

Review of the Occupational Regulation of Valuers

Discussion Document

1 July 2014

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Executive Summary

Background

Land Information New Zealand (LINZ) has been reviewing the occupational regulation of valuers. Your comments are sought on the issues identified by the review and on proposals for addressing some of these issues. The proposals aim to implement a cost-effective new regime that protects consumers and maintains public confidence in valuers without unduly impeding competition.

The existing scheme was established by the Valuers Act 1948 (the Act) which created the Valuers Registration Board (VRB) and the New Zealand Institute of Valuers (NZIV). The VRB registers and disciplines valuers, while the NZIV is a professional association charged with promoting and protecting the interests of valuers. The regime has not been reviewed since the Act was passed.

LINZ started the review in August 2013 in close consultation with NZIV and has also consulted stakeholders from the financial, property and insurance sectors as well as government and industry regulators and academics.

Problems with the current scheme

While some aspects of the scheme are working well, the Act is now out of date and we have identified a number of problems that need to be addressed.

The governance structure does not provide sufficient accountability, transparency and independence from the profession, because NZIV's representative and regulatory roles are not sufficiently separated and the VRB lacks lay representation. The VRB also lacks specialist expertise.

The disciplinary process is slow, expensive, inefficient and inflexible. Serious complaints take on average three and a half years to resolve and the cost of complaints that reach the formal inquiry stage generally range from \$20,000 to \$100,000.

The range of sanctions available to the VRB for breaches of the NZIV Code of Ethics or practice standards is insufficient.

The "registered valuer" title should be retained but we cannot see any justification for retaining "public valuer", a title which is obtained by paying an annual fee for a practising certificate but which does not require the valuer to prove his or her competence.

Similarly, registration can be renewed by merely paying an annual fee and no consideration is given to whether an applicant continues to meet the initial probity or competency-related registration requirements.

Feedback about the adequacy of the practice standards has been positive, but the scheme should provide the Minister for Land Information with backstop regulation-making powers in the event the standards are inadequate for addressing risk. The profession is best placed to continue setting practice standards but ethical standards, which are not technical in nature, can and should be set by the government.

The minimum age requirement is inappropriate. Modern occupational regulation schemes tend to impose qualification and experience requirements rather than age restrictions.

Proposals

We have formulated proposals to address some problems with the current scheme.

The proposals include:

- changing the governance structure
- making the disciplinary process more efficient and cost-effective
- increasing the range of sanctions
- removing title protection for “public valuer”
- increasing scrutiny on valuers renewing their registration
- giving the Minister for Land Information a regulation-making power in case practice standards are inadequate
- removing the minimum age requirement.

Other issues

Your views are also sought on whether:

- the experience requirements for registration are appropriate
- specialist training and/or practice standards are required for registered valuers undertaking sum insured valuations
- the lack of specialisation within the profession is problematic and the possibility of introducing, for example, residential-only registration
- professional indemnity insurance should be mandatory
- valuation education adequately equips registered valuers to work in all areas of valuation.

Your views on these issues will inform decisions on whether further changes are required in addition to the proposals set out in this paper.

Next Steps

Submissions are due on 26 August 2014.

After LINZ has analysed the submissions and reported to the Minister for Land Information, Cabinet policy decisions will be sought in early 2015. If approved by Cabinet, the repeal and replacement of the Valuers Act 1948 will follow.

Introduction

Purpose

Land Information New Zealand (LINZ) is seeking submissions on proposals to improve the occupational regulation of valuers.

The proposals have resulted from LINZ's review of the current occupational regulation scheme for real property (land and buildings) valuers.

The proposals are aimed at putting in place a new occupational regulation scheme, that:

- protects consumers and the wider public from the risks of unethical and incompetent valuers
- maintains public confidence in the valuation profession
- is cost-effective
- does not unduly impede competition in the supply of valuation services.

The proposals include changes to the governance structure, certification, compliance monitoring and disciplinary processes.

The paper also seeks your views on other issues, including specialisation within the profession, sum insured valuations, professional indemnity insurance, and sustainability. Your views on these issues will inform decisions on whether further changes are required in addition to the proposals we have made in this paper.

How to make your submission

You can email your submission to LINZregulatorysubmission@linz.govt.nz. Submissions are due by 26 August 2014.

LINZ is required to carry out its functions with transparency. Please be aware that any information provided to LINZ may be discussed with, or provided to, other parties. Identify any information you wish to remain confidential and provide reasons for this, for example, that certain information is commercially sensitive. You should also be aware LINZ is subject to the Official Information Act 1982.

Next steps

When the submission period closes, LINZ will analyse the submissions and report to the Minister for Land Information. Cabinet policy decisions will be sought in 2015.

If approved by Cabinet, the proposals will require changes to legislation. This would provide another opportunity for public input during the normal select committee process. It is unlikely that a bill would be introduced before 2016.

Contacts

If you require further information, please contact:

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Background

Valuers Occupational Regulation Review

The current occupational regulation scheme for valuers was set up in 1948 and is now clearly outdated. Both LINZ and the profession, led by the New Zealand Institute of Valuers (NZIV), recognise the need to modernise the scheme, which has not been formally reviewed by the government since its inception.

LINZ started the review in August 2013, working in close consultation with NZIV. The main objective of the review is to identify improvements necessary to ensure the scheme is protecting consumers and the wider public from the risks of valuers behaving unethically or incompetently.

In addition to NZIV and other representatives of the profession, LINZ sought input from a wide range of stakeholders, including representatives from the financial, property and insurance sectors, government and industry regulators, academics, local government and consumer representatives. Stakeholder consultation has informed the identification of issues and the development of proposals, on which feedback is now being sought through this wider public consultation process.

Market for valuation services

Real property valuers assess the value of a property for various purposes including sale and purchase, mortgage and loan security, rating and compulsory acquisitions.

As of 31 December 2013, there were 1230 registered valuers in New Zealand.

It is estimated that approximately 273,000 private valuations (as distinct from rating valuations) are carried out each year. The vast majority are carried out on residential properties with commercial and rural property valuations comprising less than 10% and 2% respectively of the total number of private valuations.

Two-thirds of private valuations are sought for lending purposes and approximately 80% are sought by the borrower. New Zealand is somewhat unusual in this regard. In other countries, including Australia, the US and the UK, the vast majority of valuations for lending purposes are sought by banks.

Rating valuations are carried out by councils to provide the basis for setting rates. There are 1.9 million rateable units in New Zealand, of which one-third need to be re-valued each year. There are between 50 and 60 registered valuers working in the rating valuations area.

While there are many firms operating in the private valuation market, the recent Evaluation of the Rating Valuations Regulatory Framework¹ found that for rating valuations there are very few areas of New Zealand where competition exists. Ninety percent of rating valuations are carried out by one firm.

¹ Land Information New Zealand (2013). Evaluation of the Rating Valuations Regulatory Framework. Retrieved February 26 2014, from <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/news-and-notice/clone-of-rating-valuations-regulatory-framework-evaluation>

A relatively new development in New Zealand is the emergence of third party agents providing valuation ordering services to banks (known as 'clearinghouses' or 'appraisal management companies'). When the clearinghouse receives an order for a valuation, it assigns the job to a member of a panel of valuers. The aim is to eliminate the possibility of collusion or fraud between borrower and valuer or lender and valuer and to allow banks to monitor the quality of the valuation reports they receive. There are currently two valuation ordering services operating in New Zealand.

The current scheme allows anyone to offer valuation services to the public. Registration under the Act is not compulsory but only registered valuers can use that title. This makes the current scheme a certification model rather than a licensing model. Licensing would prevent anyone other than registered valuers from offering valuation services.

The current scheme does use 'task licensing' for certain work carried out for local or central government, such as rating valuations and compulsory acquisition valuations. Furthermore, banks will only lend on the basis of valuations done by registered valuers. So while the occupational regulation scheme (current and proposed) does not require registration, in reality only a small part of the valuation market is available to non-registered valuers. This work includes insurance valuations and valuations sought by property owners for non-lending purposes. The proposals in the discussion document would not change this.

