

South Australia

Land Valuers Act 1994

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

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

3—Interpretation

In this Act, unless the contrary intention appears—

Commissioner means the Commissioner for Consumer Affairs;

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 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;

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;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

4—Commissioner to be responsible for administration of Act

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

5—Qualifications required to carry on business as land valuer

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- (b) has been licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973*.

Maximum penalty: \$20 000.

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

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

- (a) 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- (b) has been licensed as a land valuer under the repealed *Land Agents, Brokers and Valuers Act 1973*.

Maximum penalty: \$20 000.

7—Cause for disciplinary action

- (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.

8—Complaints

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

9—Hearing by Tribunal

- (1) On the lodging of a complaint, the Tribunal 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 Tribunal, the Tribunal 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 Tribunal may think fit to impose.

10—Participation of assessors in disciplinary proceedings

- (1) For the purposes of section 22 of the *South Australian Civil and Administrative Tribunal Act 2013*, there will be a panel of assessors consisting of—
 - (a) persons representative of land valuers; and
 - (b) persons representative of members of the public who deal with land valuers, who have expertise that would be of value to the Tribunal in relation to proceedings before the Tribunal under this Act.
- (2) In any proceedings under this Act, the Tribunal may, if the President so determines, sit with 1 or more assessors from the panel.
- (3) In this section—

President means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*.

11—Disciplinary action

- (1) On the hearing of a complaint, the Tribunal 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 \$20 000 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 Tribunal 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.

12—Contravention of orders

- (1) If a person carries on the business of a land valuer in contravention of an order of the Tribunal, the person is guilty of an offence.
Maximum penalty: \$35 000 or imprisonment for 6 months.
- (2) If a person—
 - (a) is employed or otherwise engages in the business of a land valuer; or
 - (b) becomes a director of a body corporate that is a land valuer,in contravention of an order of the Tribunal, that person and the land valuer are each guilty of an offence.
Maximum penalty: \$35 000 or imprisonment for 6 months.

13—Register of disciplinary action

- (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.

14—Commissioner and proceedings before Tribunal

- (1) The Commissioner is entitled to be joined as a party to any proceedings of the Tribunal 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.
- (3) Subsection (1) applies in addition to section 53 of the *South Australian Civil and Administrative Tribunal Act 2013*.

15—Investigations

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.

16—Delegation by Commissioner

- (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.

17—Agreement with professional organisation

- (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.

18—Exemptions

- (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.

19—Liability for act or default of officer, employee or agent

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.

21—Prosecutions

- (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.

22—Evidence

- (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.

23—Annual report

- (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.

24—Regulations

- (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 \$2 500) 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 2—Transitional provisions

- (1) If, under Schedule 2 subclause (1) as in force immediately before the commencement of this subclause, an order had effect as if it were an order of the Administrative and Disciplinary Division of the District Court, the order will, on and from that commencement—
 - (a) have effect under this Act as if it were an order of the Tribunal; and
 - (b) be subject to the same terms and conditions as applied immediately before that commencement.

- (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.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1994	91	<i>Land Valuers Act 1994</i>	15.12.1994	1.6.1995 (<i>Gazette 25.5.1995 p2198</i>)
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998</i> as amended by 22/1998	2.4.1998	Pt 7 (ss 20 & 21)—28.5.1998 (<i>Gazette 28.5.1998 p2292</i>)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 32 (s 62)—17.6.2013 (<i>Gazette 6.6.2013 p2498</i>)
2017	51	<i>Statutes Amendment (SACAT No 2) Act 2017</i>	28.11.2017	Pt 26 (ss 142 to 151)—4.10.2018 (<i>Gazette 28.6.2018 p2618</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
<i>Court</i>	<i>deleted by 51/2017 s 142(1)</i>	4.10.2018
Tribunal	inserted by 51/2017 s 142(2)	4.10.2018
ss 5 and 6	amended by 21/1998 Sch cl 5 as substituted by 22/1998 s 3	28.5.1998
s 8	amended by 51/2017 s 143	4.10.2018
s 9		
s 9(1)	amended by 51/2017 s 144(1)	4.10.2018
s 9(2)	amended by 51/2017 s 144(2)	4.10.2018
s 10	amended by 21/1998 s 20	28.5.1998
	substituted by 51/2017 s 145	4.10.2018

s 11		
s 11(1)	amended by 21/1998 Sch cl 5 as substituted by 22/1998 s 3	28.5.1998
	amended by 51/2017 s 146(1)	4.10.2018
s 11(2)	amended by 51/2017 s 146(2)	4.10.2018
s 12		
s 12(1)	amended by 21/1998 Sch cl 5 as substituted by 22/1998 s 3	28.5.1998
	amended by 51/2017 s 147(1)	4.10.2018
s 12(2)	amended by 21/1998 Sch cl 5 as substituted by 22/1998 s 3	28.5.1998
	amended by 51/2017 s 147(2)	4.10.2018
s 14		
s 14(1)	amended by 51/2017 s 148(1)	4.10.2018
s 14(3)	inserted by 51/2017 s 148(2)	4.10.2018
s 20	<i>deleted by 16/2013 s 62</i>	17.6.2013
s 24		
s 24(2)	amended by 21/1998 Sch cl 5 as substituted by 22/1998 s 3	28.5.1998
<i>Sch 1 before deletion by 51/2017</i>		
scl (5)	<i>amended by 21/1998 s 21</i>	28.5.1998
Sch 1	<i>deleted by 51/2017 s 149</i>	4.10.2018
Sch 2		
scl 1	substituted by 51/2017 s 150	4.10.2018

Transitional etc provisions associated with Act or amendments

Statutes Amendment (SACAT No 2) Act 2017, Pt 26

151—Transitional provisions

- (1) A right to lodge a complaint under section 8 of the principal Act in existence (but not yet exercised) before the relevant day, will be exercised as if this Part had been in operation before the right arose, so that the complaint may be lodged with the Tribunal rather than the Administrative and Disciplinary Division of the District Court.
- (2) A decision or order of the Administrative and Disciplinary Division of the District Court under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision or order of the Tribunal.
- (3) Nothing in this section affects any proceedings before the Administrative and Disciplinary Division of the District Court commenced before the relevant day.
- (4) A member of each panel of persons who may sit as assessors established under Schedule 1 of the principal Act (as in existence immediately before the relevant day) ceases to hold office on the commencement of this subsection and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this subsection at the same time.

(5) In this section—

principal Act means the *Land Valuers Act 1994*;

relevant day means the day on which this Part comes into operation;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Historical versions

Reprint No 1—28.5.1998

17.6.2013