

Discussion paper

National Competition Policy Review of the
Land Valuers Act 1994
- Final Report

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National Competition Policy Review
Land Valuers Act 1994

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National Competition Policy Review
Land Valuers Act 1994

Executive Summary

In 1995 the Council of Australian Governments entered into three agreements to give effect to national competition policy objectives. As part of their obligations under these agreements, each State and Territory government gave an undertaking to review existing legislation that potentially restricts competition. The Office of Consumer and Business Affairs is reviewing the *Land Valuers Act 1994* ("the Act") as part of this process.

Land valuation involves the estimation of the value of all types of land, improved property and other interests which may be held in real estate. The market for the valuation of land is the relevant market for the purposes of this Review.

The land valuation industry has been subject to a licensing regime since 1969. Licensing was introduced at that time to address problems with the competence and honesty of persons holding themselves out as land valuers.

The objective of the current legislation is to protect consumers by setting minimum qualifications and providing for disciplinary proceedings against land valuers who pose a threat to consumers. The legislation seeks to achieve this objective in an unobtrusive fashion, by creating a light handed system of "negative licensing" of valuers.

The Review Panel concludes that there is continuing justification for the continued regulation of land valuers. Consumers are placed at risk of significant financial loss if valuers are incompetent, negligent or dishonest. While complaints against valuers have been few in number, the extent of losses suffered by consumers as a result of erroneous valuations can be significant.

The Review Panel has considered various less regulatory alternatives, including complete deregulation, self-regulation by industry bodies, co-regulation by industry bodies and government, a system of certification, and restriction of title legislation. The Review Panel concludes that these alternatives are not viable for ensuring that the current level of consumer protection is maintained.

The Act contains a number of restrictions, in the form of barriers to entry and conduct restrictions. The definition of the scope of work is a barrier to entry, as it reserves a body of work to a particular class of person (that is, those who meet the requirements of the Act). Nonetheless, the Review Panel has concluded that the current scope of work for which prescribed qualifications is appropriate and can be justified. The scope of work undertaken by valuers is itself broad, and any narrowing of the definition would be artificial and impractical.

The requirement to hold qualifications is the most significant barrier to entry in the legislation, however the Review Panel concludes that it is a justifiable one. A significant risk would be posed to the community if unqualified valuers were permitted to operate within South Australia. The Review Panel considers that the valuation of land is a task which requires some form of training to be performed competently.

However, the Review Panel also concludes that the current qualification requirements are too onerous in relation to the postgraduate qualifications, and that consideration should be given to re-examining the current requirements, and to broadening the number and type of acceptable qualifications.

The Act provides for disciplinary measures to be taken against a valuer under a range of circumstances. Disciplinary measures may result in a reduction in the number of persons who can provide land valuation services, and may therefore be seen as a mechanism by which competition within the marketplace can be restricted. However, normal competitive behaviour within the marketplace is unaffected by the operation of the Act, and the disciplinary procedures only operate to remove from the market those who engage in conduct which is against the interests of consumers generally. For these reasons, the Review Panel sees any restriction which may arise from the operation of the disciplinary provisions to be justified as being in the public interest.

The Review Panel therefore concludes that there is a clear public benefit in the retention of regulatory control of the market for land valuation services, and that the current legislation is the least restrictive and most effective means of achieving the objective of consumer protection.

The recommendations of the Review Panel are therefore that:-

- 1) the *Land Valuers Act 1994* be retained.
- 2) the requirement for all land valuers to hold prescribed qualifications be retained.
- 3) consideration be given as to whether the completion of subjects other than the professional sequence should be removed from the postgraduate qualifications.
- 4) if the Advanced Diploma in Property (Valuation) is offered in South Australia, this course is considered for recognition as a prescribed qualification.
- 5) the disciplinary provisions be retained.

PART A: INTRODUCTION

1. PURPOSE OF THE REVIEW

On 11 April 1995 the Council of Australian Governments ("CoAG") entered into three inter-governmental agreements to facilitate the implementation of national competition policy objectives.

One of these agreements was the Competition Principles Agreement ("the Agreement"). As part of its obligations under the Agreement, State and Territory governments gave an undertaking to review existing legislation that restricts competition. The Office of Consumer and Business Affairs has reviewed the *Land Valuers Act 1994* (SA) as part of this process. The Terms of Reference for the Review are located at Appendix 2.

National competition policy ("NCP") is about

*"ensuring that the way markets work serves the whole community, rather than resulting in back-room deals which benefit a few. It is about improving efficiency of the public sector to provide better services at lower prices. And it is about ensuring that legal protections from competition genuinely promote the welfare of all Australians, rather than the narrow interests of the businesses protected. The policy doesn't prevent governments guaranteeing desirable social objectives."*¹

The guiding principle² of competition policy is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:-

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

All existing legislation that restricts competition should be reviewed and, where appropriate, reformed. Any necessary reforms should be implemented by the end of the year 2000³.

Legislation identified as restricting competition should be systematically reviewed at least once every ten years thereafter⁴.

The procedure for reviewing legislation is contained in clause 5(9) of the Agreement. A review should:-

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;

¹ Mr G. Samuel, President, National Competition Council, *Australian Financial Review*, 22 June 1998, p. 20

² Clause 5(1), Competition Principles Agreement

³ Clause 5(3), Competition Principles Agreement

⁴ Clause 5(6), Competition Principles Agreement

- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

Where there is a requirement to balance the benefits of a policy or course of action against its costs, or to assess the most effective means of achieving a policy objective, the following matters⁵ should be taken into account where relevant:-

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

2. SCOPE OF THE REVIEW

As noted above, the Agreement requires that legislation (including Acts, enactments, ordinances or regulations) be reviewed.

Accordingly, this Review applies to:-

Land Valuers Act 1994 ("the Act"); and
Land Valuers Regulations 1994 ("the regulations")

3. THE REVIEW PANEL

The review was conducted by a review panel consisting of the following persons:-

- Ms Margaret Cross, *Deputy Commissioner (Policy & Legal), Office of Consumer and Business Affairs;*
- Mr Peter Fountain, *Acting Deputy Valuer-General, Land Services Group, Department for Administrative and Information Services;*
- Mr Matthew Bubb, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs (until 8 September 1999);*
- Mr Adam Wilson, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs (from 13 September 1999)*
- Ms Kate Tretheway, *Legal Officer, Policy & Legislation, Attorney-General's Department*

⁵ Clause 1(3), Competition Principles Agreement

4. THE REVIEW PROCESS

In February 1999 the Commissioner for Consumer Affairs wrote to key industry and consumer groups advising them of the upcoming review of legislation within the Consumer Affairs portfolio. These groups were invited to attend one of a number of briefing sessions in March 1999, during which representatives of the Office of Consumer and Business Affairs and the Department of Premier and Cabinet outlined the basis and structure of the review process.

An Issues Paper was released for public consultation on 15 March 1999. Five submissions were received by the Review Panel. A schedule showing the distribution of Issues Papers can be found in **Appendix 3**. A schedule of submissions received can be found in **Appendix 4**.

As a result of information provided in submissions and further research by the Review Panel, a Draft Report was prepared. The purpose of the Draft Report was to present the preliminary conclusions and recommendations of the Review Panel.

The Draft Report was released on 5 July 1999. Submissions were again invited, and the Review Panel allowed six weeks for responses. Four submissions were received by the Review Panel. A schedule of submissions received can be found in **Appendix 4**.

This Final Report has been prepared based on the information provided in submissions and research conducted by the Review Panel. It contains the findings and recommendations of the Review Panel.

PART B: OVERVIEW OF LEGISLATION

1. HISTORY

Until 1969, the valuation of land in the private sector was not regulated. Any person who wished to act as a land valuer could do so.

In 1969, the *Land Valuers Licensing Act* was introduced as a result of several cases of incompetence or dishonesty of persons holding themselves out to be land valuers. It created a regime of licensing administered by a statutory board.

This regime continued until 1984, when the *Land Valuers Licensing Act* was repealed and its functions subsumed into the *Land and Business Agents Act 1973*, which was renamed the *Land Agents, Brokers and Valuers Act 1973*.

This system was a highly regulatory one. The licensing function was initially vested in a board, but later transferred to the Commercial Tribunal. The licensing body determined the qualifications which were necessary for a grant of a valuers licence, but also gave regard to other criteria relating to the character of the valuer.

In 1994, a comprehensive review of all occupational licensing was undertaken by a Legislative Review Team of the Office of Consumer and Business Affairs. This review found that the market for valuers had altered significantly over the years. Consumers now rarely used valuers, with local government and business being the primary users of valuers. In addition, the industry had matured. A significant proportion of valuers were members of the primary industry body, the Australian Institute of Valuers and Land Economists⁶. Very few complaints were being received by the Office of Consumer and Business Affairs in relation to valuers.

The recommendation of the review team was that the licensing of land valuers be significantly scaled down. A negative licensing scheme was proposed, which would give the court power to prohibit people who had committed various acts from practising as land valuers, but would not require formal licensing or registration of valuers. Essentially, anyone would be free to practise as a valuer, unless they had been prohibited from doing so by court order. Although the general thrust of this proposal was accepted by the industry, the industry felt that it was still necessary for the Government to mandate the possession of certain educational qualifications. This recommendation was accepted by the Government and in 1994 the *Land Valuers Act* was passed, giving effect to this scheme.

⁶ Now the Australian Property Institute.

2. CURRENT OPERATION OF THE ACT

2.1 What is the relevant market?

The relevant market is the market for the valuation of land. Land valuers are the providers of the service. Users of the service are consumers, business, banks, legal practitioners, local government, state government and statutory authorities.

Valuers are involved in estimating the value of all types of land, improved property and many other interests which may be held in real estate. Valuation is a process of observation and measurement of characteristics of property, location and economic activity. Collected data is evaluated and analysed to produce an accurate and objective estimate of the value of the property; that is, the most likely sum that the property would realise if placed on the market.

Valuers are employed in both the public and private sectors. In the private sector most valuers are employed by major real estate agencies and various financial institutions such as banks, insurance companies and building societies. Valuers in the private sector may be involved in activities as diverse as determining mortgage security value, valuation to determine the feasibility of a development proposal and checking various statutory valuations.

In the public sector, valuers are required to provide values used as a base for collecting rates and taxes, to check the value of assets for income tax purposes and to determine the compensation which should be offered to a person whose property is to be either partly or wholly acquired for public projects such as schools, highways, railway extensions and so on.⁷

In the 1996 Census, 359 South Australians reported their main occupation as "property professional", a term which encompasses both land valuers and land economists. However, it is likely that there are more land valuers than this; the Australian Property Institute alone has 666 members.

Conclusion

The relevant market is the market for the valuation of land.

2.2 What are the objectives of the Act?

The *Land Valuers Act 1994* was one part of a package of Acts⁸ which repealed the *Land Agents, Brokers and Valuers Act 1973*. In introducing the new Act into the Parliament, the Minister for Consumer Affairs noted that:-

"[T]he nature of the valuing profession and the importance of the role that valuing has achieved in the business community has greatly

⁷ Based on the course outline for the *Bachelor of Business (Property)*, University of South Australia.

⁸ The other Acts being the *Land Agents Act 1994*, *Conveyancers Act 1994* and the *Land and Business (Sale and Conveyancing) Act 1994*.

changed. Significantly, the valuer plays a key role in the commercial sector and a great deal of reliance is placed upon realistic and sound valuations...

There is an extremely low incidence of complaints against valuers and formal disciplinary action has not been taken against any valuers for some time...

Given the relatively high rate of compliance and the fact that in practical terms most valuations are done for business, the impact upon general consumers will be minimal."

The objective of the Act is thus to protect consumers by setting minimum qualifications and providing for disciplinary proceedings against land valuers who pose a threat to consumers. The Act seeks to achieve these in as unobtrusive way as possible, by creating a system of negative licensing of valuers.

Conclusion

The objective of the Act is to protect consumers.

2.3 Overview of the provisions of the Act

Section 3 of the Act defines a land valuer as "a person who carries on a business that consists of or involves valuing land". The definition also includes a person who formerly carried on such a business, so that disciplinary proceedings may be taken against such a person.

"Court" is defined as "the Administrative and Disciplinary Division of the District Court of South Australia". This Court is given jurisdiction under the Act to deal with the discipline of land valuers.

The Act also includes a wide definition of "director of a body corporate" to encompass persons who control the body corporate.

Section 5 of the Act sets up the negative licensing system. It provides that a land valuer is required either to hold prescribed qualifications or to have been licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973*.

Section 6 requires a land valuer that is a body corporate to ensure that their land valuing business is managed and supervised by a person who holds the prescribed qualifications or was licensed under the repealed Act.

The objective of these requirements is to ensure that valuers have achieved certain levels of knowledge and skill. The valuation of land is considered to be a complex task involving the assessment of many criteria. A valuer who does not possess this knowledge may pose a risk to consumers who rely on that person's valuations.

Section 7 sets out the causes for disciplinary action. Disciplinary action may be taken against a land valuer if the land valuer has acted contrary to an assurance accepted by the Commissioner for Consumer Affairs under the *Fair Trading Act 1987* or the land valuer or

any other person has acted unlawfully, improperly, negligently or unfairly in the course of conducting, or being employed or otherwise engaged in, the business of the land valuer.

The section further provides for disciplinary action to be taken against each director of a body corporate that is a land valuer if disciplinary action could be taken against the body corporate. Disciplinary action may not be taken where it was not reasonable to expect the person to have been able to prevent the act or default.

Section 8 provides that a complaint alleging grounds for disciplinary action against a land valuer may be lodged with the District Court by the Commissioner or any other person.

Section 11 prescribes the penalties that may be invoked in a disciplinary action. Disciplinary action may comprise one or more of the following

- a reprimand;
- a fine up to \$8000;
- a prohibition on carrying on the business of a land valuer;
- a prohibition on being employed or engaged in the industry; and/or
- a prohibition on being a director of a corporate land valuer.

A prohibition may be permanent, for a specified period or until the fulfilment of certain conditions.

2.4 How does the Act interact with other Acts?

Various other Acts require valuers engaged to perform functions under those Acts to be "licensed" under the *Land Valuers Act*.

Valuation of Land Act 1971

The *Valuation of Land Act 1971* creates the office of the Valuer-General. It sets out requirements for statutory valuations. The Act authorises a person whose property is subject to a statutory valuation to request that a valuer licensed under the *Land Valuers Act* perform the valuation.

Local Government Act 1934

Under the *Local Government Act 1934*, when a local government wishes to declare a rate for a particular financial year, it must first adopt the valuations that are to apply to land within its area for rating purposes that year.⁹ Such valuations must be valuations made by the Valuer-

⁹ *Local Government Act 1934* (SA) section 171(1) (*167(1)*). Please note that a new *Local Government Act 1999* has been enacted. However, at the time of writing, it has yet to come into operation. When the new Act comes into operation, the substance of the provisions will remain the same, but the section numbering will differ. The new section numbers are placed in brackets and italics after the current section numbers.

General or a valuer engaged or employed by the council.¹⁰ When a local government engages a valuer to value property for the purposes of rating, the valuer must be a valuer licensed under the *Land Valuers Act*.¹¹

Community Titles Act 1996

Under the *Community Titles Act 1996*, when an application is made for an amendment to a community plan, the application must be accompanied by a certificate from a land valuer certifying either that the amendment does not affect the relative value of the lots or that a new schedule of lot entitlements is correct. Although the Act does not specify that the valuer must be licensed under the *Land Valuers Act*, the schedule to the regulations, which sets out the form which must be used in the certification, requires the valuer to specify that they are a land valuer within the meaning of the *Land Valuers Act*.

The *Land Valuers Act* therefore provides a basis for the employment of valuers to perform statutory functions. In the absence of the *Land Valuers Act*, alternative means would need to be found to ensure that valuers performing statutory functions possessed appropriate expertise.

