

Passed by both Houses



New South Wales

## Valuers Bill 2003

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2003*



New South Wales

## **Valuers Bill 2003**

Act No , 2003

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An Act to provide for the qualifications and regulation of valuers; to repeal the *Valuers Registration Act 1975*; and for other purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**Part 1 Preliminary**

**1 Name of Act**

This Act is the *Valuers Act 2003*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation except as provided by subsection (2).
- (2) Schedule 1.6 and 1.15 commence on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**3 Definitions**

In this Act:

*authorised officer* has the meaning given in Part 4 (Enforcement).

*corresponding law* means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act.

*Director-General* means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department of Commerce—the Director General of that Department.

*disqualified person* means a person who is disqualified from registration as a valuer under section 9.

*property* means:

- (a) land (including any estate or interest in land), or
- (b) an exclusive right to the separate occupation of land or a building or part of a building (whether the right derives from the ownership of a share or interest in a body corporate or arising in some other way), or
- (c) an access licence under the *Water Management Act 2000*, or
- (d) any other property that is prescribed by the regulations as property for the purposes of this Act.

***Register*** means the Register maintained under this Act.

***registered valuer*** means a person registered under this Act as a valuer.

***valuer*** means a person who values property for a fee or reward that is paid or payable either to the person or to a person (including the State or an instrumentality or agency of the State) who employs the person, whether in the capacity of employee or agent or in any other capacity.

#### **4 Exception for architects, engineers and surveyors**

A person who carries out a valuation of property in the course of and incidentally to the performance of services as an architect, engineer, surveyor or quantity surveyor is not a valuer with respect to that valuation if any fee or reward paid or payable in respect of those services is wholly or principally attributable to the performance of services other than the carrying out of that valuation.

#### **5 Notes**

Notes included in this Act do not form part of this Act.

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## Part 2 Registration

### 6 Natural person practising or advertising as valuer

- (1) A natural person must not practise or advertise as a valuer unless he or she is a registered valuer.
- (2) A registered valuer must not practise as a valuer in contravention of any conditions to which the valuer's registration is subject.
- (3) A natural person must not advertise that a person employed by him or her (whether in the capacity of an employee or in any other capacity) is entitled or prepared to value property or practise as a valuer unless a person so employed is a registered valuer.
- (4) Anything done by a person who is a student valuer in the course of carrying out duties under the supervision of a registered valuer does not constitute practise as a valuer for the purposes of this section. A *student valuer* is a person who is undertaking a course of study approved by the Director-General under this Act in connection with a qualification for registration as a valuer.
- (5) A person *advertises* as a valuer by advertising himself or herself or holding himself or herself out as being entitled or prepared to value property or practise as a valuer.

Maximum penalty: 100 penalty units.

### 7 Corporation practising or advertising as valuer

- (1) A corporation must not practise or advertise as a valuer unless at least one director or at least one employee of the corporation is a registered valuer.
- (2) A corporation must not advertise that a person employed by the corporation (whether in the capacity of an employee or in any other capacity) is entitled or prepared to value property or practise as a valuer unless a person so employed is a registered valuer.
- (3) A corporation must not furnish to a person a valuation of any property unless the valuation is signed by a director or employee of the corporation who is a registered valuer.
- (4) A corporation *advertises* as a valuer by advertising itself or holding itself out as being entitled or prepared to value property or practise as a valuer.

Maximum penalty: 200 penalty units.

## **8 Eligibility and qualifications for registration**

- (1) A person is eligible to be registered as a valuer only if the Director-General is satisfied that the person:
  - (a) is at least 18 years of age, and
  - (b) is a fit and proper person to be registered, and
  - (c) has the qualifications approved by the Director-General for registration as a valuer, and
  - (d) is not a disqualified person.
- (2) The Director-General may from time to time approve qualifications for registration as a valuer.
- (3) Without limiting the Director-General's power to approve qualifications under this section, the Director-General may approve qualifications by reference to any one or more (or a combination of any one or more) of the following:
  - (a) the completion of a course of study,
  - (b) the completion of a period of training in valuing property,
  - (c) the attainment of a standard of competency in valuing property,
  - (d) registration under the *Valuers Registration Act 1975* (before the repeal of that Act) or under a corresponding law.

