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Land Valuers Act 2001

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Land Valuers Act 2001

An Act to regulate land valuers, to repeal the Valuers Registration Act 1974 and for related matters

[Royal Assent 17 December 2001]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Land Valuers Act 2001 .

2. Commencement

- (1) Section 22 commences on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be proclaimed.

3. Interpretation

- (1) In this Act, unless the contrary intention appears –

accredited course means –

- (a) a degree (Undergraduate 1); or
- (b) a tertiary qualification –

if the degree or qualification is approved by the Australian Property Institute or by any other organisation representing the professional interests of land valuers in Tasmania and includes any other course that is approved by that Institute or organisation as being of equivalent standard to any such degree or qualification;

Australian Property Institute means the incorporated association established to represent professional land valuers and other property professionals in Tasmania;

authorised officer means the Director or a person declared to be, or appointed as, an authorized officer under the Consumer Affairs Act 1988 ;

Board means the Valuers Registration Board established under the repealed Act;

commencement day means the day fixed under section 2(2) ;

court means the Magistrates Court;

Director means the Director of Consumer Affairs and Fair Trading;

director of a body corporate includes –

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

document includes –

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disk, tape, paper or other device from which sounds or messages are capable of being reproduced;

land includes –

- (a) messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description (whatever may be the estate or interest in them), together with all structures, paths, passages, ways, waters, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals and quarries and all trees and timber on land or lying or being under land; and

(b) any structure which is above land but permanently anchored to, or otherwise kept in place above, the land;

land valuer means a person who carries on the business, or is engaged in the business, that consists of or involves valuing land and, for the purposes of Part 2 , includes a person who was at any time registered under the repealed Act;

repealed Act means the Valuers Registration Act 1974 .

(2) For the purposes of the definition of "land" in subsection (1) , a person who has a licence to enter or remain on land is taken to have an interest in the land.

(3) Where the Australian Property Institute ceases to exist, or ceases to exist under that name, the Governor may, by order, amend this Act by substituting for that Institute the name of any other organisation which the Governor is satisfied represents the interests of land valuers in Tasmania.

4. Qualifications required to carry on business as land valuer

(1) A natural person must not carry on business, or hold himself or herself out, as a land valuer unless he or she has satisfactorily completed an accredited course and has the required practical experience as determined by the Australian Property Institute or any other organisation representing the interests of land valuers in Tasmania.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

(2) Subsection (1) does not apply to a person who was immediately before the commencement day –

(a) a registered valuer under the repealed Act and whose registration was not suspended under that Act; and

(b) subject to any restricted registration under that Act so long as he or she is practising in accordance with that restriction.

5. Incorporated land valuer's business to be properly managed and supervised

A land valuer that is a body corporate must ensure that the valuer's business is properly managed and supervised by a natural person who –

(a) has satisfactorily completed an accredited course and has the required practical experience as determined by the Australian Property Institute or any other organisation representing the interests of land valuers in Tasmania; or

(b) was, immediately before the commencement day, a registered valuer under the repealed Act and whose registration was not suspended under that Act; or

(c) if he or she was, immediately before the commencement day, subject to any restricted registration under the repealed Act, is practising in accordance with that restriction.

Penalty: Fine not exceeding 200 penalty units and a further penalty not exceeding 5 penalty units for each day during which the offence continues after conviction.

PART 2 - Complaints and Investigations

6. Complaints relating to land valuers

- (1) The Director may receive a complaint –
 - (a) relating to this Act with respect to the conduct of a land valuer; or
 - (b) relating to the conduct of a land valuer where the conduct occurred before the commencement day.
- (2) On receipt of a complaint under subsection (1)(a) relating to a land valuer, the Director must consider whether there are grounds for disciplinary action against the land valuer under section 9 .
- (3) On receipt of a complaint under subsection (1)(b) relating to a land valuer, the Director must consider whether there are grounds for disciplinary action against the land valuer under section 9(b) or (c) .

