, however would support closer ties or merger with RICS to improve branding of local property professionals to a global market.

### **Professional Indemnity Insurance**

46. Westpac obtains information on Insurance cover from all firms that are part of the Property IQ valuation ordering service. Additionally key firms providing commercial valuation reports confirm information on their Insurance arrangements to Westpac. Known lack of Insurance cover by a valuer could potentially limit our use of their services.
47. I would support a move for valuers to disclose within valuation reports whether they have Professional Indemnity Insurance. One of the other banks requires valuers to note within valuation reports that they have Insurance in place to 20% of the properties assessed value.

### **Tiered Registration**

48. I do not support tiered valuers registration. A benefit of the current system is that registration requires potential valuers to be well schooled in a very broad range of property assets and knowledge. Most valuers specialise, however if confronted with a requirement to provide an opinion on a property outside of their main market they are aware of the key drivers and what to look for.
49. There are a number of mixed use and complicated properties that come up in general business, and it is important that one generalist valuer is able to comment on all aspects of a property rather than engaging a number of specialists.
50. There is also the argument of 'highest and best use' whereby a valuer under the current arrangement has the opportunity to assess the property under a range of potential scenarios. This would be challenging under a tiered registration system.
51. With the use of the banks internal valuation panels, we are aware of specialist valuers where they are required. Complex properties such as Shopping Centres, Retirement Villages, and Development Land are

not (in general) valued by unknown/recently registered valuers. I would expect bank panels to exist in any updated regime.

## Summary of Questions

**Q1** Do you agree that there is a lack of accountability and transparency in relation to the VRB's operations?

Yes.

**Q2** Do you agree that the composition of the Valuers Registration Board is problematic? If so, how?

I don't see the composition as a problem, as it is a specialist board requiring specialist knowledge.

**Q3** Do you agree with the proposal to constitute a new board which would include lay people with specialist expertise?

I agree with the proposal to improve the mix of the VRB.

**Q4** Do you agree that it should not be mandatory for registered valuers to join NZIV or any other professional association?

Yes.

**Q5** What if any issues do you think would need to be managed if professional association membership was voluntary?

The main issues would be;

- Lack of a centralised forum for discussion, industry events, professional guidance.
- Weakening of process around valuation standards and how these are created.
- Reduction in quality of CPD courses.
- Reduction in institute resources and spread of a greater cost over a smaller membership base.

**Q6** Do you think that a tiered complaints system could deliver the benefits outlined above? If not, why not and do you have any thoughts on how else those benefits might be realised?

Yes.

**Q7** Do you think it is possible to reduce the reliance on check valuations and, if so, how might this be done?

Potentially, however check valuations will still be required in most instances. Refer points 29-34.

**Q8** Is the range of sanctions proposed above adequate? If not, what other sanctions would be appropriate?

Yes.

**Q9** Is there a need for compliance monitoring and if so, by whom?

Potentially, however given the volume of valuation reports produced and the amount of work involved in reviewing a valuation for compliance it may be better to leave this as a complaint driven process. Selective audits could be another option.

Part of this is undertaken currently by valuation firms involved in the PINZ QAAS quality assurance scheme. At present this is an 'opt in scheme' and in early stages of market acceptance.

**Q10** Do you agree with the proposal for the VRB to undertake more analysis of complaints and outcomes? Why/why not?

Yes. Refer points 18-28.

**Q11** Do you agree that "registered valuer" should be the only protected title? Why/why not?

No. I think that there is potential for the public to be misled if terms such as 'Public Valuer' or 'Valuer' were openly available for use without protection. There may be some cross over with non-property valuers (such as Business Valuers) however there are arguments to include non-property valuers within the regulation or allow for specific exceptions.

**Q12** Do you think it necessary or desirable to change the existing registration period and/or registration renewal requirements? Why/why not?

Yes. Refer points 1-17.

**Q13** If you have answered "yes" to the above question, please indicate whether you prefer one or other of the suggested approaches or another approach.

Refer points 1-17. I would prefer a more structured CPD programme/renewal requirements.

**Q14** Should CPD be mandatory? Why/ why not?

Yes. Refer points 11-17.

**Q15** Do you agree with the proposal for setting practice standards? Why/why not?

Yes – technical standard requirements should remain with the valuation industry as best practice.

**Q16** Do you agree with the proposal for setting ethical standards? Why/why not?

Yes – although Valuer input will be required and may need to be specific to the industry.

**Q17** Do you agree that the minimum age requirement should be removed?

Yes.

**Q18** What do you consider are the benefits and costs of implementing any or all of the proposals?

Refer points 39-42. There are a number of benefits that can be brought about by the changes required, however most come at a cost. I consider some of these benefits are in the public good and should not necessarily be funded from within the industry.

**Q19** Do you think there are any aspects of the current occupational regulation scheme for valuers that impede competition in the supply of valuation services? Please specify which aspects and how they impede competition.

Yes. Refer points 1-10.

**Q20** Do you think the occupational regulation of valuers should be liberalised? If so, what aspects of the scheme should be liberalised and what benefits would this have?

Yes. Refer points 1-10.

**Q21** Do you think the three year supervised experience period for New Zealand graduates is too long? If so, how long should the experience period be?

Yes. Refer points 1-10. I would support a reduction of the practical experience component of registration to one year in parallel with a maintained registration exam standard.

**Q22** Do you favour a tiered registration system that provides for provisional registration (with less experience and other requirements) as well as full registration?

No. Refer points 48-51.

**Q23** Should the requirement for overseas valuers to have at least one year's practical experience in New Zealand be retained?

Yes.

**Q24** Do the existing degree courses and post-graduate training requirements provide registered valuers with the expertise required to do sum insured valuations?

Sum Insured valuations as I understand them were originally designed as a high level proxy of improvement value from which Insurers could base their calculations for insurance premiums.

They have evolved to what is expected to be accurate measures of a property's likely rebuild cost.

The regulation around these valuations, what they are being used for and how they are being undertaken needs to be reassessed.

**Q25** Is there a need for practice standards covering sum insured valuations?

There is already a Guidance Note covering Insurance Valuations. Guidance Notes are not mandatory but do represent best practice.

**Q26** Could registration requirements be reduced for some types of valuation?

No. Refer points 48-51.

**Q27** Are the current registration requirements excessive for valuers who only carry out residential valuations? What would be the risks and benefits to consumers if the requirements were reduced?

No. Refer points 48-51.

**Q28** Are there any risks in allowing registered valuers who have not passed degree courses in valuation to do rural valuations?

I have no experience with rural valuations.