All submissions agreed that some alternate system for ensuring the competence of those undertaking statutory valuations would need to be established. The Real Estate Institute of South Australia (hereafter "REISA") commented that:-

The repeal of the Land Valuers Act would necessitate the implementation of alternate legislation to protect the integrity of our financial and corporate systems... The definition of land valuer and the reliance on land valuations being an accurate assessment of the value of property are crucial in the interpretation and operation of many of the laws of our country. Many companies, businesses and people within Australia have a direct or indirect interest in property.

2.5 Is the continued regulation of land valuers justified?

It is inevitable that Government intervention in an industry will result in some costs. These costs may arise through two main factors; reduced competition or contestability in the industry resulting in less incentive to innovate, increase efficiency or keep prices down; and costs of complying with requirements of the regulation, both financial and otherwise.

2.6 What are the costs of regulation of the industry?

Valuers bear the costs of acquiring the prescribed qualifications. Once those qualifications have been acquired, there are no ongoing costs in the form of registration fees or continuing education requirements.

The indirect costs of the Act are borne by consumers. Economic theory predicts that when competition is reduced, the cost of acquiring the relevant goods or services will increase.

¹⁰ The power to employ a valuer other than the Valuer-General is given in section 172(2) (167(2)).

¹¹ Section 171(5) (167(8))

Competition is the force which drives prices down. Restrictions on the supply of a service may lead to price increases.

Reduced competition may also reduce the incentive to innovate - often described as technological lethargy. Thus innovative and potentially less expensive methods of carrying on business may never be developed, because the incentive to do so does not exist.

It is difficult to determine whether the requirement for all valuers to hold prescribed qualifications is leading to an artificially high price. Given that anyone wishing to perform valuations will need some form of training or significant experience, it may be that the price of the service would not change if this restriction were removed.

REISA submitted that *"the industry is presently very competitive"*, pointing to a survey conducted by REISA's Valuers Division, in which *"88% of respondents indicated that their fees had remained stable or decreased over the past five years through increased pressure from both major clients and individual consumers"*.

In the light of this, the Review Panel considers that while consumers may bear some costs as a result of reduced competition, in general the land valuing industry is competitive and thus these costs are minimal.

Further, as the industry is regulated via a light handed negative licensing regime, costs are borne by Government in the enforcement of the legislation. In particular, there are significant costs involved in investigation and taking disciplinary action against valuers. However, as these provisions will only be used where it is necessary to ensure that someone is removed from the industry for the protection of consumers, it is arguable that in these situations the benefits of taking disciplinary action outweigh the costs incurred in doing so.

2.7 What are the benefits of regulation of the industry?

Nonetheless, for the ongoing regulation of land valuers to be justified, it is clear that there must be some public benefit derived from such regulation which outweighs these costs.

The public benefit is to be found in the addressing of two main risks:-

- risk of market failure
- risk of provider failure

2.7.1 Risk of market failure

Market failure may arise from:-

- high transaction costs
- information asymmetry; and
- externalities.

2.7.1.1 Transaction Costs

Transaction costs are costs incurred in doing business with a service provider, including the costs of:-

- locating a service provider
- reaching agreement on the price and other aspects of the exchange; and
- ensuring that the terms of the agreement are fulfilled, including resort to legal advice and court action.

Market failure may occur where consumers experience search costs in a market with which they are unfamiliar and therefore abandon the search or make a less than optimal decision.

Users of land valuers fall into four main groups: government agencies, local government, business and consumers. Of these groups, consumers make the least use of land valuation services. Therefore consumers are likely to face high transaction costs in engaging a valuer.

Licensing¹² seeks to reduce these costs by providing information about land valuers. The fact that a person has satisfied required standards is an indication to the consumer (although not a guarantee) of the quality of service that will be provided. This can decrease the cost to consumers of individually measuring the quality of services. The Government is also in a better position to undertake such assessment on behalf of consumers, at significantly lower cost than if consumers were to individually undertake such searches.

2.7.1.2 *Information Asymmetry*

Once a consumer has located a service provider, they must then determine whether that provider offers an appropriate price/quality mix for their purposes. Information asymmetry occurs when there is a disparity between information at the disposal of the consumer on the one hand, and the service provider on the other. Consumers have a natural incentive to buy services with a price/quality combination they desire. However, it is difficult for them to do so where the supplier has much more knowledge about the quality of the service that is being offered. Consumers may be at a disadvantage in:-

- assessing the need for the service or the type and quality of service required;
- distinguishing the competent service provider from the incompetent; and
- assessing the quality of services rendered and whether they are excessive or inadequate for their needs.

This is particularly relevant in relation to services because generally these factors can only be assessed after the service has been provided, by which time it may be too late.

Regulatory intervention can provide consumers with additional confidence in the service provider, instead of exposing them to the risk of inappropriate selection of service and the possibility of exploitation by the provider.

Of all groups which make use of valuation services, consumers are the most likely to experience information asymmetry. In general, consumers use land valuers infrequently. The transactions in which they are involved would represent only a small percentage of transactions involving land valuers. However, it is precisely this infrequency of use which lead to community users being at significant risk. It is because they don't use valuers very

¹² In whatever form, ie licensing, registration, negative licensing.

often that they are unable to assess the quality of service provided, they are less likely to be aware of the level of qualification which may be necessary for someone to be able to perform a competent valuation and they may also be less aware of the risks involved. Because valuation services are complex services, users of those services may face difficulties in assessing the appropriateness of the services provided, or the appropriateness of the service provider.

The lack of knowledge about qualifications places consumers in a very difficult position. On the one hand, they may engage a person who describes themselves as a valuer who possesses minimal qualifications and does not have the expertise to perform a competent valuation. The consumer may pay that person far more than their skills/experience warrant. Additionally, the consumer may rely on the valuation to their detriment. Conversely, the consumer may be overly cautious and engage a valuer with considerably more training than is necessary for the type of valuation involved. To use a simple analogy, a person would not require a Queen's Counsel to defend them in a case involving a minor traffic infringement. This would be a misallocation of resources. Likewise, for a simple residential property valuation, it will not be necessary or advisable to engage a person who has developed considerable expertise in complex commercial valuations. Again, this is simply a misallocation of resources.

Consumers generally are also less able to assess the quality of the valuation received. Being inexperienced in the use of valuation services, they will lack the requisite knowledge to know if a valuation is questionable. They will know little or nothing about the techniques involved in valuation. They will often be unable to ask the right sort of questions to enable them to establish whether the valuer they have engaged is skilled or not.

As pointed out by REISA, while the larger government, corporate and professional clients of valuer may be in a position to assess the competency of a prospective valuer, by, for example, relying on references, the public at large will usually make use of advertising material to contact a valuer. It was asserted, and is accepted by the Review Panel, that when consumers do so:-

they are assuming that persons and companies which hold themselves out to undertake valuation work are responsible, reliable and capable of completing the task in a proper manner... and rely solely on the assumption that someone is ensuring that a person who holds themselves out as being a valuer is suitable to do so.

The requirement that all valuers hold prescribed qualifications may provide a benefit in the reduction of this information asymmetry. It provides consumers with the information that a land valuer is a person who has had training in the specific skills required to perform the valuation of land. There is no need for the consumer to make complicated inquiries into the types of skills needed to perform a land valuation, because if the person is providing the valuation in the course of a business, then they should have been trained in that area. In addition, it prevents the untrained valuer, who knows of his or her lack of skill and knowledge, from taking advantage of the consumer, who may be either unaware of the level of knowledge required to perform a competent valuation or, as asserted by REISA, assumes that someone is ensuring that all valuers are competent.

The Review Panel does not consider that information asymmetry is a significant factor for government and financial institutions who make use of valuers.

2.7.1.3 Externalities

Externalities are costs to parties not directly involved in the transaction - sometimes referred to as "spillovers". In relation to land valuations, externalities may occur where the main users of such valuations, financial institutions and government authorities, rely on incorrect valuations. If financial institutions rely on incorrect valuations, and make poor investment choices as a result, this has flow on costs to all users of that institution. Thus while normally it would be considered that such institutions should take care of themselves, there may be a justification for continued regulation on the basis of the effect that reliance on poor valuations by these institutions may have on third parties. In the same way, where statutory valuations are made on behalf of government, the effect of that valuation is felt by third party consumers. Primarily, the effect is felt by ratepayers, who may have to pay higher rates as a result of an incorrect valuation. Additionally, however, the community as a whole may bear the costs of incorrect statutory valuations if, for example, an incorrect level of revenue is raised.

