

LAND VALUERS LICENSING.

No. 55 of 1978.

**AN ACT to provide for the licensing of land valuers
and for related purposes.**

[Assented to 6th September, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Land Valuers Licensing Act, 1978*.

Short title.

2. This Act shall come into operation on a date to be fixed by proclamation.

Commence-
ment.

Arrange-
ment.

3. The arrangement of this Act is as follows—

PART I.—PRELIMINARY.

PART II.—LAND VALUERS LICENSING BOARD.

Division 1.—General.

Division 2.—Proceedings before the Board.

PART III.—LICENSING.

PART IV.—CONTROL OF THE PRACTICE OF
VALUATION.

Division 1.—General.

Division 2.—Discipline.

PART V.—MISCELLANEOUS.

Inter-
pretation.

4. In this Act unless the context otherwise requires—

“approved” means approved by the Board;

“Chairman” means the Chairman of the Board;

“corporation” means any body corporate;

“District Court” means The District Court of Western Australia established under the District Court of Western Australia Act, 1969;

“land” includes any estate or interest in land;

“legal practitioner” means a certificated legal practitioner within the meaning of the Legal Practitioners Act, 1893;

“licence” means a licence under this Act;

“licensed valuer” means a person licensed under this Act;

“licensed valuers code of conduct” means the code approved under section 26;

“member” means a member of the Board and includes the Chairman;

“member”, where used in relation to membership of the Institute of Valuers, means a Fellow or Associate of that Institute;

“officer” means—

- (a) in relation to a firm—a member of the firm or an employee of the firm whose sole or principal employment is in the service of the firm;
- (b) in relation to a corporation—any director, manager or secretary of the corporation or any employee of the corporation whose sole or principal employment is in the service of the corporation;

“Registrar” means the Registrar of the Board;

“section” means a section of this Act;

“subsection” means a subsection of the section wherein the term is used;

“the Board” means the Land Valuers Licensing Board;

“the Institute of Valuers” means the Australian Institute of Valuers (Incorporated).

PART II.—LAND VALUERS LICENSING BOARD.

Division 1.—General.

5. (1) For the purposes of this Act there shall be a board to be known as the “Land Valuers Licensing Board”.

The Board.

(2) The Board—

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) shall be the licensing and supervisory authority for the purposes of this Act; and
- (c) shall have the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that—

- (a) the seal is the common seal of the Board; and
- (b) the common seal was duly affixed.

Composition
of Board.

6. (1) Subject to this section the Board shall consist of five members appointed by the Governor of whom—

- (a) one, who shall be appointed to be a member and Chairman of the Board, shall be a person who is a legal practitioner of not less than seven years' standing and is nominated by the Minister from a panel of names submitted by The Law Society of Western Australia;
- (b) one shall be a person who is experienced in the valuation of land and is nominated by the Minister;
- (c) two shall be persons who are experienced in the valuation of land, are members of the Institute of Valuers, and are nominated by the Western Australian Division of that Institute; and
- (d) one shall be a person who is experienced in the valuation of land, is a member of the Institute of Valuers, and is nominated by the Real Estate Institute of Western Australia.

(2) The Governor shall appoint one of the members appointed pursuant to paragraph (b), (c) or (d) of subsection (1) to be Deputy Chairman of the Board.

(3) Whenever a panel of names is required for the purposes of filling the offices referred to in paragraph (a) of subsection (1) the Minister shall, in writing, request The Law Society of Western Australia to submit, in writing, a panel of names of persons each of whom is qualified and willing to be appointed to those offices.

(4) A request under subsection (3) shall specify—

- (a) the time within which the panel is to be submitted; and
- (b) the number of names to be included in the panel.

(5) Where a request is made pursuant to subsection (3) the Minister may, if no panel, or no panel of sufficient size, is submitted in accordance with the request, nominate for appointment to the offices of member and Chairman such legal practitioner of not less than seven years' standing as he thinks fit.

(6) Whenever a nomination is required for the purpose of filling an office referred to in paragraph (c) or (d) of subsection (1) the Minister shall, in writing, request the body referred to in the appropriate paragraph to nominate in writing, a person qualified and willing to be appointed to that office.

(7) Where a request is made pursuant to subsection (6) the Minister may, if no nomination is made in accordance with the request, appoint to the office of member such person, being a person who is experienced in the valuation of land and a member of the Institute of Valuers, as he thinks fit.

(8) The Governor may appoint a person as the deputy of a member.

(9) The provisions of subsections (1), (3), (4), (5), (6) and (7) as to qualifications and nomination that apply to and in relation to the appointment of a member apply, with any necessary modifications, to and in relation to the appointment of the deputy of that member.

(10) A person appointed pursuant to subsection (8) is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, is deemed to be a member and has all the powers, functions, and duties of a member.

Term of
office.

7. (1) Subject to this Act, each member shall hold office for such period, not exceeding four years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

(3) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.

(4) The office of a member becomes vacant if—

(a) his term of office expires;

(b) his appointment is terminated pursuant to subsection (3);

(c) he becomes an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

(d) he becomes permanently incapable of performing his duties as a member;

- (e) he resigns his office by written notice addressed to the Minister;
- (f) he absents himself, except on leave duly granted by the Minister from three consecutive meetings of the Board; or
- (g) he ceases to hold any qualification required for his becoming or being a member.

8. (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the Chairman to convene a meeting of the Board.

Meetings of
the Board.

(2) The Chairman shall preside at all meetings of the Board at which he is present and the Deputy Chairman shall preside at all meetings at which he, but not the Chairman, is present, but where neither the Chairman nor the Deputy Chairman is present at a meeting of the Board, the members present shall appoint one of their number present to preside at the meeting.

(3) At a meeting of the Board, three members constitute a quorum.

(4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.

(5) The member presiding at a meeting of the Board has a deliberative vote only, and in the event of an equality of votes being cast on any question, that question shall remain unresolved until a subsequent meeting.

(6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.

(7) To the extent that it is not prescribed the Board shall determine its own procedure.

Validity of
acts of
Board.

9. No act, proceeding, or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

Remunera-
tion of
members.

10. The members of the Board shall be paid such allowances and expenses as may from time to time be fixed by the Governor.

The
Registrar
and other
officers.

11. (1) There shall be a Registrar of the Board and there may be such Deputy Registrar, Assistant Registrars and other officers of the Board as are necessary for its proper functioning.

(2) The officers of the Board shall be appointed and shall hold office subject to and in accordance with the Public Service Act, 1904.

(3) The officers of the Board may hold office as such in conjunction with any other office in the Public Service of the State.

(4) Anything by this Act appointed or authorized or required to be done or signed by the Registrar may be done or signed by any Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.

(5) All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been Registrar, Deputy Registrar or Assistant Registrar and of the fact that such person holds or has held such office.

*Division 2.—Proceedings before the Board.*Proceedings
before the
Board.

12. (1) The Board shall give to any person who is a party to proceedings instituted before the Board reasonable notice of the time and place at which it intends to hear those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board unless—

- (a) in the case of an application for the grant of a licence there is no objection; or
- (b) in the case of an application for an inquiry into the conduct of a licensed valuer there is no allegation against him which would, if substantiated, enable the Board to exercise its powers of discipline under this Act.

(2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may hear the proceedings in his absence.

(3) The Board may appoint a person with such qualifications as it thinks fit to appear in proceedings before the Board to assist the Board.

(4) Any party to proceedings before the Board shall be entitled to appear personally or by counsel.

(5) Any party to proceedings before the Board, may, by leave of the Board, be represented before the Board by a person other than a legal practitioner.

(6) A person, other than a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Board.

Penalty: Five hundred dollars.

(7) Where the Board is satisfied that for the purpose of protecting the business or interest of any person it is desirable that the proceedings of any part thereof be heard *in camera*, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

(8) Notwithstanding any other provision of this Act, the Board may, in a meeting at any time and place and without notice thereof to an applicant, grant a licence, and where the Board does so the Registrar shall forthwith deliver the licence to the applicant.

(9) A person appointed by the Board to assist the Board in proceedings before the Board or a person authorized by or under this Act to appear in proceedings before the Board for the purpose of representing another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, where the person so appointed is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

Powers of
the Board.

13. (1) In the exercise of its powers and functions under this Act, the Board may—

- (a) by summons signed on behalf of the Board by the Registrar, require the attendance before the Board of any person;
- (b) by summons signed on behalf of the Board by the Registrar, require the production of any books, papers, or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;

- (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by a member of the Board or any officer of the Board); and
- (e) require any person appearing before the Board, including the person whose conduct is subject to an inquiry, (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Board, or by any other person appearing before the Board.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers, or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board, or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he is guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of any proceedings, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.

(5) In any proceedings the Board shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Orders for
fines or
costs.

14. (1) The Board may, upon the determination of any proceedings, make such orders for costs as the Board considers just and reasonable.

(2) Where the Board makes an order for the payment of a fine or costs against a licensed valuer, and the fine or costs is not, or are not, paid within the time fixed by the Board, the Board may suspend his licence until the fine or costs is or are paid, or for such period as the Board thinks fit.

(3) The power conferred on the Board by subsection (2) is in addition to and not in derogation of the powers conferred on the Board by section 28.

Reasons for
decision of
Board to be
given.

15. The Board may, and, on request by any party to the proceedings, shall, give to the parties reasons for its decision.

16. (1) Any person aggrieved by a decision or order of the Board in proceedings to which the person was a party shall, subject to this section, be entitled to appeal to the District Court against the decision or order of the Board.

Appeal.

(2) The appeal shall be instituted within one month of the making of the decision or order appealed against, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal shall be so instituted.

(3) The District Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

PART III.—LICENSING.

17. (1) An application for a licence shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

Application.

(2) Notice of the application shall be advertised in accordance with the regulations.

(3) The information contained in the application shall be verified by statutory declaration of the applicant.

(4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

(5) An applicant is a party to proceedings before the Board on his application.

Objections.

18. (1) Any person may object to the grant of a licence.

(2) Any objection made shall be in writing and in a form and manner determined by the Board and shall contain information in support of the grounds on which the objection is made.

(3) The information contained in the objection shall be verified by statutory declaration of the person making the objection.

(4) A person who makes an objection to the grant of a licence is, while he maintains the objection, a party to the proceedings on the application for the grant.

Grant of licence.

19. (1) The Board may grant a licence to any person who satisfies the Board, by such evidence as it may require that he is a person of good character and repute and is competent to carry out the duties of a licensed valuer and who—

(a) applies for a licence within two years after the coming into operation of this Act and has had, in the opinion of the Board, not less than five years' satisfactory practical experience in the valuation of land within the period of ten years immediately preceding the date of his application; or

(b) is a member of the Institute of Valuers; or

- (c) is the holder of a prescribed degree, diploma, certificate or other award and has had, in the opinion of the Board,—
- (i) satisfactory practical experience in the valuation of land, for the period of two years immediately preceding the date of his application; and
 - (ii) a total of not less than four years' satisfactory practical experience in the valuation of land within the period of ten years immediately preceding the date of his application; or
- (d) has previously held a licence under this Act within the period of five years immediately preceding the date of his application.

(2) The Board may conduct, or cause to be conducted, such examinations of persons referred to in paragraph (a) of subsection (1) as the Board thinks necessary in order to ascertain whether those persons are competent to carry out the duties of a licensed valuer.

(3) The Board may, with the approval of the Minister appoint such examiners as it thinks necessary for the purposes of this section and a person so appointed shall be entitled to such remuneration, allowances and expenses as may be determined by the Board and approved by the Minister.

(4) The Board may collect such fees as are prescribed from candidates for examinations held for the purposes of this section.

20. A person who has applied for and is qualified to hold, a licence shall, before being granted a licence,—

- (a) pay to the Board the prescribed fee for the licence; and
- (b) make on oath or affirmation a declaration in an approved form that he will make every valuation impartially.

Fee and
Oath.

Expiry and
surrender of
licence.

21. (1) Subject to this Act, a licence shall remain in force until the 30th June next ensuing the day on which it was granted but is renewable pursuant to section 22.

(2) A person may at any time surrender a licence and the licence shall thereupon become and be void and of no effect.

Renewal of
licence.

22. (1) Where the holder of a licence applies to the Board for the renewal of that licence and pays to the Board the prescribed fee, the Board shall renew the licence for a further period of twelve months.

(2) An application for the renewal of a licence shall be made not later than the 1st June preceding the date of expiry of the licence unless the applicant satisfies the Board that there is reasonable cause for the application being made out of time.

(3) An application for the renewal of a licence shall be made in writing and in a manner and form determined by the Board in respect of such an application.

PART IV.—CONTROL OF THE PRACTICE OF VALUATION.

Division 1.—General.

Valuers to
be licenced.

23. (1) After the expiration of twelve months from the coming into operation of this Act a person shall not carry on business, or by any means hold himself out, as a valuer of land unless he is licensed under this Act.

Penalty: Five hundred dollars.

(2) Subsection (1) does not prevent a firm or corporation from carrying on business, or holding itself out, as a valuer of land so long as every valuation of land supplied by that firm or corporation is made by an officer of the firm or corporation who is licensed under this Act.

(3) Subsection (1) does not prevent—

- (a) a student who is undertaking a prescribed course of study in the valuation of land; or
- (b) a person who is employed as an assistant to a licensed valuer,

from performing and discharging, under the supervision of a licensed valuer, functions and duties connected with the valuation of land.

24. (1) A person who, not being a licensed valuer, in any way implies that he is licensed under this Act shall be guilty of an offence against this Act.

False claim
of being
licensed.

Penalty: Five hundred dollars.

(2) Subsection (1) does not prevent a firm or corporation of which at least one officer is a licensed valuer from using the term "licensed valuers", or otherwise implying in any way that it is able to render the services of a licensed valuer, in a notice or advertisement or in a letterhead or other document so long as the notice, advertisement or document also contains the names of the officer or officers of the firm or corporation who is or are licensed under this Act.

25. (1) The Board may from time to time by notice published in the *Government Gazette* fix the maximum amounts of remuneration for the various kinds of services rendered by licensed valuers.

Remunera-
tion of
licensed
valuers.

(2) The respective maximum amounts fixed under subsection (1) shall have effect on and after the date on which the notice fixing them is published in the *Government Gazette* or on and after such subsequent date as is specified in that notice.

(3) A licensed valuer, or a firm or corporation of which a licensed valuer is an officer, shall not demand or receive, in respect of any service rendered by the licensed valuer, any remuneration that exceeds in value the amount (if any) for the time being fixed under subsection (1) in respect of a service of that kind.

Penalty: Five hundred dollars.

(4) Any remuneration received in contravention of this section may be recovered as a civil debt recoverable summarily in a court of competent jurisdiction.

Division 2.—Discipline.

Licensed
valuers'
code.

26. The Board may approve a code of conduct for licensed valuers.

Inquiries
into conduct
of licensed
valuers.

27. (1) The Board may on the application of the Registrar or any other person, or of its own motion, hold an inquiry into the conduct of any licensed valuer.

(2) An application under subsection (1) shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

(3) The information contained in the application shall be verified by statutory declaration of the applicant.

(4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

(5) An applicant, if any, and the licensed valuer are parties to an inquiry held under subsection (1).

28. (1) If after conducting an inquiry under subsection (1) of section 27 the Board is satisfied that proper cause exists for disciplinary action, the Board may do any one or more of the following things—

Powers on inquiry.

- (a) reprimand or caution the licensed valuer;
- (b) impose a fine not exceeding five hundred dollars on him;
- (c) suspend or cancel his licence and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the Board, or until the further order of the Board, from holding a licence.

(2) There shall be proper cause for disciplinary action if—

- (a) the licensed valuer improperly obtained a licence;
- (b) the licensed valuer has been guilty of negligence or incompetence in making a valuation of land;
- (c) the licensed valuer is acting or has acted in breach of the licensed valuers code of conduct; or
- (d) any other cause exists that, in the opinion of the Board, renders the licensed valuer unfit to hold a licence.

(3) Where the Board suspends or cancels a licence the suspension or cancellation shall take effect immediately, and shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do if it thinks fit subject to such conditions as it may impose to protect clients and potential clients of the licensed valuer and the public generally.

PART V.—MISCELLANEOUS.

Registers.

29. (1) The Registrar shall keep a register of licensed valuers.

(2) The Registrar shall record in the register any prescribed particulars.

(3) The Registrar shall cause to be removed from the register the name of every licensed valuer who dies or ceases for any reason to be licensed under this Act.

(4) The Registrar shall, upon receipt of the prescribed fee from a person desiring to inspect the register, make it available for the inspection of that person.

Lists and certificates.

30. (1) A list of the names and descriptions of all persons holding licences on a date specified therein together with such of the particulars appearing in the register as the Registrar thinks fit, shall be published in the *Government Gazette* annually.

(2) The Registrar may cause supplementary lists to be published.

(3) A certificate under the hand of the Registrar that any person is or is not, or was or was not, licensed under this Act on the date of, or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.

(4) The Registrar shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the Register.

31. (1) The Chairman shall, on behalf of the Board, as soon as practicable after the 1st July in each year, submit to the Minister a report on the activities under this Act of the Board for the year ending on the 30th June last preceding.

Annual
report.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within fourteen days of its receipt, or if at that time Parliament is not in session, then within fourteen days of the commencement of the next session of Parliament.

32. No liability shall attach to a member or the deputy of a member, or the Registrar or any other officer, of the Board for any act or omission by him or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

Immunity of
Board and
officers.

33. (1) This section applies to any person who is, or has been, a member or the deputy of a member, or the Registrar or any other officer, whether permanent or temporary, of the Board.

Secrecy.

(2) A person to whom this section applies shall not either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.

Penalty: Five hundred dollars.

34. Where a corporation is guilty of an offence against this Act any officer of the corporation who was knowingly a party to the commission of that offence is also guilty of that offence.

Offences by
corporations.

Proceedings.

35. (1) Proceedings for an offence against this Act may be taken by the Registrar.

(2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

(3) Without limiting the application of section 72 of the Justices Act, 1902 in relation to a complaint for an offence against this Act, in any proceedings for an offence against this Act an allegation in the complaint that a person named therein was or was not licensed under this Act at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

Regulations.

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

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

- (a) prescribe the procedure of the Board;
- (b) provide for the enforcement of judgments and orders of the Board;
- (c) provide for the advertising of notices of applications for licences;
- (d) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
- (e) prescribe the particulars to be recorded in the register required to be kept under this Act;
- (f) prescribe a scale of costs for proceedings before the Board; and
- (g) prescribe penalties not exceeding one hundred dollars for any breach of the regulations.