## **9 Disqualification from registration**

- (1) A person is disqualified from registration as a valuer if the person:
  - (a) has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (2) that the offence should be ignored, or
  - (b) is an undischarged bankrupt or is a director or person concerned in the management of a corporation that is the subject of a winding-up order or for which a controller or administrator has been appointed, unless (in the case of an undischarged bankrupt) the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or
  - (c) at any time in the 3 years preceding the application for registration, was an undischarged bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an



assignment of his or her remuneration for their benefit, unless the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or

- (d) at any time in the 3 years preceding the application for registration, was concerned in the management of a corporation when the corporation was the subject of a winding-up order or when a controller or administrator was appointed, unless the Director-General is satisfied that the person took all reasonable steps to avoid the liquidation or administration, or
  - (e) is a mentally incapacitated person, or
  - (f) is disqualified from being licensed or registered or otherwise authorised under a corresponding law or whose licence, registration or other authority under a corresponding law is suspended, or
  - (g) is the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*, or
  - (h) subject to the regulations, is in partnership as a valuer with a person who is a disqualified person, or
  - (i) is for the time being declared to be a disqualified person under Part 3 (Complaints and disciplinary action), or
  - (j) has failed to pay any monetary penalty payable by the person under Part 3 (Complaints and disciplinary action) or has failed to comply with a direction given by the Director-General under that Part, and the failure continues, or
  - (k) is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.
- (2) The Director-General may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.

## **10 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002**

- (1) The Director-General may grant registration as a valuer for the purposes of this Act.

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- (2) Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002 (the applied Act)* applies to and in respect of registration as a valuer, subject to the modifications and limitations prescribed by or under this Act.
  - (3) For the purpose of applying Part 3 of the applied Act to registration as a valuer:
    - (a) an application for the granting of registration may only be made by a natural person, and
    - (b) registration may be amended under that Act, and
    - (c) an application for restoration of registration under section 39 of that Act may not be made more than 3 months after the date on which registration expires, and
    - (d) the reference to 28 days in section 46 (1) of that Act (as to the period within which applications are to be dealt with) is to be read as a reference to 8 weeks.
  - (4) An applicant for registration as a valuer must make provision for the payment of an application fee of an amount prescribed by the regulations.
  - (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning registration under this Act as are relevant to the operation of Part 3 of the applied Act.

## 11 Conditions of registration

Registration as a valuer may be granted subject to conditions, including (but not limited to) conditions of the following kind:

- (a) a condition prohibiting the valuation of specified kinds of property or prohibiting the valuation of property other than specified kinds of property,
- (b) a condition prohibiting the valuer from practising as a valuer otherwise than as an employee or under the supervision of a registered valuer whose registration is not subject to such a condition,
- (c) a condition requiring the valuer to undertake or complete a specified course of studies within a specified period of time,
- (d) a condition requiring the valuer to undertake by way of professional development specified further education or training during the term of the valuer's registration.

**12 Duration of registration**

Registration as a valuer remains in force (unless it is sooner suspended or cancelled) for 3 years.

**13 Production of certificate of registration**

A registered valuer must at the request of a person for whom the valuer values property, or with whom the valuer enters into an arrangement for the valuation of property, produce his or her certificate of registration for inspection by the person as soon as practicable after the request is made.

Maximum penalty: 20 penalty units.