7. Investigations

- (1) The Director may conduct an investigation required for the exercise of powers or the discharge of duties under this Part.
 - (1A) For the purposes of an investigation into the conduct of a land valuer where the conduct occurred before the commencement day –
 - (a) the Director may rely on the results of any investigation made by the Board before that day and any findings made by the Board in that investigation; and
 - (b) any evidence obtained by the Board for any such purpose is taken to have been obtained by the Director.
- (2)

8. Consultation regarding investigations

For the purposes of this Part, the Director may consult with the Valuer-General or his or her nominee and a land valuer nominated by the Australian Property Institute.

9. Grounds for disciplinary action

There are grounds for disciplinary action against a land valuer if –

- (a) the land valuer has acted contrary to the Australian Consumer Law (Tasmania) Act 2010 after the commencement day; or
- (b) the land valuer has acted unlawfully, improperly, negligently or unfairly in the course of carrying on, or being employed or otherwise engaged in, the business of a land valuer; or
- (c) the land valuer has been found guilty of an offence involving fraud or dishonesty that is punishable on conviction by imprisonment for 3 months or more.

10. Prosecution for offence

A prosecution for an offence under this Act –

- (a) may be instituted by an authorised officer; and
- (b) must be commenced within 3 years after the commission of the alleged offence and within 6 months after the authorised officer first obtains knowledge of the alleged offence.

11.

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12. Disciplinary action

(1) Where the Director determines that there are grounds for taking disciplinary action against a land valuer, the Director may, by order, do one or more of the following:

- (a) prohibit the land valuer from carrying on business as a land valuer;
- (b) prohibit the land valuer from being employed or otherwise engaged in the business of a land valuer;
- (c) prohibit the land valuer from being a director of a body corporate that is a land valuer;
- (d) reprimand the land valuer;
- (e) require the land valuer to pay the reasonable costs of the hearing or any investigation conducted for the purposes of the hearing, or both.

(2) The Director may order that a prohibition is to apply –

- (a) permanently; or
- (b) for a specified period; or
- (c) until the fulfilment of any conditions specified in the order; or
- (d) until further order.

(3) An order may provide that it is to have effect at a specified time and impose conditions as to the conduct of the land valuer who is subject to the order or that person's business until that time.

(4) An order takes effect on the day on which it is served on the land valuer to whom it relates.

(5) If an amount ordered to be paid by a land valuer as costs under subsection (1)(e) is not paid as directed by the order, that amount may be recovered by the Director as a debt due to the Crown in any court of competent jurisdiction.

13. Ancillary powers of Director

For the purpose of exercising his or her powers under this Part, the Director has the same powers as the court to administer an oath and compel the attendance of witnesses and production of documents.

14. Contravention of order

(1) If a person carries on business as a land valuer in contravention of an order of the Director, the person is guilty of an offence.

Penalty: Fine not exceeding 350 penalty units and imprisonment for a period not exceeding 6 months.

(2) If a person –

- (a) is employed or otherwise engages in the business of a land valuer; or
- (b) becomes a director of a body corporate that is a land valuer –

in contravention of an order by the Director, that person and the land valuer are each guilty of an offence.

Penalty: Fine not exceeding 350 penalty units and imprisonment for a period not exceeding 6 months.

15. Register of disciplinary action

(1) The Director must keep a register of disciplinary action taken against a person under this Act.

(2) A person may inspect the register at any time when the office of the Director is open for business.

16. Appeal against determination or order to magistrate

(1) This section applies to a determination or order made by the Director before commencement of the Magistrates Court (Administrative Appeals Division) Act 2001 .

(2) A person who is aggrieved by a determination or order to which this section applies may appeal to a magistrate within 28 days after receiving notice of that determination or service of the order.

- (3) At the hearing of an appeal under this section, the magistrate may –
- (a) confirm the determination or order of the Director and direct that the determination or order is to take effect from a specified date; or
 - (b) set aside the determination or order of the Director; or
 - (c) set aside the determination or order of the Director and substitute another determination or order that the Director could have made.
- (4) Subject to this section, an appeal under this section is to be instituted, heard and determined as prescribed.

