

**DEPARTMENT OF NATURAL RESOURCES**

**PUBLIC BENEFIT TEST REPORT**

**VALUERS REGISTRATION ACT 1992**

**1 August 1999**

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## EXECUTIVE SUMMARY

### PURPOSE

The review of the *Valuers Registration Act 1992* has been undertaken in accordance with the principles and guidelines established under the Competition Principles Agreement between the Commonwealth, State and Territory Governments. The Act contains two potentially anti-competitive restrictions, a registration requirement and a business conduct restriction. As part of the review, a Public Benefit Test has been undertaken to determine whether the benefits to the community of the restrictions outweigh the costs, and to determine if the objectives of the legislation could only be achieved by restricting competition.

### METHOD

The Review has been undertaken as a departmental review. The review was advertised widely and submissions invited. Consultation and discussions have occurred with representatives of the professional bodies, community organisations and other government departments. The review has relied heavily upon qualitative information from all sources due to the lack of quantitative information available. The market for valuation services is relatively small being a submarket of property related services, with a high proportion of individual practitioners.

### SCOPE

The Review has examined the background to the current legislation and has sought to clarify what might be the contemporary objectives of Government in regulating the providers of professional valuation services. The current composition and operation of the market has been analysed together with an assessment of the risks associated with the legislation. Alternative options to the current system of registration of land valuers have been identified and analysed, including non-regulatory environments, as potentially providing a more competitive and efficient market for valuation services. The alternative options of deregulation, competency based registration and negative licensing have been assessed against the status quo base state, with the net benefits from each alternative summarised qualitatively.

The current regulatory environment is largely non-intrusive into the marketplace, with active competition between service providers and no evidence of supernormal profits being apparent. The Review has identified global trends in market expectations of valuers, and the strengthening role of the professional property institutes within the broader property markets.

There are three important features of the market for land valuation services:

- land valuations are part of a wider market of property services, some of which is unregulated;
- The community are often third party recipients of valuations, affected by valuation outcomes while not involved in the purchasing decision;

- valuation is a purpose driven service, with a single valuer able to provide a number of different valuations for the same property, depending on the instructions given. This is not well understood by infrequent users of valuation services.

The Review examined risks to users arising from problems of information limitations or asymmetry; that is, consumers of valuation services not being in a position to adequately assess the quality and nature of the service prior to purchase, and, after the event, to assess whether the valuation has been performed with an appropriate degree of professional competence. It has found that information limitations are a potential problem or risk for one-off users of valuation services, rather than repeat users such as the finance and mortgage industry.

The current legislation was enacted to reduce risk to users of valuation services by regulating who can supply valuation services using the mechanism of registering valuers who have attained certain qualifications at some time in the past and by requiring adherence to a statutory code of conduct. The legislation does not however link registration to current levels of competency. Hence there are registered valuers who are not practising, have not practiced for some time or are practising but have not maintained any form of professional development. Hence, to some extent, the possession of current registration by a person may in fact mislead users as to that person's current level of competency.

## OPTIONS

The deregulation option is the only option that does not contain anti-competitive provisions. However, this option would increase risks to a small proportion of the consumer market, those who contract for valuation services on an infrequent basis. This option may also increase risks to third party members of the community, such as recipients of rating valuations or mortgage valuations who have no input into the choice of valuation service provider.

The competency based registration model envisages that registration would be effected by recognition of competency in accordance with the National Training Frameworks. This would include recognition of Professional Institute Continuing Professional Development compliance statements where appropriate. This model would provide enhanced consumer protection and support the self-regulating functions of the institutes by providing for the continuation of the Valuers Registration Board with enhanced functions.

Negative licensing would maintain the legislative requirements equivalent to the current registration standards but would provide minimal information on the risks associated with using valuation services. It would provide predominantly for a redress system after a loss has been incurred.

## CONCLUSIONS

NCP obligations require that legislation which restricts competition be reformed unless it can be shown, as a result of the review process, that:

- the benefits of the restriction to the community as a whole outweigh the costs of the restriction; and
- the objectives of the legislation can only be achieved by restricting competition.

The review concludes that there have been no strong grounds identified for favouring one option over another. The impacts generally are fairly small when compared to the status quo. In particular, the Review is not able to demonstrate that the restrictions provide a net benefit to the community as a whole and, on this basis, consideration should be given to adoption of the deregulation option. This option would be most likely to deliver net public benefits in the long term, with some increasing risk to the individual one-off users of valuation services in the short term. This risk would decline if the profession, through its professional bodies, continued with its efforts in developing effective self regulatory provisions, and other avenues for consumer protection were followed under the Queensland *Fair Trading Act 1989* and the *Trade Practices Act 1974*.

The Government may wish to ensure that this risk is managed in the short term, with competency based registration considered the most appropriate option to manage the identified risks. The Review suggests that this option would not bring high costs with it in terms of economic efficiency or restricted competition but would be more appropriately targeted to ensuring practising valuers maintained their skills in delivering services to the market place. However, in view of the strengthening role of the professional institutes, consideration should be given to this option as a transitional measure, subject to a review clause within 3 to 5 years.

## 1.0 INTRODUCTION

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### 1.1 *National Competition Policy*

In April 1995 the Commonwealth and all States/Territories signed a set of agreements to implement a National Competition Policy (NCP). Clause 5(3) of the Competition Principles Agreement requires each jurisdiction to implement a series of competition reforms within a specified timeframe, and in accordance with a common set of principles. Queensland is required to report to the federal advisory body, the National Competition Council, on progress in implementing the review timetable.

The terms of the Competition Principles Agreement require that legislation which restricts competition be reformed unless it can be shown, as a result of the review process, that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs of the restriction - often called the "public benefit" test; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

In 1996 all Queensland government departments reviewed their legislation to identify provisions that contain measures that restrict competition.

The *Valuers Registration Act 1992* (the Act) and *Valuers Registration Regulations 1992* were found to contain two types of restrictions on competition; a registration restriction and a business conduct restriction. The *Queensland Legislation Review Timetable*, July 1996 (the Timetable) defines licensing or registration restrictions and business conduct restrictions as:

*"licensing or registration requirements for persons or bodies wishing to engage in a particular business activity and which operate on the basis of either limiting the number of participants or limiting participation to those persons or bodies that meet defined standards, qualifications or training or to those who hold membership of a particular occupational or professional organisation"; and*

*"restrictions on the conduct of a business relating to matters such as hours of operation, size of premises, provision of specified facilities, geographical area of operation, advertising or promotion, sector-specific operation (eg, retail vs wholesale), type of good or service allowed to be offered for sale, etc".*

Under Clause 5(7) of the *Competition Principles Agreement* each responsible State or Territory must consider whether any issues have a national dimension and if the review should be conducted on a national basis. In the absence of major national implications, each responsible authority is responsible for conducting its own review program. The possibility of conducting a national review was considered early in

1996, however in the absence of agreement for a national review, each State initiated its own review program.

## 1.2 Terms of Reference

The terms of reference developed in the Public Benefit Test Plan (outlined below) have been applied in conducting the Public Benefit Test:

The review of the *Valuers Registration Act 1992* and *Valuers Registration Regulation 1992* shall be conducted in accordance with the terms for legislation reviews set out in the *National Competition Principles Agreement*. The guiding principle of the review is that the legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The review will:

- clarify the objectives of the legislation;
- identify the nature of the restrictions of the Act and Regulations on competition;
- analyse the likely effect of the restriction on competition, the economy and the stake holders;
- assess and balance the benefits and costs of the restriction;
- consider alternative means for achieving the same result including non-legislative approaches.

The review will take account of developments with regard to NCP reviews in other jurisdictions.

In undertaking this review, due consideration will be given to the matters listed in clause 1(3) of the *Competition Principles Agreement*:

- social welfare and equity considerations, including community service obligations;
- the interests of consumers generally, or a class of consumers;
- the competitiveness of Australian businesses

The Department will undertake targeted consultation with selected interest groups, and call for public submissions.

During the course of the review, the Department will conduct a public benefit test of those options which contain restrictions on competition, in accordance with relevant Queensland Treasury Public Benefits Test methodology.

The Public Benefit Test report will be delivered to the Director-General and the Minister for Natural Resources.

## 1.3 Methodology

Consultation with Treasury determined that the review of the *Valuers Registration Act 1992* and *Valuers Registration Regulation 1992* should be conducted as a minor assessment. Factors considered in determining the nature of the review included:

- There are no price control provisions for delivery of valuation services, either directly or indirectly.
- While there are prescriptive restrictions on potential practitioner entry into the market in the form of licensing requirements incorporating a minimum education level, there are no provisions in the Act which impose defined standards.

- It is unlikely that the financial impact on affected groups of removing, retaining or altering the restriction will be substantial.
- The restriction is not significant within the context of either the Queensland or Australian economy. Valuation services comprise a small submarket of total property market activity.

The Public Benefit Test assessment has included:

- A review of background information concerning the introduction and maintenance of the registration of valuers in Queensland;
- A call for public submissions;
- A review of public submissions received;
- A mail survey of 182 registered valuers;
- Analysis of records of registration and other documents requested from the Valuers Registration Board of Queensland, and the API;
- A review of arrangements in other Australian States and Territories;
- Consultation with:
  - Officers in the Departments of:-
    - Natural Resources; Premier and Cabinet; Equity and Fair Trading;
    - State Development, Justice and Attorney-General and Queensland Treasury;
  - The Australian Property Institute (API) Qld  
(formerly the Australian Institute of Valuers and Land Economists);
  - The Queensland Consumer Association;
  - The Valuers Registration Board of Queensland;
  - The API in other Australian States and Territories.
  - Relevant government departments in other Australian States and Territories;
- Analysis of the costs and benefits of potential regulatory and non regulatory alternatives;
- A summation of impacts and outcomes arising from the review together with final conclusions and recommendations.

## 2.0 BACKGROUND

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### 2.1 History of Registration

The need for valuers and valuation services in Australia was first identified when state colonies began to pass Land Tax Acts to generate income. The first of these was Victoria in 1877, capitalising on Australia's first post-gold-rush property boom, with Queensland introducing legislation in 1915

Several early valuer organisations were formed but cohesiveness was not achieved until 1926 with the formation of the Commonwealth Institute of Valuers, (now the Australian Property Institute). This organisation was instrumental in introducing minimum education standards and improving the professionalism of practitioners.

The Department of the Valuer-General was established in Queensland in 1946 as a result of the passing of the *Valuation of Land Act 1944*. Prior to this Act, statutory valuations were undertaken by valuers appointed by individual local authorities. There were no standards of valuation for rating and taxing purposes, with individual practitioners adopting their own methods. This in turn led to a lack of continuity and inconsistency of approach with resultant disparities in values. Under this Act, the Valuer-General was responsible for the provision of independent and objective municipal valuations for all land in Queensland.

The registration of valuers throughout Australia occurred on a State by State basis commencing in Victoria in 1960 followed by Queensland in 1965, with the driving factors being the need for uniformity in municipal valuations and the provision of consumer protection.

The *Valuers Registration Act 1965* was introduced “to afford a measure of protection in the public interest of the State of Queensland by providing for a Valuers Registration Board, its powers and functions, the registration of valuers of land, qualifications for such registration and for other incidental purposes.” (Hansard Vol.242 p.2138)

The Bill was designed to improve the standard of valuation work for statutory and other purposes, by regulating the requisite qualifications for registration, and to afford a measure of protection to the public through a better valuation service. The Act provided for the constitution of the Valuers Registration Board, with the Valuer-General holding the position of chairman. The enactment of the legislation was considered a necessary turning point in the valuation profession. Reference was made to the fact that similar legislation had already been enacted in New Zealand and Victoria.

During the 1965 parliamentary debate, concern was voiced regarding the many practising valuers who would not meet the forthcoming academic qualifications. It was considered that these valuers would no longer be eligible to practice in Queensland, thereby suffering financial detriment. In recognition of these valuers,

provision was made in the 1965 Act for those valuers to be granted registration by proving their competence to the Board. One hundred and three 'experience only' valuers are still registered with the Board, however in acknowledgment of the passage of time, it is questionable how many of these still practice.

The 1965 Act was reviewed, repealed and replaced by The *Valuers Registration Act 1992*, the subject of this review. The most significant differences between the two Acts were a substantial increase in the investigatory and disciplinary powers of the Board, an increase in the number of members of the Board by the addition of two assistant members, and the provision for the *Valuers Registration Regulation 1992*. The regulation incorporates a code of professional conduct binding on all registered valuers. In addition, the new Act and the Regulation were written in plain English.

According to the parliamentary debate, the code of professional conduct had been developed in consultation with valuation regulatory authorities in all States of Australia and had received agreement in principle. Agreement between the jurisdictions was considered desirable given the introduction of mutual recognition of standards and regulations throughout Australia.

## **2.2 Previous Review of Legislation**

As a response to the Hilmer Report (1993), the Vocational and Educational Training Advisory Committee (VEETAC) undertook a review of occupational regulation, focusing on partially regulated occupations in accordance with the provisions of mutual recognition.

The then Department of Lands, as lead agency for the valuation and surveying professions, released a discussion paper *Regulation of Land Professions* for public comment in May 1994. This paper outlined the background of the review, discussed issues surrounding the review and proposed alternate regulatory models for the professional occupations. Eighty-seven formal submissions were received, with a further 14 submissions received in response to requests for comments on the initial assessment of submissions. The vast majority of responses supported the retention of the existing regulatory framework for both valuers and surveyors.

The regulatory models considered at that time included various forms of continued registration, co-regulation, negative licensing and deregulation. However, the reviews at national level remained uncoordinated, and attempts to achieve consistent approaches across jurisdictions were unsuccessful. In Queensland, it became apparent that the valuation and surveying profession would have to be reviewed separately, and while consultation with major stakeholders continued at officer level, the impetus for change slowed. The current review has had reference to this earlier work, in particular to the identification of major stakeholder groups and previous submissions.

## 2.3 Market Structure

The property valuation profession is a small sector of the total property market. This submarket is characterised by a small number of providers of services and a specialised group of users of services.

The general community has little direct contact with the valuation profession, but are directly affected by the decisions made by valuation practitioners with regard to valuations provided for rating and taxing purposes and valuations provided for mortgage purposes. Business users have a direct link with the profession by directly assessing and employing valuers services.

The valuation profession is well represented in both the public and private sectors. Valuers within government departments provide valuation services for the provision of rating and land tax valuations, asset valuations, acquisitions, disposals, resumptions and other government matters.

Valuers within the private sector offer valuation services on a fee for service basis, to a range of end users, for a multitude of purposes. These include mortgage valuations, market valuations and asset valuations.

Valuation is a purpose driven service, with a single valuer able to provide a number of different valuations for the same property dependant upon the instructions provided. A property may have a different value for rating purposes, mortgage purposes, insurance purposes, acquisition purposes or selling purposes all at the same date.

### 2.3.1 Number of Valuers Providing Valuation Services

The list of registered valuers, published on 6 February 1998<sup>1</sup> in the Queensland Government Gazette, lists 1378 registered valuers and their places of employment. Some valuers have maintained registration even though they no longer practise, or are not practising at this time. The number of non-practising valuers is unknown. Of the 1378 registered valuers, 314 practise within government.