2.7.2 Risk of Provider Failure

There are four main risks arising from provider failure, which regulation of land valuers may seek to address. These are risks:-

- of financial loss
- of substandard work being performed
- to health and safety; and
- of criminal activity.

2.7.2.1 *Risk of financial loss*

This refers to loss which arises as a result of either the business failure or the fiduciary default of the service provider. It is not relevant for the purposes of land valuers, as valuers do not hold consumers' money at any stage of the transaction.

2.7.2.2 *Risk of substandard work being performed*

The primary benefit of the Act is the reduction of provider failure. Requiring all land valuers to hold prescribed qualifications provides some assurance, as pointed out by REISA, that "*land valuers have the knowledge and understanding to provide proper advice and valuations to clients*". It keeps incompetent valuers out of the market.

The Consumer's Association of South Australia (hereafter "CASA") submitted that:-

"requiring such qualifications as prescribed in the Act are necessary to address the consumer risk of loss should they rely on an ill-informed valuation and to protect businesses from dispute and litigation resulting from disparate valuations."

There is a risk of provider failure in this industry because the valuation of land is a skill which requires some level of training to perform competently. Thus the removal of a requirement for a valuer to hold qualifications could result in persons entering the industry with little or no competency.

2.7.2.2.1 *What are the risks associated with land valuations?*

The main risk associated with land valuers is the risk of the valuation being wrong. Error may arise through the negligence, recklessness or deliberate dishonesty of the valuer. Valuers do not handle trust money and thus pose little or no risk of financial default to consumers.

Valuers are often involved in transactions which are worth a significant amount of money. While businesses may be in a position to verify the reliability of a valuation by other means, consumers¹³ will generally have to rely on the valuation being made correctly. Valuation is a complex task, involving assessment of a number of complex factors. It is not a task which may be easily carried out by an untrained person.

Where untrained persons present themselves as valuers, and proceed to give faulty valuations, the consequences for persons relying on those valuations may be significant. Financial losses incurred as a result of incorrect valuations are potentially large.

Although the predominant use of land valuers is in a commercial setting, land valuers are used by consumers for the purposes of wills, family law settlements and a variety of other purposes. Hence, in a small number of cases, there is a significant risk presented to the consumer if untrained persons act as valuers. Additionally, valuations may be used by commercial interests to attract consumer investment. If such valuations are erroneous, there is a risk of significant financial loss.

Additionally, significant risk of financial loss is posed to the consumer by a dishonest or negligent valuer. While there would be very few of these, it is inevitable that in any occupation there will be some members who fail to observe appropriate standards of behaviour. Consumers who rely on the valuations of those who are careless, negligent or deliberately dishonest could find themselves faced with significant financial loss.

The consequences of an erroneous valuation will depend on the nature of the transaction. In a family law dispute, where each party engages a separate valuer for the valuation of jointly held property, considerable court time and therefore money may be wasted in determining which valuation is accurate where the two valuers come up with vastly disparate valuations. One party may experience significant financial loss as a result of an overvaluation or undervaluation of the property.

In a home purchase situation, a consumer who relies on a valuation may find themselves either paying more or receiving less than they should for a property as a result of reliance on an inaccurate valuation.

Beneficiaries under a will may find themselves disadvantaged where the testator has sought to balance the bequests so that, for example, one child receives the house and land and one

¹³ In this report, 'consumer' means a person who acquires goods or services other than in the course of a business.

child receives money equivalent to the value of the land, based on a valuation made either at the time of making the will or on settlement of the estate (probate).

Consumers also stand to lose significant amounts of money if they invest in property on the basis of a valuation which turns out to be wrong, especially where the property is overvalued.

Valuations made for statutory purposes will pose less risk to consumers as there are generally appeal provisions from those valuations. However, some consumers may not realise that their property has been overvalued or undervalued and would therefore accept a valuation which may turn out to be incorrect. They may therefore end up paying higher tax or rates than they need to.

There is also a risk to consumers where valuers are engaged to value property for the purposes of mortgages. If the valuer makes a faulty valuation, the consumer stands to lose considerable amounts of money.

An example of the types of losses which may be experienced as a result of erroneous valuations can be found in the experience of consumers in Western Australia. Recently in Western Australia there have been considerable problems with poor valuations. The collapse of finance brokers Global Finance Group has brought to light a series of transactions in which properties were considerably overvalued.

Examples given in *The West Australian* include:-

- Katanning Unit Hotel [was] valued at \$1.6m in 1997 - four days before it was sold for \$910,000. It recently sold for less than \$350,000
- A video and medical suite in the Parmelia shopping centre was valued at \$1.7m in 1995. An independent valuer estimates the properties are now worth \$670,000.
- A Baldivis worm farm was valued at \$510,000 in 1997. The latest valuation puts it at \$360,000. It would fetch \$315,000 under a forced sale.¹⁴

These figures demonstrate the amount of money that can be lost as a result of an erroneous valuation.

The situation in Western Australia is not an isolated incident. The Office of Consumer and Business Affairs is aware of situations in South Australia where consumers have lost considerable amounts of money as a result of relying on valuations which were made using assumptions which at least some of the persons relying on the valuation did not understand. In Queensland, similar losses have been incurred as a result of relying on flawed or inflated valuations.

Regulation of the industry helps to reduce the incidence of such provider failure, both by keeping out those who have not been trained in land valuation, and by providing a means for removing those who have demonstrated that they provide a negligent or dishonest service.

¹⁴ Source: *The West Australian* 25/02/1999.

2.7.2.3 Risks to health and safety

These risks are not relevant in relation to the market for land valuations.

2.7.2.4 Risk of criminal activity

These risks are not relevant to the market for land valuations.

2.8 A cost/benefit analysis of regulation of land valuers

There are clearly a number of benefits in having regulation of land valuers. It reduces transaction costs associated with engaging a valuer and reduces the level of information asymmetry between valuer and client. Most significantly, regulation of the industry helps to limit the extent of provider failure in the industry.

The Review Panel acknowledges that many of the situations where money has been lost have been in a commercial setting, where participants in the market could be considered to be responsible for protecting themselves and making their own inquiries. However, in many examples, consumers have been part of a group of investors, investing in commercial property. In addition, valuers are also used by consumers in a number of settings. The Department of Fair Trading in New South Wales, in its review of the *Valuers Registration Act 1975 (NSW)*, noted that the situations in which consumers will use valuers include:-

- private mortgage lending or borrowing for home purchase;
- private mortgage lending or borrowing for loan extension, often for non-residential use;
- valuation for sale and stamp duty purposes;
- assessment for capital gains tax;
- valuation for pre-nuptial agreement;
- valuation for investment;
- valuation for Family Court property settlement;
- assessing market rentals; and
- resolving rental disputes.¹⁵

In each of these settings, consumers are placed at risk of significant financial loss if valuers are incompetent, negligent or dishonest.

While complaints in relation to valuers have been few in number over the past few years in South Australia, the extent of loss by consumers as a result of erroneous valuations is significant. Thus there is a situation where few incidents occur but those that do are of great financial significance. The Review Panel also notes that these incidents occur in a regulated environment; it is possible that there would be more incidents if there were no regulation of the industry.

¹⁵ Source: *Department of Fair Trading and Property Services Council (NSW) Review of Valuers Registration Act 1975, Issues Paper (May 1997)*

The other major problem with no regulation of the industry is that it is impossible to stop people participating in the industry. This means that, for example, no matter how many negligent valuations a valuer performed, there would be no means of preventing other consumers unwittingly engaging that valuer, and experiencing negligent valuations as a result. The regulation of valuers plays an important role in protecting consumers from such valuers.

While there are some costs as a result of restricted competition in the market, the Review Panel does not consider that those costs are significant. The restrictions currently imposed by the Act are minimal. Financial institutions and government would require valuers to hold qualifications in any event, so most valuers would be required to hold some form of qualification. While the disciplinary provisions impose some costs on Government by way of enforcement, these costs are only incurred when it is necessary for someone to be removed from the industry. In such a case, the public benefit in ensuring that consumers are protected from consistently negligent or dishonest valuers outweighs the costs incurred in taking disciplinary action.

It is therefore the conclusion of the Review Panel that the benefits of regulation of land valuers outweigh the costs.

Conclusion

The benefits of regulation of land valuers outweigh the costs.

2.9 What are the alternatives?

2.9.1 Deregulation

Whenever alternatives to regulation of an occupation are considered, complete de-regulation is an option which must be considered. In the case of land valuers, complete deregulation is considered undesirable. If the industry were completely deregulated, there would be reliance solely on common law remedies and consumer protection laws. The valuation industry is one where there is the potential for significant consumer detriment. In the complete absence of regulation, it is probable that incompetent and possibly dishonest practitioners would enter the industry.

Consumers would incur greater search costs in identifying an appropriate service provider, would continue to be at a significant disadvantage through information asymmetry, and would face an increased risk of provider failure. Deregulation does nothing to address these risks.

The Review Panel acknowledges that complete deregulation would not leave consumers without protection. There are a number of remedies available to aggrieved consumers at common law. Further, a number of statutory requirements would still apply to the relationship between valuer and client, including a number of contractual remedies available under consumer protection legislation.

Deceit

At common law, a valuer who makes a fraudulent valuation - that is, one which is either false to her or his knowledge or is made without regard to whether it is true or false - with the intention that it be acted upon, is liable to an action in deceit. Such an action may be brought by any person who intended to act on the basis of the valuation and who did so act to their detriment.¹⁶

Tort - Negligence

A valuer owes a duty of care.¹⁷ A valuer may therefore be sued in negligence for breach of that duty of care. The standard of care expected of valuers is that of the ordinary skills of an ordinarily competent valuer.¹⁸ The valuer may be liable to third parties who have suffered financial loss where the valuer knew or ought to have known that those third parties would rely on her or his valuation.¹⁹ The damages are generally such as would fairly and reasonably be considered as resulting from the failure of the valuer to report as he or she should have done.²⁰

Contract

Under the common law, misrepresentations regarding the price or quality of services may give a consumer legal rights to annul the contract or even claim damages.

One of the problems with relying solely on common law remedies is that ultimately an aggrieved consumer may have to take the matter to court to enforce those remedies. In doing so, a consumer will incur the substantial costs of taking legal action, some of which, at least, will not be recoverable. The time and expense involved in taking legal action may make a consumer reluctant to do so.

On the other hand, the potential for significant liability may deter valuers from deliberately misleading consumers, and may increase the pressure on valuers to provide an appropriate standard of valuation.

Fair Trading Act 1987

The *Fair Trading Act 1987* (SA) prohibits misleading and deceptive advertising and other conduct. The more general sections read as follows:-

Misleading or deceptive conduct

56. (1) A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

¹⁶ *Derry v Peek* (1889) 14 App Cas 337; [1886-90] All ER Rep 1.

¹⁷ *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465; [1963] 2 All ER 575; [1963] 3 WLR 101; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405; [1975] 3 All ER 901.

¹⁸ *Corisand Investments Ltd v Druce & Co* (1978) 243 EG 315; *Harmer v Cornelius* (1858) 5 CBNS 236; [1843-60] All ER Rep 624.

¹⁹ *Cann v Wilson* (1888) 39 CH D 39; 59 LT 723; *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (op cit 17)

²⁰ *Philips v Ward* [1956] 1 All ER 874 at 878; [1956] 1 WLR 471 at 475 per Morris LJ.

Misleading conduct in relation to services

64. A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

Valuation services are subject to these laws because the definition of services in section 46 of the *Fair Trading Act 1987* is very wide; it includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce, including rights benefits, privileges or facilities that are or are to be provided, granted or conferred under a contract for or in relation to the performance of work, including work of a professional nature. Therefore valuation services will fit into the category of "services" for the purposes of the *Fair Trading Act*.

Trade Practices Act - Implied Terms

The *Trade Practices Act 1974* (Cth) implies standard terms that cannot be excluded into contracts for the purchase of goods and services. Those terms stipulate that services purchased will be rendered with due care and skill and fulfil their purpose. Failure to do so will be a breach of contract, which may be taken to court.

Section 74 of the *Trade Practices Act 1974* (Cth) reads:-

Warranties in relation to the supply of services

74. (1) In every contract for the supply by a corporation in the course of a business of services to a consumer there is an implied warranty that the **services will be rendered with due care and skill** and that any materials supplied in connexion with those services will be reasonably fit for the purpose for which they are supplied.

(2) Where a corporation supplies services (other than services of a professional nature provided by a qualified architect or engineer) to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation any particular purpose for which the services are required or the result that he desires the services to achieve, there is an implied warranty that the services supplied under the contract for the supply of the services and any materials supplied in connexion with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the corporation's skill or judgment.²¹

²¹ Emphasis added.

The section only implies these terms into contracts for the supply of services struck between a corporation and a consumer. A land valuer carrying on business as a sole trader or in partnership with another does not have these terms implied into their dealings with consumers.

However, the conduct of the directors, servants or agents of the corporation acting within the scope of their actual or apparent authority may be taken into account to ascertain whether a breach of the implied term has been committed.²² A land valuer working for a corporation may make it liable if their services are not rendered with due care and skill, or if the services do not fulfil their requested purpose.

Although section 68 of the *Trade Practices Act* prohibits the exclusion of these warranties from the contract, section 68A modifies this prohibition so that a corporation may limit its liability to the supplying of the services again or the payment of the cost of having the services supplied again, provided it is fair and reasonable to do so.

In the case of land valuers, it would generally not be fair and reasonable to limit the liability to the resupply of the services of the cost of having the services supplied again. This is because the damage suffered by the consumer will usually arise from the consumer's reliance on the land valuer's work. Resupply of the service would not repair the damage done to the consumer. The only appropriate remedy in such a case will be damages.

Consumer Transactions Act 1974 (SA) - Implied Terms

South Australian law has a similar set of terms that are implied into contracts for the performance of services.²³ However, it only applies to a limited range of services, which are defined in that Act and its regulations. Valuation services are not a "service" for the purposes of that Act. In a deregulated market, it would therefore be desirable to prescribe valuation services as a service under the *Consumer Transactions Act*.

If valuation services were prescribed as a service under the *Consumer Transactions Act*, then consumers would have access to the remedies under that Act. The main benefit for consumers would be that the warranty under section 7 would be implied into their contract with the land valuer. This warranty is that "the services will be rendered with due skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied".

The benefit of this is that consumer would have a remedy in contract.

Although the consumer protection laws tend to operate reactively (ie they are only available to the consumer once substandard work has been performed), they still offer some protection to clients of land valuers. In addition they have some deterrent effect, because land valuers know that they may face legal action if substandard work is performed.

However, there is a difficulty in relying on either common law remedies or consumer protection laws to the exclusion of other protection. While they can be effective in some instances, in others they may offer little protection to consumers. If, for example, the valuer is insolvent, or if the loss incurred as a result of the conduct of the valuer is large and the valuer does not hold professional indemnity insurance, then while the consumer may be

²² *Trade Practices Act 1974 (Cth)*, section 84(2).

²³ *Consumer Transactions Act 1972 (SA)*, section 7(1), (2).

able to establish a claim against the valuer, recovering any form of compensation will be difficult if not impossible. Thus any victory will be a moral one only, and will still leave the consumer out of pocket. Further, the costs of pursuing such remedies may deter some consumers from taking any action. Finally, if litigation increased as a result of a lowering of standards in the valuation industry, there would be significant public costs which would follow through the increased costs to the courts, longer lists and the many other costs involved in litigation.

Thus complete deregulation of the industry is not considered to be a viable alternative.

2.9.2 Self-regulation

Self-regulation involves an industry body taking responsibility for the regulation of a trade or profession. Generally this will take place without any form of legislative backing. Sometimes such a body will receive government funding, while at other times it is completely self-supporting.