When should occupational regulation be used?

Occupational regulation is considered necessary when "there is a possibility that incompetent service by members of the occupational group could result in significant harm to the consumer or a third party."² This could apply in nearly all occupations however the significance of harm can vary and the compliance costs of intervention can outweigh the benefits. Government intervention should be limited to occupations where the harm could be significant.

"Significant harm is defined as covering significant harm to one person or moderate harm to a large number. Moderate harm to a large number might arise from one event or from the aggregated actions of different providers of a service. Significant harm that is irreversible (such as permanent disability) is more likely to justify intervention than reversible harm (such as moderate food poisoning)."²

Occupational regulation tends to be considered where there is potential for significant, irreversible harm to individuals or groups resulting from the non-performance of practitioners. Intervention is more likely if the risk of harm is involuntary for the individuals and groups because they are unaware of it, even though the probability of it occurring is low.

Does valuation work meet the criteria for using occupational regulation?

We think that valuation work meets the criteria for using occupational regulation set out in Cabinet's Policy Framework for Occupational Regulation and that the profession should continue to be regulated. The Framework is administered by the Ministry of Business, Innovation and Employment.

² Cabinet Office circular CO (99) 6 "Policy Framework for Occupational Regulation", 8 June 1999: <http://www.dpmc.govt.nz/cabinet/circulars/co99/6>

The key risk for consumers of valuation services is that they will make poor decisions when relying on valuations that are wrong or otherwise misleading. For individual consumers, those decisions could have significant financial consequences. Under or over valuation can result in properties being bought or sold for more or less than the market value, lost opportunities to buy or sell, rents wrongly set, properties being under-insured, lending being under-secured and mortgagors having negative equity in their properties. At a more systemic level, widespread incompetent or unethical conduct could erode public confidence in the profession and the property market.

Valuation reports contain complex technical information which makes it difficult for some consumers to assess the accuracy and adequacy of the information for the intended purpose. Also, the quality of the report can only be assessed after the service has been provided.

As previously noted, 80% of valuations for lending purposes are sought by members of the public. Information asymmetries between valuers and their clients would therefore seem to be more of a risk in New Zealand where the bulk of valuations are provided to relatively unsophisticated consumers.

Depending on who the client is and what the valuation is required for, valuers can be incentivised to under or over value. A number of highly publicised valuation fraud cases have come to light in the wake of various financial company failures. These involved allegations of valuers colluding with property developers to over value properties.

The examples listed below from complaints upheld by the Valuers Registration Board (VRB) show the harm that can result from wrong or misleading valuations:

- A commercial property incorrectly valued for rental purposes resulted in a client undercharging rent by \$842 per month. As the error only came to light 30 months after the valuation. The total loss was estimated at \$25,260.
- A lender provided mortgage finance in reliance on valuations of two blocks of land which were over valued by 450% and 771% respectively.
- A building that was being converted into apartments was over valued by more than five million dollars.
- A property valued at \$505,000 was found by the VRB to be worth \$670,000. If the client had acted in reliance on the original valuation, he would have sold the property for significantly less than the market value.

In the absence of occupational regulation, the law, especially consumer and contract law, would provide some protection and redress for consumers.

The Consumer Guarantees Act provides guarantees in relation to services which would provide redress for consumers for costs and damages. This is enforceable by the Disputes Tribunal for small claims, so would not necessarily be costly. Any false or misleading representations would be enforceable by the Commerce Commission under the Fair Trading Act. Fraud would also be enforceable by the SFO or the Police under the Crimes Act. Large claims may be better dealt with by the courts so as to effectively address damages claims.

Valuation ordering services control some of the risks previously identified but may carry their own risks. In response to concerns raised by some of its members, the International Valuation Standards Council is currently investigating issues related to valuation order services.

Has occupational regulation worked to date?

Given the paucity of data collected, it is difficult to assess the effectiveness of the current scheme. What is clear is that the volume of complaints has been reasonably static over the past few years, with an average of 28 per year between 2008 and 2011. This amounts to one complaint for every 32 practising valuers.³ There have not been calls for change from the public – as has happened in the past with other occupations such as real estate agents – to overhaul the occupational regulation regime.

³ This includes those who are both registered and holding an annual practising certificate.

Overview of the existing scheme

Governance structure

The existing occupational regulation scheme was established by the Valuers Act 1948 (the Act). It is a co-regulatory scheme with government and the profession both having regulatory responsibilities.

The Act created the Valuers Registration Board (VRB) which is responsible for the registration and discipline of valuers. The VRB is an independent statutory body comprised of five members, all of whom are registered valuers. It is chaired by the Valuer-General, a statutory officer based in LINZ, and the other four members are appointed by the Minister for Land Information (the Minister).

The requirement to appoint a Valuer-General comes from section 3(1) of the Rating Valuations Act 1998 (the RVA). The Valuer-General's responsibilities under the RVA are to:

- set the minimum standards for territorial authorities in relation to rating valuations and maintenance of the District Valuation Roll
- monitor, audit and certify compliance with the standards
- provide technical advice to the government on valuation issues and the regulation of the provision of rating valuations.

The Valuer-General does not have similar responsibilities in relation to occupational regulation. Under the Act, the Valuer-General's responsibilities are limited to chairing the VRB, investigating some complaints of misconduct, appointing prosecutors for some disciplinary proceedings and appointing one of the members of the NZIV Council.⁴ The Valuer-General is located in LINZ.

The VRB is assisted in carrying out its functions by the Registrar, another role established by the Act. The Registrar maintains the register of valuers, processes the registration and practising certificate applications, administers the registration examinations and acts as the VRB secretary. The Registrar is a public service employee located in LINZ.

The Act also established the NZIV which is a professional association whose functions include promoting the ethical conduct of valuers, promoting and protecting the interests of the profession and the public and investigating some of the complaints received by the VRB. NZIV's day to day business activities are carried out by the Council of the Institute which was also established under the Act. The Act requires all registered valuers to belong to NZIV subject to a limited exception for those who object to membership on conscientious grounds.

Certification model

While the Act provides for the "registration" of valuers, the current scheme is actually a certification model. Certification⁵ means that an agency is statutorily empowered to certify to the public that individuals have either acquired certain professional qualifications or met specified competency requirements in a particular field. The certified practitioner is given the

⁴ The NZIV Council is responsible for managing NZIV's affairs.

⁵ As defined in CO (99) 6 Policy Framework for Occupational Regulation, 8 June 1999.

exclusive right to use a certain title (title protection). The Act protects the titles “registered valuer” and “public valuer”.

Registration is not compulsory but only registered valuers can use the title “registered valuer”. We understand that in the past 15 years, only 4 or 5 cases have been reported to the VRB of unregistered valuers holding themselves out as registered valuers.

Other statutes, including the Rating Valuations Act 1998 and the Public Works Act 1981, restrict work in areas such as local government rating valuations and compulsory acquisitions to registered valuers. This is effectively a form of task licensing. Banks will only lend on the basis of valuations done by registered valuers which further limits the work available to non-registered valuers. Of the pool of 1230 registered valuers, 900 also hold practising certificates issued under the Act entitling them to use the title “public valuer” and to hold themselves out as such to the public.

We believe that a certification regime is still the most appropriate form of regulation and provides a proportional response to the risks posed by valuers. A certification regime allows the general public to be confident that the valuers they hire have obtained a prescribed level of competence. While this does not completely remove the risk of harm, certification does lower the risk of harm.

In situations where it may be too risky to allow non-registered valuers to provide services, other measures such as task licensing (for rating valuations, compulsory acquisitions etc.) and the reliance of banks on registered valuations for lending purposes sufficiently mitigate the risks so that more expensive and inflexible interventions such as occupational licensing are unnecessary.