**14 Register**

- (1) The Director-General is to maintain a Register for the purposes of this Act and is to enter and keep in the Register particulars of such of the following as the regulations may require:
  - (a) certificates of registration issued under this Act,
  - (b) any conditions to which registration is subject,
  - (c) applications for registration that are refused,
  - (d) prosecutions taken under this Act and the result of those prosecutions,
  - (e) warning notices that the Director-General has authorised publication of under this Act,
  - (f) disciplinary action taken under this Act,
  - (g) undertakings given under this Act by a registered valuer,
  - (h) such other matters as may be prescribed by the regulations.
- (2) Any person is entitled to inspect any entry in the Register on payment of such fee as the Director-General may determine for the giving of access to the Register.

**15 Cancellation of registration**

- (1) The Director-General is to cancel the registration of a registered valuer if the person:
  - (a) has died, or
  - (b) has requested that his or her registration be cancelled, or
  - (c) has become a disqualified person, or

- (d) is not eligible to be registered and was registered by mistake or as a result of any false representation concerning the person's age or qualifications for registration.
- (2) A person whose registration is cancelled may apply to the Administrative Decisions Tribunal for a review of the decision of the Director-General to cancel the person's registration.
- (3) The cancellation of registration under subsection (1) (c) or (d) does not take effect until notice of cancellation is served on the person concerned.
- (4) The Director-General may, in any case in which the Director-General thinks it appropriate to do so, restore the registration of any valuer whose registration has been cancelled under this section without payment of any fee or on payment of such fee, not exceeding the fee prescribed by the regulations for the purposes of this section, as the Director-General may direct.

#### **16 Clients to be informed of suspension, cancellation or conditions**

A person whose registration as a valuer is suspended or cancelled under section 15 or Part 3, or on whose registration conditions are imposed under Part 3, must within 3 days after notice of that action is given to the person notify the fact to each person with whom the valuer has an arrangement for the carrying out of a valuation of property.

Maximum penalty: 10 penalty units.

#### **17 Practice requirements**

The regulations may prescribe rules of conduct to be observed in the course of practice as a valuer.

**Note.** Part 3 provides that a contravention of a provision of the regulations is grounds for taking disciplinary action against a person.

#### **18 Undertakings**

The Director-General may accept a written undertaking from a registered valuer as to the manner in which the valuer will conduct the valuer's practise as a valuer.

**Note.** Part 3 provides that a breach of such an undertaking is grounds for taking disciplinary action against a valuer.

## **Part 3 Complaints and disciplinary action**

### **19 Grounds for disciplinary action**

Disciplinary action under this Part can be taken against a person who is or was a registered valuer on any one or more of the following grounds:

- (a) the person has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention,
- (b) the person has contravened a condition of the person's registration as a valuer,
- (c) the person has, in the course of practising as a valuer, acted unlawfully, improperly, unfairly or incompetently,
- (d) the person is not a fit and proper person to be registered as a valuer,
- (e) the person has breached an undertaking given by the person to the Director-General under this Act or the *Fair Trading Act 1987*, in respect of the person's practise as a valuer,
- (f) the person has failed to comply with a direction given to the person by the Director-General pursuant to the taking of disciplinary action under this Part,
- (g) the person has failed to pay a monetary penalty imposed on the person by the Director-General pursuant to the taking of disciplinary action under this Part,
- (h) grounds specified in the regulations as grounds for the taking of disciplinary action against a person under this Act.

### **20 Disciplinary action**

- (1) Each of the following actions is disciplinary action that the Director-General can take against a person under this Act:
  - (a) caution or reprimand the person,
  - (b) give a direction to the person requiring the person to give a specified undertaking to the Director-General as to the manner in which the person will practise as a valuer,
  - (c) give a direction to the person requiring the person to take specified action within a specified time in connection with the person's practise as a valuer,

- (d) impose a monetary penalty on the person of an amount not exceeding 100 penalty units in the case of a natural person or 200 penalty units in the case of a corporation,
  - (e) impose a condition on the person's registration as a valuer,
  - (f) suspend the person's registration as a valuer for a period that does not exceed the unexpired term of that registration,
  - (g) cancel the person's registration as a valuer,
  - (h) declare the person to be a disqualified person for the purposes of this Act, either permanently or for a specified period.
- (2) A power conferred by this Act to take disciplinary action against a person is a power to take any one or more of the actions that constitute disciplinary action.