Valuers in the private sector number 1064, of which 126 are registered under mutual recognition. It is not known how many of the 126 actually practice in Queensland.

Using the list of registered valuers as a source document, there appear to be approximately 82 small firms, 16 medium firms and 4 large firms operating in Queensland.<sup>2</sup> As the existence of multi-disciplinary firms cannot be estimated based on the registration list, there may be errors in the estimated number of firms in existence. The majority of registered valuers (62%), appear to be sole practitioners.

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<sup>1</sup> The Qld Government Gazette dated 26 February 1999 reveals a similar number of service providers with 1379 valuers registered as at the 1 January 1999. Of these, 128 are registered under mutual recognition, 280 are employed within government and 174 list an interstate or overseas address as their business address. Over the previous year, 36 valuers retired, 31 were struck off (predominantly for non-payment of fees), with 6 of these re-established.

<sup>2</sup> A small firm is defined as a firm employing 2-4 valuers, a medium firm employs 5-9 valuers and a large firm employs 10 or more valuers.

An unknown number of the 62% may in fact be retired, or working in a different profession.

### 2.3.2 Users of Valuation Services

Users of valuation services have been identified as falling within three broad categories, community users, business users and government users.

TABLE 1 - USERS OF VALUATION SERVICES	
Type of User	Market application
<u>Government</u> – means Federal or State governments (including government departments) and Local Government	Public sector
<u>Business</u> – means banking, finance institutions, mortgage insurers and corporations, who tend to be repeat users of valuation services	Private sector
<u>Community</u> - means private individuals, family trusts, and small businesses which are not frequent users of valuation services.	Private sector

Other definitions used are:

- Consumer – in the context of the Queensland *Fair Trading Act* or the Commonwealth *Trade Practices Act*, means any individual falling within the definition of a ‘consumer’<sup>3</sup> within the Acts.
- Users of valuation services - means all the above types of users both in the public and private sectors
- Service providers - is a general term used to refer to any person or firm providing valuation services

<sup>3</sup> A consumer is defined in the *Fair Trading Act 1989 Qld* as s6.(1) In this Act-

“**consumer**” means a person who, in a particular transaction, whether a separate contract or separate transaction within a contract, acquires goods or services or an interest in land as a consumer.

(2) A person acquires goods or services or an interest in land as a consumer under subsection (1) if-

(a) the person –

(i) is an individual; and

(ii) acquires the goods, services or interest otherwise than for a business carried on by the person, whether as an individual or a member of a business partnership:

or

(b) the price of the goods, services or interest is not more than \$40,000.

Appendix A summarises valuation service activities. The table identifies the type of valuation service user, associated valuation activities, the purpose of each valuation activity and identifies the party responsible for the choice of service provider.

## **2.4 Professional Institutes**

### **2.4.1 The Australian Property Institute**

The API has undergone several name changes over the years. Initially, the API was known as the Commonwealth Institute of Valuers (CIV), later becoming the Australian Institute of Valuers and Land Economists (AIVLE). One of the early objectives of the Institute was:

*“...to unite members of the profession of valuers into one general body, to improve their technical and general knowledge in such profession, and to provide for and regulate the training, education, and admission to the Institute of persons desirous of being enrolled as members thereof”<sup>4</sup>*

The CIV played an active role with respect to the education and training of its members for 38 years prior to registration in 1965. By the late 1970's, tertiary institutions began offering degree courses for valuation studies, with a three year Bachelor level degree now being the minimum acceptable education requirement internationally for recognition as a valuer by professional Institutes and the Courts.

The API currently represents over 7000 property specialists throughout Australia including land economists, property analysts, asset managers, facilitators and valuers, with recent figures indicating that approximately 58% of registered valuers in Queensland are members of the API.

#### *Future Direction*

In 1997/98 the API identified major trends affecting the profession and undertook major change within the Institute to better meet the needs of changing markets. The redefined focus for the Institute included an emphasis on valuers as 'real property professionals' with a broader range of skills than the title 'valuer' suggests. The institute also recognised the markets' requirement for competent professionals, and now requires members to undertake a minimum of 20 hours of Continuing Professional Development (CPD) annually to retain membership. At the same time annual membership fees for services provided to members were reviewed with current membership fees being \$378.00 for 1999.

The institute has been successful in raising its profile both in Queensland and nationally, with the vast majority of business users of valuation services requiring service providers to be members of the API.

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<sup>4</sup> *The Australian Institute of Valuers Incorporated, A History, 1988, pages 7-8.*

## 2.4.2 Other Institutions

Several other property related institutions and organisations have also identified the emerging trends in property markets, and have redefined the objectives of their associations and membership base. The Property Council of Australia was formerly the Building Owners and Managers Association (BOMA), with many valuers operating in retail markets finding membership of this association beneficial.

The Real Estate Institute of Queensland (REIQ) has a significant valuer membership, particularly representative of valuers practising in residential markets. To further support their valuer members, the REIQ may follow trends in Victoria where the REIV confers on valuer members the certification of "Sworn Valuer", providing a marketable point of difference.

The Royal Institute of Chartered Surveyors (RICS), headquartered in London, has a global membership base with chapters throughout America, Europe and Asia. RICS is currently establishing a Chapter in Queensland to better represent its members and members interests in the current dynamic markets.

The Urban Development Institute of Australia (UDIA) represents a broad range of property professionals including valuers, particularly those operating in land development markets. Like the API, the UDIA has a requirement for members to undertake Professional Development as a condition of membership.

## 2.5 Regulation in Other States

### *New South Wales*

New South Wales has a valuers registration system pursuant to the *Valuers Registration Act 1975*. The Act has been under review for the past 12 months. The Public Benefit Test was completed late 1998. The PBT resulted in support for a negative licensing regime acting as a staggered withdrawal leading to anticipated full deregulation in the long term as the market matures. Cabinet is yet to consider the proposal, however it is anticipated legislation may be introduced late 1999.

### *Victoria*

The *Valuation of Land (Amendment) Act 1994* amended the *Valuation of Land Act 1960*, effectively partially deregulating Victoria's land valuation profession, from 1 January 1995. However, under s.13 of the *Valuation of Land Act 1960* (Vic.), the Government has protected the public sector by requiring that any person wishing to provide valuation services to government must meet the standards specified by the relevant Minister. This has been gazetted to include tertiary qualifications plus a minimum two years supervised practical experience, or a registered valuer in any other jurisdiction, or a valuer member of the API. This Act was identified as not anti-competitive and is therefore not subject to any further NCP reviews.

*Tasmania*

In Tasmania valuers are required to register under the *Valuers Registration Act 1974*. The registration regime is similar to Queensland's. Review of the Act is under way. The Tasmanian Government is yet to provide a preferred policy decision on the review.

*South Australia*

Negative Licensing is practised in South Australia, where the *Land Valuers Act 1994* replaced the previous valuers licensing system with a negative licensing regime from 1 June 1995. The Regulations under the Act require land valuers to hold one of a range of qualifications which includes certain academic qualifications, (or equivalent) or membership of the API, the New Zealand Institute of Valuers, or the Royal Institution of Chartered Surveyors (General Practice Division). Rather than registering valuers, a register of disciplinary actions against persons offering valuation services is maintained by the District Court. The register may be searched by the public. This Act will be reviewed in late 1999.

*Western Australia*

Western Australia has a registration system under the *Land Valuers Licensing Act 1978*, requiring all valuers not in government employment to be registered. Review of the Act has commenced and to date a draft public benefit test has been submitted for internal consultation. Advance advice suggests support for the retention of registration in the interests of consumer protection, however a Cabinet decision is not expected for several months.

*Territories*

There are no registration requirements in the Australian Capital Territory (ACT) or the Northern Territory (NT), however, it is generally accepted that the few valuers practising in the territories are registered elsewhere, such as NSW or Queensland. In support of this supposition, three NT valuers are registered in Queensland. In addition, the position of Valuer General in the Northern Territory was advertised in December 1998, with the position requiring applicants to be a registered valuer in another jurisdiction.

**2.5.1 Mutual Recognition**

Mutual recognition arrangements allow registered service providers from one jurisdiction to provide equivalent services within another jurisdiction, with minimum constraints. The regulation of valuers in Queensland has been premised on community protection, seeking to ensure reliable land valuation services. Prior to mutual recognition, Queensland accepted the competencies of valuers registered in other jurisdictions on a reciprocal basis.

However, under mutual recognition, the mobility of service providers in a competitive economy is unbalanced when all jurisdictions do not have a registration system in place (eg Northern Territory, Australian Capital Territory). This regulatory structure results in valuers from a jurisdiction having registration being able to practice where

there is no registration, but valuers from a jurisdiction having no registration cannot compete where there is registration. There is also the question of why registration is required in some jurisdictions and not others. When this was examined for all such partially regulated occupations by VEETAC, it was recommended that registration of valuers be discontinued<sup>5</sup>. At present two states (Victoria, South Australia) have not retained full registration and the future systems in the other states (Western Australia, New South Wales, Tasmania and Queensland) are currently under review.

Investigation of overseas trends on the registration of valuers has identified strong support for registration in emerging economies such as Vietnam, China, Malaysia, South Africa and Barbados, recognising the relationship of the underlying value of the land to the economic wealth of the country. In support of this position, Departments of the Valuer General within these economies cite the 'Savings and Loans Affair' in the United States of America which has led to the progressive re-introduction of registration for valuers across many States in that country.

### **2.5.2 Government Agreement on Trade in Services (GATS)**

As Australia is a signatory to the GATS agreement, the provisions of that agreement must not be contravened by any domestic restrictions.

Article VI (1) states:

In sectors where specific commitments (limitations) are undertaken, each Member (Country) shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

Article VI(4) further states:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for trade in Services shall, through appropriate bodies it may establish, develop necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure quality of the service;
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Should jurisdictions within Australia retain or impose restrictions contrary to these provisions in the delivery of services through such measures as occupational licensing, the restriction and the responsible nation will be subject to challenge by individual members of the World Trade Organisation in the Haig.

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<sup>5</sup> Vocational Education, Employment and Training Committee (VEETAC), *Review of Partially Registered Occupations*, Report of Working Party on Mutual Recognition, May 1993.

## 3.0 CLARIFICATION OF OBJECTIVES

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### 3.1 Principles for Government Involvement in Occupational Regulation

Government involvement in occupational regulation is usually implemented to address a market failure, such as lack of information available to users of services to adequately assess what they are buying or have bought.<sup>6</sup> Accordingly, it is necessary to examine the need for government intervention in the valuation profession, and to determine whether the retention of regulated registration provides benefits which justifies the costs overall to the community.

#### 3.1.1 Information Limitations

Information limitations exist when users of valuation services are unable to assess the quality of services (often referred to as information asymmetry between professionals and their clients). This may be due to several factors. As with many other professional services, users of valuation services are unable to inspect a service prior to purchase in the same way that they might inspect a manufactured product. The complexity and level of skill inherent in those services may preclude assessment of the quality of the service. Even after purchase, the quality of the service may still be difficult to determine. Infrequent users of valuation services do not have the benefit of repeat purchases to assess either the quality of the service provided or the professional competence exhibited in providing the service. The question to consider is whether the consequences of poor quality services are significant and whether the risks of those consequences can be managed in other ways.

Appendix A indicates that community users, as defined, have limited use for valuation services. Community users, as infrequent users, are most likely to suffer from information limitations and may not have the skill to assess the quality of the service. The Department of State Development has submitted that some small businesses such as retail lessees are in a similar position to community users in that they may be infrequent users of the services of specialist retail valuers and accordingly subject to information limitations.

As a generalisation, business users are in a good position to judge the quality of services where they are repeat purchasers who have a history with members of the profession. Moreover, the issue of whether a valuer is registered is often not a factor in the choice of valuer, however this may be attributable to an acceptance of mandatory registration. Membership of the API and current professional indemnity insurance have been highlighted as factors in the choice of valuer, with repeat

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<sup>6</sup> *The Reform of Occupational Regulation in Australia*, paper presented by David Parker, Assistant Secretary, Competition Policy Branch, to an Asia-Pacific Economic Cooperation (APEC) Workshop on Competition Policy and De-regulation, held in Quebec, Canada in May 1997.

business for a valuer from frequent users of valuation services being generally performance based.

State government is a major user of valuation services for the provision of statutory valuations for rating and taxing purposes, and to meet government land management requirements. Government employs a significant workforce of valuers to meet these requirements and is not subject to the same information limitations as infrequent users of valuation services. Government is generally in a strong position to evaluate and manage the quality of services provided by valuers. However, the partial commercialisation of the Department of Natural Resources valuation unit and the development of the purchaser provider model for the provision of statutory valuations may have information asymmetry implications in the future.

### 3.1.2 Regulatory Failure

It is possible that a regulatory measure implemented to address a market failure, such as information limitations, can in time result in a regulatory failure.

Regulatory failure may occur where:

- (a) Regulation is poorly targeted to address the identified problems;
- (b) Regulation has unintended consequences; or
- (c) Other policy instruments are better equipped to address the same problem

It needs to be ascertained whether a regulatory problem exists with respect to (a). It has been argued that information limitations are most likely to occur when the users of valuation services are infrequent community users. Appendix A indicates that these infrequent community users do use valuation services for 10 of the 26 services listed. Despite a lack of specific figures on the value of services provided, this does suggest that the problem which regulation seeks to address is only moderate in terms of the total market in valuation services. However, while business and government users are in a more informed position, being regular users, it is frequently the individual consumer who is ultimately affected by the valuation. This is particularly the case in mortgage valuations and rating and taxing valuations.

The legislation was introduced to provide a measure of consumer protection by setting minimum qualification and experience standards, and providing for a consumer complaint mechanism. It would appear the legislation was well targeted at its inception, but over time may be considered to have been poorly targeted. The Act provided for the measurement of inputs, however emerging trends now place more focus on achievable outputs.

Registration is not performance based under current arrangements. The registration process ensures a minimum level of skill and experience at the point of registration. It does not maintain on-going professional competence thereafter.

The present legislation may have had unintended consequences as it allows the regulated to regulate themselves. The Board, as a regulatory body, is comprised entirely of valuers who administer the regulations governing entry standards, registration and discipline. While technical knowledge is a pre-requisite of Board members in assessing applicants for registration and investigating complaints, the perception is easily obtained that valuers are regulating on behalf of valuers, not on behalf of the community.

The option of using other policy instruments to address regulatory failure, including the use or introduction of other legislation to achieve government objectives must be considered. Since 1965, other legislation providing consumer protection has been enacted, and is discussed in the section on *Risk to Users of Valuation Services*.

### **3.2 Desired Policy Objective**

No simple statement of Government policy exists which explains contemporary objectives of Government in relation to the valuation profession and the market for valuation services. However, the following statement proposes what might be a desirable policy objective for government in relation to the market for valuation services, given the previous history of regulation and other policy objectives of government, including its commitment to NCP.

***To maintain necessary community protection mechanisms and flexibility for valuers and users of valuation services in an efficient market.***

It is considered desirable that an efficient market will be competitive, where users of valuation services are able to choose valuers on the basis of relevant measures of competence/performance and are aware of the risks associated with their choice.

Both the API and the Valuers Registration Board support this as a desired policy objective although the API submitted that the establishment of a consumer choice framework based on “*..relevant measures of competence/performance and are aware of the risks associated with their choice*” may be difficult in practice.