Funding and costs

The scheme operates on a cost recovery basis. It is almost completely funded by the profession through registration and annual practising certificate fees. Additional funding, albeit very minimal, also comes from fines and costs awarded against valuers through the disciplinary process. Some additional services are provided by Land Information New Zealand staff, which means that a small amount of Crown funding is used to administer the overall scheme.⁶

For the year ended 31 December 2013, the total gross income of the VRB was \$849,595 and the total expenditure was \$731,969. There are some additional costs borne by NZIV who also have some regulatory functions under the Act.

The fees, set in regulations made under the Act, had to be increased in 2010 and then again in 2012 to meet the increased costs of the complaints and discipline scheme. The VRB attributed much of the increased costs to an increase in the volume and complexity of complaints resulting from the fallout from the Global Financial Crisis. The VRB has previously expressed a desire to have the funding model reviewed. As discussed later in the paper, the legal fees and expert valuer fees related to disciplinary proceedings are a significant component of the costs related to the disciplinary process.

Regulatory Instruments

⁶ The VRB reimburses LINZ for costs in relation to any of the Valuer-General’s functions under the Act but not costs related to the administration of the legislation and the provision of related policy advice.

The co-regulatory nature of the scheme is particularly evident in its mix of regulatory instruments.

The Act and the regulations that established and govern the operation of the scheme are the responsibility of the Minister for Land Information and are administered by LINZ.

Valuers are required by the Act to follow the Code of Ethics which is an industry-led instrument set in the NZIV Rules. The Rules, which do not have legislative force, are made by NZIV but must be approved by the Minister.

While not a requirement of the Act, it is a requirement of NZIV membership that registered valuers comply with the Australia-New Zealand Valuation and Property Standards set by the Property Institute of New Zealand (PINZ) and the Australian Property Institute. These are practice standards (i.e. the "how to" of valuation) for valuers in Australia and New Zealand. They also incorporate the International Valuation Standards, set by the International Valuation Standards Council. Unlike the Code of Ethics, the practice standards do not need to be approved by the Minister.

The Code of Ethics and the practice standards are enforced by the VRB through the disciplinary process.

Entry to the profession

The Act specifies minimum registration requirements regarding age, education, experience, character and reputation and also requires applicants to pass an exam. The VRB carries out the registration functions and is also responsible for accrediting New Zealand universities to provide valuation courses.

To be eligible for registration, an applicant must:

- be at least 23 years old
- hold an approved degree from an accredited New Zealand university or have met the equivalency requirements for other New Zealand and international qualifications
- have at least three years valuation experience
- have met the ongoing post-graduate education requirements
- be of good character and reputation
- pass an exam administered by the VRB.

Complaints and discipline

SCOPE AND NATURE OF COMPLAINTS

Anyone can make a complaint to the VRB. There is no fee and complainants need not be a consumer of valuation services or be in any way affected. It is not necessary to prove loss or harm. Even if the complainant suffers no detriment, a valuer can be punished because there is a risk of harm to others if the behaviour goes unchecked. This approach is consistent with the objective of protecting the interests of the public.

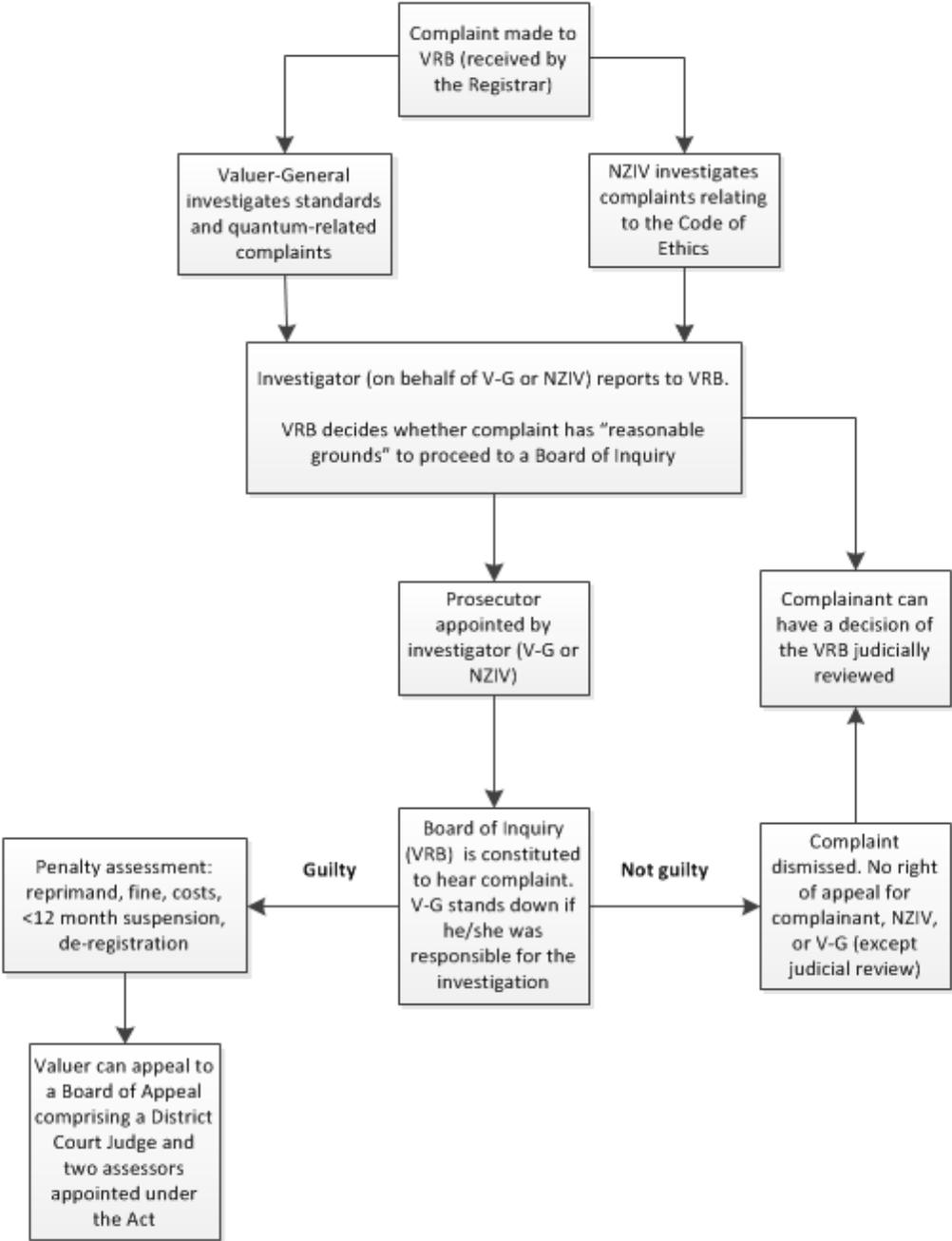
In general, there are two types of complaints made to the VRB. The first is competency complaints where the complainant either commissioned a valuation report that did not meet

their expectations or is a lender who suffered a loss through lending on the basis of a valuation. Competency complaints usually allege gross over or under valuation. With regard to the former, there is usually an accompanying complaint of an excessive mortgage recommendation. The second type of complaint relates to alleged breaches of the NZIV Code of Ethics and is usually made by parties who are directly affected by the behaviour at issue.

PROCESS

The complaints and discipline process provided for in the Act is set out in **Diagram 1** below.

DIAGRAM 1: CURRENT COMPLAINTS AND DISCIPLINE PROCESS



Proposals to address problems and concerns

This section of the paper explores some problems and concerns that have been identified with the scheme and seeks comment from you on proposals to address these issues.

