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Land Information New Zealand
Wellington

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By email: LINZregulatorysubmission@linz.govt.nz

Dear Sir / Madam

Review of the Occupational Regulation of Valuers

The Real Estate Institute of New Zealand Inc. ("REINZ") is a voluntary membership organisation representing over 13,000 members specialising in all facets of the real estate arena. Included within our membership are licensed real estate agents selling residential, rural & commercial property and businesses, leasing commercial property, as well as property managers letting and managing residential properties. We also count valuation firms amongst our customers with access to details of the REINZ recent sales data series, which provides the most up to date sales information available on the residential and rural property sales markets.

REINZ welcomes the opportunity to comment on the proposed review of valuer regulation. We have commented primarily on areas which appear to have the greatest relevance to our sector. We also offer some commentary based on our experience of moving from a structure similar to that which currently exists in the Valuation profession which may be of interest.

Section One: Governance Structure

The proposed structure for the Valuer's Registration Board ("VRB") is intended to address a lack of accountability, transparency and independence from the profession, and proposes a seven person board appointed by the Minister for Land Information. The seven persons are to comprise four valuers and three lay persons with specialist expertise such as legal, academic or consumer affairs. This is a change from the current structure which is made up solely of valuers, chaired by the Valuer-General, who is also a valuer.

This structure appears to combine the functions of a "board" in the sense of a governing body of an entity charged with the usual governance functions and with a management structure reporting to it, with the functions of a disciplinary body to whom investigators or complaints committees refer serious disciplinary concerns. This differs from, by way of example the regime governing real estate agents. Under that regime, the Board of the Real Estate Agents Authority ("REAA") is charged with governance functions, while the Real Estate Agents Disciplinary Tribunal ("READT") is a three person body, autonomous from the REAA, which hears serious complaints and appeals from Committee decisions.

We are unsure how the proposed structure of the VRB achieves the aim of establishing independence from the profession. We also see a number of practical issues in combining governance and disciplinary functions, both in terms of workload, logistics and again independence.

We recognise that having representation on the board and disciplinary body of the profession being regulated is critical. As noted in the document, the Board of the REAA includes two licensee representatives. The READT also includes one licensee member. We note that the READT can sit without that licensee member; we consider that to be less than ideal, and submit that deliberations of the disciplinary body should always include a Valuer.

With regard to the role of the VRB as a disciplinary decision maker, we see considerable potential for logistical issues if the entire board of seven must meet to consider a matter. Alternatively, if the VRB is to form committees to consider individual matters, it is not clear what numbers must make up that committee and how a sub-committee might be comprised in terms of being a valuer or a specialist in another discipline. It is possible that a sub-committee might be comprised entirely of valuers, which would negate any increased perception of independence from adding non valuer members. Similarly, the proposal still sees a majority of valuers on the VRB, which may detract from the intention of enhancing the perception of independence.

The proposal also suggests removing the compulsion on valuers to be members of the New Zealand Institute of Valuers (“NZIV”). This is in line with modern practice in respect of such bodies. Voluntary membership would be of benefit to NZIV in that they would not have to retain members who for any number of reasons, such as non-payment of fees, they may prefer not to accept. We do note however that the proposal suggests that certain functions including the development of practice standards should be delegated to NZIV. There appears to be an inherent conflict in delegating functions which are of value to all valuers to a voluntary body. Unless the voluntary body is provided with some guaranteed funding to cover the costs of that activity, there is a risk of ‘freeloading’ in such a structure.

Section Two: Disciplinary process is slow, expensive, inefficient and inflexible

The proposal considers the establishment of a tiered complaints process and importantly, includes a filter at the commencement of the process to allow frivolous or vexatious complaints to be dismissed. We support this as an essential part of any fair complaints system. In particular, the cost of a structure which does not include that filter can be extremely onerous for an industry to fund.

We also support the proposal that less serious complaints can then be considered by a sub-committee. However the proposed membership of two board members plus any other person the board thinks fit, could, when coupled with the makeup of the board, result in all sub committees being made up of a majority of valuers. We suggest that this is counter to the stated aim of making the complaints process more independent of the profession. Given that it is also proposed that only valuers may appeal the decisions of these bodies, the perception of independence at this level will be critical.