In conducting this review, options were selected broadly on the basis of whether they met the above criteria in whole or in part.

## 4.0 IDENTIFICATION OF RESTRICTIONS

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### 4.1 Legislation under Review

The *Valuers Registration Act 1992* (the Act) relates to the registration of valuers and related matters. In particular, the Act provides for the Valuers Registration Board of Queensland (the Board) and the registration and discipline of registered valuers.

Section 3 of the Act defines a 'valuer' as "*...a person who, in any capacity, holds himself or herself out as ready to make a valuation of land*".

Section 30 requires persons applying for registration to be of good fame and character, hold a certificate of competence or have passed an examination approved by the Board, and have had sufficient practical experience over at least five years to enable the person to competently value land in Queensland. Under the Act it is only valuers of land who are required to be registered by the Board.

'Land' has its ordinary meaning at common law and is further defined in section 36 of the *Acts Interpretation Act 1954* as "*messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, and whatever may be an interest in land*".

The functions of the Valuers Registration Board are:

- To maintain a register of valuers in Queensland;
- To publish in the Gazette a copy of the register as at 1 January in each year;
- To process annual registration fees;
- To interview and examine new applicants who seek registration;
- To issue certificates of registration;
- To deal with complaints and disciplinary matters concerning valuers.

The Governor in Council appoints the three members of the Board who must be registered valuers, for a period not exceeding three years. The Governor in Council may also appoint two assistant members, who must also be registered valuers.

Board membership consists of a nominee of the Chief Executive of the Department of Natural Resources, and two registered valuers, one of whom is to be appointed from names submitted by the Australian Property Institute (the API). One assistant member is also appointed by nominations from the API, with the Real Estate Institute of Queensland represented by the other assistant member. The Board meets as often as is necessary for the efficient conduct of its business. The composition of the Board means that entry qualifications, work experience and disciplinary matters regarding valuers are dealt with entirely by valuers.

Part 4 of the Act empowers the Board to investigate suspected contraventions of the Act and/or code of conduct in addition to investigating complaints. If necessary, an investigator may be appointed to provide a written report regarding a complaint. At

present, the Board appoints a registered valuer to act as its investigator. Penalties imposed by the Board include a reprimand, suspension of registration or cancellation of registration.

While the Act provides for disciplinary action, it makes no provision for redress for injured parties, with damages having to be sought through common law. Consumer protection legislation provides for loss incurred through false or misleading behaviour, however loss incurred through error or negligence must be pursued through tort. Due to the varying magnitude of losses incurred, knowledgeable business users incurring substantial losses would take legal action for recovery of loss, but community consumers generally do not.

## **4.2 Legislated Restrictions on Competition**

Restrictions on competition have been identified within the Act and the Regulation as follows.

### **4.2.1 Registration Restriction**

Section 30 of the Act sets out the barriers to entry identified within the legislation.

The minimum entry qualifications as listed in section 30 of the Act are:

*“30. The Board is to register a person as a valuer if the person makes application under section 29 and satisfies the Board that the person -*

- (a) is of good fame and character and is a fit and proper person to be registered as a valuer; and*
- (b) either -*
  - (i) holds a certificate of competence recognised by the Board and issued by a prescribed institute of valuers; or*
  - (ii) has passed an examination approved by the Board; and*
- (c) has had sufficient practical experience over a period of at least 5 years since starting an approved course of study to enable the person to competently value land in Queensland”.*

The profession through the consultation process questioned whether a minimum educational standard combined with a minimum experience component is of itself a barrier to entry to a profession where a body of knowledge and understanding of the law are pre-requisites to competent practice. However, the questions remain as to whether entry to the profession should be further restricted through a legislated registration mechanism; whether the barrier to entry associated with the minimum experience component is set at an appropriate level; what benefit to the community registration provides; and if this benefit can be achieved using mechanisms other than legislative controls.

In those jurisdictions where full registration has been revoked, industry input into the curriculum of university property courses has resulted in the introduction of a minimum one-year full time experience component of the course at undergraduate level, resulting in a four-year bachelor degree qualification. While this experience component is viewed by the profession as necessary, new graduates are still closely supervised upon appointment.

#### 4.2.2 Competition Restriction

The restriction in section 63 of the Act prohibits unregistered persons from carrying on the business of a valuer and from using or attempting to use the professional title of “valuer”.

Section 63 of the *Valuers Registration Act 1992* states:

*“63. (1) Subject to subsections (2) and (3), a person who is not a registered valuer must not -*

*(a) hold himself or herself out as being a registered valuer; or*

*(b) carry on or attempt to carry on the business of a registered valuer; or*

*(c) take, use or exhibit a name, letter, word, title, description or symbol that, either alone or in the circumstances in which it is taken -*

*(i) is capable of being reasonably understood to indicate; or*

*(ii) is intended by the person to indicate;*

*that the person is a registered valuer or is entitled to carry on the business of a registered valuer.”*

*Maximum Penalty – 100 penalty points.*

A person wishing to practice as a valuer must be registered with the Board. Annual registration is required thereafter. The current fee is \$66.00.

The restriction prevents persons from holding themselves out as valuers unless registered under the Act, but it does not prevent persons who do not hold themselves out to be valuers from providing “market assessment valuations”. Other professions such as real estate agents currently provide free “market appraisals” to the community without any warranty in an endeavour to gain listings. While there is a legislated restriction on use of the title ‘valuer’, the public benefit test seeks to determine whether this restriction is valid within the current market in terms of providing a benefit to the community.

#### 4.2.3 Price Control Provisions

Price control provisions may contribute to the availability of super normal profits within market sectors, contributing to market inefficiencies.

Part 2 of the Regulation provides a code of professional conduct applicable to all registered valuers. The code imposes ethical duties such as a duty of client confidentiality. In addition, the code appears to restrict the manner in which valuers price valuation services, in that a valuer is required to charge “appropriate fees”. The term “appropriate fees” is not defined in the legislation.

The API has, from time to time, published a list of fees and charges, as a guide for its members. Members are not obliged to conform to the guide, last published in 1992, however some consumers reportedly rely upon the guide.<sup>7</sup> The Australian Competition and Consumer Commission (ACCC) approached the API in 1998 over the guide as being a price setting mechanism and anti-competitive. The guide has now been rescinded and removed from circulation by the API in all States and Territories.

It is questionable whether the regulation contained a legislated price control provision of itself, however taken in combination with the API suggested scale of fees, this provision came under scrutiny in the review of the Act. With the withdrawal of the scale of fees, the issue is no longer relevant. However the merit of inclusion of this provision in the Act is questionable, and withdrawal of this provision from the Regulation should be considered.

#### 4.2.4 Specialisation Restriction

The Board is required under section 42A of the Act, to keep a list of specialist retail valuers. Specialist retail valuers assess current market rents relevant to retail shop leases<sup>8</sup>. A registered valuer may apply to the Board to be recorded as a specialist retail valuer. If the Board is satisfied that the applicant has enough experience in retail rental evaluation, the application is approved.

Section 42C(2) provides that “*..the Board may limit the applicant’s authority to make determinations of current market rents under this Act to particular areas of the State*”. Eighty-three valuers are listed as specialist retail valuers. Sixty of the 83 are restricted as to their geographical area of practice.

The requirement to apply to the Board for assessment as a Specialist Retail Valuer, combined with potential geographic restrictions, may be considered to be a further restriction on competition. Submissions by the Department of State Development strongly support the retention of Specialist Retail Valuers for the purposes of the *Retail Shop Leases Act 1994*, citing imbalanced market power and knowledge, with small business as consumers requiring the independent experience of a registered valuer.

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<sup>7</sup> Many of the fees charged in the present market are reportedly significantly lower than those listed in the guide. Although valuers do not view the guide as binding, some consumers do take the guide seriously. Several complaints made to the Board since 1992 refer to the guide as a benchmark for fees charged for valuation services.

<sup>8</sup> Section 28(2) of the *Retail Shop Leases Act 1994* requires that current market rent is to be determined by a specialist retail valuer. This usually occurs when rent is due for review but the lessor and lessee cannot agree on the current market rent.

### 4.3 Risk to Users of Valuation Services

The key questions to consider in respect of the review of the *Valuers Registration Act 1992* are:

- whether the process of registering valuers is providing consumers with useful information on choosing the provider of a valuation service; and
- whether the complaints process provides an effective mechanism to address complaints and influence the conduct and practice of valuers in the market place.

There are two potential risks to users, lack of technical competence and false or misleading (dishonest) conduct by valuers.

#### *Risk of Technical Incompetence*

Under the current legislation, registered valuers are tied to a Code of Professional Conduct and professional responsibility as prescribed in the *Valuers Registration Regulation 1992*. While registration itself does not ensure ongoing competence, nor ensure all services will be performed professionally, this provision does provide some measure of consumer protection. It is generally recognised that the registration process provides assurance to consumers that a service provider has gained certain qualifications enabling the service to be performed, thus providing an easily recognised entrance standard and framework for complaints. As identified by the Queensland Consumers' Association, community expectation is that government provides a watchdog mechanism to provide for consumer protection. Through the mechanism of registration, government is able to meet this community expectation in a low cost and effective manner.

While the Valuers Registration Board meets that requirement, it comprises entirely of valuers, with no independent input from the community or consumers. This has resulted in claims of self-protection and criticism of the process, where entry qualifications, work experience and disciplinary matters are dealt with by the profession itself. This issue was raised through the consultation process in considering not only the current structure, but also within the alternative option of self regulation/deregulation.

#### *Risk of False or Misleading Conduct*

Since 1974, the Commonwealth *Trade Practices Act 1974* (TPA) has provided a legal redress process for consumers in regard to goods and services and certain types of business conduct. The TPA relates primarily to offences by corporations. In 1989, Queensland enacted the *Fair Trading Act 1989* (FTA) to provide a wider range of legal redress for the individual consumer, affected by such things as false and misleading conduct by persons providing services. Some of its provisions mirror Part V (consumer protection provisions) of the TPA. Offences by individuals can be prosecuted under the FTA. Legal redress for individuals is also available through the

Small Claims Tribunal and the common law. Accordingly, this legislation provides some measure of protection for consumers in respect to false or misleading conduct.

Generally, business users do not fall within the definition of a 'consumer' under the FTA, with the distinction being of particular relevance to small business owners involved in retail tenancy disputes.

A broader range of legal redress is provided by the *Fair Trading Act* (FTA) than is offered by the *Valuers Registration Act 1992*. For example, a person who falsely holds himself or herself out to be a valuer could contravene provisions in the FTA relating to false and misleading conduct.

Breaches of the FTA are generally an offence against the State and are pursued on behalf of an individual by the Commissioner of Consumer Affairs (the Commissioner), or those delegated to carry out the Commissioner's duties. Consumers are generally informed within 1-3 weeks whether the Commissioner will pursue a matter. The cost of investigation and/or proceedings is borne by the State.

The Australian Competition and Consumer Commission (ACCC) investigates complaints believed to contravene the TPA. A private individual would not need to lodge a complaint under the TPA unless redress was only available under the TPA rather than the FTA. Not all the consumer protection provisions in the TPA are available in the FTA.

There may be a need to inform the community of the legal redress process available under the FTA if registration of valuers were to be discontinued.

#### *Risk to Community Users*

In terms of consumer protection in the context of 1965, the public as consumers of valuation services may have been best served by a process of registration. In 1965, legislation provided a legal redress process for persons who purchased goods, but not for persons who purchased services. This situation changed with the introduction of the FTA in 1989.

In 1965, the range of services provided by valuers appears to have been considerably narrower than those offered in 1998. The table contained within Appendix A lists 26 different applications of valuation services, with individuals in the community employing valuers either directly or indirectly in 10 of these activities. These community users are infrequent users, and are exposed to risks from information limitations when undertaking these activities. In addition, community, business and government users are all affected by the decisions of valuers in the balance of the 26 activities.

The Department of State Development contends that small business operators are in fact community users in terms of the *Retail Shop Leases Act 1992*, and should be treated as such for the purposes of this review. These small business owners are subjected to market inequality and imbalances in market knowledge, requiring the

protection of legislation to meet this inequity. This need was recognised in 1994, with amendments relating to the introduction of Specialist Retail Valuers introduced into the *Valuers Registration Act 1992*, resulting in a tightening of the provisions relating to specialist retail valuation services. The current review questions whether registration and the associated geographical restrictions are essential to the selection of an appropriately qualified specialist retail valuer able to perform the functions as required under the *Retail Shop Leases Act 1994*.

Consumer risk in property markets has been further identified by both the State and Federal Governments as a result of the growing investment property industry. The Wallace committee reporting in 1993 identified a significant shift in household savings away from traditional deposit products toward managed funds as preferred investment vehicles. The committee further identified that this trend was anticipated to continue, with the regulation of managed investment schemes a matter of considerable public policy.

The Federal Government introduced the *Managed Investments Act 1998* to provide increased consumer protection and to act as a watchdog over managed pooled investments. The Act requires property owned by a managed investment scheme to be valued at regular intervals by an independent qualified valuer. This interval is suggested to be no more than annually by the Australian Securities and Investments Commission.

The Queensland State Government is preparing to introduce legislation to regulate and licence real estate marketeers. The proposed changes to the *Auctioneers and Agents Act 1971* are aimed at preventing two-tiered marketing schemes, where investors are sold investment units and homes at inflated prices, with developers, marketeers and financial planners taking supernormal profits. These properties are sold at up to \$100,000.00 over market value, with the purchasers later unable to sell without substantial loss. The proposed legislation seeks to have independent legal advice and independent valuations performed by accredited valuers available to potential purchasers prior to commitment to purchase.

Both these legislative reforms have been introduced to provide greater levels of consumer protection, with the role of the property valuer an integral component on each.

### *Risk To Business Users*

Business users are involved in 10 of the 26 valuation applications listed in Appendix A. In terms of volume of valuations supplied by valuers, the majority of valuations in the private sector are completed for business.

Business users have the resources and market presence to manage commercial risk through commercial and common law and by the establishment of panels of preferred valuers to conduct required valuations. Business users have greater knowledge and experience to manage their commercial risk in their choice of valuers; eg that valuers

have professional indemnity insurance. Where businesses are repeat users of valuation services, they have a greater capacity to assess the skills and performance of valuers.

#### *Risk To Government Users*

The State government is involved in 5 of the 26 applications in Appendix A and the Federal government in 3. The State Government is a significant user of valuation services and an employer of valuers who carry out statutory valuations. The government currently employs approximately 300 registered valuers, with the majority of these working within valuation related areas. As an employer, government should be in a position to manage the delivery of valuation services in an effective manner.

#### **4.4 Complaints against Valuers**

There are three avenues consumers generally rely upon in the matter of complaints against valuers, namely through consumer protection legislation, complaints to the API, and/or complaints directly to the VRB.

Complaints to the Department of Equity and Fair Trading are generally referred on to the Board as the registering body.

Complaints to the API are reviewed, with complaints against members dealt with by the API disciplinary committee. Complaints against non-members and in some instances members may be referred to the Board. The API has the power to disbar members who contravene the API code of conduct, but it cannot de-register a valuer.