## **21 Decision to take no further action**

The Director-General may at any stage of a matter that is the subject of consideration by the Director-General under this Part determine to take no further action in respect of the matter, whether or not the matter is the subject of a complaint or a show cause notice and whether or not the Director-General determines that there are grounds for taking disciplinary action in connection with the matter.

## **22 Complaints**

- (1) Any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Act.
- (2) Action can be taken under this Part whether or not a complaint has been made.

## **23 Show cause notice**

- (1) The Director-General may serve a show cause notice on a person if the Director-General is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.
- (2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Act on the grounds specified in the notice.

- (3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.
- (4) The person on whom a show cause notice is served may within the period allowed by the notice make oral or written submissions to the Director-General in respect of the matters to which the notice relates.

#### **24 Power to suspend registration when show cause notice served**

- (1) When a show cause notice is served on a person, the Director-General may by notice in writing to the person suspend the person's registration as a valuer pending a determination by the Director-General of whether to take disciplinary action under this Act against the person.
- (2) The Director-General may only suspend a person's registration under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the person's registration as a valuer.
- (3) Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served.
- (4) The Director-General is not required to afford a person an opportunity to be heard before taking action against the person under this section.
- (5) The Director-General can revoke a suspension under this section at any time by notice in writing to the suspended person.
- (6) This section does not limit or otherwise affect any power to suspend a licence or certificate of registration under section 64A of the *Fair Trading Act 1987*.

#### **25 Inquiries and investigation**

The Director-General may conduct inquiries and make investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates in relation to those matters, as the Director-General thinks fit.

**26 Taking of disciplinary action**

- (1) If the Director-General is satisfied that there are grounds for taking disciplinary action under this Act against a person on whom a show cause notice has been served, the Director-General may by order in writing served on the person take such disciplinary action against the person as the Director-General thinks is warranted.
- (2) The order must include a statement of the reasons for the Director-General's decision on the matter.

**27 Recovery of monetary penalty**

A monetary penalty imposed on a person by disciplinary action under this Part may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.

**28 Review of disciplinary action by ADT**

A person against whom disciplinary action is taken by the Director-General may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the Director-General's decision on the disciplinary action.

**29 Warning notices**

- (1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified registered valuer, or a person who is not a registered valuer, in connection with the activities of valuers.
- (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unconscionable conduct in the person's dealings with consumers.
- (3) The Director-General may authorise publication of such a notice in any one or more of the following ways:
  - (a) to any person making inquiries to the Director-General about the valuer concerned,
  - (b) by advertisement by the use of any medium,
  - (c) to any media representatives.
- (4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.



- (5) Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of such a notice, unless:
  - (a) the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or
  - (b) the person refuses to make any representations.
- (6) No opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith:
  - (a) a notice under this section, or
  - (b) a fair report or summary of such a notice.

**30 Return of suspended or cancelled certificate of registration**

A person who has possession of a certificate of registration that has been suspended or cancelled under this Part must give the certificate of registration to an officer of the Department of Commerce at any office of the Department within 7 days after the suspension or cancellation takes effect.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

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## Part 4      Enforcement

### 31    Authorised officers

- (1) In this Act:

*authorised officer* means:

- (a) an officer of the Department of Commerce for the time being appointed under this Part as an authorised officer, or
  - (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
  - (c) a police officer.
- (2) The Director-General may appoint any officer of the Department of Commerce as an authorised officer for the purposes of this Act.
- (3) An authorised officer who is not a police officer is to be provided by the Director-General with a certificate of identification.
- (4) An authorised officer (other than a police officer) must, when exercising on any premises any function of the authorised officer under this Act, produce the officer's certificate of identification to any person apparently in charge of the premises who requests its production.

