

# ***Valuers Registration Regulation 2024***

## **Human Rights Certificate**

### **Prepared in accordance with Part 3 of the *Human Rights Act 2019***

In accordance with section 41 of the *Human Rights Act 2019*, I, Scott Stewart, Minister for Resources and Critical Minerals provide this human rights certificate with respect to the *Valuers Registration Regulation 2024* made under the *Valuers Registration Act 1992*.

In my opinion, the *Valuers Registration Regulation 2024*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

### **Overview of the Subordinate Legislation**

The *Valuers Registration Act 1992* (the Act) establishes the Valuers Registration Board (the Board) and details its role; details the requirements for registration as a valuer; details the complaints and disciplinary actions within the power of the Board.

Section 66 of the Act states that the Governor in Council may make regulations for the purposes of the Act. The *Valuers Registration Regulation 2024* (the Regulation) provides the operational effect to the Act including establishing a code of conduct, prescribing Continuing Professional Development (CPD) requirements and institutes that may issue compliance certificates, and fees for registration.

The Act and Regulation afford a measure of protection for the users of valuation services through a better valuation service. This includes the standards required of registered valuers and greater confidence in the competency of valuers.

In particular, the Regulation provides for:

- a professional code of conduct that valuers must comply with. The code consists of the provisions in Schedule 1 of the Regulation together with either the Board's own approved document or the Australian Property Institute (API) Code of Professional Conduct.
- Annual CPD requirements for valuers and specifies the institutes that may provide a certificate of competence acceptable to the Board to fulfill the CPD requirements.
- The setting of fees for registration under Schedule 2.

Section 2 of the Regulation provides the Code (Schedule 1) takes precedence over other codes as established. This sets the minimum standards for the conduct of valuers. The Code has three parts:

- Duty to Client – This Part details the expectations of valuers during their engagement with a client. It provides the valuer’s responsibilities to their client, including maintaining confidentiality and disclosing a valuer’s interests in land they are valuing.
- Professional Responsibilities – This Part details the valuers’ obligations to maintain professional integrity. This includes not predetermining a valuation, being appropriately qualified, specifying content for written reports and ensuring valuers are truthful and operate in good faith in advertising and discussing the valuation profession and their colleagues.
- Professional Fees – This Part limits how professional fees may be charged by valuers by not permitting fees to be charged based on a stated outcome or contingent on compensation to a client.

These responsibilities in the Code have been established as minimum professional standards for valuers. As the Board has not approved their own code of conduct document, all valuers must operate in accordance with the API Code which contains additional detailed obligations all valuers must comply with. It is appropriate that the Regulation maintain minimum standards periodically reviewed by Government to ensure a baseline protection to consumers.

In accordance with section 54(1) of the *Statutory Instruments Act 1992*, the *Valuers Registration Regulation 2013* (2013 Regulation) has been reviewed and re-made with amendments. The remade Regulation remains substantially the same as the 2013 Regulation, although a number of updates and amendments have been made to improve the efficiency and effectiveness of its operation. It has also been updated to align with more modern drafting practices.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019 (HR Act)*)

The human rights that are relevant to the Regulation are:

- Right to privacy and reputation (section 25 of the HR Act);
- Right to freedom of expression (section 21 of the HR Act); and
- Property rights (section 24 of the HR Act).

### Consideration of reasonable limitations on human rights (section 13 *HR Act*)

#### **Right to Privacy and Reputation**

##### (a) the nature of the right

Section 25(a) of the HR Act protects the right to privacy for the people of Queensland from unlawful or arbitrary interference, such as when something is lawful but also unreasonable, unnecessary or disproportionate. The right to privacy protects a person from having to arbitrarily disclose information about themselves that they would reasonably expect to be private.

Section 3 of the Code requires valuers to disclose an interest in a property they are valuing. Section 7 of the Code requires valuers to disclose information on their qualification and registration in the valuation report. These sections engage the right to privacy because they require valuers to disclose information about their home, family, financial or private life that, in other contexts, they may reasonably expect to remain private. However, for the reasons outlined below, this requirement is not an arbitrary interference with privacy, and therefore the right to privacy is not limited.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of requiring disclosure of this information is to ensure community confidence in the independence and competence of valuers. Accurate and reliable valuations of real assets are a vital component of Australia's economy. These purposes are consistent with a free and democratic society.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Imposing a requirement that valuers disclose property interests in section 3 of the Code will prevent the valuer from seeking to inflate or deflate the actual value of property for their personal gain. This will contribute to community confidence in the valuations of property.

Additionally, limiting the right to privacy as imposed in section 7 of the Code will ensure that appropriately skilled valuers are completing the valuation. This will protect the community from having incorrect valuations which could harm the financial interest of individuals and businesses. These limitations help to achieve the purpose of the sections.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

An alternative to section 3 would be for individuals to check the interest in the land prior to engaging the valuer, for example by completing a title search. This is not as effective for ensuring community confidence.