The Board investigates complaints regarding registered valuers and if the Board so decides, disciplinary action is administered. Charges may be laid for misconduct in a professional respect, or incompetence or negligence in a person's performance as a valuer.

Most complaints investigated by the Board are settled within several weeks, although some require more time. Frequent use is made of an investigator to provide written reports to the Board. No fees are imposed on individuals bringing complaints. Costs of investigation have been relatively small. The Board has supplied information that since 1996, costs of investigating complaints amounted to approximately \$500.00 per annum.

Concern has been raised that in corresponding with complainants, the Board generally does not give reasons for its decisions. Complainants may be informed that "*appropriate action has been taken*", or that the Board has decided not to take any further action. Under the FTA a complainant is given reasons for whatever decision is taken, and correspondingly in the interests of natural justice, complainants to the VRB should also be entitled to reasons for Board decisions. Further, the independence of

the Board is perceived to be compromised by a lack of business and community representatives.

One difference between the FTA and the powers of the Board is that the Board has the power to de-register a valuer. Although an injunction can be invoked under the FTA to stop certain action or behaviour, it is highly unlikely that the time and expense required for an injunction would ever be justified in order to prevent one valuer from practising. However, it appears that since the inception of registration in 1965, only one valuer in Queensland has been de-registered, suggesting that the Board has considered that the complaints brought before it are of insufficient magnitude to warrant de-registration, or has declined to act. It has been identified that government bodies in a number of jurisdictions are reticent to deprive persons of their livelihood, and while deregistration is an ultimate sanction, it is seldom applied in practice.

The Table below illustrates the number of complaints made to the Board from 1992 - 1998.

TABLE 2 COMPLAINTS AGAINST VALUERS 1992 – 1998								
Activity	1992	1993	1994	1995	1996	*1997	**1998	Total
Complaints	6	6	7	9	12	5	21	66
Investigations	0	4	4	5	6	4	6	29
Cautions	3	3	0	0	0	2	3	11
Charges Laid	0	0	1	1	1	1	3	7
Suspensions	0	0	0	0	0	1	1	2
De-registration	0	0	0	0	0	1	1	2

\* For six month period only due to changes in reporting timelines

\*\* For 18 month period due to changed reporting timelines

It is also important to note that the Board has no powers to overturn a valuation that has been subject to complaint and subsequent investigation. Nor is there any scope for providing compensation to an aggrieved complainant. Such an outcome could only be obtained as a result of an action under the FTA, TPA or common law legal action undertaken by the complainant.

## 5.0 ALTERNATIVE MARKET STRUCTURES

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### 5.1 Public Benefit Test Guidelines

The methodology guidelines provided by government require six steps necessary for a public benefit test assessment. They are:

- Identification and description of a realistic 'without change' or 'base' state
- Identification of realistic 'with change' or 'alternative' states
- Identification of all major impacts
- Valuation of impacts where possible
- Assessment and quantification of non-valued impacts
- Timing, aggregation and presentation of results.

The PBT examines the current market and legislative environment and evaluates this status quo state on the basis of this scenario continuing into the future in the absence of any significant changes to the legislation. This will provide the benchmark against which other options are to be assessed. The status quo option is a legitimate option in its own right if the net benefits of other options, when compared to the base case, are negative.

The PBT also considers alternative means for achieving the same benefits to the community, including non-legislative approaches.

#### 5.1.1 Alternative Options

The alternative options evaluated in this review do not correspond exactly to those proposed in the initial Public Benefit Test Plan. The PBT Plan proposed four possible alternatives to the status quo base state:

- Partial De-regulation
- Self Regulation
- Co-regulation
- Negative Licensing

These options were selected for detailed evaluation on the basis that they are consistent, either in whole or in part, with the proposed desirable objectives for the performance of the market in land valuation services.

*To maintain necessary community protection mechanisms and flexibility for valuers and users of valuation services in an efficient market.*

### *Partial De-regulation and Self Regulation*

The Public Benefit Test Plan proposed a partial de-regulation model based upon the structure in Victoria. The *Valuation of Land Act 1960 (Vic)* requires any person wishing to provide valuation services to government for rating and taxing purposes to meet the standards specified by the relevant Minister. In December 1994, this was gazetted to include certain tertiary qualifications, API membership and a minimum level of experience. Hence, persons wishing to offer valuation services to the public sector are required to hold qualifications, while no qualifications are required of persons wishing to practise in the private sector. This partial deregulation approach was discounted as an option for Queensland early in the PBT evaluation process, due to the retention of pseudo partial occupational licensing delivering negligible public benefit.

Self-regulation was defined in the Public Benefit Test Plan as full de-regulation. A fully de-regulated market has no legislative controls and does not require persons to hold particular qualifications in order to carry on the business of a valuer. After evaluation, there is no distinction made between the two terms in this analysis. For the purposes of this report, Option 2 is simply referred to as the deregulation option<sup>9</sup>.

### *Co-regulation*

Co-regulation may be structured to incorporate varying degrees of government involvement and does not preclude registration. A Board and nominated professional institute share the regulatory responsibility. This requires at least one professional body to be of sufficient size to competently, impartially and uniformly administer the requisite functions in an arm's length transparent manner.

Under co-regulation, the regulatory role is shared between government and an industry or occupational representative body. This is usually effected through legislative reference or endorsement of a self-regulatory body responsible for the competency assessment of an occupation. Typically it involves a code of practice, breaches of which are enforced by sanctions imposed by the relevant industry or professional body.

The co-regulation alternative, as proposed in the Public Benefit Test Plan, retained registration of valuers with a different mix of input with respect to:

- admissions and exclusions to practice; and
- discipline.

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<sup>9</sup> Arguably there is a difference between full deregulation and self-regulation. In the latter state, industry itself takes on the responsibility for, not only the ethical conduct of its members, but also for ensuring that the market is informed on the professional competencies of its members and the functions which they are capable of performing.

The inclusion of both business and community representation in matters of admissions, exclusions, and discipline was intended to counter the perception of a self-serving profession.

This co-regulatory model was dismissed during the evaluation and consultation stage as potentially increasing costs to consumers, government, service providers and the profession bodies without any efficiency gains nor increased consumer protection as a result. However, some elements of the proposed co-regulatory model were considered of merit, with these introduced into the revised Option 3 Changed Role of the Valuers Registration Board. This registration by recognition of competency model captures existing structural utility while enhancing the benefits to the community.

### *Negative Licensing*

A negative licensing model has been evaluated as 'Option 4'. South Australia has adopted this approach with the introduction of the *Land Valuers Act 1994* replacing the previous valuers registration system. Option 4 is broadly based on the South Australian model.

#### **Description of the South Australian Model**

The *Land Valuers Act 1994* came into effect on 1 June 1995, effectively altering the legislative environment in South Australia from a highly regulated environment requiring land valuers to be registered to a negative licensing regime. The Regulations under the Act require land valuers to hold one of a range of qualifications which include certain academic qualifications, (or equivalent) or membership of the API, the New Zealand Institute of Valuers and the Royal Institution of Chartered Surveyors (General Practice Division).

Valuers are not registered, but may be prohibited from practising if the Court so determines. Under the disciplinary provisions of the Act, a person<sup>10</sup> may lodge a complaint with the Administrative and Disciplinary Division of the District Court of South Australia, on the grounds of unlawful, improper, unfair or negligent acts. Costs to the complainant are minimal. The Commissioner for Consumer Affairs is required to maintain a register of disciplinary action taken against a person. The register may be inspected by any person on payment of the required fee.<sup>11</sup>

If the Court determines that the matters alleged in the complaint constitute grounds for disciplinary action, the Police investigate the complaint.

The Court has the power to impose disciplinary measures, ranging from a reprimand to prohibition from practising as a valuer. However, consultation with South Australian government departments indicates that the Court is reluctant to deprive a person's livelihood by prohibiting practice as a valuer.

<sup>10</sup> A person includes a Body Corporate

<sup>11</sup> Section 13, *Land Valuers Act 1994* (SA).

## 5.2 Option 1: The Status Quo Option

### 5.2.1 Description of the Option

This is referred to as the “base case” or “without change” option. It assumes a continuation of the current legislative restrictions without substantial modification. The impacts of other options will be examined against the situation that would be expected to prevail if current regulatory arrangements were to continue in their existing form.

Under the current legislation, registered valuers are tied to a Code of Professional Conduct and professional responsibility as prescribed in the *Valuers Registration Regulation 1992*. While registration itself does not ensure ongoing competence, this provision does provide some measure of consumer confidence and protection, providing a highly recognised government endorsed certification that the service provider is capable of providing the required service, while providing a low cost easily accessible framework for complaints. However the Valuers Registration Board comprises entirely of valuers, with no independent input from the community or consumers. This has resulted in claims of self-protection and criticism of the process, where entry qualifications, work experience and disciplinary matters are dealt with by the profession itself.

### 5.2.2 Description of the Market Structure under the status quo option

Analysis of registered valuers employment details as provided in the Government Gazette 6 February 1998 indicate that of the 1378 registered valuers, 314 practise within government, while the balance operate within the private sector. Further analysis indicates that private practitioners appear to fall within the following categories:

	<u>Total Private Providers</u>	<u>Total Market</u>
Sole practitioners	62%	48%
Small firms	22%	17%
Medium firms	11%	8%
Large firms	5%	4%
State Government valuers		23%
	<hr/> 100%	<hr/> 100%

The market is highly competitive, with strong competition between service providers for market share, and no indication of more than normal profits being achievable.

It is anticipated that this market structure would continue within a regulated environment in the short term. However, in response to ongoing structural changes

within the market, there is potential for an increase in the number of small and medium sized firms, with an associated reduction in sole practitioners anticipated in the medium and longer term.

Computer technology and policy changes by business users are likely to result in a significant downturn in the number of property valuations for residential mortgage purposes sought. A corresponding drop in the income of firms or sole practitioners relying on that type of work would result, unless it can be offset by offering other services, or by merging with other firms.

The range of services currently provided by valuers has been previously identified in Appendix A. Advice from the profession suggests that most private sector valuations are conducted for financing purposes, required primarily by banks, other financial institutions and mortgage insurers. Valuation fees for the provision of these services have fallen in the past 5 years, due primarily to competition between service providers and the demands of business users.

Valuers who responded to a survey questionnaire on issues relevant to this review confirmed an expectation that the overall demand for traditional services will fall, with a strong demand for new types of services and a need to specialise.<sup>12</sup> A collation of responses is provided in Appendix B.

The views expressed by valuers responding to the survey corresponds with the earlier suggestion that global expansion of the property market will increase demand for a broad range of different skills including the capacity to advise on future trends, market trends and investment strategies. A tendency toward valuers merging or forming alliances with related professionals such as stockbrokers, accountants, bankers, real estate agents, property managers, and property economists is likely to become more significant.

Under the existing legislative environment there is no input or independent view from the community or consumers into matters of admissions and more notably complaints. This issue was raised during the consultative process as being of concern to both business and consumer groups.

Registered valuers will remain tied to a Code of Professional Conduct under the Regulations, whereby they are bound to not accept instructions nor undertake valuations where they have insufficient skill or knowledge to professionally undertake the task. While registration of itself does not ensure ongoing competence, the payment of registration fees is an acceptance of the conditions associated with registration, and provides a basis for the measurement of complaints.

Current legislation will continue to provide that valuers are qualified upon initial registration, but with no requirement to maintain levels of competency on an on-going basis to retain registration. This potential lack of on-going competency has been identified through the consultative process as being a potential source of complaints

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<sup>12</sup> One hundred and eighty-two questionnaires were mailed out to registered valuers. Fifty-seven were returned.

against valuers, and questions the validity of the annual re-registration process. It has been suggested that as valuation is perceived as a profession it should be subject to Continuing Professional Development (CPD) requirements similarly to other professions.

The API identified this trend for professions to undertake CPD from its analysis of major shifts in global trends and responded by requiring all members of the Institute to undertake a minimum of 20 hours of CPD annually to retain membership.

While there may be changes in the delivery of valuation services for rating and taxing purposes arising from the commercialisation of valuation services within DNR, government will still manage the process and specify its requirements as a custodian of the information produced.

The emergence of a partially commercialised valuation service within the State government is not expected to impact on the private sector in the short term due to tied arrangements for the provision of rating and taxing valuations. However, the State Valuation Service (SVS) is deemed the pre-eminent supplier for valuation products for government purposes, and is required to competitively tender for this work. This will bring the SVS into competition with medium and large private valuation firms.

At present approximately 58% of registered valuers are members of the API. Of the 42% non-members, it is unclear what percentage no longer practise or alternately, are employed by government where membership is not a requisite of employment. With the implementation of the SVS as a commercial unit, it is anticipated government valuers may choose to join the Institute, thereby further increasing the Institutes' membership representation. This would result in a stronger professional body capable of undertaking increased self-regulation into the future.

Specialist retail valuers are a small sub group of 83 practitioners. Demand for the services of specialist retail valuers under the provisions of the *Retail Shop Leases Act 1994* will continue while the provisions of that Act remain in force. Geographical restrictions as to where a specialist retail valuer may practise would continue. Sixty specialist retail valuers are restricted as to a geographical area of practice.

Continuation of the legislation in its current form will mean that users may continue to choose valuers whose skills were accredited upon registration, but potentially have not been maintained.

### **5.2.3 Costs of Maintaining Restrictions**

Costs associated with maintaining the current restrictions arise from market efficiency costs and financial resource costs.

The legislation has been identified as being largely non-intrusive into the marketplace. The market would appear to be operating at reasonable efficiency levels, with no

evidence of achievable super normal profits. The large number of practitioners provide consumers with a range of service providers from whom to select, with natural market forces contributing to efficient competition between providers.

The costs of registration are low, \$66.00 per annum, with the Board and its functions fully funded from registration fees. It is unlikely there would be any tangible redistribution of funds in economic terms should registration fees be revoked.

#### **5.2.4 Summary**

Existing barriers to entry comprise:

- the requirement to hold a tertiary degree qualification or recognised equivalent
- and
- a minimum 5 years experience in the field of valuation.

In addition Specialist Retail Valuers are required to demonstrate specific knowledge and competency relating to retail markets and associated legislation.

Additional barriers to entry for this classification are:

- Specialist technical knowledge
- Specific geographical knowledge of markets.

The intent of the legislation is to provide for a minimum of technical knowledge and experience to provide a measure of consumer protection, thereby addressing information asymmetry in the marketplace.

The competition restriction within the existing legislation does provide some measure of consumer protection and confidence. However, while provision has been made for a complaint mechanism resulting in potential disciplinary action against the practitioner, there is no provision for redress to the consumer under the existing legislation. Nor is there any mechanism to ensure ongoing competence.

### **5.3 Option 2: De-Regulation**

#### **5.3.1 Description of the Option**

While this review has been undertaken to examine the anti-competitive restrictions in the Act, the removal of the restrictions by adoption of the de-regulation option would potentially involve the repeal of the Act.

The fundamental elements of this option are:

- Removal of the legislative requirement for registration of valuers and a winding up of the Board
- Preparatory measures to facilitate an efficient market and inform the public of proposed changes to the consumer protection process;
- Repeal of provisions applying to valuers and specialist retail valuers
- Resultant consequential amendments to other legislation.

It may also involve the development and implementation by the valuation profession of a code of practice, benchmarking requisite professional performance standards. While the API has recently released its professional practice standards which are binding on institute members, non-members would have no professional conduct or practice standards without the introduction of a code of practice, with a potential result of increased consumer risk.

#### *Removal of the Legislative Requirement for Registration*

A repeal of the *Valuers Registration Act 1992* and the associated *Valuers Registration Regulation 1992* would remove the requirement for persons wishing to practice as valuers to apply for registration and to register annually with the Board thereafter. The code of conduct under the Regulations would be repealed along with other provisions.

Any person wishing to offer valuation services would be able to do so subject to compliance with normal consumer protection legislation. In addition, a statutory code of practice for valuers could be developed and attached to section 88A of the FTA. However consultation throughout the review process has highlighted the existing code of practice and code of conduct provisions associated with professional institute membership, and questioned whether a statutory code under the FTA could be justified when the “consumers” protected by the FTA are infrequent users of valuation services. A voluntary code of practice adopted by the professional institutes would provide a measure against which all providers of valuation services would be measured whether institute members or not.

Valuers would have a choice, if eligible, of joining a professional body that promotes and supports the profession, and provides supporting evidence for a valuer’s capacity to perform valuation services. Alternatively, valuers may choose to practise without such affiliation.

Other legislation that refers to, or requires registered valuers to perform certain functions would require amendment, including the provisions relating to specialist retail valuers contained within the *Retail Shop Lease Act 1994*. This specialist category was introduced into the *Valuers Registration Act 1992* in 1994, subsequent to a review of Retail Tenancies legislation, to address imbalances of market power in determining appropriate current market rents and accordingly provide greater

protection to small business consumers. The parameters of the current review have not included questioning how fair rents are determined under the *Retail Shop Leases Act 1994*, this being outside the jurisdiction of this review. However, the review has sought to identify suitable mechanisms to ensure the continuance of consumer protection in assessing the de-regulation option.

Under the *Retail Shop Leases Act 1994*, the definition of an "approved auditor" is a person registered, or taken to be registered, as an auditor under the Corporations Law; or a person who is a member of, and holds a practising certificate issued by the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia.

Under the same Act, a "specialist retail valuer" means a person whose name is recorded on the list of specialist retail valuers kept under the *Valuers Registration Act 1992*.

The legislation recognises endorsement of auditors by the professional accounting bodies, but requires specialist retail valuers to be registered under an Act. Should the Act be repealed in a move toward a de-regulated market, it would seem appropriate for recognition of similar professional endorsements by recognised industry bodies for those valuers able to demonstrate competence in the practice of retail valuation. Should this proposed endorsement by professional institutes be accepted, the necessity for specialist retail valuers to be registered under statute would be removed.

#### *Discontinuance of the Board*

The services of the members of the Board and associated staff would no longer be required. The question of staff redeployment or redundancy would have to be resolved prior to the winding up of the Board.

#### *Preparatory Measures*

A move to de-regulation needs to be managed to allow for a smooth transition to a de-regulated state without jeopardising market efficiency. It is expected that a date would be set in legislation, at which time the Board would cease to exist and the Commissioner of Consumer Affairs would take responsibility for handling community complaints against valuers under the *Fair Trading Act 1989*. In the time leading up to this, it would be necessary to:

- Inform the public of the changes to the legislation;
- Develop internal policies consistent with NCP principles to address departmental purchasing of valuation services;
- Wind up existing actions and unresolved complaints.

### 5.3.2 Description of the Market Structure Expected to Prevail

There would be no legislative restriction on the use of the term "valuer". This means that there could be an entry of potential service providers who may not have previously met registration requirements. Entry costs would be reduced by the cost of attaining registration requirements and registration fees.

It is likely that competition between service providers would increase for services demanded by community users, for example property valuations for private individuals, offered by real estate agents may result in the downward pressure on prices for these services.<sup>13</sup> It is likely that some consumers will settle for price-quality combinations which may expose them to some financial risk. Research of complaints revealed that possible financial loss to a complainant could range from very little to several hundred thousand dollars.

Banks, mortgage insurers, and financial institutions as repeat consumers of existing valuation services would have certain expectations of service providers and any new services provided by valuers would have to meet those expectations. It is unlikely that, in the short-term, new entrants would impact on this part of the market. It is anticipated that membership of the API (or other relevant professional institutions) would continue to be favoured by these business users, with eligibility for API membership contingent on having met the necessary academic and experience requirements.

Overall, the number of participants would not be expected to increase significantly. Employment, social welfare and regional development issues would not be affected. Very little change in price would be likely to occur except in relation to community users and the various price-quality combinations they may choose.

Professional indemnity insurance (P.I. insurance) would be expected to become more important and may increasingly become a more widely used benchmark for choice of service providers. Banks, mortgage insurers and financial institutions would remain unlikely to accept services from uninsured service providers, but the inability to obtain P.I. insurance would not prevent uninsured service providers offering services to other users of valuation services.

Anecdotal evidence from Victoria confirmed that P.I. insurance more than doubled in the first three years of de-regulation of the private sector. However, other evidence suggests that the rise in premiums related to major claims being made in the early 1990's as a result of actions taken in relation to the land boom and bust of the late 1980's early 1990's<sup>14</sup>. The fact that premiums rose around the time of de-regulation may not be directly attributable to de-regulation, but to actions taken prior to that time. Significant rises in P.I. insurance therefore, while considered possible would be unlikely as a result of de-regulation alone.

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<sup>13</sup> Valuers argue that such 'valuations' provided by real estate agents lack the independent view of a registered valuer, who has no interest in the sale of the property valued.

<sup>14</sup> *The Valuer & Land Economist*, August 1995, page 535.

After repeal of the legislation, Government would no longer be involved in the administration and maintenance of the *Valuers Registration Act 1992*. However, Government resources would be required to support an increased role in complaint management under the *Fair Trading Act 1989*.

### 5.3.3 Impacts

## IMPACTS OF OPTION 2 – DE-REGULATION COMPARED TO STATUS QUO BASE CASE

Table 3: IMPACT MATRIX FOR OPTION 2 – DEREGULATION COMPARED TO STATUS QUO BASE CASE	
Possible outcomes expected by a move to de-regulation	Possible impacts on stakeholders
<p>1. Increased competition as new service providers of some valuation services enter the market or business users who normally use valuation services utilise internal expertise.</p> <p>2. Increase in flexibility for valuers and related professionals to structure and develop new services.</p> <p>3. Some “lower quality” valuation services may be offered in the market. Increased demand for benchmarks of professional competence.</p> <p>4. Increased independence in legal redress process.</p> <p>5. Decrease in price of some valuation services.</p> <p>6. Changes in transaction costs.</p> <p>7. Specialist retail valuers will no longer be registered for purposes of assessing market rents relevant to shop leases.</p>	<p>Some lower quality valuation services may be offered which will pose a higher risk to community users.</p> <p>Opportunities to effect cost savings through alliances and internal structures and expanding the range of valuation and valuation-related services. Increase in consumer welfare (product - price).</p> <p>The valuation profession would promote the code of practice and advantages of membership of professional bodies.</p> <p>Increased community welfare.</p> <p>Fall in income for some valuers, potential savings to consumers.</p> <p>Savings in registration costs to valuers; increased costs to valuers seeking API membership; saving in cost of Valuers Registration Board; costs of administering provisions of FTA as it applies to valuers. Increased search costs for consumers in evaluating service providers.</p> <p>No specialisation nor geographical limitations on practice; changes to <i>Retail Shop Leases Act 1994</i> would be necessary.</p>

## 5.4 Option 3: Changed Role of Valuers Registration Board

### 5.4.1 Description of the Option

Co-regulation as proposed in the Public Benefit Test Plan envisaged a new Valuers Registration Act replacing the functions of the Board with an admissions and exclusions panel and a disciplinary panel, both panels comprising representatives of the profession, government and the public. This model also placed emphasis on the

recognised Institute taking a pro-active role in educating the community regarding the competency of valuers and the new mechanisms available for complaints

This co-regulatory model was dismissed during the evaluation and consultation stage as potentially increasing costs to consumers, government, service providers and the profession with no increased consumer protection nor overall efficiency gains as a result.

However, some elements of the proposed co-regulatory model were considered of merit, with these introduced into the revised model Changed Role of the Valuers Registration Board. This registration by recognition of competency model captures existing structural utility while enhancing the benefits to the community.

This option, competency based registration, may assist as a transitional environment during the current evolution in global property markets, by moving from the current highly structured legislative environment through supporting the strengthening of professional bodies to potential full deregulation of the profession when appropriate.

The option envisages a fully revised registration Act for valuers. Registration of valuers would continue including restrictions relating to the use of the term "valuer".

The composition of the Board would be modified, with representation from the business and community sectors introducing a greater level of independence and more focus on the end user of valuation services provided.

The specialist retail valuer classification would remain, but the restriction on the geographical area of practice relating to specialist retail valuers would be repealed.

While initial registration would require demonstration of qualifications and experience, ongoing registration would be effected by a competency assessment. This would be by either recognition of a professional institute Continuing Professional Development compliance statement or provision of current practice competency in accordance with the National Training Frameworks.

Legislative changes to modify the composition of the Board and to remove the more unduly anti-competitive restrictions contained within the current Act would be achieved fairly quickly. However, the development of a revised code of practice and introduction of competency standards for registration renewal may take a period of time to complete and legislate.

#### *Entry Qualifications and Experience*

The requisite experience component for registration of new entrants would be reviewed to ensure flexibility and responsiveness to current and on-going market requirements of valuers. There may be several types of experience relevant to the various aspects of the valuation profession and new entrants should be able to demonstrate competence relating to the chosen field of practice, with an appropriate

level of experience in that field, rather than the current statutory five years broad experience required to obtain registration.

### *Disciplinary Matters*

Business and community representation on the Board regarding disciplinary measures would ensure a level of independence that currently does not exist.

An acceptable level of consumer and public participation in disciplinary matters would need to be negotiated, so that the balance of power does not rest with any particular group.

### *The Code of Practice*

The current code of conduct contained within the *Regulation* would be either substantially revised, or replaced by a Code of Practice. The Code should address professional performance standards and contain mechanisms for monitoring and amending the code. The code would contain the primary elements of a code of practice as identified in "Fair Trading Codes of Practice" and detailed in Appendix C. A significant consultation process involving all stakeholders would need to be undertaken.

Registration of valuers would ensure minimum standards are met at the point of entry, while the development and maintenance of a relevant code of practice would be directed toward maintaining competency after entry. The National Competency Standard<sup>15</sup> for valuers has been developed and is available for benchmarking purposes. Valuers would be required to prove competence on a periodic basis.

Options for assessment of competency would be:

- (a) that assessing the competence of valuers becomes a function of the Board, with the Board contributing to the maintenance of the National Standard;
- (b) that ongoing registration be effected by recognition utilising existing resources. That is, that provision of a competency certification through membership of the API (which has a mandatory CPD requirement), or alternatively the RICS, REIQ or PCA where relevant CPD is undertaken, be accepted as proof of current competence.
- (c) that the API act as an accreditation body, assessing valuers against the National Competency Standard, whether the valuer is a member of the Institute or not.

The requirement of maintaining competency is premised on reducing the risk to the community of poor quality valuation services arising from choosing a valuer who was

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<sup>15</sup> The Australian National Training Authority published its competency standard for Valuation in 1997, entitled "Real Property, Plant and Equipment, Valuation Standards."

not appropriately qualified and experienced. This requirement to prove competence on an on-going basis does not exist in the status quo option. The introduction of proving on-going competence provides greater consumer protection, but does effectively increase the restriction on registration.

On-going registration may be effected not only by provision of a CPD certification by a professional association but may also be awarded on the provision of proof of current, relevant, competent experience by non association members.

The Board would be the final arbiter in assessing CPD compliance statements and/or competency against standards, due to the number of professional institutes representing valuer interests, and potential practitioners not belonging to any institute.

Competency linked registration would impose additional costs on valuers by imposing competency associated costs or costs of membership of accrediting institutes.

The code of practice would ensure that the competency level required, composing of qualifications plus experience, would ensure a satisfactory performance expectation, the focus being on outcome rather than input.

#### *Registration and Competency*

It is anticipated that registration fees may rise to fund the extra responsibilities and membership of the Board. In addition, an accreditation fee would be an additional cost to a valuer seeking accreditation. The rise in registration fees and costs to valuers of fulfilling the competency requirement would be passed on to users of valuation services. Registration fees are currently due on an annual basis. The Red Tape reduction Task Force 1997 recommended that Registration under the *Valuers Registration Act 1992* be issued for a period of five years. This time period dovetails with the recommended review of competency standards within the National Competency Frameworks to ensure the currency of standards relative to changes in the marketplace.

However, valuers operate within in a dynamic marketplace where five years may be too long between reviews. It may be more appropriate that competency linked registration be for a period of not more than two years, reflecting the changing expectations and requirements of providers of valuation services currently emerging in the market.

#### *Repeal of the Restriction Relevant to Specialist Retail Valuers*

The list of specialist retail valuers would continue, but the additional classification would be competency assessed on renewal of registration. The restriction on geographical area of practice would be repealed.

#### **5.4.2 Description of the Market Structure Expected to Prevail**

The market structure would not be expected to differ greatly from the status quo option. There may be a reduction in the number of service providers, due to the added competency restriction on registration. It would be expected that some existing valuers would not seek to upgrade their competency and some would not be able to fulfil the qualifications for renewal of registration.

Barriers to entry would remain while requirements for retention of registration would be raised. There would be a reduction in the choice of price-quality combinations of valuation services available to users. Provided the entry requirements were efficiently set and were based on current competencies rather than qualifications, such barriers would not generate significant economic costs in the way of super normal profits to existing providers.

Such a restriction may affect the continued provision of valuation services in some regional and more isolated communities. As a number of regional based service providers are not members of a professional institute, competency assessment for these service providers would require reference to actual work undertaken rather than reliance upon institute CPD compliance.

Specialist retail valuers would continue to be registered but would not be restricted to geographical areas of Queensland. Users of those services would need to satisfy themselves as to the practical locality experience of particular valuers. Anticipated higher registration fees and costs relevant to fulfilling competency requirements would be passed on to users of valuation services. Fewer complaints would be anticipated due to potentially higher levels of competence in service providers, and users more informed of services and their delivery through enforcement of the code of practice. The complaint mechanism available to all users of valuation services would be seen to be more independent.

### 5.4.3 Impacts

#### IMPACTS OF OPTION 3 - CHANGED ROLE OF THE BOARD COMPARED TO STATUS QUO BASE CASE

**Table 4: IMPACT MATRIX FOR OPTION 3 – CHANGED ROLE OF THE BOARD, COMPARED TO STATUS QUO BASE CASE**

Possible outcomes expected by a move to competency based registration	Possible impacts on stakeholders
1. Some decrease in competition due to increased restriction on registration and renewal of registration. 2. Registration more effectively targeted towards ensuring that registered valuers remain competent. 3. Increased administrative costs of Board. 4. Possible duplication of some functions of the API. 5. Increased independence of complaints process. 6. Specialist retail valuers will no longer be restricted to practising in a particular area.	Some currently registered valuers will not meet competency requirements and some would not seek to upgrade to required competency standards. Valuers wishing to practice must maintain competency levels. Higher registration costs. Higher costs overall to valuers and users of valuation services. Increased community welfare. No geographical limitations on practise; the Retail Shop Leases Act would require review.

## 5.5 Option 4: Negative Licensing

### 5.5.1 Description of the Queensland Option

The fundamental elements of this option are:

- Repeal of a legislative requirement for registration. Development of occupational licensing legislation detailing requirements for specific qualifications and experience, or membership of a relevant institution, for a person wishing to carry on the business of a valuer<sup>16</sup>
- Implementation (including necessary legislation) of a disciplinary system to operate within the District Court, including a register of disciplinary action
- Discontinuance of the Valuers Registration Board
- Repeal of the classification and geographical restriction relating to specialist retail valuers.

<sup>16</sup> A variation on the model could be to only specify in legislation the specific types of land valuation activities (and the purpose of the valuation) which must be undertaken by an appropriately qualified person. This variation would focus on services used by community users, as opposed to business users who are not subject to the same level of risk. The District Court would therefore only hear complaints about persons who have offered valuation services to community users. This variation to the negative licensing model would be less restrictive from a regulatory point of view and would be more efficient.

*Repeal of Legislative Requirement for Registration and Retention of Qualifications*

The legislative requirements for registration would be repealed, as would the code of conduct contained in the regulations. Relevant qualifications and experience, or membership of the API or any relevant international institution, would be determined by government in consultation with valuers and business and specified in legislation. Provision would need to be made for inclusion of 'experience only valuers' to continue to practise.

*Implementation of a Court Redress System*

Professional complaints would be heard in the Vocational Appellate Jurisdiction of the District Court of Queensland. At present the Court hears appeals from professional persons rather than complaints against professional persons. Legislation would need to be enacted and funding provided to facilitate a complaint procedure within the Court. The Court would keep a register of disciplinary action taken against 'valuers', which any persons would be able to access free of charge.

Grounds for complaints against valuers would be modelled on the South Australian system. The costs of hearing and investigating complaints would be borne by government, although complainants could pay a nominal fee, for example \$30.00, as complainants do in South Australia.

The level of risk from using non-institute members may be minimised by the grounds available for making complaints in the District Court. In South Australia for instance, the grounds include acting 'unlawfully, improperly, negligently, or unfairly'. The words 'improperly' and 'unfairly' have the scope to apply to what the court may consider ethical breaches. Many areas of law, eg corporation's law, contract law, consumer protection law, have protected people from the unethical conduct of others for many years. The fact that no actual code of conduct exists does not prevent the Court from applying ethical principles in judgment. It is argued therefore, that the risk to the community of using service providers who are not subject to a code of conduct would be minimal where the grounds for complaint are sufficiently broad to include unethical behaviour.

*Discontinuance of the Board*

The Board would be wound up. Any dealings in hand would require resolution. Any questions of staff redeployment or redundancy would need to be resolved prior to winding up the Board.

*Repeal of the Restriction Relevant to Specialist Retail Valuers*

The restriction relevant to specialist retail valuers would be repealed. The restriction is contingent on the existence of registration. There would be consequential legislative implications for the *Retail Shop Leases Act 1994*.

## Description of the Market Structure Expected to Prevail

The market structure expected to prevail is the same as that for the status quo base case, with the exception that abolition of the restriction on specialist retail valuers would allow more persons to work in that area. The effect of that removal on competition is likely to be minimal.

There would still be a legislative restriction on the use of the term "valuer". However, a person would not be able to refer to himself or herself as a registered valuer. In such a situation, there could be an entry of potential service providers who would seek to offer "valuation" services primarily at the community user end of the market.

Competition between service providers could increase perhaps marginally for services demanded by community users, for example property valuations for private individuals that may result in the downward pressure on prices for these services, with a potential decrease in quality of the service provided.

Current market evidence suggests existing high levels of competition with associated low prices. It is questionable whether any further downward pressure on prices would arise.

Banks, mortgage insurers, and financial institutions as repeat consumers of existing valuation services would have certain expectations of service providers and any new services provided by valuers would have to meet those expectations. It is unlikely that, in the short-term, new entrants would impact on this part of the market.

Overall, the number of participants is not expected to increase. Very little change in price is likely to occur. Little or no impact on employment, social or regional issues is anticipated.

Professional indemnity insurance (P.I. insurance) would be expected to become more important. Banks, mortgage insurers and financial institutions would remain unlikely to accept services from uninsured service providers, but the inability to obtain P.I. insurance would not prevent uninsured service providers offering services to other users of valuation services.

Membership of the API (or other relevant professional institutions) would remain favoured by business users, particularly banks, mortgage insurers, financial institutions.

However, in relation to community users, the challenge for the API or any other body representing the professions, would be to successfully market membership of the organisation as a measure of service quality and delivery. Anecdotal evidence suggests that the API's role in Victoria has strengthened since partial de-regulation.

Government would be intimately involved in the hearing of complaints in relation to valuers and would assume the regulatory responsibilities. Higher regulatory involvement will involve higher costs to government and ultimately the community,

resulting in negative efficiency gains. New occupational licensing legislation would be introduced effectively retaining the barriers to entry.

The negative licensing model attracted criticism during the current consultation process as not providing readily identifiable consumer protection particularly for infrequent users, but only made provision for complaints and discipline after a loss had been incurred.

Western Australia investigated the prospect of introducing negative licensing in line with SA as part of their review process. However, after detailed analysis, retention of registration is now a more likely outcome. NSW is also examining the potential of adopting negative licensing to address the community user risks identified in their review. At the same time, South Australia is currently reviewing its negative licensing regime as part of its NCP review process. The SA review has identified a number of cases of significant loss potentially associated with non-ethical valuation practice, with the register of disciplined valuers maintained by the Court failing to act as a deterrent and being ineffective as a consumer information mechanism.

### 5.5.3 Impacts

#### IMPACTS OF OPTION 4 NEGATIVE LICENSING COMPARED TO STATUS QUO BASE CASE

<b>Table 5: IMPACT MATRIX FOR OPTION 4 - NEGATIVE LICENSING, COMPARED TO STATUS QUO BASE CASE</b>	
<b>Possible outcomes expected by a move to negative licensing</b>	<b>Possible impacts on stakeholders</b>
1. Increased independence of complaints process. 2. Specialist retail valuers will no longer be registered for purposes of assessing market rents relevant to shop leases. 3. Code of conduct/ethics not applicable to persons who are not members of the API or equivalent institute.	Increased community welfare. No geographical limitations on practise; changes to the <i>Retail Shop Leases Act 1994</i> would be necessary. Increased costs and risk to government and the community.

## 6.0 NET BENEFITS

### 6.1 Introduction

The net benefits of adopting each of the Options 2, 3 and 4 assessed against the status quo, are assessed qualitatively in terms of economic efficiency and in terms of the net transfers between sectors.

### 6.2 Option 2 – Deregulation

**Table 6: AGGREGATION OF NET IMPACT ASSESSMENT FOR DEREGULATION**

Impact Classification	Size of impact	Direction	Comments
<u>Efficiency gains</u>			
1. Increased user utility from increased price-quality spectrum of valuation services.	Small	Positive	Demand for varying price-quality valuation services could be serviced by all users to some extent. Most users, especially business, would continue to demand quality services.
2. Increased user utility from lower prices generally.	Small	Positive	Minor price changes for existing valuation services. Users may benefit more from the expected changes likely to occur in the market for valuation and valuation-related services.
3. Increased production efficiencies.	Small	Positive	Direct impacts of not requiring registration would be unlikely to result in a significant aggregate increase in production efficiencies. Some valuers (small firms and sole practitioners) may be adversely affected as a result of increased competition, ie unable to achieve cost savings, but others (medium and large firms) would benefit from increased flexibility and result in cost savings.
4. Increased consumer welfare from increased independence of legal redress process.	Small	Positive	Level of complaints has been low.
5. Economies of scale of professional bodies, eg the API, through increased membership.	Medium	Positive	A significant number of valuers (approximately 42%) are not members of the API.
6. Efficiency gains through removal of restrictions of specialist retail valuers.	Small	Positive	There are presently 83 specialist retail valuers.

<b>Table 6: AGGREGATION OF NET IMPACT ASSESSMENT FOR DEREGULATION</b>			
<b>Impact Classification</b>	<b>Size of impact</b>	<b>Direction</b>	<b>Comments</b>
<u>Efficiency Losses</u> 7. Decreased user utility from higher risk to uninformed users	Small	Negative	Repeat users (business, government) will manage their own risk. Only occasional users (community) would be exposed.
<u>Income Transfers</u> 8. Fall in some valuers income.	Small	Negative	Concentrated in some small firms and sole practitioners (small firms and sole practitioners comprise 84% of valuers operating in private sector).
9. Lower costs to consumers.	Small	Positive	Impacts most likely on the community.
10. Savings in registration costs to valuers.	Small	Positive	Savings of approximately \$220,000.00
11. Costs to government of administering legal redress process under the FTA.	Small	Negative	Establishment costs. Costs would be variable after establishment.
12. Costs of membership of professional bodies.	Medium	Negative	Approximately 42% of valuers are not members of the API. Some proportion would seek membership.
13. Increased revenue to the API.	Medium	Positive	As above.

### 6.2.1 Summary

While benefits and costs of the Deregulation option have not been quantified, there is likely to be a small net benefit to the community overall by the implementation of this option. Thus, while costs of administering the Valuers Registration Board are not high, neither are the benefits likely to be forgone by its abolition. While removal of registration may increase both search costs and transaction costs for users of valuation services, such removal will decrease the potential for users to be misled in the use of a registered valuer who has not maintained an appropriate level of professional skills or practice.

This option achieves the objective of the NCP review in removing barriers to entry. However, community users who are the least informed, would be exposed to greater risk being subject to imperfect market knowledge.

This relatively small increase in risk to users of valuation services should be offset by an anticipated increased profile of the professional institutes. In a deregulated environment the profession would assume responsibility for the development of competency standards and codes of practise for adoption by its members. These standards will serve to better inform users of the services available and the standards applying to the delivery of the service. In the longer term, risks to community users

would be expected to decline as the professional institutes continue to gain prominence in the market place

### 6.3 Option 3 – Changed Role Of The Board

<b>Impact Classification</b>	<b>Size of impact</b>	<b>Direction</b>	<b>Comments</b>
<u>Efficiency gains</u>			
1. Increased community welfare due to maintenance of competence by valuers.	Small	Positive	The bulk of transactions for valuation services in the private sector are conducted for business.
2. Increased community welfare due to the increased independence in complaints process.	Small	Positive	Community transactions for valuation services are infrequent.
3. Efficiency gains through removal of geographical area of practise restrictions on specialised retail valuers.	Small	Positive	There are presently 83 specialist retail valuers. On-going recognition of the classification would be competency based.
<u>Efficiency Losses</u>			
4. Loss of welfare for valuers who cannot fulfil competency requirements.	Small	Negative	Ninety-two 'experience only valuers would not be eligible to join the API, but estimated that only a small number are still practising. Other valuers may choose not to continue as valuers.
5. Higher costs of services	Small	Negative	Higher costs to all users regardless of whether risk is already managed
<u>Income Transfers</u>			
6. Extra costs to government for Board administration.	Small	Negative	Registration fees would rise affecting all valuers.
7. Higher registration fees and competency related costs.	Medium	Negative	Higher Registration fees would affect all valuers. Competency costs would likely affect the 42% of valuers who are not API members.

#### 6.3.1 Summary

Higher registration costs associated with an expanded role of the board, possibly over a smaller number of registered valuers, will result in potentially higher fees for the provision of valuation services. As business and government users currently manage their own risk, community users would derive the greatest benefits in the form of reduced risk from the increased regulatory requirements.

Competency based registration would effectively capture those valuers employed in areas where membership of professional institutes is not required. By providing for the maintenance of on-going professional practice and development and adherence to a revised code of practice, this option may raise the average quality of valuation services and potentially reduce the incidence of complaints.

While there are identifiable efficiency gains and losses associated with this option, it is unclear whether the additional benefits to the community from increased regulation in the short term outweigh the additional costs associated with it. In the medium to longer term, this option would potentially support the maturation and self-regulation of the profession, with a resultant potential for complete legislative withdrawal probable within five years.

There would however, be identifiable efficiency losses if there were any duplication of the functions of institute bodies and the Valuers Registration Board. This could be addressed by the Board advising on professional development activities acceptable for registration. This may counter the criticism of some CPD programs, which measure attendance at functions, rather than the development of knowledge. Suitable competence for re-registration would be evidenced by either the provision of a professional institute CPD compliance statement or alternatively for non-institute members, the provision of evidence of current practice and competency in accordance with the Nation Training Frameworks would be suitable. These alternative mechanisms for providing evidence of competence would minimise any major economic costs on both practising valuers and the Board.

While it is recognised the requirement to provide evidence of on-going competency may result in a reduction in the number of valuers seeking re-registration, it is anticipated this reduction would arise from valuers who no longer practice but have retained registration. Accordingly, it is anticipated there would be minimal social and employment impacts associated with this option.

#### 6.4 Option 4 – Negative Licensing

Table 8: AGGREGATION OF NET IMPACT ASSESSMENT FOR NEGATIVE LICENSING			
Impact Classification	Size of impact	Direction	Comments
<u>Efficiency gains</u>			
1. Increased consumer welfare from increased independence of legal redress system.	Small	Positive	Levels of complaint have been low.
2. Efficiency gains through removal of restrictions on specialised retail valuers.	Small	Positive	There are presently 83 specialist valuers.
<u>Efficiency losses</u>			
3. Loss of welfare for the community due to risk of	Small	Negative	Community users are infrequent users of valuation services.

dealing with valuers not subject to a code of conduct.			
4. Increased search costs for users	Small	Negative	Register only provides information on those service providers against whom action has been successfully taken. Levels of complaint have been low.
5. Increased costs of independent legal redress system	Small	Negative	

#### 6.4.1 Summary

It is unlikely that there would be any significant positive net public benefits from the negative licensing model compared to the status quo. While there would be savings in registration costs over time, there would be increased search and transaction costs primarily for the community user section of the market at least in the short term. In addition, increased costs to government would include some small education costs associated with managing the transition and costs associated with complaints management through the Department of Equity and Fair Trade.

After-the-event action against a valuer under the negative licensing model will only benefit future users by such action being recorded in the register. As with the status quo, the complaints mechanism would not deliver any benefits to users who were financially affected by negligence on the part of a valuer.

The negative licensing model based on qualifications is effectively a continuation of the qualification and experience barriers to entry without a legislated code of conduct and without a register of qualified valuers. To that extent it would represent a lessening of information available to users.

As with deregulation, the role of professional bodies such as the API would have increasing prominence, and there would be costs involved in such a body identifying itself in the market as a source of information on the qualifications of its members.

## 7.0 CONCLUSIONS

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National Competition Policy (NCP) obligations require that legislation that restricts competition be reformed unless:

- (a) the benefits of the restriction to the community as a whole outweigh the costs of the restriction; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

As has been demonstrated, the current restrictions as contained within the *Valuers Registration Act 1992* are relatively non-intrusive into the market place, with a resultant low economic cost to the community. The costs of providing and supporting the legislative environment are low, with the functions of the Valuers Registration Board fully funded by registration fees. However, the current legislation does not fully address risk to consumers by lack of maintenance of competency.