An example of self-regulation is accountants. There is no legislation regulating accountancy as a profession, but most accountants are members of the various industry bodies, including the Institute of Chartered Accountants, the Australian Society of Certified Practising Accountants and the National Institute of Accountants. Each of these groups promotes high standards within the industry, including strict trust account requirements.

Strong publicity has ensured public awareness of members of these bodies as practitioners of the highest standard. This enables the general public to make an informed choice in their use of accountant.

For an industry to self-regulate, there needs to be an industry body or bodies with broad industry coverage.

In the valuation industry, the Australian Property Institute estimates its current membership at 70% of industry. Thus this is a body with fairly broad industry coverage.

However, a problem with self-regulation is that the industry body has very little control over members of the industry who are not members of the association. Such practitioners could well engage in conduct which is detrimental to the interests of consumers. This is particularly a problem in the long term, as more people enter the industry (under a self-regulatory system) who do not possess the qualifications or fulfil the other criteria of the industry association.

Thus self-regulation is not considered to be a viable alternative at this stage.

2.9.3 Co-regulation

In recent years, the Government has developed a new regime of occupational licensing in which provision has been made for increased industry involvement. The Commissioner for Consumer Affairs now has the power to enter into agreements under which groups or organisations associated with certain regulated industries undertake a specified role in the administration and enforcement of a particular Act. Delegations to a particular industry group must be recorded in a formal agreement which must be laid before Parliament.

Agreements will be dependent on industry groups demonstrating their capacity to achieve certain outcomes required by law. The Government must be satisfied that, in any industry seeking delegated authority and an industry agreement, there is a degree of maturity and an ability to look objectively at itself.

Under an agreement, elements of the enforcement and administration of the relevant Act may be delegated to key industry groups. However, certain functions cannot be delegated. These include the registration/licensing function, the power to request the Commissioner of Police to investigate and report on matters, the power to commence prosecutions under the Acts and some aspects specific to the individual Acts.

Typically, the industry group will participate in an informal way in dispute resolution and giving consumers advice. In some industries, it has become the practice for disputes to be referred first to the relevant industry group before it is brought to Consumer Affairs. However, such groups will not be able to make a final determination in a dispute; their role will be to conciliate or mediate the dispute only.

As prerequisites to an industry agreement, the Government will need to be assured that the industry group already demonstrates certain capabilities, including:-

- a sufficient legal basis for the group to undertake the responsibilities proposed;
- the industry as a whole is supportive of the proposed role;
- the group has significant coverage of the industry concerned;
- evidence of public and consumer consultation;
- sufficient reporting procedures are in place; and
- evidence of the capacity to handle the delegations, including such issues as staffing, access to the proposed dispute resolution process, customer feedback proposals, etc.

The *Land Valuers Act* currently contains provisions which could lead to the development of a co-regulatory system. However, given the minimal level of regulation in existence at the moment, it is unlikely that a co-regulatory scheme could be established that was less restrictive of competition.

2.9.4 Certification

A system of certification is a form of partial deregulation. Such systems involve two main aspects: the elimination of the offence of practising without a license, registration or prescribed qualifications, and the introduction of a certificate of qualification.

On completion of a course of instruction, a person is given a certificate specifying that they have achieved a certain level of expertise, to be displayed prominently in their work premises. A publicity campaign may be undertaken to inform the public that only those practitioners who hold certificates have been fully trained in their trade.

Only those who held certificates could call themselves "qualified". Uncertified or unregistered professionals are prohibited from using the title of certified or registered professional, or otherwise indicating to the public that they have the same standing.

Certification is often used in the regulation of professions. Certified professionals are those who have been issued with certificates by educational institutions, industry associations or

other regulatory bodies certifying that the holder has passed certain examinations or possesses certain practical experience.

The advantage of such a system is that it provides the consumer with a choice. It is expected that those who were fully qualified would charge more than an untrained person, but with this increased price would come a guarantee of quality.

There are a number of disadvantages to such a system, however. Certification may be misleading to consumers where it is based on a one-off award of a certificate of competence. Current competence levels will not be the same as they were ten years previously and will not be the same ten years hence. In some cases, skills will have improved, but in others, skills may have declined.

In addition, there would be difficulties in ensuring that all persons acting as valuers were properly trained. As indicated above, there are a number of risks which are posed to consumers if a person without training in the relevant skills is involved in valuations. It is considered doubtful that uncertified persons could provide a competent service without having the training that land valuers are currently required to have.

2.9.5 Restriction of title

Under this option, any person would be allowed to be involved in the valuation of land, but only those holding prescribed qualifications and fulfilling other criteria could call themselves a land valuer. In some ways, this option resembles certification, but there could potentially be greater control over who could call themselves an valuer.

The advantage of this option is that it would lead to an increase in competition as other occupational groups entered the industry. This could potentially lead to lower prices for valuation services.

There are a number of objections to this option however. As with certification, there would be difficulties in ensuring that all persons acting as valuers were properly trained. As indicated above, there are a number of risks which are posed to consumers if a person without training in the relevant skills is involved in valuations. It is also considered doubtful that there are other occupational groups which could enter the market and provide a competent service without having the training that land valuers are currently required to have.

Pursuing this option is unlikely to lead to any great increase in competition in the industry, but may lead to an increase in consumer detriment.

2.10 Conclusion

The Review Panel has determined that the benefits of regulation in principle outweigh the costs. There are no viable alternatives. It is therefore the recommendation of the Review Panel that the *Land Valuers Act* be retained.

Conclusion

There are no viable alternatives to the negative licensing regime in place under the *Land Valuers Act 1994*.

Recommendation

The Review Panel recommends that the *Land Valuers Act 1994* be retained.

3. RESTRICTIONS ON COMPETITION - BARRIERS TO ENTRY

The following sections of the Report identify areas of restriction upon competition within the Act and regulations.

3.1 Scope of work for which prescribed qualifications are required

The Act defines a "land valuer" as any person who carries on a business that consists of or involves valuing land. All "land valuers" must comply with the requirements of the Act, in particular the requirement to obtain prescribed qualifications.

The definition does not differentiate between different categories of land, eg land zoned or used for residential, commercial or industrial purposes. This may represent a restriction on competition if there are other occupations which may involve the valuation of one type of land from time to time.

The only submission which directly addressed this issue was from REISA, which rejected any suggestion that the definition of valuer was too broad. It appears that the scope of work undertaken by land valuers is broad, and any narrowing of that definition would be artificial and impractical.

Conclusion

The scope of work for which prescribed qualifications are required is appropriate.

3.2 Qualifications

The Act requires all people carrying on business as land valuers to hold prescribed qualifications. A requirement to hold prescribed qualifications is, *prima facie*, a barrier to entry. Unlike many other occupational licensing regimes, however, the Act does not restrict the entry of those with previous history of dishonesty or bankruptcy.

The regulations set out the prescribed qualifications. Currently prescribed qualifications are:-

- (a) degree of Bachelor of Business (Property) conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
 - (i) Statutory Valuations; and
 - (ii) Valuation of Investment Properties;
- (b) Graduate Diploma in Property, or degree of Master of Business in Property, conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:

- (i) -
 - (A) Property Law 1G and 2G; or
 - (B) Property Law 2M; and
- (ii) -
 - (A) Property Case Studies, Real Estate Valuation 1, Real Estate Valuation 2, Real Estate Valuation 3 and Valuation Case Studies; or
 - (B) Statutory Valuations G and Valuation of Investment Property G;
- (c) degree of Bachelor of Business in Property conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
 - (i) Valuation 1 and 2; and
 - (ii) Valuation Field Work 1 and 2;
- (d) membership as a provisional associate, graduate, associate, technical associate, fellow or life fellow of the Australian Institute of Valuers and Land Economists Inc.;
- (e) membership as an intermediate member, associate, fellow or life member of the New Zealand Institute of Valuers;
- (f) membership as an associate or fellow member of the Royal Institution of Chartered Surveyors (General Practice Division).

3.2.1 Implications of the qualifications requirement

Two competition issues arise out of the requirement to hold prescribed qualifications: firstly, whether a requirement to hold such qualifications at all is too restrictive, and secondly, if not, whether the training requirements are too onerous and thus unduly restrictive of competition.