1. Governance structure does not provide sufficient accountability, transparency and independence from the profession and there is a lack of specialist expertise

VALUERS REGISTRATION BOARD

The Valuers Registration Board (VRB) is comprised solely of registered valuers and is chaired by the Valuer-General who is also a registered valuer. This is typical of older occupational regulation schemes whose boards were made up predominantly or entirely of members of the regulated occupation. Governance entities for modern schemes usually include some form of lay representation. Examples from the property sector include the New Zealand Registered Architects Board, whose current membership is comprised of five registered architects, an accountant, an academic and a lawyer. Under the Real Estate Agents Authority Act 2008, the Board of the Real Estate Agents Authority can have up to seven members of which only two are required to be licensed (or formerly licensed) real estate agents. Current members include a barrister, an accountant and a consumer affairs specialist.

The scheme relies on the VRB to undertake a wide variety of functions and does not require specialisation in any of these areas. The regulator in modern schemes may have responsibility for the same range of functions but the schemes usually provide for sub-committees or staff to carry out specialist functions including accreditation of education providers and complaints and discipline. Examples of this approach include the schemes for lawyers and conveyancers, architects and psychologists.

While it is technically independent, the VRB make-up does not give the appearance of being sufficiently removed from the profession. Many stakeholders we have consulted, including regulators, wrongly perceive the scheme to be self-regulatory.

The VRB registers and disciplines valuers. While carrying out both functions may be viewed as creating conflicts of interest, this is a common practice and has not been identified as a concern of stakeholders we have consulted to date. The benefits in addressing any perceived conflicts of interest within the current institutional arrangements might not be sufficient to warrant any additional costs incurred in providing for another body to take over one of the functions.

PROPOSAL TO CHANGE THE COMPOSITION OF THE VRB

The composition of the VRB should be changed to provide for seven members (including the chair) appointed by the Minister for Land Information. The membership would be made up of four registered valuers and three lay persons, who would be required to have specialist expertise, such as legal, academic or consumer affairs. This change in composition is aimed at:

- increasing the specialist expertise within the scheme and potentially reducing the cost of external specialist advice
- making the independence of the Board from the profession more apparent to the public.

PROPOSAL FOR REPORTING REQUIREMENTS FOR THE VRB

The VRB is accountable to the Minister who appoints and can remove VRB members. However there is no requirement under the Act for the VRB to report to the Minister or to provide any publicly available reports on any aspect of its registration or complaints and discipline functions, even in a sanitised form. This has resulted in a lack of transparency of the scheme's operations.

By comparison, other statutory occupational regulators including the New Zealand Psychologists Board, New Zealand Registered Architects Board and the Real Estate Agents Authority, are all required to provide annual reports to the relevant ministers and many schemes publish the findings of disciplinary proceedings.

The VRB should be required to report annually to the Minister for Land Information on its operations. It should also be required to report publicly on its disciplinary proceedings.

Key questions:

- Q1 Do you agree that there is a lack of accountability and transparency in relation to the VRB's operations?**
- Q2 Do you agree that the composition of the Valuers Registration Board is problematic? If so, how?**
- Q3 Do you agree with the proposal to constitute a new board which would include lay people with specialist expertise?**

NEW ZEALAND INSTITUTE OF VALUERS

NZIV has representative and regulatory roles under the Act. A fundamental principle of occupational regulation is that the governance structure should separate the representative functions from the regulatory functions of a professional association involved in regulating the profession. The representative functions are focused on advancing the interests of the profession, while the regulatory functions are focused on protecting the public interest. The two are not always consistent which gives rise to at least the perception of a conflict of interest. NZIV's representative and regulatory roles are not sufficiently separate under the current governance structure. Its regulatory functions require it to investigate some of the complaints against its members.

While not required to report to the Minister, NZIV is accountable to government in that the scope of the rules it makes to govern its operations is set in the Act and the rules must be approved by the Minister. NZIV has a shared services agreement with the Property Institute of New Zealand (PINZ), a professional association that represents NZIV, the Institute of Plant & Machinery Valuers and the Property & Land Economy Institute of New Zealand. PINZ's rules incorporate the NZIV rules but PINZ has no statutory standing in relation to the occupational regulation scheme and nor is it accountable to government.

PROPOSAL TO REMOVE NZIV'S STATUTORY FUNCTIONS AND MAKE PROFESSIONAL ASSOCIATION MEMBERSHIP VOLUNTARY

No professional association, including NZIV, should have any statutory regulatory functions that are inconsistent with its representative functions.

Membership of NZIV or any other professional association should not be mandatory. We are not aware of any statutory occupational regulation schemes that require practitioners to join a professional association. Legislation such as the Lawyers and Conveyancers Act, which explicitly provides for professional associations to have regulatory functions, makes it clear that membership is not mandatory for practitioners.

Voluntary membership does not appear to be much of a barrier to obtaining comprehensive coverage of practitioners for other property-related professional associations. The New Zealand Institute of Architects represents over 90% of registered architects and the Real Estate Institute of New Zealand represents over 95% of the real estate industry.

Key questions:

- Q4 Do you agree that it should not be mandatory for registered valuers to join NZIV or any other professional association?**
- Q5 What if any issues do you think would need to be managed if professional association membership was voluntary?**

2. Disciplinary process is slow, expensive, inefficient and inflexible

There is widespread concern among stakeholders about the disciplinary process. On average, a serious complaint takes three and a half years to resolve and it takes over two and a half years just to get a hearing.

There is no charge to the complainant for using the service but the cost of complaints to the VRB varies considerably depending on the complexity and duration of the investigation and inquiry. The cost of complaints that reach the formal inquiry stage generally ranges from \$20,000 to \$100,000 with the most expensive case costing the VRB almost \$200,000.

The threshold for determining whether a complaint should proceed to a Board of Inquiry after the initial investigation is set at a level which is low enough to catch relatively minor compliance breaches. For example, a valuer alleged to have behaved unethically by swearing at a client was formally prosecuted before a Board of Inquiry. The valuer was found guilty of unethical conduct, reprimanded by the VRB and ordered to pay \$4000 towards the Board's costs.

If the "reasonable grounds" threshold is met, the VRB is required to have the case prosecuted before a Board of Inquiry and lacks the ability to have the case dealt with more expediently. This means that much of the Board's time is taken up considering relatively minor complaints while complaints about more significant breaches are backing up.

CHECK VALUATIONS

In addition to legal fees, another significant cost of the complaints and discipline scheme is the fees paid to registered valuers for retrospective or “check” valuations undertaken during complaints investigation and to appear as expert witnesses.

The reliance on check valuations appears to be particularly inefficient given that the scheme’s governance and operational support bodies are predominantly made up of registered valuers. For complaints of over or under valuation, the investigations appear to consist of little more than reviews of check valuations. The Valuer-General commissions a registered valuer to do a valuation using the methodology and following the standards applicable when the original valuation was done. Finding a valuer who was practising in that area at the time of the original valuation can be difficult, expensive and time consuming. The check valuation is reviewed by the Valuer-General who may then commission one or more extra check valuations. The results of the investigation are presented to the VRB whose considerations include an assessment of the various check valuations.

In some jurisdictions, investigations into quantum-related complaints against valuers use retrospective valuations sparingly. The focus is more on the behaviour that resulted in the end value and the investigators consider evidence including the records kept by valuers. This suggests that there may be alternative methods of investigating complaints about over or under valuation worth exploring.

Some stakeholders disagree with this view and consider that the only way to reduce reliance on check valuations is to narrow the scope of the complaints and discipline scheme to exclude complaints about quantum. Within that group however there appears to be a difference of opinion as to whether this would require restricting complaints to breaches of ethics standards or whether compliance with practice standards could still be considered. Excluding complaints about incompetence would in our view significantly reduce the level of protection provided by the scheme.

We have assessed the complaints and discipline process against the Australasian benchmarks for dispute resolution schemes.⁷ Our assessment (attached – **Appendix One**) found that the scheme did not meet the benchmarks.

PROPOSAL FOR A TIERED COMPLAINTS SYSTEM

To improve efficiency and effectiveness, we propose the introduction of a tiered complaints system (outlined in **Diagram 2** on page 20) that allows simpler complaints to be dealt with by a less formal process than that which applies to more serious complaints. This provides greater flexibility enabling the operation of a three-tiered system where simpler complaints could be dealt with by an investigator or a complaints committee and cases involving more serious compliance breaches would be dealt with by the disciplinary committee. This is broadly consistent with the tiered approach to complaints and discipline followed by other property-related occupational regulation schemes including those covering architects and real estate agents.

⁷ Customer Affairs Division, Department of Industry, Science and Tourism (1997). “Benchmarks for Industry-Based Customer Dispute Resolution Schemes”. Retrieved October 17 2013, from http://ccaac.gov.au/files/2013/04/Benchmarks_DIST1997.pdf

The disciplinary committee would consist of the full board, while the complaints committee would include at least two board members and any other persons the board thinks fit. Neither the Valuer-General nor NZIV would have any role in the investigation or prosecution of complaints.

In developing this proposal we have been guided by, but have not strictly adhered to, the Australasian benchmarks for customer dispute resolution schemes. This is because occupational regulation has a broader focus. It covers discipline as well as dispute resolution and it is concerned with the public interest and not just the interests of those transacting with members of a profession or occupation.

Accordingly we have not provided for a right of appeal (aside from judicial review) for complainants. Those dissatisfied with the outcome of their complaint can go to the Disputes Tribunal at very little cost, or they can go to court. Introducing a right of appeal for complainants could result in a flood of meritless appeals unless high fees were set or there was the ability to recover costs from complainants – both of which introduce additional complexity to the scheme.⁸

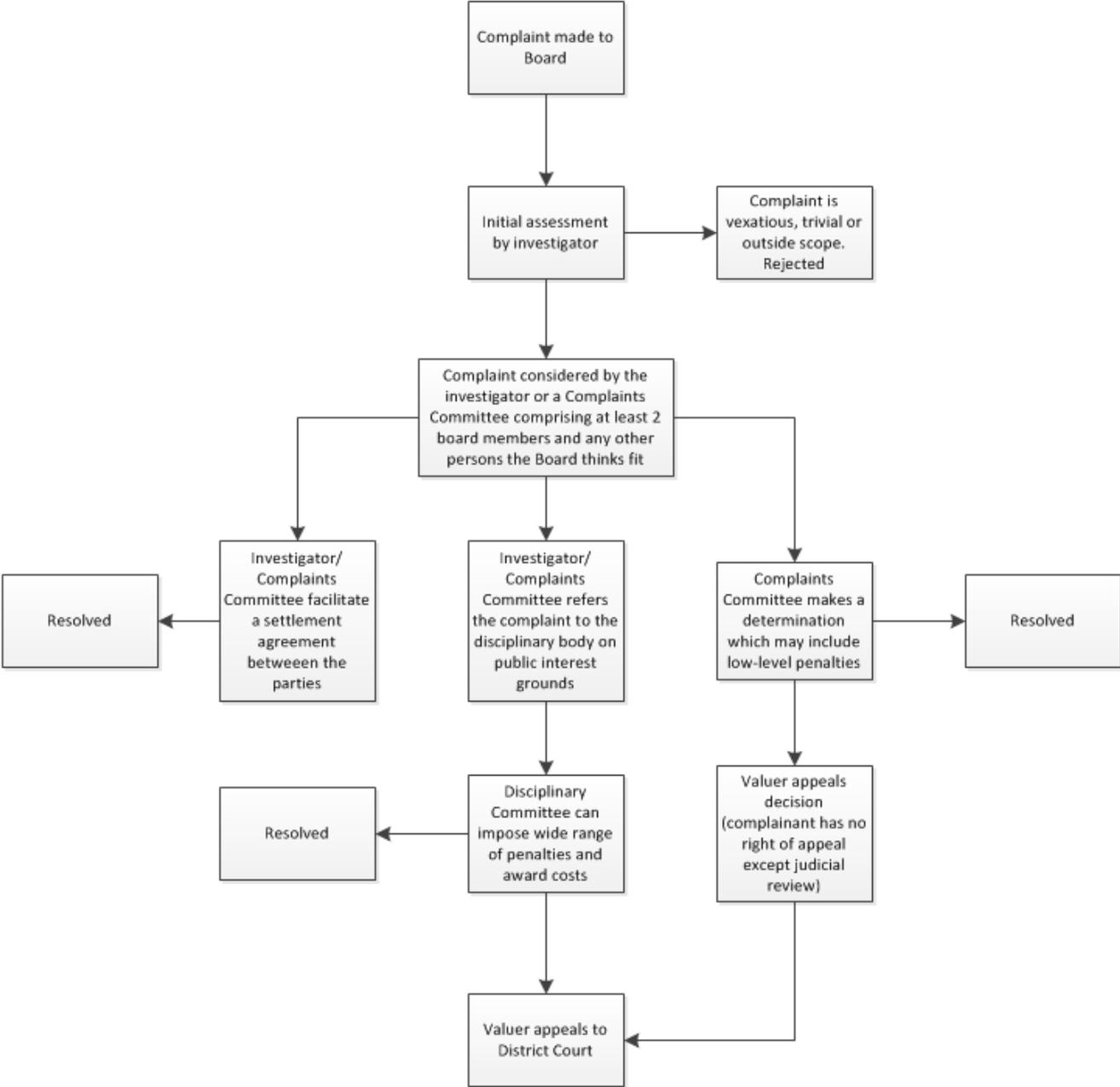
There will be requirements to operate a feedback loop from the complaints process to inform the compliance monitoring and standards-setting processes. This will require the collection, analysis and reporting of data about the complaints and their outcomes. The process should be more transparent and complaints and disciplinary proceedings will have to be reported, at least in a sanitised form.

Key questions:

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

⁸ This is consistent with the approach taken under the Financial Service Providers Act 2008. Under that scheme, complaints can be made to one of the approved dispute resolution schemes but there is no right of appeal. If a complainant wishes to take a matter further, they are referred to the Disputes Tribunal or court.

DIAGRAM 2: PROPOSED COMPLAINTS AND DISCIPLINE PROCESS



3. Insufficient tools to incentivise, facilitate and enforce compliance

The range of sanctions available to the VRB is limited to reprimanding a valuer, imposing a fine of up to \$10,000⁹, ordering a valuer to pay costs, suspending registration for up to 12 months and de-registering a valuer. Cancelling registration is reserved for the most severe transgressions and the VRB has few options for addressing less serious cases.

PROPOSAL FOR A BROADER RANGE OF SANCTIONS

A broader range of sanctions is required to enable the disciplinary body to be more responsive to various levels of willingness to comply. In addition to the existing penalties, these should include warnings, compliance assistance and orders to undertake training. The maximum fine needs to be raised for consistency with other more recently established schemes and to maintain its deterrent effect. We propose increasing it to \$20,000.

The scheme's complaint services functions as a trigger for disciplinary action rather than a means of providing redress for consumers. As previously discussed, consumers have other options for seeking redress either under contract law or through consumer protection law. The objectives of the scheme are punishment and deterrence rather than remediation and redress. We consider it appropriate for the focus of the scheme to remain on discipline.

While PINZ does undertake some auditing of compliance with its standards, the scheme makes no explicit provision for compliance monitoring. The Code of Ethics and practice standards are enforced solely by the complaints and discipline process. There is no requirement for NZIV or the VRB to monitor compliance in a systematic way.

PROPOSAL FOR THE VRB TO UNDERTAKE MORE ANALYSIS OF COMPLAINTS AND OUTCOMES

There does not appear to be any feedback loop between the complaints and discipline process and the standards-setting process. Complaints are not analysed to identify gaps in the standards and/or the related education and information material. This is a significant weakness of the scheme. This sort of analysis would require the collection of more data about compliance breaches than is currently collected. The VRB should be required to undertake and report on this analysis from time to time.

Key questions:

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

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

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

⁹ The maximum fine has not been updated since 1994.

4. Concerns regarding title protection

PROPOSAL TO REMOVE TITLE PROTECTION FOR “PUBLIC VALUER”

We see no need to retain title protection for “public valuer”.