### 32    Powers of entry, inspection etc

- (1) An authorised officer may exercise the powers conferred by this section for the purpose of:
- (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
  - (b) investigating a complaint made or intended to be made under this Act, or
  - (c) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (2) An authorised officer may enter and inspect at any reasonable time any premises that the officer believes on reasonable grounds are used for the carrying on of practice as a valuer, whether or not it is being carried on by a registered valuer.

- (3) While on premises entered under this section or under the authority of a search warrant under this Part, an authorised officer may do any one or more of the following:
- (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of practice as a valuer, and (in the case of records stored electronically) to produce any such record in written form,
  - (b) inspect, take copies of or extracts from, or make notes from, any such records, and for that purpose may take temporary possession of any such records,
  - (c) take possession of any such records if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,
  - (d) take such photographs, films and audio, video and other recordings as the authorised officer considers necessary,
  - (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of practice as a valuer or a contravention of a provision of this Act or the regulations,
  - (f) require the owner or occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise the functions of an authorised officer under this section.
- (4) An authorised officer is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
  - (b) under the authority of a search warrant.

**33 Power of authorised officer to obtain information, records and evidence**

If an authorised officer believes on reasonable grounds that a person is capable of giving information, producing records or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, the authorised officer may, by notice in writing given to the person, require the person:

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- (a) to provide an authorised officer, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the authorised officer within the time and in the manner specified in the notice, with any such information, or
  - (b) to produce to an authorised officer, in accordance with the notice, any such records, or
  - (c) to appear before an authorised officer at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such records.

#### **34 Obstruction etc of authorised officers**

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer under this Part, or
- (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Part knowing the information or evidence to be false or misleading in a material particular, or
- (c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Part.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

#### **35 Taking possession of records to be used as evidence**

- (1) If an authorised officer takes possession of any records under this Part for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which they may be evidence.
- (2) The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an authorised officer as a true copy.
- (3) A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy.

### 36 Search warrants

- (1) An authorised officer may apply to an authorised justice for the issue of a search warrant for premises if the authorised officer believes on reasonable grounds:
  - (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
  - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
  - (a) to enter and inspect the premises, and
  - (b) to exercise on the premises any function of an authorised officer under this Part.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

### 37 Injunctions

- (1) On the application of the Director-General, the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations.
- (2) An injunction may be granted without the Director-General being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Director-General makes an application for the grant of an injunction under this section, the Court is not to require the Director-General or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) This section does not limit any provision of the *Fair Trading Act 1987*.

## Part 5      Miscellaneous

### 38 Disclosure of information

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act, or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, the *Freedom of Information Act 1989* or the *Independent Commission Against Corruption Act 1988*, or
  - (e) to a regulatory officer or law enforcement officer, for the purposes of assisting the officer in the exercise of the officer's functions, or
  - (f) as otherwise authorised by this section or the regulations, or
  - (g) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (2) The Director-General may communicate to any person directly concerned in any transaction with a registered valuer in connection with his or her practice as a valuer any information furnished to the Director-General in connection with the administration or execution of this Act, in so far as it relates to any such transaction and directly concerns any such person.
- (3) The Director-General may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Director-General in the exercise of functions under this Act or under any other Act administered by the Minister.
- (4) The Director-General may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.

(5) In this section:

**law enforcement officer** means:

- (a) a member of NSW Police, the Australian Federal Police or of the police force of another State or a Territory, or
- (b) the Director of Public Prosecutions or the Crown Prosecutor of the State or the Director of Public Prosecutions or the Crown Prosecutor of the Commonwealth or of another State or Territory, or
- (c) any other person, or officer of an authority, responsible for the investigation or prosecution of offences under laws of the State, the Commonwealth, another State or a Territory.