3.2.2 What are the benefits of requiring prescribed qualifications?

Submissions identified the benefits of requiring valuers to hold prescribed qualifications as follows:-

- the courts do not need to spend significant time assessing the qualifications and experience of the valuer.
- the public have significant assurances that valuers will provide proper considered advice
- non-qualified persons can be prevented and/or prosecuted for holding themselves out as valuers
- they address the consumer risk of loss should they rely on an ill-informed valuation
- they protect business from dispute and litigation resulting from disparate valuations.

These benefits can be divided into two main categories:-

1. reduction of information asymmetry; and
2. reduction of provider failure.

3.2.2.1 Reduction of Information Asymmetry

The incidence of information asymmetry in relation to valuers was discussed in consideration of the question of the overall need for continued regulation of valuers. In short, it was noted that consumers generally suffer from a significant level of information asymmetry when dealing with land valuers, and that requiring land valuers to hold prescribed qualifications is an effective way of reducing that information asymmetry.

3.2.2.2 Reduced risk of provider failure

The risk posed to consumers from provider failure was discussed in the general consideration of the ongoing need for regulation of land valuers. There is a risk of provider failure in this industry because the valuation of land is a skill which requires some level of training to perform competently. Thus the removal of a requirement for a valuer to hold qualifications could result in persons entering the industry with little or no competency.

The risks involved in such people performing valuations are considerable. Wrong valuations can result in considerable financial losses for parties which rely on those valuations. Consumers generally place considerable reliance on a valuation being correct.

Even with the current provisions, the Office of Consumer and Business Affairs is aware of situations where consumers have lost considerable amounts of money as a result of relying on flawed valuations. Thus the addressing of this risk by requiring valuers to hold prescribed qualifications is a significant public benefit.

3.2.3 What are the costs of requiring prescribed qualifications?

As noted above, valuers bear the costs of acquiring the prescribed qualifications. Once those qualifications have been acquired, there are no ongoing costs in the form of registration fees or continuing education requirements.

The indirect costs of this requirement are borne by consumers. Economic theory predicts that when competition is reduced, the cost of acquiring the relevant goods or services will increase. Competition is the force which drives prices down. Restrictions on the supply of a service may lead to price increases.

However, the Review Panel notes the submission of REISA, discussed above, that the land valuation industry is currently very competitive.

In the light of this, the Review Panel considers that while consumers may bear some costs as a result of reduced competition, in general the land valuing industry is competitive and thus these costs are minimal.

3.2.4 Assessing the costs and benefits

While there may be some minor costs, both private and public, as a result of the requirement to hold prescribed qualifications, the Review Panel considers that these costs are more than outweighed by the benefits of the requirement. A significant risk would be posed to the community if unqualified valuers were permitted to operate within South Australia. The Review Panel considers that the valuation of land is a task which requires some form of training to be performed competently. It is therefore the conclusion of the Review Panel that the benefits of requiring prescribed qualifications to be held outweigh the costs.

3.2.5 What are the alternatives?

Possible alternatives were considered in the general discussion. Each alternative was rejected as being inadequate to ensure the protection of consumers.

The Review Panel therefore considers that there are no viable alternatives to the requirement that all land valuers hold prescribed qualifications.

In the light of this, the recommendation of the Review Panel is that the requirement to hold prescribed qualifications be retained.

Conclusion

The benefits of requiring valuers to hold prescribed qualifications outweigh the costs.

Conclusion

There are no viable alternatives to the requirement that valuers hold prescribed qualifications.

Recommendation

The Review Panel recommends that the requirement for all land valuers to hold prescribed qualifications be retained.

3.2.6 Are the current training requirements unduly restrictive of competition?

The degree of Bachelor of Business (Property) involves three years full time study (or part time equivalent). Entrance is subject to the usual SATAC criteria and in 1998 the tertiary entrance rank was 59.8. Potential entrants generally must have completed 4 PES and/or PAS subjects, together with one PES, PAS or SAS subject. Alternative entry may be gained where students have completed or partly completed certain other courses or through the Special Tertiary Admissions Test for mature age students.

In the course, students study a variety of core subjects, as well as a professional sequence in valuation for those students wishing to become valuers. This professional sequence contains the subjects mandated in the regulations. The four subjects comprising the professional sequence are:-

- Law of Property;

- Real Estate Valuation;
- Valuation of Investment Properties; and
- Statutory Valuations.

The Master of Business (Property) involves two years full-time study. To complete the Master of Business (Property) students must undertake at least 13 subjects, which must include Property Research Project. To qualify as a valuer, a student must include the subjects listed in the regulations among those 13 subjects.

To enter the Masters degree as student must hold a degree or higher award in property or a related discipline and/or have undertaken a period of work experience related to property.

The Graduate Diploma in Property involves one year full-time study or equivalent part-time. Entry is open to holders of a qualification acceptable to the University of South Australia, which may be a degree, three year diploma, corporate membership by examination of a professional body, or an equivalent qualification.

Each of these courses involves a significant period of study. The duration of the course may act as a deterrent to entry into the industry. It may be argued, however, that the requirements are justified by the level of skill necessary to perform a competent valuation.

There are a number of subjects contained in the course which appear to have little relevance to valuation, however. It may be more appropriate to only require those subjects which are relevant to the valuation of land to be completed before a person may enter the industry, rather than requiring completion of a degree.

While agreeing that “*there are some subjects included in the course which are not directly relevant to the completion of some valuation work*”, REISA submitted that:-

a valuer needs to have a good base knowledge of a wide variety of factors which may affect the value of the land, including a general knowledge of the laws relating to property ownership, use restrictions, contamination and other occupational health and safety issues, accountancy and basic business skills. If valuers are to be able to value all classes of land (including rural, commercial, industrial, extractive and residential property) they must have sufficient understanding of the operations of the land users' businesses, uses and efficiency of use of the land. This, accordingly, requires that a wide range of property types and businesses are studied at some length before a valuer becomes qualified.

In New South Wales, an Advanced Diploma in Property (Valuation) is offered in addition to University level courses. The Review Panel has examined the curriculum for this course, and considers that it may provide sufficient competency in land valuations. The Review Panel therefore considers that if this course were to be offered in South Australia, it should be recognised as a prescribed qualification under the Land Valuers Act. The Review Panel also notes that the persons who have this New South Wales qualification could practise as valuers in South Australia pursuant to mutual recognition arrangements.

Conclusion

Current training requirements are not excessive, except in relation to the post graduate course requirements.

Recommendation

The Review Panel recommends that consideration be given as to whether the completion of subjects other than the professional sequence should be removed from the training requirements in relation to all post graduate courses.

Recommendation

The Review Panel recommends that if the Advanced Diploma in Property (Valuation) is offered in South Australia, this course should be considered for recognition as a prescribed qualification.

4. RESTRICTIONS ON COMPETITION - CONDUCT RESTRICTIONS

4.1 Disciplinary Provisions

The Act places restrictions on the market conduct of valuers by enabling the expulsion of valuers who commit certain acts or conduct their business in certain ways.

Disciplinary provisions are best characterised as a minor restriction on competition. Although they restrict some conduct, the conduct which may give rise to disciplinary action is very limited, restricted to conduct which is completely undesirable, including negligence and dishonesty. The provisions do not restrict normal competitive conduct. They generally place no limitations on the conduct of valuers beyond those which are imposed by the common law. They provide a mechanism for enforcing the standards created by the common law.

Significant risk of financial loss is posed to the consumer by a dishonest or negligent valuer. While there would be very few of these, it is inevitable that in any occupation there will be some members who fail to observe appropriate standards of behaviour. Consumers who rely on the valuations of those who are careless, negligent or deliberately dishonest could find themselves faced with significant financial loss.

REISA submitted that:-

“Without the disciplinary provisions of the Act, unethical and dishonest people who hold themselves out to be land valuers and a number of general land agents, might be encouraged to provide “valuations”, perhaps even at a lower cost, and the integrity of the valuation profession and the respect which their reports obtain from the courts and the community will be lost.”

