



**Valuers Bill Submission**  
**New Zealand Institute of Valuers**  
**September 2024**

**Introduction**

The New Zealand Institute of Valuers (**NZIV**) welcomes the opportunity to provide its views on the Valuers Bill Exposure Draft (the **Bill**).

NZIV is the professional body for registered valuers in New Zealand. Its members are recognised in New Zealand as the authority when it comes to assessing the value of property. They undertake thousands of valuations every year on behalf of their clients and play a critical role in the financial wellbeing of NZ Inc.

With the passage of the Valuers Act 1948 (the **Act**), NZIV assumed a range of statutory functions under s. 10 of that Act. These include: *to consider and suggest amendments to the law relating to the valuing of land and related subjects*. NZIV also undertakes important statutory roles in relation to the education and regulation of registered valuers. NZIV supports measures to modernise the Act.

**Introductory comments**

NZIV acknowledges the limitations of a revision Bill introduced under s. 96(3) of the Legislation Act 2019, together with the Amendment Paper (**AP**) process suggested.

However, NZIV also notes the Act has been the subject of several recent High Court decisions, notably:

- *Bates v Valuers Registration Board* [2015] NZHC 1312; and
- *Valuers Registration Board* [2020] NZHC 2050.

These decisions have identified several issues relating to the Act that could be clarified. NZIV considers that, to the extent possible in this context, those issues should be addressed.

Deciding whether a potential amendment falls more neatly under s. 96(3) of the Legislation Act or is a matter that should be progressed through the AP process is, at least in part, a subjective exercise. NZIV has attempted to identify all of the changes it considers should properly be made in the current context (and having regard to the changes already proposed in the Exposure Draft materials). These changes are identified primarily in the tables appearing at Q3 – Q5 below (or as specifically requested by other Questions).

## **Response to questions 1 to 14**

### **Question 1**

*Do the changes made in those provisions amount only to “minor amendments to clarify Parliament’s intent, to resolve ambiguity, or to reconcile inconsistencies between provisions” within the meaning of [section 96\(3\)\(a\)](#)?*

Please see the more detailed comments below under Q3 - Q5.

### **Question 2**

*If the Bill does make “minor amendments” to the effect of the law, is there any reason why the amendments should not be made?*

Please see the more detailed comments below under Q3 - Q5.

### **Question 3**

*Are there any other “minor amendments” within the meaning of [section 96\(3\)](#) that should be made? If so, please provide a detailed explanation of any proposed amendment and why it is justified.*

NZIV considers it would be appropriate, and consistent with a revision Bill, to include the following further changes to the Act:

<b>Act ref.</b>	<b>Proposed change</b>	<b>Rationale</b>
31	Remove the word “grave” from the heading.	The term is not consistent with, nor reflected in, the wording of s. 31.

s. 33(1)	The further disciplinary powers of the Board should be exercised only if a complaint is upheld.	If, following an inquiry, the complaint is not upheld there is no basis for imposing a sanction on the valuer concerned.  NZIV suggests including words to the effect of “Where, following an inquiry, a complaint against a registered valuer is upheld the Board may...” This is broadly similar to the wording in s. 241 of the Lawyers and Conveyancers Act 2006.
s. 33 (1)	The word “penalty” to be changed to “fine”.	All of the sanctions set out in s. 33(1) constitute penalties in a professional disciplinary context. The monetary penalty is in substance a fine and would be more accurately described as such.

#### **Question 4**

*Do you think we have made any “minor amendments” in the Bill that inadvertently change the law that we have not identified in notes to the Bill?*

Please refer to the table below. For completeness, NZIV has also included in the table changes suggested in the AP that it considers are problematic.

<b>Bill ref.</b>	<b>Proposed change</b>	<b>Rationale</b>
s. 17(4)(d)	Remove the word “current” and add, at the end, “which is in full force and effect”.	Makes clear the reciprocity agreements concerned are not limited to those in force at the time the Bill is passed.
s. 36(4)	Removal of the proviso in s. 32(1) of the Act (mandating NZIV’s investigation of matters under s. 31(1)(c)).	NZIV considers replacing “provided” with “however”, changes Parliament’s intention (which is that NZIV have ‘first option’ to investigate all complaints falling under s. 31(1)(c)).  NZIV suggests s. 36(3) of the Bill should be drafted as subject to s. 36(4) and the word “however” be deleted.
s. 41(1)(c)	Replace the current wording with “order A, at their own expense, to complete education, training or professional development course(s) as prescribed by the Board within the time period and on the terms stipulated by the Board”	NZIV considers this wording would be clearer and more flexible than what is proposed.

s. 89(1)(l)	The amount of any fine should be increased to “not exceeding \$5,000”.	A maximum fine of \$1,000 is unlikely to be an effective sanction for a registered valuer in 2024. For example, the cost per year to meet a member’s CPD obligations would often exceed \$2,500. Consistent non-compliance needs to be met with sanction that is proportionate and will deter others.
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**Question 5**

*Are there any other changes that do not fall within the powers in [section 96](#) of the Legislation Act 2019 that would improve the Bill as a revision Bill if made via the revision AP? To be suitable for the Business Committee’s consideration, they should be uncontentious improvements to the law to address legislative inconsistencies, imperfections, and minor policy issues.*

NZIV considers it would be appropriate to include the following further changes in the Amendment Paper:

<b>Act ref.</b>	<b>Proposed change</b>	<b>Rationale</b>
s.3	The powers and functions of the Board should be expressly stated.	Parliament has granted the Board powers and functions under the Act. They should be expressly stated in the provisions constituting the Board.
s. 30(1)	Delete the word “accordingly at the end of the section and replace “within 30 days”.	Any direction for removal should be actioned promptly
s.3(2)(b)	Commence the section with the words “At least 4 but not more than 6” (or similar).	This will provide the Board more flexibility in how it is constituted, reduce the risk of conflicts of interest and promote the speedy resolution of complaints.
s.32	Clarify that an inquiry by the Board must be held in public unless otherwise directed.	This would more expressly align an inquiry hearing with the disciplinary hearings of other regulated professions and act as an important counterpoint to the proposed new 65A of the Bill.
s.32	Clarify that the Board may, in the course of an inquiry, receive any evidence it considers would assist	This would align an inquiry hearing with the disciplinary hearings of other regulated professions and make express the implied

	(whether or not such evidence would be admissible in court).	powers of the Board to receive evidence on a more flexible basis than a court.
s.32	Clarify that an inquiry by the Board must proceed in accordance with the rules of natural justice (albeit within a “quasi -inquisitorial” framework) .	This would more expressly align an inquiry hearing with the disciplinary hearings of other regulated professions.
s.32	Clarify that, following an inquiry, the Board will promptly produce a written decision, with reasons, to be published on its website (subject to any non- publication orders).	This would more expressly align an inquiry hearing with the disciplinary hearings of other regulated professions.

NZIV considers the changes suggested above are not controversial, clarify the intention of Parliament and/or reflect current practice.

**Question 6**

*Can an intention to bind the Crown be implied because the terms of the Valuers Act 1948 make it apparent that the Act’s purpose must be wholly frustrated unless the Crown were bound?*

NZIV is content to leave this issue to the Office of Parliamentary Counsel.

**Question 7**

*Is it desirable that the new Valuers Act should bind the Crown?*

NZIV is content to leave this issue to the Office of Parliamentary Counsel.

**Question 8**

*Would expressly providing for the new Act to bind the Crown be a minor amendment within the powers of section 96(3)(a) of the Legislation Act 2019 (ie, the power to “make minor amendments to clarify Parliament’s intent, to resolve ambiguity, or to reconcile inconsistencies between provisions”)?*

NZIV is content to leave this issue to the Office of Parliamentary Counsel.

*If not, would the express amendment be a suitable change for the AP?*

NZIV is content to leave this issue to the Office of Parliamentary Counsel.

**Question 9**

*Do you agree with the proposed amendments to the disciplinary provisions?*

Yes, aside from as noted at Q3 – Q5 above, and the qualification below, NZIV considers the disciplinary provisions of the Act should be clarified in the manner proposed.

*Specifically:*

- *the rearrangement of clauses 35 and 41*
- *the omitting of the ground for discipline under section 31(1)(a) of the Act, improper conduct that shows that a person is unfit to be registered (as it is covered by the grounds of improper, unethical, or incompetent conduct in the performance of a valuer's duties under section 31(1)(c)).*
- *new disciplinary powers to make orders relating to examination, education, and training after an inquiry and, also, after an investigation when there is no inquiry.*

NZIV supports the changes referred to above, aside from the suggestion that the Board have powers to make orders in the absence of an inquiry (and an upheld complaint) (s. 45C of the Bill). If there is no inquiry there are no reasonable grounds for the complaint - the valuer has not transgressed in any material way.

Further, the Board has no formal role in education the profession. That role sits with NZIV under the s. 10 of the Act, supported by clause 5.1 of the Code of Ethics (CPD) and the NZIV Rules. The Board has declined to accept complaints by NZIV against members who have consistently failed to meet their CPD obligations and referred such matters back to NZIV to address.

To be clear, NZIV has no objection to the Board being granted the power to order education or training as part of the suite of sanctions available under the Act *if a complaint is upheld*.

However, NZIV suggests the wording adopted could be simpler and more flexible (as noted at Q4 above).

NZIV wishes to also record its support for s. 45B of the AP, which would allow the Board to appoint a legally qualified person to chair defended inquiry hearings. NZIV agrees such a change is likely to improve the timing and quality of Board decisions.

**Question 10**

*Do you think clauses 70C and 70D, drawing on sections 18 to 24 of the Crown Entities Act 2004, are useful*

Yes, NZIV considers the new clauses 70C and 70D are useful in modernising the language of the Act.

**Question 11**

*Do you agree with how the Bill approaches transitional arrangements?*

Yes, NZIV has not identified any concerns with the transitional provisions

**Question 12**

*Do you think the term “taxation” in section 44 of the Act is an outdated reference to the process of assessing or reviewing charges in a disputed bill, with an adjustment if appropriate?*

Yes.

*We would like your feedback on whether you think the reference to “taxation” in clause 105(l) is needed today and, if so, whether the term “review” would cover it. Do you think there is a better term to use?*

NZIV considers “taxation” may be removed and that “review” alone is sufficient.

**Question 13**

*Do you have any feedback on the changes made in clause 105(1)(m) under section 96(2)(e)?*

No

**Question 14**

*Do you have any other comments about the Bill?*

No.