

## South Australia

**LAND VALUERS ACT 1994**

No. 91 of 1994

**SUMMARY OF PROVISIONS**

1. Short title
2. Commencement
3. Interpretation
4. Commissioner to be responsible for administration of Act
5. Qualifications required to carry on business as land valuer
6. Incorporated land valuer's business to be properly managed and supervised
7. Cause for disciplinary action
8. Complaints
9. Hearing by Court
10. Participation of assessors in disciplinary proceedings
11. Disciplinary action
12. Contravention of prohibition order
13. Register of disciplinary action
14. Commissioner and proceedings before Court
15. Investigations
16. Delegation by Commissioner
17. Agreement with professional organisation
18. Exemptions
19. Liability for act or default of officer, employee or agent
20. Offences by bodies corporate
21. Prosecutions
22. Evidence
23. Annual report
24. Regulations

**SCHEDULE 1***Appointment and Selection of Assessors for Court***SCHEDULE 2***Transitional Provisions***APPENDIX****DIVISIONAL PENALTIES AND EXPIATION FEES**



ANNO QUADRAGESIMO TERTIO

**ELIZABETHAE II REGINAE**

A.D. 1994

\*\*\*\*\*

**No. 91 of 1994**

**An Act to regulate land valuers; and for other purposes.**

*[Assented to 15 December 1994]*

The Parliament of South Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Land Valuers Act 1994*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. In this Act, unless the contrary intention appears—

"Commissioner" means the Commissioner for Consumer Affairs;

"Court" means the Administrative and Disciplinary Division of the District Court of South Australia;

"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;

"land valuer" means a person who carries on a business that consists of or involves valuing land, and includes a person who formerly carried on such a business;

"land" includes—

- (a) an interest in land; and

- (b) an exclusive right (whether deriving from the ownership of a share or interest in a body corporate or partnership or arising in some other way) to the separate occupation of land or a building or part of a building.

*Note: For definition of divisional penalties (and divisional expiation fees) see Appendix.*

**Commissioner to be responsible for administration of Act**

4. The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

**Qualifications required to carry on business as land valuer**

5. A natural person must not carry on business, or hold himself or herself out, as a land valuer unless he or she—

- (a) holds the qualifications required by regulation; or
- (b) has been licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973*.

Penalty: Division 5 fine.

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

6. 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) holds the qualifications required by regulation; or
- (b) has been licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973*.

Penalty: Division 4 fine.

**Cause for disciplinary action**

7. (1) There is proper cause for disciplinary action against a land valuer if—

- (a) the land valuer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (b) 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.

(2) Disciplinary action may be taken against each director of a body corporate that is a land valuer if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.

(4) This section applies in relation to conduct occurring before or after the commencement of this Act.

**Complaints**

8. The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Act.

**Hearing by Court**

9. (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Act.

(2) Without limiting the usual powers of the Court, the Court may during the hearing—

- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

**Participation of assessors in disciplinary proceedings**

10. In any proceedings under this Act, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

**Disciplinary action**

11. (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) reprimand the person;
- (b) impose a fine not exceeding \$8 000 on the person;
- (c) prohibit the person from carrying on the business of a land valuer;
- (d) prohibit the person from being employed or otherwise engaged in the business of a land valuer;
- (e) prohibit the person from being a director of a body corporate that is a land valuer.

(2) The Court may—

- (a) stipulate that a prohibition is to apply—
  - (i) permanently; or
  - (ii) for a specified period; or
  - (iii) until the fulfilment of stipulated conditions; or
  - (iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

(3) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

#### **Contravention of prohibition order**

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

Penalty: Division 3 fine or division 7 imprisonment.

(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 of the Court, that person and the land valuer are each guilty of an offence.

Penalty: Division 5 fine.

#### **Register of disciplinary action**

13. (1) The Commissioner must keep a register of disciplinary action taken against a person under this Act and must make a note on the register of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a land valuer.

(2) A person may inspect the register on payment of the fee fixed by regulation.

#### **Commissioner and proceedings before Court**

14. (1) The Commissioner is entitled to be joined as a party to any proceedings of the Court under this Act.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

#### **Investigations**

15. The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to a matter that might constitute proper cause for disciplinary action under this Act.

#### **Delegation by Commissioner**

16. (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—

(a) to a person employed in the Public Service; or

- (b) to the person for the time being holding a specified position in the Public Service; or
- (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of land valuers.

(2) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the Commissioner from acting in any matter.

#### **Agreement with professional organisation**

17. (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of land valuers under which the organisation undertakes a specified role in the administration or enforcement of this Act.

(2) The agreement—

- (a) must be in writing and executed by the Commissioner and the organisation; and
- (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
- (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
- (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.

(3) The Commissioner may not delegate for the purposes of the agreement—

- (a) power to request the Commissioner of Police to investigate and report on matters under this Act;
- (b) power to commence a prosecution for an offence against this Act.

(4) A delegation by the Commissioner for the purposes of the agreement—

- (a) has effect subject to the conditions specified in the agreement; and
- (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
- (c) does not prevent the Commissioner from acting in any matter.

(5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

**Exemptions**

18. (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.

- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

**Liability for act or default of officer, employee or agent**

19. For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

**Offences by bodies corporate**

20. Where a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate are guilty of an offence and liable to the same penalty as is imposed for the principal offence unless it is proved that the person could not by the exercise of reasonable diligence have prevented the commission of that offence.

**Prosecutions**

21. (1) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

- (2) A prosecution for an offence against this Act cannot be commenced except by—
  - (a) the Commissioner; or
  - (b) an authorised officer under the *Fair Trading Act 1987*; or
  - (c) a person who has the consent of the Minister to commence the prosecution.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

**Evidence**

22. (1) An allegation in a complaint that a person did not, on a specified date, hold the qualifications required by regulation for carrying on business as a land valuer will be taken to be proved in the absence of proof to the contrary.

(2) In any proceedings, a certificate executed by the Commissioner certifying that a person was or was not licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973* constitutes proof, in the absence of proof to the contrary, of the matters so certified.

**Annual report**

23. (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.

(2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

**Regulations**

24. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) require land valuers to comply with a code of conduct;
- (b) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
- (c) impose a penalty (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation.

(3) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

(4) If a code is referred to in the regulations—

- (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
- (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.



**SCHEDULE 1***Appointment and Selection of Assessors for Court*

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of land valuers.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with land valuers.

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under this Act, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

**SCHEDULE 2**  
*Transitional Provisions*

(1) Where an order is in force under the repealed *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of this Act—

- (a) suspending a person's licence as a land valuer; or
- (b) disqualifying a person from holding a licence as a land valuer,

the order has effect under this Act 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, the business of a land valuer for the period of the suspension or disqualification.

(2) A reference in an Act or other instrument to a licensed land valuer will be taken to be a reference to a land valuer acting lawfully under this Act.

## APPENDIX

## DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor