

SUBMISSION

REVIEW OF THE OCCUPATIONAL REGULATION OF VALUERS

Submitter

This submission is the personal viewpoint of GRAEME HORSLEY a life member and past president of the NZIV. I no longer hold a practising certificate however I still hold a warrant as an additional member of the High Court and I am a director of two NZX listed property investment entities one of which I chair. I am also a director of several unlisted property investment companies and so I am not without current experience in investment property and the professionals who work in this area both in NZ and in Australia where one of the companies has the bulk of their investment portfolio.

Background

In the following section I respond to some of the comments in the discussion document. While the majority of valuers and valuations in NZ are in the residential sector (and they attract the greater number of claims/complaints) the importance of the commercial sector cannot be understated. Listed companies are required to report their real estate assets at market value and the bulk of these properties also require regular rental valuations providing significant work (and fee income) for appropriately qualified valuers. These valuations have been problematical to many of the GFC fallouts of the past decade whether they be finance companies, banks or listed entities. A small number of valuers have provided some particularly dubious valuations that might not have been seen by the VRB but they have resulted in significant settlements by PI insurers. It is the ever improving level of standard setting that is addressing the market concerns and deficiencies in valuation practice. With respect I am not sure that your discussion document understands or acknowledges these very real market place concerns and the significance of them.

Clearing houses have arisen in the UK and in Australia as well as in NZ and are as a result of the poor valuation practices seen in the Fletcher Homes and Blue Chip cases to name but two examples. The NZIV is to be complemented on introducing a Q & A process that sought to address these poor practices and it would seem only a matter of time until the clearing houses themselves require their pool of valuers to also be participants in the NZIV Q & A process.

The NZIV has for too long now held a privileged position as the only professional body where a registered valuer could reside and like any monopoly they have over the years become slow and unresponsive to the needs of their members. I was one of those who promoted the merger with PINZ in 2000 where I was always of a view that the NZIV should be disestablished and compulsion as to membership removed. This would have led to an expanded organisation of property professionals that would have had to deliver efficient and effective services to its members in the face of what would be growing competition from RICS and potentially other professional organisations. That this might now happen I fully endorse but I fear the importance of the “registered valuer” label might now be superseded by the global recognition attached to the RICS post nominal.

Outside of the limited amount of work required by statute to be undertaken by registered valuers I would suggest that changes to occupational regulation such as are proposed in the review document will be seen and treated as mana from heaven by the RICS who will simply promote their post nominal and their global expertise to downplay or dismiss the need for registered valuers in the lucrative commercial valuation market.

This challenge will only be addressed by licensing (as for real estate agents) or by strengthening the terms around public practicing certificates to say that fee valuations or appraisals can only be undertaken by registered valuers holding a current practicing certificate.

The VRB complaint examples given in the review document are of lesser severity than many I have seen over the past ten years through reviewing claims on PI cover. The question is why would a claimant take a case to the VRB with all its attendant costs and time delays and with no question of compensation being awarded when one can short cut the process and go straight to court albeit the majority of cases will settle by some form of alternative resolution or simple agreement. Many of these valuers continue to practice without reprimand and sit outside of the jurisdiction of the VRB. This should be addressed at the time of issuance of the annual practising certificate by a strengthened form of individual valuer declaration.

My final point on this the opening section of the review document is on valuation standards. These standards which promulgate down from the IVSC have evolved over the last 25 years, they are regularly updated and improved, and have gained wide recognition not only in the global valuation profession but also from accountants, auditors, regulators and courts. They are, to the profession, our most valuable asset, and the NZIV are to be congratulated on their support for standard setting and for their promulgation amongst users in NZ. That the NZIV made adherence to the standards as being mandatory is also a credit to them.

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

One would have to agree with the question; the average valuer would have little or no understanding as to what the VRB do. The membership's only contact with the VRB is at registration and in the unlikely event that they become the subject of a third party complaint. Its work with the universities on course content is simply not visible to the membership at large. Nothing however should belittle the significant time and effort that VRB members have put into managing the affairs of the board and in the case of some members over a much extended period of years.