The registration of valuers was first legislated in 1965 to increase the standard of valuation work and to provide a measure of protection in the public interest. These same issues of competency and community protection have been highlighted throughout the consultation process associated with conducting the Public Benefit Test.

While the current legislation does impose barriers to entry by means of qualification and experience requirements, there is little evidence to suggest that a more efficient market for valuation services would result should these barriers be removed. Moreover, it would appear that the market is highly competitive, with no evidence of super-normal profits being earned within the profession as a result of the regulatory controls.

There are three important features of the market for land valuation services:

- land valuations are part of a wider market of property services, some of which is unregulated;
- members of the community are often third party recipients of valuations, affected by valuation outcomes while not involved in the purchasing decision; and
- valuation is a purpose driven service, with a single valuer able to provide a number of different valuations for the same property, depending on the instructions given. This is not well understood by infrequent users of valuation services.

The Review examined risks to users arising from problems of information limitations or asymmetry; that is, consumers of valuation services not being in a position to adequately assess the quality and nature of the service prior to purchase, and, after the event, to assess whether the valuation has been performed with an appropriate degree of professional competence. It has found that information limitations are mainly a potential problem or risk for one-off users of valuation services, rather than the repeat users such as users in the finance and mortgage industry.

The current legislation reduces risk to users of valuation services by regulating who can supply valuation services by the mechanism of registering valuers who have attained certain qualifications at some time in the past and by requiring adherence to a statutory code of conduct. The legislation does not however link registration to current levels of competency. Hence there are registered valuers who are not practising, have not practiced for some time or are practising but have not maintained any form of professional development. While the registered valuer is governed by the Code of Conduct as stipulated in the current Regulation, the possession of current registration may in fact mislead users as to the practitioner's current level of competency.

It has been submitted that users of specialist retail valuer services, while business operators in their own right, are in fact consumers under the *Retail Shop Leases Act 1994*, potentially suffering from unequal market power and information limitations. While this submission is accepted, an alternate scenario of recognition of institute membership in accordance with the provisions relating to auditors contained within the *Retail Shop Leases Act 1994* has been mooted for consideration.

The terms of this review required assessment not only of the status quo or base case scenario, but also of options that may address market failure without enacting unnecessary legislation.

The options examined under this public benefit test were:

- maintain the status quo,
- remove the restrictions entirely,
- maintain registration with greater emphasis on current competency and independence of complaints, and
- implement a negative licensing regime.

On the basis of the qualitative assessments of the net public benefits carried out in this review, there have been no strong grounds identified for favouring one option over another.

The status quo option was evaluated not only as the base case for evaluating other options but was also examined as a legitimate potential alternative in its own right. The analysis found some evidence to suggest that the current regulatory environment addresses information inequity by a well-recognised and accepted registration certification, and provides some benefit to the community by setting minimum entry

standards for practitioners. However, as continuing competence is not assured by registration, thereby exposing the public to the risk the legislation endeavours to minimise, this option fails as a preferred market environment.

The option of de-regulation as discussed within the body of the report is the most likely to deliver positive net public benefits in the long term. However, this would increase risk to community users of valuation services in the short term. This risk will decline if the profession, through its professional bodies such as the API, continues its efforts in distinguishing itself and its members in the marketplace. The recent introduction of practice standards for members will also provide a platform for the measurement of service provision. This option would also require a community awareness program highlighting the remedies available under the *Fair Trading Act 1989* and the *Trade Practices Act 1974*. While the API is positioning itself to be the leading property professional organisation in Australia, the activities of the Property Council of Australia, the Real Estate Institute of Queensland, the Royal Institute of Chartered Surveyors and the Urban Development Institute of Australia, suggest that a voluntary code of practice developed by and applicable to the whole valuation profession may require a significant period of time to be adopted by all factions.

The third option, competency based registration, would retain the existing barriers to entry. Under the competency based registration model, it is envisaged that registration would be effected by recognition of competency in accordance with the National Training Frameworks. This would include recognition of Professional Institute Continuing Professional Development (CPD) compliance statements where appropriate. This model provides enhanced consumer protection, supports the self-regulating functions of the institutes and would continue the operations of the Valuers Registration Board, but with enhanced functions as described.

Given that business and government users in general manage their own risk, and that community users are infrequent users of valuation services, it is not clear that the additional benefits of competency based registration would be justified in relation to the additional costs incurred over time. It may however be an effective transitional measure which could support the strengthening role of the professional institutes in the market place.

Option four, the negative licensing model, is the least desirable of the four options when assessed by the net public benefit test. It maintains legislative requirements for valuers equivalent to existing registration standards, but provides minimal information to the market of the risk associated with the purchase of valuation services. While it provides for a limited redress situation, action can only be taken after a loss has been incurred, thereby potentially preventing repeat offences but not meeting the criteria of providing consumer protection.

Of the four options, de-regulation is the only option that does not contain anti-competitive restrictions. However this option increases risk to community users in the short term, which needs to be balanced against other efficiency gains.

Of the remaining options, competency based registration has regard to social welfare and equity considerations to a greater extent than the other options examined. This option retains existing barriers to entry, however, it also ensures that minimum standards and competency are maintained through a highly recognised registration certification.

The NCP review of the *Valuers Registration Act 1992* incorporating a Public Benefit Test, finds that there are no clearly identified strong grounds for favouring one option over another. The impacts generally are fairly small when compared to the status quo. In particular, the Review is not able to demonstrate that the existing restrictions provide a net benefit to the community as a whole and, on this basis, consideration should be given to the adoption of the deregulation option. This option is most likely to deliver positive net public benefits in the long term, with some increasing risk to the individual one-off users of valuation services in the short term. This risk will decline as the profession, through its professional bodies, continues with its efforts in developing effective self regulatory provisions, and other avenues for consumer protection are pursued under the Queensland *Fair Trading Act 1989* and the *Trade Practices Act 1974*.

The Government may wish to ensure that this risk is managed in the short term, with competency based registration considered the most appropriate option to manage the identified risks. The Review suggests that this option would not bring high costs with it in terms of economic efficiency or restricted competition but would be more appropriately targeted to ensuring practising valuers maintained their skills in delivering services to the market place. However, in view of the strengthening role of the professional institutes, consideration should be given to this option as a transitional measure, subject to review in 3 to 5 years.

In undertaking any amendments to the legislation, consideration should be given to the removal of the geographic restriction on Specialist Retail Valuers; any reference to 'appropriate fees' as contained within the Regulation and broadening the membership of the Board to better represent community and business interests.

## APPENDIX A

SUMMARY OF VALUATION SERVICE APPLICATIONS<sup>17</sup>

User Type	Activity	Application Purpose	Service Provider Chosen By
1. Private individual (COMMUNITY)	Home purchase	Property valuation by lending institution	Finance institution
2. Private individual (COMMUNITY)	Home purchase	Private lending by family members, company loans to employees for housing	Individual
3. Private individual (COMMUNITY)	Mortgage extension	Value home to extend existing mortgage	Finance institution
4. Private individual (COMMUNITY)	Valuation for sale	Value property	Individual
5. Private individual (COMMUNITY)	Assessment for capital gains tax (CGT)	Value property to establish base for CGT	Accountant or individual
6. Private individual (COMMUNITY)	Valuation for pre-nuptial agreement	Value real estate assets prior to marriage	Individual
7. Private individuals (COMMUNITY)	Family court property settlement	Property valuation, usually by both parties	Individual or solicitor
8. Private investor (COMMUNITY)	Valuation for investments	Obtain value to assess risk, regarding investment	Investor
9. Bodies Corporate (COMMUNITY)	Schedule calculations	To determine owners interest on termination of the scheme.	Bodies Corporate
10. Private individual (COMMUNITY)	Acquisition/resumption	Valuation for resumption and acquisition	Individual as dispossessed owner
11. Banks, financial lenders (BUSINESS)	Loan valuations for homes or businesses	Value real estate for lending purpose	Each institution selects from their panel of valuers
12. Banks, financial lenders (BUSINESS)	Construction progress payments	Assess/confirm amount of progress payment to builder for home/business construction	Financial institution
13. Mortgage insurers (BUSINESS)	Insurance of low equity home loans	Valuation to assess risk for insurance purposes	Bank/Financial institution
14. Landlords/tenants (BUSINESS)	Assess market rental (Under Retail Shop Leases Act)	Estimate rental value	Landlord/tenant
15. Landlords/tenants (BUSINESS)	Resolve rental disputes (Under Retail Shop Leases Act)	To determine market rental	Usually specified in lease
16. Corporations (BUSINESS)	Asset valuations	Value land and building assets	Corporation
17. Corporations (BUSINESS)	Prospectus	Provide valuations for inclusion in a prospectus for potential investors	Corporation
18. Trust/investment house (BUSINESS)	Asset valuations and asset purchases	Value current portfolio for Balance Sheet. Value possible new acquisitions	Investment house
19. Developer	Current value, or	Provide current value.	Developer

<sup>17</sup> Source: *Review of Valuers Registration Act 1975*, Issues Paper, Department of Fair Trading, New South Wales, May 1997, and consultation with Queensland valuers.

User Type	Activity	Application Purpose	Service Provider Chosen By
(BUSINESS)	projections for project or proposal	Estimate future value for new activity or land use	
20. Insurance company (BUSINESS)	Review valuation for professional indemnity and fire insurance claim	Ensure compliance with professional indemnity insurance requirements	Insurance company
21. Federal & State government (GOVERNMENT)	Taxation	Valuation for tax purposes	Federal government
22. Federal government (GOVERNMENT)	Social security	Valuation asset checking or to assess pension eligibility	Federal Department
23. Federal government (GOVERNMENT)	Assess rental value of houses for Department of Defence	Determine annual rental for property on commencement and lease reviews	Federal government
24. State government (GOVERNMENT)	Value for taxation, rating and State government lease rentals	Local Government rates, taxation, State Government rents	State government
25. State and Local government (GOVERNMENT)	Acquisition/resumption	Valuation for resumption and acquisition	State and Local government
26. State and Local government (GOVERNMENT)	Property sale or rental	Assess value of property for Government Land Management System	State and Local government

## APPENDIX B

## SUMMARY OF VALUERS QUESTIONNAIRE RETURNS

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No. of questionnaires mailed out 182  
No. of valid returns 058

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Composition of valid returns:

Sole practitioners 023  
Small firms 017  
Medium firms 010  
Large firms 008

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**Note:**

1. There is no correlation between the number of answers given to any one question and the number of valid returns in a particular segment. Some respondents gave more than one answer to a question and others gave no answer. Also, the number of large firms according to analysis of the Registration list is 4, whereas 8 firms claim to be "large". It may be that several small firms of the same name consider themselves a large firm and have responded as a large firm.