Public valuers are registered valuers who pay an additional fee (currently \$373 per annum) for a practising certificate that gives them the right to hold themselves out as willing to make valuations of land for members of the public. They are not subject to any competency or supervision requirements over and above those required for registered valuers.

As there is an additional inherent risk associated with working in the public realm, the public valuer title implies that a public valuer is somehow safer than a registered valuer. This is misleading as the protection afforded to the public comes from the registration requirements rather than the requirement to hold a practising certificate.

In our view the more accurate distinction to be drawn is between practising and non-practising registered valuers. This would be consistent with the approach taken to the occupational regulation of psychologists. That scheme protects the title “registered psychologist” but only permits registered psychologists holding practising certificates to work in the public realm. No additional qualifications or scrutiny by the regulator are required to obtain a practising certificate.

We are not aware of any problems or concerns with protecting the title “registered valuer” and think that this should continue under the new scheme. The title has been in existence for over sixty years and has strong brand value. NZIV also wish to retain protection for this title.

NZIV considers that the titles “valuer” and “valuation” should also be protected when used in relation to real property valuation. This would effectively reserve all real property valuation work to registered valuers which would have the same effect as a licensing regime. We do not support this proposal for the same reasons that we do not favour occupational licensing or licensing tasks additional to those effectively licensed under the current scheme. Licensing is a less flexible, less proportional and more costly intervention than certification.

Key question:

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

5. Insufficient checks in the system to ensure ongoing probity and competence after registration

Registration under the Act lasts for one year unless suspended or cancelled by the VRB during that period. Renewal of registration is automatic upon payment of the annual renewal fee. This is the same for renewing the annual practising certificate. We find it surprising that no consideration is given to whether the applicant continues to meet the initial probity or competency-related registration requirements.

Initial certification and even recertification are not sufficient to demonstrate competency in the modern environment of technological and social change. A proper model of continuing competence should provide for continuous monitoring and maintenance of competence.

PROPOSAL TO SET CPD REQUIREMENTS IN LEGISLATIVE RULES

Registered valuers are required under the NZIV Code of Ethics to undertake an “ongoing annual programme” of compulsory professional development (CPD) in accordance with NZIV guidelines.¹⁰ The guidelines require registered valuers to undertake 20 hours of CPD annually. PINZ randomly audits at least fifteen percent of its members annually for CPD compliance and awards compliance certificates. We think the retention of some form of mandatory CPD requirement is necessary but think the actual requirements should be set in legislative rules.

PROPOSAL FOR ENHANCED REGISTRATION RENEWAL REQUIREMENTS

There is no link between the recertification requirements (for those renewing annual registration and practice certificates) and CPD compliance. The PINZ random audits may go some way to incentivising compliance but do not in our view constitute continuous monitoring.

NZIV has suggested the possibility of extending the registration period to say five years but requiring a more rigorous re-registration process at the end of that five year period to incentivise valuers to adhere to good practice standards and comply with their CPD requirements.

We favour the less extreme intervention of retaining the current registration period of one year but requiring applicants for renewal to complete a statutory declaration about whether they have continued to meet specified requirements in the intervening year. This is consistent with the approach taken under the Lawyers and Conveyancers Act 2006.

Under that Act, the focus is on the fit and proper person requirements. Applicants must state, among other things, whether they have been declared bankrupt or convicted of any offences and that there are no circumstances that would render them ineligible to meet the fit and proper person requirements for registration. An affirmative response to the former or negative response to the latter would not necessarily result in the application being declined but would raise red flags and could prompt further investigation.

In view of the concerns regarding the lack of compliance by some registered valuers with CPD requirements, we propose to also require applicants to declare whether and how they have met the CPD requirements. As well as incentivising registered valuers to comply, these responses will provide data which could be used to monitor some areas of compliance.

Key questions:

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

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.

Q14 Should CPD be mandatory? Why/ why not?

¹⁰ The guidelines are contained in the Australia and New Zealand Valuation and Property Standards produced by PINZ and the Australian Property Institute.

6. Insufficient government oversight of standards setting

A recent comparative analysis of the world's major valuation standards found that they typically fall into two categories: "ethics provisions or codes of conduct" which primarily involve issues of confidentiality, competence, disclosure, honesty and integrity; and "work product standards" (practice standards) that deal with the development and communication of valuation opinions. A breach of an ethics provision or code of conduct is considered much more serious and carries stronger penalties than violations of work product standards.¹¹

In New Zealand, both the ethical and practice standards are set by NZIV with the former subject to approval by the Minister. That is the only lever the Minister has in the event that the standards fail to address significant risk. The regulation-making powers under the Act do not empower the Minister to regulate ethical or practice standards.

PROPOSAL FOR SETTING PRACTICE STANDARDS

We think that it is still appropriate for the practice standards to be set by the profession because highly technical and complex issues are involved which require industry expertise. We have also had largely positive feedback from stakeholders about the adequacy of the practice standards. However a more flexible and inclusive approach will be required.

NZIV is no longer the only professional body representing valuers in New Zealand. A small proportion of registered valuers hold dual membership of NZIV and the Royal Institute of Chartered Surveyors (RICS).¹² Under the governance proposals outlined in this paper, NZIV would be disestablished by the legislation establishing the new scheme. We have assumed that following this process, the former NZIV will in whatever new form it takes retain a significant majority of its members and consider that it should therefore lead the development of the practice standards but be required to consult RICS and any other professional body representing valuers.

The standards need not be legislative but should be approved by the VRB. The Minister should also have backstop regulation-making powers.

PROPOSAL FOR SETTING ETHICAL STANDARDS

We do not think that the profession is better placed than government to set ethical standards as these are relatively generic across professions and do not require the same degree of technical expertise in their development that practice standards do. They are also unlikely to change as frequently as practice standards, which have to keep pace with technological and other changes. In view of the seriousness accorded to breaches of ethical standards, these standards should be set in legislative rules.

¹¹ J Shultz (2009). "A Comparative Analysis of the World's Major Valuation Standards". Presented to 2nd Arab Real Estate & Urban Development Conference. Retrieved October 11 2013, from <https://appraisalfoundation.sharefile.com/download.aspx?id=s35afb7f18534229b>

¹² RICS is a UK-based professional association that represents a number of property-related professions including valuers.

Key questions:

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

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

7. Minimum age requirement for registration outdated

We propose to remove the minimum age requirement as it is no longer appropriate. Imposing any minimum age requirement over 16 years may raise issues of discrimination under the New Zealand Bill of Rights Act 1990. Modern occupational regulation statutes tend not to impose age restrictions and instead assume that minimum requirements around qualifications and experience are sufficient to ensure competency.

Key question:

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

Comparison between the proposals and the status quo

This section of the paper compares the existing scheme with the package of proposals outlined in the paper. Both options are assessed against good practice principles for certification regimes as set out in Cabinet's Policy Framework for Occupational Regulation.¹³ The analysis shows that implementing the proposals would make the existing scheme much more consistent with good practice.

Principle	Status quo	Package of proposals
Separation of disciplinary functions from those to do with providing services to members	No - NZIV carries out disciplinary functions and membership service provision	Yes - removes NZIV's disciplinary functions
Significant consumer participation in setting entry standards and discipline	No - does not provide for any consumer participation at all	To a degree - enables consumer representation on VRB and VRB responsible for both functions.
Clear statement of the certifying body's purpose and functions	Yes	Yes
Certifying body should have responsibility for providing for the ongoing competence of members of the occupation;	No - VRB is not required to provide for ongoing competency. Registration and practising certificates are renewed automatically on receipt of application and accompanying fee	Yes - VRB will administer the statutory declaration (including a statement about CPD compliance) required for registration renewals
Provision for full disclosure of information on processes and on decisions of the certifying and disciplinary bodies	No - VRB carries out both functions and has no reporting obligations in relation to either	Yes - requires VRB to report to the Minister on all its operations and requires additional reporting on disciplinary proceedings
Admission criteria should be based on relevant and objective data to ensure fair and consistent treatment of applicants	No - minimum age requirement potentially unfair	Yes - removes minimum age requirement
Any regulation must operate in an impartial manner	Yes	Yes

Benefits and costs of the proposals

Implementing the proposals could increase the cost of running the scheme. The VRB would have more members and would have to carry out more functions than it does now. There is potential for these costs to be offset by reduced reliance on external experts if the Board composition includes such experts. Any efficiency gains realised through the tiered complaints system could further offset the costs.

¹³ Above, n5.

We are not proposing to change the third party funding model which means the scheme would be primarily funded by fees (supplemented by fines and costs recovered through the disciplinary process). The cost to individual valuers might not increase depending on what if any effect the removal of NZIV's statutory functions and introduction of voluntary professional association membership have on the professional association membership fees. The current total cost of maintaining registration includes the NZIV fee of \$720 a year. When combined with the registration and practising certificate fees, this means a valuer practising in the public realm pays around \$1500.00 per year.

Key question:

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

Other issues

This section of the paper seeks your comments on other issues that have been identified through the review. Your input will inform decisions on whether further changes are required to the scheme.

1. Future supply of valuers

Concerns have been raised in regard to the future supply of valuers. However occupational regulation cannot ensure the maintenance of a minimum number of suppliers. This is for the market to determine. This review is concerned with sustainability of valuation services only to the extent that the occupational regulation scheme should not unduly impede competition in the supply of valuation services.

NZIV advises that more than half of registered valuers are aged 50 or older and that too few young valuers are coming through the system to ensure an adequate supply for the future.

In relation to rating valuation services, the Evaluation of the Rating Valuations Regulatory Framework highlighted that there are some concerns (particularly among those in the valuation industry) that in future there may be challenges associated with recruiting rating valuers generally and rural rating valuers in particular. The Evaluation commented on:

"...contradictory evidence from valuers regarding the extent to which the system for registration operates to the advantage of general valuers compared to rating valuers."¹⁴

Sustainability of the valuation profession is a global issue. In the US, the number of real estate appraisers has dropped 15 per cent since 2007 and could drop another 25 to 35 per cent during the next 10 years due to retirements and fewer new entrants to the profession. In the UK, there are also fewer new entrants to the profession, as well as the more immediate problem of significant delays recently in getting valuations done.

It is not evident to us that there is now or will be in the immediate future a supply problem in relation to valuation services in New Zealand. We are not aware of delays in getting valuations and related claims of house sale transactions failing which is what precipitated the 2013 independent inquiry into valuer shortages and delays in the UK commissioned by RICS.

Furthermore, demand for valuers may reduce in the future due to:

- increased reliance on technology, such as automated valuation models, by valuation firms
- changes in valuation requirements for lending purposes by financial institutions and the use of valuation ordering services.

¹⁴ Above, n1, p. 23.

Key questions:

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.

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?

2. Are the experience requirements for registration appropriate?

NEW ZEALAND GRADUATES

NZIV considers that the requirement for New Zealand graduates to have three years supervised valuation experience before they can be registered is too onerous for valuers and firms. Graduates require a firm to take them on as a trainee valuer and supervise them during this period. However many firms are reluctant to enter into this commitment because they are unable to use the trainees to generate revenue for three years.

NZIV claims that for potential new entrants to the profession, the requirement for supervision over a three year period before being able to work unsupervised with clients can be off putting. We note, however, that New Zealand architects also require three years supervised (or five years unsupervised) experience for registration and we understand that this requirement does not appear to have impeded new entrants to the profession.

NZIV proposes addressing this problem by providing for some form of provisional registration. For example, a tiered system might allow a graduate valuer to obtain provisional registration after one year's supervised experience. For the next two years, the provisional registrant would then be able to do less complex valuations without onsite supervision but would still be subject to oversight measures, such as having their processes and calculations checked and final valuations countersigned by a registered valuer. After three years, they can be fully registered and can value any property.

The minimum experience requirements in Australia are:

- four years to become licensed in Western Australia
- two years to become licensed in Queensland
- no experience is required to become certified in New South Wales.

In the UK, less than two years experience is required for a graduate to become a chartered surveyor while in the US the minimum experience required to become a certified general real estate appraiser is 30 months.¹⁵

As previously mentioned, New Zealand differs from these other countries because a much higher proportion of valuations is sought by members of the public rather than banks and other lenders who are sophisticated consumers. A relatively long supervised experience

¹⁵ The terms "chartered surveyor" and "real estate appraiser" are used in the UK and US respectively to describe land valuers.

requirement appears to be a proportional response to the risk posed to less sophisticated consumers. Most of the complaints received by the VRB are about residential property valuations. The volume of complaints might reasonably be expected to increase if inexperienced valuers are left to value houses by themselves.

A graduated certification system may not significantly increase the number of entrants to the profession, because the entry requirements are unlikely to be the sole factor deterring young people from becoming valuers. Other deterring factors include property market peaks and troughs, particularly where these are significant or sustained, and the attractiveness of other property market occupations and professions. One of the findings from the 2013 independent inquiry into valuer shortages and delays in the UK reported back in January 2014 was that *long hours, low pay, high stress and high liability means that the majority of valuers would not recommend a career in residential valuation to young professionals. Often other professions within the real estate sector are viewed as more exciting, and as such more work needs to be done to promote the benefits of a career in residential valuation.*¹⁶

While we are unaware of any comparable surveys carried out in New Zealand, we have heard similar views expressed by some within the profession. We understand that many New Zealand graduates take on a valuation role only until they get registered so they can use valuation as a “fall back” career and, once registered, look for a more lucrative property career. This approach is usually very successful as valuation is viewed as a strong base for any property career.

VALUERS WHOSE QUALIFICATIONS ARE GAINED OVERSEAS

In view of the concerns around the future supply of valuers, it is worth considering whether the experience requirements for valuers from overseas seeking registration in New Zealand unduly impede competition.

Applicants who qualified overseas require at least three years of practical experience and one or more years experience must be obtained in New Zealand. We consider this to be a reasonable requirement. Valuations are location-specific. New Zealand-specific factors that a valuer from overseas would have to become familiar with and competent in include the school zoning system, the large number of coastal properties and the valuation of Māori Land. A high proportion of complaints to the VRB are made against valuers who qualified and trained overseas which suggests that it can be difficult to get to grips with the New Zealand market.

Key questions:

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?

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

Q23 Should the requirement for overseas valuers to have at least one year's

¹⁶ Dr Oonagh McDonald (2014). Balancing Risk and Reward: Recommendations for a Sustainable Valuation Profession in the UK. An independent report commissioned by RICS. Retrieved 26 February 2014, from <http://www.rics.org/uk/regulation/regulation-uk/independent-commission-on-valuation/>

3. Is there a need for additional training and/or practice standards for registered valuers undertaking sum insured valuations?

The decision taken by some insurers to shift from full replacement to sum insured policies requires homeowners insured under such policies to state the dollar amount they want to insure their home for when they acquire house insurance. Previously insurance companies would insure a house's full replacement cost without any upper limit. Under a sum insured policy, if the amount calculated by the homeowner is too low they will be under-insured and if it is too high they will be paying higher premiums unnecessarily.

Homeowners have several options when they choose the method they use to calculate the sum insured. They can calculate an estimate themselves based on their own knowledge of the house, or they can use one of the calculators provided on insurance companies' websites. Both of these methods cost the homeowner nothing. Alternatively, a range of practitioners who have expertise in property or construction can be engaged to provide a sum insured calculation. This includes valuers, quantity surveyors, builders, engineers and architects. Those listed are subject to various forms of occupational regulation but there are other sum insured valuation providers who do not carry professional indemnity insurance and are not subject to occupational regulation.