**regulatory officer** means an officer or employee of a government agency (including the government of a jurisdiction outside the State and outside Australia) exercising functions under an enactment with respect to fair trading or an enactment that provides for the registration or other authorisation in connection with the undertaking of an activity regulated under the enactment.

### **39 Delegation**

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department of Commerce, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

### **40 Service of notices**

- (1) A notice or direction in writing that is authorised or required to be given under this Act may be given as provided by this section.
- (2) A notice or direction may be given to a natural person:
  - (a) by delivering it personally to the person, or
  - (b) by sending it by post, addressed to the person at the address recorded in the Register as the person's residential address, business address or address for service, or
  - (c) by leaving it with another person apparently aged 16 years or more at the address recorded in the Register as the person's residential address or business address, or

- (d) by sending it by means of electronic communication or facsimile transmission, addressed to the person at the address recorded in the Register as the person's address for service of electronic communications or facsimile transmissions, in accordance with the person's information technology requirements with respect to the receipt of electronic communications or facsimile transmissions.
- (3) A notice or direction may be given to a corporation:
- (a) by delivering it personally to a person concerned in the corporation's management, or
  - (b) by sending it by post, addressed to the corporation at the address recorded in the Register as the corporation's business address or address for service, or
  - (c) by leaving it with a person apparently aged 16 years or more at the address recorded in the Register as the corporation's business address, or
  - (d) by sending it by means of electronic communication or facsimile transmission, addressed to the corporation at the address recorded in the Register as the corporation's address for service of electronic communications or facsimile transmissions, in accordance with the corporation's information technology requirements with respect to the receipt of electronic communications or facsimile transmissions.
- (4) This section does not affect any other Act or law with respect to the service of notices or other documents.

#### **41 Proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.
- (2) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.



- (3) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.
- (4) Despite any proceedings against a person for an offence against this Act or the regulations (whether resulting in a conviction or otherwise) the person remains liable to civil proceedings in the same manner as if the proceedings for an offence had not been taken.

#### **42 Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:  
*authorised officer* means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

#### **43 Time for laying information**

Proceedings for an offence against this Act or the regulations may be commenced within 3 years after the date on which the offence is alleged to have been committed or, with the consent of the Attorney General, at any time.

#### **44 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:
- he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

#### **45 Repeals**

The *Valuers Registration Act 1975* and *Valuers Registration Regulation 2001* are repealed.

**46 Amendment of other Acts**

Schedule 1 has effect.

**47 Savings and transitional provisions**

Schedule 2 has effect.

**48 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**49 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## Schedule 1 Amendment of other Acts

(Section 46)

### 1.1 Aboriginal Land Rights Act 1983 No 42

#### Section 38 Purchase, lease etc of property

Omit “registered real estate valuer (within the meaning of the *Valuers Registration Act 1975*)” from subsection (6).

Insert instead “registered valuer (within the meaning of the *Valuers Act 2003*)”.

### 1.2 Community Land Development Act 1989 No 201

#### Section 3 Definitions

Omit the definition of *registered valuer* from section 3 (1).

Insert instead:

*registered valuer* means a registered valuer under the *Valuers Act 2003*.

### 1.3 Community Land Management Act 1989 No 202

#### Section 3 Definitions

Omit the definition of *registered valuer* from section 3 (1).

Insert instead:

*registered valuer* means a registered valuer under the *Valuers Act 2003*.

### 1.4 Fair Trading Act 1987 No 68

#### [1] Section 8 Delegation by Director-General

Omit section 8 (1) (g).

#### [2] Section 25I Functions

Omit “*Valuers Registration Act 1975*” from paragraph (a) of the definition of *property services industry* in section 25I (2).

Insert instead “*Valuers Act 2003*”.

**1.5 Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Insert in appropriate order:

*Valuers Act 2003*, section 42

**1.6 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Schedule 2 Search warrants under other Acts**

Insert in appropriate order:

*Valuers Act 2003*, section 36

**1.7 Licensing and Registration (Uniform Procedures) Act 2002 No 28**

**Schedule 2 Registration to which Part 3 of Act applies**

Omit the matter relating to the *Valuers Registration Act 1975*.