One alternative to section 7 could be to not require valuers to disclose their qualifications or registration. If this occurred, a person seeking to understand a valuer's credentials would have to search the register of valuers. This would put the person seeking to check a valuer's credentials to great inconvenience and ultimately undermine the accessibility and transparency of the registration process. Accordingly, it would not be as effective at achieving the purpose.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The obligation to disclose an interest in property under section 3 of the Code does not exceed the benefit gained. The purpose for regulating valuers is to ensure community confidence in the profession as a basis for sound economic principles. Section 7 of the Code ensures that valuations are being conducted by appropriately qualified valuers. The requirement for a valuer to evidence their qualifications and registration is appropriate and

does not arbitrarily limit human rights. For these reasons, any interference with the right to privacy is not arbitrary, and therefore the right is not limited.

(f) any other relevant factors

Nil.

**Freedom of Expression**

(a) the nature of the right

Section 21 of the HR Act protects an individual's right to express an opinion through various mediums. This right is broad but can and has been limited in some circumstances.

Section 8 of the Code provides that a registered valuer must ensure that an advertisement is not misleading or be likely to damage the valuation profession or the professional reputation of another valuer. Section 9 of the Code provides that a registered valuer must not make a false, malicious, or misleading statement to another person, about the professional reputation of another valuer or the valuation profession. Sections 8 and 9 limit the right to freedom of expression by preventing a registered valuer from expressing themselves in a way that might mislead consumers, reduce community confidence in the valuation profession, or harm the reputation of another valuer.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the freedom of expression is to protect consumers of valuation services and valuers from reputational damage. These purposes are consistent with a free and democratic society. This will ensure consumers have confidence in valuations and be consistent with promoting other valuers' right to reputation under section 25(b) of the HR Act.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Section 8 of the Code seeks to reduce the instances in which valuation advertising misleads consumers, which reduces public confidence and harms the reputation of the profession. The prohibition is an effective tool to keep valuers mindful of their advertising responsibilities.

Section 9 of the Code seeks to prevent and prohibit valuers from making injurious and malicious statements of other valuers. This is necessary to retain community confidence in individual valuers and the valuation profession. Limiting valuers' statements in this way will achieve this purpose.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

One alternative option could be to decline to include specific prohibitions against misleading advertisements, or making false, malicious, or misleading statements about other valuers and instead rely upon other existing legal avenues such as defamation

proceedings or claims under Australian Consumer Law (ACL) to provide legal protection of valuers' reputations. While the ACL is a robust consumer protection framework, the Australian Competition and Consumer Commission may not always prioritise the breaches of valuation advertising where there are more significant breaches of the ACL. Additionally, defamation proceedings can be cost prohibitive. Sections 8 and 9 of the Code provides the simplest and most efficient protections with only minor limits on human rights.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Section 8 of the Code prevents consumers from being misled and to protect the reputation of the profession and valuers. The obligation not to mislead in advertising is also enshrined in ACL. Section 9 of the Code prevents valuers from making statements that harm the professional reputation of other valuers which is justifiable to ensure community confidence in the profession. On balance the limitation imposed by sections 8 and 9 of the Code is outweighed by the benefit provided. These limitations on human rights largely already exist in the ACL and defamation. Including the prohibitions in the Code of Conduct are minor and it provides an accessible and transparent statement of expectations of valuers.

- (f) any other relevant factors

Nil.

### **Property Rights**

- (a) the nature of the right

Section 24 of the HR Act protects an individual's right to hold property to the exclusion of other persons and provides that a person must not be arbitrarily deprived of their property. Sections 29(1)(c), 34(1), 36, 36B, 40, 42B, 42FA and 42GB of the Act require valuers to pay various fees to cover administrative costs associated with obtaining and maintaining registration. Schedule 2 of the Regulation sets the value of the fees to be paid. Together, these provisions have the effect of depriving valuers of their property in the amount set out in Schedule 2. This does not limit property rights by depriving valuers of their money for registration as the imposition of a fee is not considered arbitrary. The fees are predictable and are proportionate for administering the registration process.

- (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of Schedule 2 of the Regulation is to set the fees payable for registration as a valuer. It is appropriate a valuer must pay for the administrative costs for their registration to ensure that the amount of the fees paid covers the administrative costs associated with administration of the registration framework. This purpose is consistent with a free and democratic society.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The Act establishes the requirement to pay a registration fee and the Regulation sets out the amount. These have been set in a manner that covers the anticipated administrative costs associated with obtaining and maintaining registration. The fees are set out in fee units to ensure that the monetary value is adjusted for inflation consistently with other government fees. Fee Units are governed under the *Acts Interpretation Act 1954* and the *Acts Interpretation (Fee Unit) Regulation 2022*.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Schedule 2 of the Regulation is necessary to facilitate the administration of the registration process for valuers. Without these fees, the cost of registering valuers would be borne by the taxpayer. Alternatively, Schedule 2 could prescribe the fees in monetary value. This is not preferred in this instance as it may increase the risk that the fees are found to be arbitrary or inconsistent with the indexation rate across government.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The scope of property rights is subject to an internal limitation, being that the deprivation of property must not be arbitrary. Mandating the payment of a registration fee is reasonable and proportionate to the purpose of the section, and therefore Schedule 2 does not impose an arbitrary limitation on property rights. A minor financial contribution to administering the registration of valuers is consistent with the policy objective of requiring entities to pay for services they use.

- (f) any other relevant factors

Nil.

## Conclusion

I consider that the *Valuers Registration Regulation 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**SCOTT STEWART**  
MINISTER FOR RESOURCES AND CRITICAL MINERALS

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