NZIV thinks the risk of harm to homeowners from online calculators and inadequately trained practitioners is significant enough to warrant consideration being given to licensing this work. The intent would not be to reserve the work to registered valuers but to ensure that only those members of the valuation and other professions who have expertise in this specialist area are permitted to do sum insured valuations. NZIV advises that around 80% of homeowners are reported to be using a default value, which typically results in underinsurance in the range of 30% to 40%.

The regulation of other occupations and professions is outside the scope of this review however we are interested in the adequacy of the current occupational regulation scheme for equipping valuers to undertake sum insured valuations.

Valuers are trained to do valuations for insurance purposes but to our knowledge the existing training does not specifically target sum-insured policies. The existing practice standards do not specifically provide for sum-insured valuations.

Key questions:

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

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

4. Is there a need for more variety and choice for consumers about the type of valuer they use?

Specialisation or the lack thereof is a common thread in many aspects of this discussion. There have been concerns expressed about the lack of expertise in some specialised areas of valuation and the lack of specialisation within any of the approved academic qualifications.

Specialisation has also been suggested as a means of attracting more new entrants to the profession. We have heard that the necessary qualifications and the amount of experience required to become competent in all areas may be off-putting to those wanting to work only in particular areas. It has been suggested that consideration be given to providing for some form of limited certification, which would be attainable more quickly than full certification, for those wishing to do solely residential valuations. In the United States, for example, valuers can be certified as residential or general real estate appraisers, with the former taking less time and only the latter being able to value all types of real property.

As well as potentially attracting more new entrants to the profession, introducing specialisation to the scheme might have benefits for consumers, who would have greater choice about the type of valuer they use. Valuers with a limited form of registration might be less qualified but they might also charge lower fees. If this was the case, consumers could opt to trade-off quality for price.

The small size of the valuation profession in New Zealand means there might be too few valuers to make a specialist system workable. Up until 1968, the Act did allow for specialisation by providing for rural and urban valuer classifications. We understand that this resulted in problems in some small communities where valuers felt pressured to work outside their scope of practice because there was no one qualified to undertake all valuation services.

Three New Zealand universities (University of Auckland, Massey University and Lincoln University) award degrees and graduate diplomas approved by the VRB for registration. Registered valuers are able to work in any area of real property valuation, including residential, commercial and rural. However not all of these areas are covered in each degree. For example, the Bachelor of Property degree offered by the University of Auckland does not cover rural property valuation.

Concerns have been raised about the lack of specialist expertise resulting from a generalist approach to training valuers. NZIV has referred to the “watering down” of valuation degrees and other stakeholders have commented on a lack of expertise in areas including hotel and commercial acquisition valuations.

Key questions:

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

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?

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

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

5. Are changes required in relation to professional indemnity insurance?

Professional indemnity insurance protects professionals and the firms that employ them against claims of negligence or breach of professional duty. This in turn protects consumers who can transact in the knowledge that the service provider will be able to pay out if a successful claim is taken against them. Professional indemnity insurance covers the costs of defending the claims and any damages payable. While not required under the Act, the vast majority of registered valuers nevertheless carry professional indemnity insurance.

Other property market practitioners including lawyers, real estate agents and financial advisers are not required by law to carry professional indemnity insurance although most do. Lawyers are required under the Lawyers and Conveyances Act to disclose to clients if they are not carrying professional indemnity insurance or if the insurance does not meet the prescribed standards. Consumers can then make an informed choice about whether to assume the risk of transacting with the lawyer.

NZIV advises that because of the high premiums, "several" of their members do not carry this insurance and "several more" have left the profession. NZIV is therefore proposing that professional indemnity insurance is made mandatory under the Act but that liability is capped at a level that would significantly reduce the premiums for this type of insurance cover.

We think it unnecessary for government to intervene. There is a high rate of voluntary compliance. Capping liability will disadvantage those consumers who would otherwise have received higher damages. If some form of regulation was required, a disclosure requirement similar to that applicable to lawyers would be a more proportional response, although this would result in increased compliance costs.

Key questions:

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

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

Summary of Questions

Proposals to address problems and concerns

- Q1** Do you agree that there is a lack of accountability and transparency in relation to the VRB's operations?
- Q2** Do you agree that the composition of the Valuers Registration Board is problematic? If so, how?
- Q3** Do you agree with the proposal to constitute a new board which would include lay people with specialist expertise?
- Q4** Do you agree that it should not be mandatory for registered valuers to join NZIV or any other professional association?
- Q5** What if any issues do you think would need to be managed if professional association membership was voluntary?
- 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?
- Q7** Do you think it is possible to reduce the reliance on check valuations and, if so, how might this be done?
- Q8** Is the range of sanctions proposed above adequate? If not, what other sanctions would be appropriate?
- Q9** Is there a need for compliance monitoring and if so, by whom?
- Q10** Do you agree with the proposal for the VRB to undertake more analysis of complaints and outcomes? Why/why not?
- Q11** Do you agree that "registered valuer" should be the only protected title? Why/why not?
- Q12** Do you think it necessary or desirable to change the existing registration period and/or registration renewal requirements? Why/why not?
- 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.
- Q14** Should CPD be mandatory? Why/ why not?
- Q15** Do you agree with the proposal for setting practice standards? Why/why not?
- Q16** Do you agree with the proposal for setting ethical standards? Why/why not?
- Q17** Do you agree that the minimum age requirement should be removed?
- Q18** What do you consider are the benefits and costs of implementing any or all of the proposals?

Other issues

- 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.
- 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?
- 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?
- Q22** Do you favour a tiered registration system that provides for provisional registration (with less experience and other requirements) as well as full registration?
- Q23** Should the requirement for overseas valuers to have at least one year's practical experience in New Zealand be retained?
- Q24** Do the existing degree courses and post-graduate training requirements provide registered valuers with the expertise required to do sum insured valuations?
- Q25** Is there a need for practice standards covering sum insured valuations?
- Q26** Could registration requirements be reduced for some types of valuation?
- 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?
- Q28** Are there any risks in allowing registered valuers who have not passed degree courses in valuation to do rural valuations?
- Q29** Are the valuation qualifications offered by the accredited universities fit for specialist purposes? If not, what are the problem areas?
- Q30** Do you think any changes are required to the existing professional indemnity insurance arrangements?
- Q31** If so, do you favour either of the options outlined above or have an alternative suggestion?

Appendix One: Australasian Benchmarks Dispute Resolution Benchmarks

We have assessed the complaints and discipline process against the Australasian benchmarks for dispute resolution schemes.¹⁷ In New Zealand, the six benchmarks have been formally applied in the real estate, financial credit and electricity and gas industries. For example, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, which requires all financial service providers to join an approved dispute resolution scheme, incorporates the six benchmarks.

The six benchmarks are:

- **Accessibility** – the scheme should make itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.
- **Independence** – the decision-making process and administration of the scheme are independent from scheme members.
- **Fairness** – the scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.
- **Accountability** – the scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.
- **Efficiency** – the scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.
- **Effectiveness** – the scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Accessibility: The scheme is insufficiently accessible. It is free and anyone may make a complaint. However information about the scheme is difficult to find and understand on the VRB website.¹⁸

Independence: The involvement of NZIV in the complaints investigation compromises independence.

Fairness: The scheme is procedurally fair in most regards but the lack of timeliness is not fair to complainants or valuers.

Accountability: The scheme lacks accountability because of its failure to report on any of its operations.

Efficiency: For the reasons outlined above we do not consider the scheme to be efficient.

¹⁷ Customer Affairs Division, Department of Industry, Science and Tourism (1997). "Benchmarks for Industry-Based Customer Dispute Resolution Schemes". Retrieved October 17 2013, from http://ccaac.gov.au/files/2013/04/Benchmarks_DIST1997.pdf

¹⁸ We are advised however that complainants get good information about the process from valuation firms.

Effectiveness: The scheme does not meet the effectiveness requirements as it does not have an appropriate terms of reference and is not subject to periodic independent performance reviews.