Insert instead:

**Valuers Act 2003**

section 10, registration as a valuer

**1.8 Property, Stock and Business Agents Act 2002 No 66**

**Section 189 Application of money in Statutory Interest Account**

Omit “*Valuers Registration Act 1975*” from subsection (2) (d).

Insert instead “*Valuers Act 2003*”.

**1.9 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of *search warrant*:

section 36 of the *Valuers Act 2003*,

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**1.10 Strata Schemes (Freehold Development) Act 1973 No 68****Section 28QAA Revised schedule of unit entitlements**

Omit “practising real estate valuer registered under the *Valuers Registration Act 1975*” from subsection (4).

Insert instead “registered valuer under the *Valuers Act 2003*”.

**1.11 Strata Schemes (Leasehold Development) Act 1986 No 219****Section 57AAA Revised schedule of unit entitlements**

Omit “practising real estate valuer registered under the *Valuers Registration Act 1975*” from subsection (4).

Insert instead “registered valuer under the *Valuers Act 2003*”.

**1.12 Strata Schemes Management Act 1996 No 138****Section 183 Order for reallocation of unit entitlements**

Omit “the holder of a current certificate of registration under the *Valuers Registration Act 1975* as a practising real estate valuer” from section 183 (5).

Insert instead “a registered valuer under the *Valuers Act 2003*”.

**1.13 Trustee Act 1925 No 14****Section 18 Ratio of loan to value**

Omit “*Valuers Registration Act 1975*” from section 18 (2).

Insert instead “*Valuers Act 2003*”.

**1.14 Valuation of Land Act 1916 No 2****Section 13C Contested contracts**

Omit section 13C (4). Insert instead:

- (4) In this section, *qualified person* means:
- (a) a person who is a registered valuer under the *Valuers Act 2003*, or

(b) a corporation in respect of which at least one of its directors or employees is a registered valuer under the *Valuers Act 2003*,

and includes the State Valuation Office and any other public agency within which persons who are registered valuers under the *Valuers Act 2003* are employed.

### **1.15 Valuers Act 2003**

#### **[1] Section 36 Search warrants**

Insert “under this Act” after “authorised officer” wherever occurring in section 36 (1) and where firstly occurring in section 36 (2).

#### **[2] Section 36 (1) and (2)**

Omit “authorised justice” wherever occurring.

Insert instead “authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

#### **[3] Section 36 (3)**

Omit “Part 3 of the *Search Warrants Act 1985*”.

Insert instead “Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

#### **[4] Section 36 (4)**

Omit the subsection.

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## Schedule 2 Savings and transitional provisions

(Section 47)

### Part 1 Preliminary

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Schedule:

*former Act* means the *Valuers Registration Act 1975*.

#### 3 Amendments of other Acts

- (1) A reference to this Act in section 63D (2) (c) of the *Property, Stock and Business Agents Act 1941* or in section 189 (2) (d) of the *Property, Stock and Business Agents Act 2002* is taken to include a reference to the former Act.
- (2) The amendment of a provision of another Act by Schedule 1 to this Act does not affect the operation of the provision in respect of any act or omission before the commencement of the amendment.



- (3) Any valuation or certificate of valuation made or given before the commencement of such an amendment by the holder of a current certificate of registration under the former Act as a practising real estate valuer authorised under that Act to make such a valuation is for the purposes of a provision of another Act that is amended by this Act taken to have been made or given by the person as a registered valuer under this Act.

#### **4 Electronic applications for registration**

- (1) Despite Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 10), an application referred to in section 41 of that Act may not be made by means of electronic communication.
- (2) Subclause (1) does not limit the effect of the *Electronic Transactions Act 2000*.
- (3) This clause ceases to have effect on a day to be appointed by proclamation.