17. Appeals to Magistrates Court (Administrative Appeals Division)

On and after the commencement of the Magistrates Court (Administrative Appeals Division) Act 2001 –

- (a) a person may not commence an appeal under section 16, but an appeal already commenced under that section may be continued and dealt with as if that Act had not commenced; and
- (b) a person aggrieved by a determination or order made by the Director may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination or order.

PART 3 - Miscellaneous and Supplemental

18. Former Register of Valuers

The Valuer-General must continue to keep the Register of Valuers, formerly maintained under the Valuers Registration Act 1974 , and make it available for inspection by any person at any time when the office of the Valuer-General is open for business.

19. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) , the regulations may provide for matters of a savings or transitional nature consequent on the repeal of the Valuers Registration Act 1974 effected by section 25 .

20. Savings and transitional

The savings and transitional provisions specified in Schedule 1 have effect.

21. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and
- (b) the department responsible to the Minister for Primary Industries, Water and Environment in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.

22. Postponement of rescission of Valuers Registration Regulations 1975

- (1) The rescission of the Valuers Registration Regulations 1975 that, but for this section, was to have been effected on 1 January 2002 is postponed until 1 January 2003.
- (2) Subsection (1) does not apply so as to prevent the rescission of the Valuers Registration Regulations 1975 at any time before 1 January 2003.

23.

The amendment effected by this section has been incorporated into the authorised version of the Local Government Act 1993 .

24.

The amendment effected by this section has been incorporated into the authorised version of the Trustee Act 1898 .

25. Repeal of Valuers Registration Act 1974

- (1) The *Valuers Registration Act 1974* is repealed.
- (2) The Valuers Registration Board is dissolved.
- (3) The members of the Board cease to hold office as such.

SCHEDULE 1 - Savings and Transitional Provisions

Section 20

1. Savings provisions relating to repealed Act

(1) A reference in an enactment or other instrument to the repealed Act is to be construed as a reference to this Act unless the contrary intention appears.

(2) Except as provided expressly or by necessary implication in this Act –

(a) all things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement day continue, subject to this Act, to have the same status, operation and effect as they respectively would have had if this Act had not been enacted; and

(b) without limiting paragraph (a) , this Act does not disturb the continuity of status, operation or effect of –

(i) an order or decision of the court or of any other court; or

(ii) any enquiry, proceeding, action, appeal, liability, right or other matter or thing made, done, issued, granted, given, existing or continuing under the repealed Act before the commencement day.

(2A) If it is necessary or expedient to do so for the purposes of subclause (2) , the Director may perform any function or exercise any power that, immediately before the commencement day, was vested in the Board.

(3) Nothing in this clause derogates from section 16 of the Acts Interpretation Act 1931 .

2. Saving for certain orders

Where an order was in force under the repealed Act immediately before the commencement day suspending a person's registration as a valuer, the order has effect according to its tenor as if it were an order of the court prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, business as a land valuer for the period of the prohibition.

3. References to land valuers

A reference in an Act or other instrument to a registered valuer is taken to be a reference to a land valuer acting lawfully under this Act.

4. Distribution of funds of Valuers Registration Board

(1) As soon as practicable after the commencement day, the Valuer-General must pay the money standing to the credit of the Board to an account in the Special Deposits and Trust Fund.

(2) The Valuer-General must, after taking into account any recommendations made by the Director or the Australian Property Institute, pay that money to any person or body so as best to foster and control the practice of land valuers.

5. Saving for appeals

Where –

(a) the Board has imposed a penalty on a registered valuer under section 12 of the repealed Act following an inquiry under that section; and

(b) the registered valuer was, immediately before the commencement day, entitled to appeal to the chairman of the Land Valuation Court under section 14 of the repealed Act –

the appeal may be heard and determined by the Magistrates Court as if the decision of the Board were a decision of the Director.