As an alternative, the membership of the subcommittees could be set at three persons, at least one of whom is a Valuer, and two others with suitable qualification and training. It might also be of value to provide for a panel to be formed of suitable persons and that, for logistical ease, it not be necessary for the subcommittee to be board members.

The proposal also calls for the seven person board to consider all more serious issues. Again the logistics of this, as well as the potential cost, appear to be a barrier to the aim of reducing cost and the time taken to resolve serious disciplinary issues. We also question whether the governance and administrative functions of a board should be combined with the disciplinary function, as appears to be the case in this proposal. A structure using a three person Tribunal with at least one Valuer on the Tribunal, and a panel of up to six Tribunal members, might better serve the purposes of independence and faster resolution of cases.

The consultation document also asks whether alternatives might exist to check valuations, which are time consuming and expensive. It seems to us that it is very difficult to fairly replicate the circumstances which existed at the time of a valuation being carried out, and the benefit of hindsight will always be argued.

As we understand it the check valuation is used to determine the “correct” value of a property and from that derive the value of compensation due to a client where a failure on the part of the original Valuer can be established. It could be argued however that beyond a reasonable limit, compensation is not the purpose of a disciplinary process, and arguments in respect of civil liability are better left to the courts to decide. It can also be argued that a disciplinary process exists to establish and protect ethical and practice standards, and to punish deviation from defined standards.

Accordingly an alternative to the expensive and ultimately subjective process of a check valuation could be to define the process and inputs which ought to be carried out by a Valuer in the process of completing a competent valuation. These would likely include independence, a complete data set on the subject and comparable properties, information on the physical description and condition of the subject property (or statements as to the lack of such data), and “reasonable skill” in assembling the data and drawing conclusions from the data. The disciplinary processes could then test for deviation from those standards. After all, it is possible that a Valuer might arrive at the correct conclusion in respect of the value of a property, and yet have failed to observe a key tenet of the process such as independence from the property owner. Check valuations might still be used in civil proceedings where compensation is sought, but under such a circumstance the process would not be funded by the valuation industry.

Section Three – insufficient tools to incentivise, facilitate and enforce compliance

We agree that the range of sanctions available to the VRB currently is insufficient. Even though the proposed penalty of \$20,000 is double the sanction currently available, we suggest that it still insufficient and should be increased to \$100,000. Alternatively, it should be possible for the maximum amount of the award to be varied under regulation, rather than legislation. Historically legislation is reviewed infrequently, and the relevance of the maximum penalties will be steadily eroded by inflation. The maximum figure proposed also appears low in comparison to other jurisdictions like the Real Estate Agents Act – which provides for a maximum penalty of \$100,000.

The proposal also asks whether the VRB should carry out compliance monitoring. The answer to this in our view depends on the extent of monitoring envisaged, as the scope of any monitoring will determine the likely cost. The benefits of active compliance monitoring (such as, for example, random audits by the VRB of practitioner files) would need to be significant to justify the additional cost imposed on a relatively small practitioner base.

Section Four – Concerns regarding title protection

We agree that the title “registered Valuer” should remain protected. Other titles appear to have little relevance in a modern context.

Section Five – insufficient checks to ensure ongoing probity and competence

We support the model of annual re-registration and declaration of completion of CPD requirements. Much can change in a five year period and a lack of interim checks would create significant risk to consumers and the end users of valuation services.

We support CPD being compulsory. This is in line with other professional disciplines such as lawyers, accountants and real estate agents. However, given the small size of the profession and the various specialities that exist within it, we support there being significant flexibility in the way in which the obligation can be met. For example, the hours required of lawyers can be met through attending a variety of learning events including conferences, Law Society events and webinars provided by a range of education providers.

Section Six: Insufficient government oversight of standards setting

We support ethical principles being stated in legislation but being given effect to in Codes developed under regulation. While ethical principles such as independence and integrity are constant values, the application of those principles to practice situations may require elaboration as the situations faced by valuers in practice change in response to a dynamic market. The ability to update regulations to reflect such changes will be important in ensuring that the regulatory regime remains relevant.

Section Seven: Minimum Age Requirement

We support the removal of a minimum age requirement and its replacement with competency requirements. We note however that requiring that valuers have reached the age of legal competency (currently 18) may still be desirable. By way of comparison, the Real Estate Agents Act requires that licensees be aged 18 or over.

