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Land Information New Zealand
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Review of the Occupational Regulation of Valuers

The New Zealand Law Society (Law Society) appreciates the opportunity to respond to Land Information New Zealand's *Review of the Occupational Regulation of Valuers: Discussion Document, 1 July 2014* (discussion document).

The Law Society's comments are set out below.

General comments

The discussion document outlines a number of fundamental problems with the current occupational regulation of valuers, in particular that:¹

- the governance structure does not provide sufficient accountability, transparency and independence (the Valuers Registration Board lacks lay representation and specialist expertise);
- the disciplinary process is regarded as slow, expensive, inefficient and inflexible;
- the sanctions available for breaches of the Code of Ethics or practice standards are insufficient; and
- there is no justification for retaining the status of "public valuer", which is obtained by merely paying an annual fee for a practising certificate and which does not require the valuer to prove any probity or competency-related registration requirements.

The primary reform objectives identified in the discussion document are:²

- to adopt consumer protection measures, to protect from the risks of unethical or incompetent valuers;
- to maintain public confidence in the valuation profession;
- to have a cost-effective regulatory regime; and
- to ensure the regulatory regime does not unduly impede competition in the supply of valuation services.

The Law Society agrees there are fundamental problems with the current occupational regulation of valuers, and endorses the reform objectives outlined in the discussion document.

¹ Discussion document, p3.

² Ibid, p5.

Response to consultation questions

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

Yes. As outlined in the discussion document, there needs to be more transparency and public reporting on the VRB's registration, complaints and disciplinary functions.

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

The discussion document indicates that the Valuers Registration Board (comprised of five members, all of whom are registered valuers) lacks the necessary independence and range of expertise. The Law Society believes that including representative panels at certain levels of the regulatory regime – particularly in the complaints area – would be beneficial, to ensure that decision-makers have the benefit of a consumer perspective and additional technical expertise (such as legal expertise).

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

Yes. See the answer to Q2.

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

Yes. The statutory occupational regulation scheme applying to valuers should not require them to join a professional association. As the discussion document notes, voluntary membership of a professional organisation would be consistent with the approach taken with other professional groups, such as registered architects, real estate agents and lawyers.

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

The experience of other professional groups in New Zealand suggests that voluntary membership does not create any particular problems. High rates of voluntary membership are cited in the discussion document for the New Zealand Institute of Architects and the Real Estate Institute of New Zealand (over 90% and 95% respectively), and the New Zealand Law Society has a similarly high rate of voluntary membership (currently 98%).

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

The Law Society supports the proposed tiered complaints system, with low level complaints dealt with by a complaints committee and more serious complaints dealt with by a disciplinary committee which has appropriate representation. Most complaints should be able to be dealt with on a fast-track basis through a complaints committee, with the more serious complaints dealt with through a more formal process. However, it is important to ensure the higher level disciplinary process is expeditious and efficient, so that there is no undue delay in resolving complaints.

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

The Law Society is not in a position to comment on this question but expects there will be submissions from valuers addressing it.

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

Sanctions should be focused on consumer protection and educating the profession to avoid repeat conduct. In addition to the proposed additional sanctions (warnings, compliance assistance, orders to undertake training), there should be public notification of the worst cases.

Giving the disciplinary body limited compensatory powers should also be considered, so that complainants receive some monetary redress in appropriate circumstances. As an example, there are limited compensatory powers under the Lawyers and Conveyancers Act 2006 which are available to recognise the harm (both financial and non-financial) which may be caused by a lawyer whose conduct amounts to unsatisfactory conduct or misconduct. Under the Lawyers and Conveyancers Act, compensatory awards may also assist adversely affected consumers in situations where alternative avenues for redress may not be easily accessible or sufficient to meet a complainant's needs.

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

Yes. Compliance monitoring should be undertaken by the entity that oversees registration and CPD requirements. There could also be a system of random audits.

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

The Law Society agrees with the proposal. Any analysis of complaints should identify themes and enable early capture of faults within the profession, and focus on recommendations as to best practice. This should help to educate the profession and to reduce the volume of lower-level complaints.

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

The Law Society agrees there is no need to retain title protection for the term "public valuer", which is anachronistic. There should be only one title ("registered valuer") to avoid confusion in the market place.

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

The Law Society considers that the current registration period of one year is desirable. (As noted in the discussion document, that is the period provided for lawyer registration under the Lawyers and Conveyancers Act 2006.)

The Law Society also supports the proposal that there should be a requirement to prove (and re-prove) competence at each renewal period.

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

See the answer to Q12.

Q14 Should CPD be mandatory? Why/why not?

CPD should be mandatory, consistent with other professions in New Zealand. The ever-changing legislative environment and other changes mean that professionals, including valuers, have a constant need for education throughout their working life. Ongoing education is also important to give the public confidence in the profession.

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

Yes.

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

Yes.

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?

The discussion document notes that implementing the proposals could increase the cost of running the scheme (although this might be offset by efficiency gains), and that there may be an increase in the annual levies payable by valuers (depending on the effect of introducing voluntary membership fees).³ More evidence, and particularly quantification of the range of potential benefits and costs, is needed in order to reach an informed view on the ultimate cost-benefit ratio of the proposed regulatory changes. In principle, however, the Law Society suggests that some increase in cost is justified in order to build and maintain high professional standards and increase public confidence in the valuation industry.

Q19 Do you think that 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.

The Law Society is not in a position to comment on this question.

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?)

No.

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?

The current three year period is adequate given the complexity of the valuation process which covers reasonably wide territory and the need for graduates to receive good practical grounding before they assume full status.

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.

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?

The Law Society is not in a position to comment on this question.

³ Ibid, p26.

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

Yes.

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

No.

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?

The current registration requirements for valuers who only carry out residential valuations are not excessive and should not be reduced.

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

The Law Society is not in a position to comment on this question but expects there will be submissions from valuers addressing it.

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

Again, the Law Society is not in a position to comment on this.

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

The Law Society considers compulsory professional indemnity insurance cover is desirable.

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

See answer to Q30.

If professional indemnity insurance is not made mandatory, the Law Society supports the proposal that there should be a disclosure requirement, so that consumers can make an informed choice about whether to assume the risk of transacting with the valuer.

Conclusion

We hope you find these comments helpful. If you wish to discuss the submission, please contact the Law Society's Property Law Section Manager, Jennifer Chowaniec (ph 04 463 2991/ jennifer.chowaniec@lawsociety.org.nz) in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal line extending to the right.

Chris Moore
President