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

I do not necessarily believe the current composition of the board to be problematic. I question why the VG is the chair rather than the investigator per se and I believe it is appropriate that the valuer membership appoints up to half of the board. Unfortunately the VRB as it is currently constituted is buried in a workload of membership applications and disciplinary proceedings and the membership sees little return on their fees from the workings of the board. This is possibly a problem with the Act rather than the board itself.

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

I accept that such a proposal would potentially address the perceived need for a greater level of independence particularly in disciplinary matters although much will depend upon the quality of those appointed and the time that they can devote to board matters.

I believe it is ludicrous to suggest that just because you have a more diverse board you are going to reduce the cost of external specialist advice. One of the board's biggest expenses is in expert valuation advice yet the board as it is now composed comprises seven registered valuers. The board cannot act as investigator, prosecutor and jury on all matters. Is not it also necessary to specify the role of the VRB going forward?

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

No, I do not agree. As I said earlier I do not believe that the NZIV should be the only professional association to which registered valuers can belong. But only through membership of a professional association will registered valuers obtain access to current standards and other professional practice guidance. Where are valuers going to get their continuing education from if not through membership of a professional association?

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

Voluntary membership of a professional association is not about coverage it is about the quality of valuation reporting. Valuation principles and practice are not static they are constantly evolving on the back of regulatory changes, new standards, increasing client expectations and technology. How can you expect a valuer to stay abreast of these when they work in silos outside of recognised professional associations?

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 these 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?

I believe it could be possible to reduce the need for check valuations commissioned by the VRB. If a complainant says that a valuation is in error (high or low) then in support of that complaint there should be a need for the complainant to produce a check valuation supporting their assertion. The VRB would then have three valuations on the table and the expertise of the board members should be able to ascertain whether the complaint is credible as to quantum; after all that is what a review valuer does when instructed in these matters. In my experience too much emphasis is on valuation quantum and not enough on the valuation process. Valuation is a matter of opinion, there is not necessarily a right answer, but it is important that the valuer follows due process in undertaking his or her valuation and greater emphasis should be placed upon the valuers due process – was there

adherence to standards, were generally accepted principles and practices followed, were adequate records kept, did the valuer meet with his or her instructions and were these confirmed between client and valuer.

If it is of concern that these questions appear to be more about cost minimisation rather than the efficiency and effectiveness of the complaints process.

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

While the scheme focusses on punishment and deterrence rather than remediation and redress the more serious complaints will, as they are now, be resolved by PI insurers through the court or other dispute settlement process. The existing sanctions appear adequate for those matters which are brought before the VRB

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

The discussion document notes that the Code of Ethics must be approved by the Minister and if there is to be Code of Ethics for registered valuers one presumes that in the absence of a single professional body the Code of Ethics will be set by the VRB and compliance with the code being monitored by the board.

The VG's responsibilities to certify compliance with standards was never intended to mean the professional practice standards that now prevail but rather the more general standards of valuation principle and practice. Professional practice standards which are now global in nature are in effect monitored by users of our valuations (e.g. auditors) and by regulators and the courts. In some overseas jurisdictions the professional bodies also monitor member's adherence to professional practice standards. In my opinion this is a matter for the professional bodies and is not a consideration relevant to the discussion document.

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

I most certainly agree with the proposal because the analysis would provide meaningful guidance to registered valuers that is currently not available to them.

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

Yes, I agree with the question but would go one step further and say that the protection should define registered valuers who hold a practising certificate as being those valuers who hold themselves out as willing to make valuations of land for the public i.e. they alone should be permitted to undertake such valuations. The public should be protected from unregistered valuers undertaking valuations or appraisals of land / real property.

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

I agree with the documents proposal and believe the statutory declaration to be completed at each annual renewal to be a most useful tool towards monitoring valuer behaviour and performance.