Other Issues

Benefits and costs of the proposals:

Among the key concerns identified in respect of the current regime are those of speed of resolution, and a lack of a perception of independence. We support changes that will have the effect of achieving both of those outcomes.

We are concerned that some of the proposals will be counter to both of the objectives above – notably, the structure of the VRB and its role as the ultimate arbiter of serious disciplinary matters. It appears that all seven members of the VRB will consider a disciplinary matter. This appears to us to present significant logistical and cost challenges which will work counter to the need for an efficient process. The fact that a majority of the VRB will be members of the profession also seems

to us to be counter to the desire to have a structure which is perceived to be independent of the profession. We understand and appreciate that registered valuers will have a key stake in ensuring that incompetent or corrupt practice is eliminated from their profession, perhaps even more so than lay persons. The concern we wish to note is entirely with regard to the perception of independence.

It is important that the structure which replaces the current regime have cost effectiveness as a key objective. Effective management of vexatious and frivolous complaints will be a core part of ensuring that objective is achieved – both in respect of the costs to administer the regime, and the costs incurred by practitioners who are subject to the regime.

Future Supply of Valuers & Experience Requirements

We have answered these two questions together as we see a correlation between these two points.

The experience requirements appear to be an extremely high barrier to entry to the profession, and if the NZIV feel that the requirements are too high we support that view. We do see considerable issues in the supply of new valuers to the profession given the difficulty of entry, balanced against the financial and other rewards of the profession, particularly in an increasingly litigious environment.

One alternative may be to adopt a two tiered licensing system, providing for an entry level licensee and a management level licensee with supervision and management responsibilities. There are examples of such systems in many other professions, such as real estate agency work and accounting. In real estate agency, a person may apply for a Salesperson's license after completing the NZ Certificate in Real Estate (Level 4). However a Salesperson licensee cannot provide advice on completing a Sale & Purchase Agreement until they have completed at least six months real estate agency work. A Salesperson licensee must at all times, both during that first six month period and subsequently, work under the supervision of an Agent licensee. A Salesperson licensee also cannot offer to provide real estate agency services to a member of the public in their own right.

In order to obtain an Agent license, a person must complete one of the prescribed degree level courses set out in the Real Estate Agents Act (usually the National Diploma in Real Estate) and complete three years of real estate practice under the supervision of an Agent licensee.

An Agent licensee may run a real estate agency business, offer services to the public and is responsible for ensuring that all of the persons they employ are adequately trained and supervised. Disciplinary complaints in respect of an individual Salesperson licensee may result in a parallel complaint in respect of the Agent responsible for supervision of that Salesperson.

A similarly tiered system could apply to Valuation practice. A junior valuer might be able to obtain registration to work under supervision for a period (to be determined by recommendation of the profession) and then be able to sign their own valuations, still subject to the supervision requirements of a senior valuer. Valuers who wished to offer services to the public and have overall responsibility for other valuers might be required to have say three years' experience as a valuer before being able to apply for a license to operate a business at this level.

Are changes required in relation to professional indemnity insurance?

Professional indemnity insurance is a key protection for both valuers and their clients. In recognition of the importance of such cover, REINZ requires that its own members carry professional indemnity insurance (although this is not a requirement of real estate agency practice under the Real Estate Agents Act).

However we are aware that professional indemnity insurance is expensive and often difficult to obtain for valuation practices, and deductibles (the portion of the cost the insured must meet themselves) are high relative to other professional services. Our own information from the insurance industry indicates that this is a result of several high cost cases which have caused underwriters to view the industry as high risk.

Placing a unilateral cap on the liability a valuer might face would be problematic given the different types and values of properties with which the profession engages. However, we do support valuers being able to limit the liability they may face in respect of a civil claim to, say, a maximum of three times the remuneration received for the service carried out. This type of limitation of liability is not unusual amongst some other professional services firms such as auditors.

Making professional indemnity insurance compulsory might place the profession at significant risk if cover became impossible to obtain. However, we do support a valuer being required to advise their prospective clients (before commencing an engagement) if they do not carry professional indemnity cover, or, if they carry cover but intend to restrict their liability, to state this prior to accepting instructions. This would allow consumers to make an informed choice of providers.

We trust that the above is of use to you in your deliberations. Any points which you would wish to discuss further should be addressed to the writer.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Helen O'Sullivan', written in a cursive style.

Helen O'Sullivan
Chief Executive Officer