It was further submitted that:-

“Without assurance as to the appropriateness of values adopted on the balance sheets of companies, we could see the manipulation of company accounts and loss of equity, resulting in the ultimate failure and winding up of companies, much as was seen in the 1980's following the

collapse of the property markets, leaving companies without sufficient assets to continue trading."

While there are some costs incurred by the Government in enforcing these provisions, these costs are minimal, and are justified by the benefit to the community at large of the removal of dishonest and negligent valuers from the industry. In the absence of these provisions, the Office of Consumer and Business Affairs would have to rely on general provisions under the *Fair Trading Act* to curb the activities of such people, which would be less effective and may well be costlier than the present disciplinary regime.

Conclusion

The benefits of the disciplinary provisions outweigh the costs.

Recommendation

The Review Panel recommends that the disciplinary provisions be retained.

5. WHAT IS HAPPENING IN OTHER STATES?

5.1 Queensland, Tasmania, Western Australia and New South Wales

In each of these states, some form of licensing of land valuers occurs. In Queensland, all land valuers must be registered with the Valuers Registration Board of Queensland. To be registered, a valuer must have successfully completed a recognised university degree and have five years practical valuation experience after completion of study. In Western Australia, all valuers not in government employment must be licensed. In New South Wales, valuers must be registered under the *Valuers Registration Act 1975*. Applicants for registration must fulfil fit and proper person requirements, have successfully completed an approved course of study and have undergone a period of training in valuing land.

Recently in Western Australia there have been considerable problems with faulty valuations. The collapse of finance brokers Global Finance Group has brought to light a series of transactions in which properties were considerably overvalued. In Queensland, there have also been problems with overvalued properties.

5.2 Victoria

Since 1995, the occupation of land valuation has been deregulated. Any person may value land, or hold themselves out as a land valuer. The only restriction on this is in relation to land valuations conducted on behalf of local government for the purpose of rating. Under regulations made under the *Valuation of Land Act 1960 (Vic)*, a person appointed by a council to make valuations for the purposes of the *Local Government Act 1989* must be:-

- a valuer member of the Australian Property Institute; or
- previously registered with the Valuers' Qualification Board in Victoria; or
- registered or licensed as a valuer in any other State; or

holder of a Bachelor of Business (Property) majoring in the valuation stream of the Royal Melbourne Institute of Technology (RMIT) with a minimum two years full-time supervised valuation practical experience.

PART C - APPENDICES

Appendix 1 -Conclusions and recommendations

1. CONCLUSIONS

Conclusion 1

The relevant market is the market for the valuation of land.

Conclusion 2

The objective of the Act is to protect consumers.

Conclusion 3

The benefits of regulation of land valuers outweigh the costs.

Conclusion 4

There are no viable alternatives to the negative licensing regime in place under the *Land Valuers Act 1994*.

Conclusion 5

The scope of work for which prescribed qualifications are required is appropriate.

Conclusion 6

The benefits of requiring valuers to hold prescribed qualifications outweigh the costs.

Conclusion 7

There are no viable alternatives to the requirement that valuers hold prescribed qualifications.

Conclusion 8

Current training requirements are not excessive except in relation to the post graduate course requirements.

Conclusion 9

The benefits of the disciplinary provisions outweigh the costs.

2. RECOMMENDATIONS

Recommendation 1

The Review Panel recommends that the *Land Valuers Act* be retained.

Recommendation 2

The Review Panel recommends that the requirement for all land valuers to hold prescribed qualifications be retained.

Recommendation 3

The Review Panel recommends that consideration be given as to whether the completion of subjects other than the professional sequence should be removed from the training requirements in relation to all post graduate courses.

Recommendation 4

The Review Panel recommends that if the Advanced Diploma in Property (Valuation) is offered in South Australia, this course is considered for recognition as a prescribed qualification.

Recommendation 5

The Review Panel recommends that the disciplinary provisions be retained.

Appendix 2 - Terms of reference

The *Land Valuers Act 1994* and associated regulations are referred by the Minister for Consumer Affairs to the Office of Consumer and Business Affairs for evaluation and report by September 1999. The review is to focus on those parts of the legislation which restrict competition or which impose costs or confer benefits on business.

Consistent with the Competition Principles Agreement, the review should assess whether any restrictions on competitive conduct represented by the *Land Valuers Act* are justified in the public interest by:-

- identifying the nature and magnitude of the social, economic or other problems that the Act seeks to address;
- identifying the objectives of the Act;
- identifying the extent to which the Act restricts competition;
- identifying relevant alternatives to the Act, including less intrusive forms of regulation or alternatives to regulation;
- identifying which groups benefit from the Act and which groups pay the direct and indirect costs which flow from its operation; and
- determining whether the benefits of the Act's operation outweigh the costs.

1. METHODOLOGY AND TIMETABLE FOR REVIEW

The review should adopt the following procedures (**in accordance with the indicated timetable**):-

- Appointment of Review Panel and finalisation of draft terms of reference (**by end of November 1998**)
- Initial research identifying relevant resources and materials, including materials on any interstate and overseas equivalents (**by mid-January 1999**)
- Preparation of an issues paper (**by mid-February 1999**)
- Release of issues paper for public and industry comment (**early March 1999**)
- Incorporation of comments into Draft Report report (**by end of May 1999**)
- Preparation of Draft Report report and release for public and industry comment (**early June 1999**)
- Preparation of Final Report to Minister for Cabinet (**by mid-August 1999**)
- Release of report (**by end of September 1999**)

2. CONSULTATION

The review will consult widely with industry and consumer representatives, educational institutions and relevant government agencies.

3. THE REVIEW PANEL

The review will be conducted by a review panel consisting of the following persons:-

- Ms Margaret Cross, *Deputy Commissioner (Policy & Legal), Office of Consumer and Business Affairs;*
- Mr Peter Fountain, *Acting Deputy Valuer-General, Land Services Group, Department for Administrative and Information Services*
- Mr Matthew Bubb, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs (until 8 September 1999)*
- Mr Adam Wilson, *Senior Policy Officer (Competition Policy), Office of Consumer and Business Affairs, (from 13 September 1999)*
- Ms Kate Tretheway, *Legal Officer, Policy & Legislation, Attorney-General's Department*

4. CONTACT OFFICER

The contact officer for the review is:-

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Appendix 3 - Consultation List

<u>Organisation/Individual</u>
Accreditation and Registration Council
ACT Consumer Affairs Bureau
Australian Competition and Consumer Commission
Australian Institute of Conveyancers (SA Division) Inc
Australian Property Institute (SA Division)
Australian Small Business Association
Australian Society of Certified Practising Accountants
Committee of Investigating Mortgagees
Consumer Affairs Division, Commonwealth Treasury
Consumers Association of South Australia
Department of Education, Training and Employment (SA)
Department of Fair Trading (NSW)
Department of Human Services (SA)
Department of Justice (Tas)
Department of Justice (Vic)
Department of Transport, Urban Planning and the Arts (SA)
Institute of Chartered Accountants in Australia (SA Division)
Insurance Council of Australia
Knight Frank
Law Society of South Australia
Local Government Association
Ministry of Fair Trading (WA)
MMAL
Mr E.C. Dixon
Mr P. Wood
NSW Consumer Protection Agency
Office of Consumer Affairs (Qld)
Office of Consumer Affairs (Tas)
Office of Consumer Affairs and Fair Trading (NT)
Office of Fair Trading and Business Affairs (Vic)
Office of Local Government
Office of the Small Business Advocate
Real Estate Employers Federation of South Australia
Real Estate Institute of South Australia
Retail Traders Association of South Australia
Society of Auctioneers and Appraisers (SA) Inc
South Australian Employers Chamber of Commerce and Industry

Appendix 4 - Submissions received

<u>Organisation</u>	<u>Issues Paper</u>	<u>Consultation Draft</u>
Local Government Association	✓	✓
Real Estate Institute of SA	✓	✓
Australian Property Institute	✓	✗
Consumers Association of South Australia	✓	✗
Department of Fair Trading (NSW)	✓	✓
Department of Education, Training and Employment (SA)	✗	✓