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

See answer to Q12 above.

Q14 Should CPD be mandatory? Why/why not?

Absolutely it should; valuation practice is forever evolving, regulations and standards change and it is inherent on all practitioners to keep abreast of these changes through CPD.

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

The document author has a particularly poor understanding of standard setting and practice standards generally.

On the one hand the document acknowledges that practice standards address “highly technical and complex issues” yet it goes on to say that the practice standards should be approved by the VRB – why/what expertise do members of the VRB have in standard setting? Even the valuer members of the VRB might not necessarily be experienced in standard setting. Accountants have a separate standard setting body that is legislated for; perhaps valuers should also have a separate body much like the institutes standards committee which has non-valuer representation on it.

The document suggests that the NZIV in whatever form it eventuates should lead standard setting but be required to consult the RICS and any other body representing valuers.

In most other countries of the world with the possible exception of the USA and Canada the RICS through its resident branch offices and its significant presence in the UK lead standard setting and are the principal contributors to the IVSC.

When the floodgates open the RICS in NZ will be the dominant professional body representing valuers and they will dominate standard setting in NZ.

Standards committees or bodies require funding; should that funding come from the VRB? Yes, if it wants to approve standards. Otherwise I suggest that the NZ professional bodies representing registered valuers should contribute to a joint standards setting committee/body and that it should be free of VRB interference.

I have no dispute with the VRB setting a generic code of ethics for registered valuers and monitoring adherence to them but they should step aside from professional standard setting.

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

Yes, see above.

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?

For ease of comment I have chosen to number the principles in the table 1 through 7; I agree with principles 1, 2 and 4 – 7 as to 3 I believe the package has not fully described the role and the protection that will or should be given to the term “registered valuer”. I have addressed this point earlier in my response.

I remain sceptical of costs being reduced simply because the widened panel of VRB members will offset the costs of external experts. The tiered complaints system may streamline processes but the benefits as a whole will be dependent upon the protection given to registered valuers across the full spectrum of valuation work.

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.

No comment.

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?

The document makes many references to rating valuations perhaps there is a need to have separate classes of valuers and rating valuers may be a class that had a lesser standard of qualification likewise If we are looking at new directions is it not an appropriate time to bring into the regulation a class of plant and machinery or infrastructure valuers.

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

No

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, but I could be convinced that a lesser standard of registration could apply to a rating valuer if that category was introduced.

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?

My personal view is that sum insured work should be undertaken by quantity surveyors and not valuers, this is particularly so for any work outside of residential property.

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

Probably but it still would not alter my view as expressed in Q24.

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

I have already said that they could for rating valuations.

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

There is a definition problem with the question; What is a residential valuation? When does a residential valuation cease to be such, by value, by number of units, by zoning etc? Is a residential subdivision a residential valuation?

I am not sure that I would agree with the tenor of the question.

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

I see no reason to change the approach as taken by the VRB over many years now and while the registered valuer is a generic qualification the code of ethics does say that valuers should only undertake work for which they are qualified by way of experience. This is not always adhered to and I have seen many examples of valuers undertaking valuations for which they simply do not have the experience to do.

Q29 Are the valuation qualifications offered by the accredited universities fit for specialist purposes? If not, what are the problem areas?

I believe the university courses are fit for purpose. It is up to the valuers themselves to learn on the job so to speak as to specialist valuation tasks. The professional bodies will go a long way to assist here, I am aware of seminars that regularly address many of the more specialist areas of valuation and attendance at these should be seen as part of one's CPD requirements and annual certification.

Q30 Do you think any changes are required to the existing professional indemnity insurance arrangements?

It is unbelievable to think that there are valuers practicing without PI cover. That said I do not agree with making such insurance mandatory.

Q31 If so, do you favour either of the options outlined above or have an alternative suggestion?

I would support a disclosure requirement and believe that should be mandatory.