2. For the sake of brevity, the wording of some questions have been abbreviated.

## TABLE OF TYPES OF ANSWERS TO QUESTIONNAIRE QUESTIONS

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
<b>Question 1:</b>  <b>It has been submitted that fees have dropped significantly in the last 2 years. If so, what is this attributed to and what effect if any, has it had on your practice?</b>	<b>Sole practitioner</b>	<ul style="list-style-type: none"> <li>• No effect on my practice (10)</li> <li>• Firms undercut one another to get work (6)</li> <li>• Quality of work has suffered as a result (6)</li> <li>• Institutions dictate prices to valuers (5)</li> <li>• Fees dropped due to greater competition (4)</li> <li>• Fees dropped 5-6 years ago because major val firms cut fees to increase market share, and major clients then expected lower fees (2)</li> <li>• Work longer hours for the same money (2)</li> <li>• Far more people are graduating as valuers (2)</li> <li>• Fees dropped because fees too high anyway (1)</li> <li>• Had a devastating effect on my practice (1)</li> <li>• Income has fallen (1)</li> <li>• Fees are buoyant(1)</li> </ul>
	<b>Small firms</b>	<ul style="list-style-type: none"> <li>• Fees dropped due to greater competition (7)</li> <li>• Quality of work has suffered (4)</li> <li>• Institutions dictate prices to valuers (3)</li> <li>• Fees static (2)</li> <li>• Fees dropped because fees too high anyway (1)</li> <li>• Clients shop around more (1)</li> <li>• Firms undercut one another to get work (1)</li> <li>• Work longer hours for the same money (1)</li> <li>• Fees dropped because firms don't specialise enough (1)</li> <li>• Have had to put off staff due to downturn (1)</li> </ul>
	<b>Medium firms</b>	<ul style="list-style-type: none"> <li>• Institutions dictate prices to valuers (3)</li> <li>• Quality of work has suffered (3)</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
		<ul style="list-style-type: none"> <li>• Fees have remained similar (3)</li> <li>• Work longer hours for same money (2)</li> <li>• Fees are increasing slightly (2)</li> <li>• Firms undercut one another to get work (1)</li> <li>• Fees dropped due to greater competition (1)</li> <li>• Fees are static (1)</li> <li>• Outsourcing of in-house vals by institutions may have contributed to lower fees (1)</li> <li>• Have had to lay off staff (1)</li> </ul>
	<b>Large firms</b>	<ul style="list-style-type: none"> <li>• Firms undercut one another to get work (3)</li> <li>• Fees have increased (2)</li> <li>• Quality of work has suffered as a result (2)</li> <li>• Fees dropped due to greater competition (1)</li> <li>• Institutions dictate prices to valuers (1)</li> <li>• Only some fees have dropped - bank valuations (1)</li> </ul>
<b>Question 2:</b> Has the average number of valuations varied in the last 3 financial years? How does the trend thus far for the 97/98 financial year compare with previous years?	<b>Sole practitioner</b>	<ul style="list-style-type: none"> <li>• Much the same (9)</li> <li>• Trend is up (5)</li> <li>• Trend is down(4)</li> <li>• New practice - work increasing steadily (3)</li> <li>• Numbers are the same, but fees are lower (1)</li> </ul>
	<b>Small firms</b>	<ul style="list-style-type: none"> <li>• Much the same (7)</li> <li>• Trend is down (3)</li> <li>• Trend is up (2)</li> </ul>
	<b>Medium firms</b>	<ul style="list-style-type: none"> <li>• Trend is up (8)</li> <li>• Much the same (2)</li> </ul>
	<b>Large firms</b>	<ul style="list-style-type: none"> <li>• Trend is up (6)</li> <li>• Much the same (1)</li> </ul>
<b>Question 3:</b> Outline the likely structural changes in the valuation profession in the next 2-5 years if no changes to regulation? Eg would demand for some services fall and new services emerge? What effect if any, would such events have on your	<b>Sole practitioner</b>	<ul style="list-style-type: none"> <li>• Many institutional clients will waive need for valuations, so reduction in volume of work (9) 20%-35%;50%</li> <li>• Will have to look for other types of vals work (2)</li> <li>• Demand for traditional services will fall (2)</li> <li>• Will need to compete with larger firms and Govt agencies for corporation work (2)</li> <li>• Elimination of valuer panels, (which is contrary to the Trade Practices Act) (2)</li> <li>• No great difference (2)</li> <li>• Demand for traditional valuations will increase due to complexities of business practices (1)</li> <li>• Expected increase in company valuation work (1)</li> <li>• A consultant type approach is required (1)</li> <li>• Will need to specialise, to get work institutions will outsource, as they will do more 'in house' vals (1)</li> <li>• More mortgage valuations (1)</li> </ul>
	<b>Small firms</b>	<ul style="list-style-type: none"> <li>• Demand for most traditional services will fall (5)</li> <li>• Many institutional clients will waive need for valuations (computer technology), so reduction in volume of work (3)</li> <li>• Would have a devastating effect on my firm (2)</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
practice?		<ul style="list-style-type: none"> <li>• Will need to compete with larger firms and Govt agencies for corporation work (2)</li> <li>• Will have to look at other types of vals work (2)</li> <li>• Little overall effect because valuers will change to meet market demands (1)</li> <li>• Streamlining with mid-sized firms (1)</li> <li>• Few new services will be needed in future (1)</li> </ul>
	Medium firms	<ul style="list-style-type: none"> <li>• Will have to look at other types of vals work (5)</li> <li>• Many institutional clients will waive need for valuations (computer technology), so reduction in volume of work (2)</li> <li>• Small firms will have to specialise or merge with other firms to survive(2)</li> <li>• Small firms will find it difficult to get panel appointments (1)</li> <li>• Quality of service will diminish further (2)</li> <li>• There will be greater emphasis on detailed advice rather than just pure valuations (1)</li> <li>• Need to specialise within each category, eg retail, industrial, commercial, rural, residential etc. (1)</li> <li>• Most changes will be technological, but major structural changes to the profession are unlikely (1)</li> </ul>
	Large firms	<ul style="list-style-type: none"> <li>• Most changes will be technological (1)</li> <li>• Small firms will have to specialise or merge with other firms to survive(1)</li> <li>• Will have to look at other types of vals work (1)</li> <li>• There will be greater emphasis on detailed advice rather than just pure valuations (1)</li> <li>• Many institutional clients will waive need for valuations (computer technology), so reduction in volume of work (1)</li> <li>• Split of market share into a well established group with sound financial base and a large group doing mostly high volume mortgage work (1)</li> <li>• No significant changes anticipated (1)</li> </ul>
<b>Question 4:</b>  Further to Q.2 what role would you expect from the AIVLE in the next 2-5 years in terms of (a) maintaining or promoting the	Sole practitioner	<ul style="list-style-type: none"> <li>• A higher leadership profile, promote members - similar to CPA(11)</li> <li>• Extra duties and changes in valuation policy will require more education for valuers (4)</li> <li>• No faith in AIVLE, does not help valuers (4)</li> <li>• Remain the same (2)</li> <li>• Assistance to students with court procedures and methods of market research (1)</li> <li>• Maintain professional standards (1)</li> <li>• Name change necessary to be better known by public (1)</li> <li>• Tighter CPD programs (1)</li> <li>• Demonstrate stronger disciplinary measures (1)</li> </ul>
professional standards of valuers; and (b) helping	Small firms	<ul style="list-style-type: none"> <li>• A higher leadership profile, promote members - similar to CPA (12)</li> <li>• Seek areas of service that valuers could provide (1)</li> <li>• Serve the country areas better (1)</li> <li>• Maintain professional standards (1)</li> </ul>
consumers distinguish	Medium firms	<ul style="list-style-type: none"> <li>• A higher leadership profile, promote members - similar to CPA (8)</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
between providers of valuation services?		<ul style="list-style-type: none"> <li>• Must slow down fall in fees by institutions (2)</li> <li>• Continue to promote members to financial institutions (1)</li> <li>• Continue to maintain professional standards (1)</li> <li>• No faith in AIVLE, does not help valuers (1)</li> <li>• Eradicate doubtful valuers (1)</li> <li>• CPD is a money-making exercise, but do valuers learn anything? (1)</li> <li>• Provide free CPD where possible (1)</li> <li>• Membership of AIVLE is too easy to obtain (1)</li> </ul>
	Large firms	<ul style="list-style-type: none"> <li>• Public awareness campaign eg CPA, are not possible due to small membership numbers (1)</li> <li>• Maintain high standards (1)</li> <li>• Become more like the CPA's and Law Society (1)</li> <li>• Prevent RE agents undertaking market valuations (1)</li> <li>• AIVLE must change name as membership will be the benchmark of the future (1)</li> <li>• To continue as they are (1)</li> </ul>
<p><b>Question 5:</b></p> <p>If there was no registration and no restrictions on the use of the term valuer, what changes would occur in the profession, and how would you see your position in the profession? What associated changes would</p>	Sole practitioner	<ul style="list-style-type: none"> <li>• The unscrupulous or untrained would move in on the market (12) ie, real estate agents, architects, quantity surveyors, accountants</li> <li>• Consumers will not be able to tell qualified from unqualified people - need educating (7)</li> <li>• Greater risk for consumer/public (6)</li> <li>• Existing valuers would not suffer in long run because knowledgeable consumers would recognise professional quality (3)</li> <li>• Significant drop in revenue for some valuers (2)</li> <li>• Unpaid PI premiums, or PI nightmare (3)</li> <li>• Lower fees (2)</li> <li>• Part-timers will disappear (1)</li> <li>• Some practices will go to the wall (1)</li> <li>• AIVLE membership will become the benchmark (1)</li> <li>• Reduction in fees due to competition from unqualified people (1)</li> <li>• Increase in litigation by banks etc(1)</li> <li>• Lowering of standards to meet competition(1)</li> <li>• AIVLE membership will become the benchmark (1)</li> </ul>
need to occur in the way the profession operates to allow existing valuers to adjust to the new arrangements	Small firms	<ul style="list-style-type: none"> <li>• The unscrupulous or untrained would move in on the market (7) ie, real estate agents, architects, quantity surveyors, accountants</li> <li>• Greater risk for consumer/public (5)</li> <li>• Significant drop in revenue for some valuers (4)</li> <li>• Consumers will not be able to tell qualified from unqualified people - need educating (2)</li> <li>• Some practices will go to the wall (1)</li> <li>• End of the profession for valuers (1)</li> <li>• AIVLE membership will become the benchmark (1)</li> <li>• A lowering of standards (1)</li> <li>• Would have little impact on my practice (1)</li> <li>• Unpaid PI premiums, or PI nightmare (1)</li> <li>• The unqualified would pick up the easy work, valuers get hard jobs, and litigation would increase fees (1)</li> <li>• Effect depends of who the consumer is, eg whether</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
		<ul style="list-style-type: none"> <li>banks or public (1)</li> <li>• Demand would fall generally if de-regulated (1)</li> </ul>
	Medium firms	<ul style="list-style-type: none"> <li>• AIVLE membership will become the benchmark (4)</li> <li>• Greater risk for consumer/public (2)</li> <li>• PI will sort out the good from the bad and clean up the profession(2)</li> <li>• Unpaid PI premiums, or PI nightmare (1)</li> <li>• Institutions will continue to employ AIVLE members (1)</li> <li>• The inexperienced cowboys will downgrade the profession (1)</li> <li>• Clients will see the value of qualified valuers in the long run (1)</li> <li>• Consumers will not be able to tell qualified from unqualified people - need educating (1)</li> <li>• Greater risk to public (1)</li> <li>• If de-regulated, profession will be defunct (1)</li> </ul>
	Large firms	<ul style="list-style-type: none"> <li>• Significant drop in revenue for some valuers (6)</li> <li>• The unscrupulous or untrained would move in on the market (4) ie, real estate agents, architects, quantity surveyors, accountants</li> <li>• Consumers will not be able to tell qualified from unqualified people - need educating (3)</li> <li>• Limited use by public of valuation services, but other consumers are well informed (2)</li> <li>• Reduction in number of service providers (1)</li> <li>• Some valuers will move into other property related areas (1)</li> <li>• Quality of work will suffer (1)</li> <li>• Over abundance of unqualified service providers (1)</li> <li>• Little effect on big firms (1)</li> <li>• No significant changes expected (1)</li> </ul>
<p><b>Question 6:</b></p> <p>In what way (if any) do you believe registration and the Valuers Registration Board protects you as a valuer? What</p>	Sole practitioner	<ul style="list-style-type: none"> <li>• Ensures compliance with valuation standards (9)</li> <li>• Offers consumers complaints mechanism (5)</li> <li>• For consumers, imposes moral obligations on valuers and some legal liability (4)</li> <li>• Protects valuers income (4)</li> <li>• Little protection for valuers (2)</li> <li>• Professional watchdog capable of resolving disputes (3)</li> <li>• Will need to compete with larger firms and Govt agencies for corporation work (2)</li> <li>• Prevents the AIVLE being the sole arbitrator of standards (1)</li> <li>• Inability to clean up the profession and discipline valuers means no protection for consumers (1)</li> </ul>
protection does it offer consumers?	Small firms	<ul style="list-style-type: none"> <li>• Protects the public from the unqualified who would offer valuation services (7)</li> <li>• Offers consumers complaints mechanism (3)</li> <li>• Ensures compliance with valuation standards (3)</li> <li>• Little protection for valuers (2)</li> <li>• Protects valuers income (1)</li> <li>• How effective is it? Never heard of a valuer being de-registered (1)</li> <li>• Board is not tough enough; anyway most clients</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
		more interested in whether valuers have PI insurance (1)
	<b>Medium firms</b>	<ul style="list-style-type: none"> <li>• Little protection for valuers (2)</li> <li>• Limited protection for consumers (2)</li> <li>• Protects the public from the unqualified who would offer val services (2)</li> <li>• Cost of Board cheaper than public risk of using uninsured valuer (1)</li> <li>• Ensures compliance with valuation standards (1)</li> <li>• Increase proactive role of the Board or get rid of it, eg Board does not de-register valuers when they should (1)</li> </ul>
	<b>Large firms</b>	<ul style="list-style-type: none"> <li>• Little protection for valuers (5)</li> <li>• Ensures compliance with valuation standards (5)</li> <li>• Offers consumers complaints mechanism (1)</li> <li>• Standards are higher for AIVLE members than for registered valuers (1)</li> </ul>
<b>Question 7:</b>  <b>Additional comments</b>	<b>Sole practitioner</b>	<ul style="list-style-type: none"> <li>• Need to inform consumers of risks and maintain consumer protection (3)</li> <li>• No professional body can provide public with the level of confidence that registration does (2)</li> <li>• Removing registration exposes consumers to untrained persons with no legal liability (2)</li> <li>• The AIVLE should not be given the disciplinary powers of the Board (1)</li> <li>• The AIVLE could take on disciplinary responsibilities of the Board (1)</li> <li>• A different system is fine as long as disciplinary measures are better legislated.</li> <li>• PI and prospect of liability helps ensure valuers keep up to date (1)</li> <li>• Further discipline of valuers is necessary (1)</li> <li>• AIVLE CPD program is a great start (1)</li> <li>• Re-education of financial institutions re value for money and need for greater fees to ensure greater quality (1)</li> <li>• De-registering valuers is akin to de-registering dentists, doctors or lawyers (1)</li> <li>• Most property based legislation being enacted (Body Corporate and Community Management Act, licensing for Real Estate Agents and Residential Tenancies Act) are all consumer protection based, so why is de-regulation of valuers being contemplated? (1)</li> </ul>
	<b>Small firms</b>	<ul style="list-style-type: none"> <li>• Removing registration exposes consumers to untrained persons with no legal liability (3)</li> <li>• Valuers suffer from poor exposure to the public which makes it difficult to expand expertise outside traditional services (1)</li> <li>• Small businesses cannot afford time off to do the AIVLE CPD programmes (1)</li> <li>• De-registering valuers is akin to de-registering dentists, doctors or lawyers (1)</li> <li>• De-registration has been tried and failed in other</li> </ul>

QUESTION NUMBER	RESPONDENT TYPE	GENERAL RESPONSE
		countries, so why are we doing it? (1) <ul style="list-style-type: none"><li>• At a time when judges are calling for regulation of the mortgage brokerage professional to protect the public, why is de-regulation of valuers being contemplated? (1)</li></ul>
	Medium firms	<ul style="list-style-type: none"><li>• Experience component of graduates should be more flexible (1)</li><li>• Regulations should provide for getting rid of bad valuers (1)</li></ul>
	Large firms	<ul style="list-style-type: none"><li>• De-registration not a problem - the AIVLE can take over the role of the Board (2)</li><li>• De-regulation would have damaging effect on terms of PI provision (1)</li></ul>

## APPENDIX C

## ELEMENTS OF A CODE OF PRACTICE

PROPOSED ELEMENTS OF A CODE OF PRACTICE <sup>18</sup>	
Content	Comments
<ul style="list-style-type: none"> <li>• Scope</li> </ul>	<p><u>The Scope</u> identifies who is subject to the code.</p>
<ul style="list-style-type: none"> <li>• Objectives</li> </ul>	<p><u>The Objectives</u> outline the expected outcomes.</p>
<ul style="list-style-type: none"> <li>• Core rules - technical standards and performance benchmarks to be delivered by valuers</li> </ul>	<p><u>Core rules</u> set competency and performance standards, dispute procedures, and may provide for an advisory service for customers. Competency benchmarks may refer to the guidelines contained within the National Training Frameworks, published by the Australian National Training Authority<sup>19</sup>.</p>
<ul style="list-style-type: none"> <li>• Dispute procedures and sanctions</li> </ul>	<p>The <u>Dispute procedure</u> part of the code would outline the procedures to be followed in case of a dispute and the applicable time limits. (It may also be a reference to another body such as the API). The dispute procedures are not to intended duplicate the redress system available under the FTA.</p>
<ul style="list-style-type: none"> <li>• Administration of the code</li> </ul>	<p><u>Administration</u> usually entails establishing a code administration committee with its own agenda. Ideally, the committee would contain a mix of representatives from the valuation profession, business and the community. The committee would oversee such matters as publicity of the code, employee awareness of the code, finance for administration of the code.</p>
<ul style="list-style-type: none"> <li>• Publicity and reporting</li> </ul>	<p>The <u>Publicity and reporting</u> section of the code would set out how the code would be publicised, what information would be disseminated, and consumer awareness of the disputes process.</p>
<ul style="list-style-type: none"> <li>• Monitoring, review and amendments</li> </ul>	<p><u>Monitoring and review</u> would cover such matters as compliance with the code by valuers, effectiveness of the dispute process, whether the code has introduced anti-competitive effects, how frequently the code should be monitored, and by whom.</p>

<sup>18</sup> *Fair Trading Codes of Conduct*, A guide prepared by Commonwealth, State and Territory Consumer Affairs Agencies, October 1996.

<sup>19</sup> The Australian National Training Authority published its competency standard for Valuation in 1997, entitled "Real Property, Plant and Equipment, Valuation Standards."

**APPENDIX D**  
**RELEVANT LEGISLATION**

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**Legislation Referring to the *Valuers Registration Act 1992***

Cooperatives Regulation 1997  
Draft Local Government Legislation Amendment Bill 1999  
Funeral Benefit Business Act 1982  
Retail Shop Leases Act 1994  
Statutory Bodies Financial Arrangements Regulation 1997  
Trusts Act 1973  
Valuation of Land Act 1944

**Legislation Referring to Authorised Valuers**

Managed Investments Act 1998 (Comm)  
Sea Installations Act 1987 (Comm)

**Legislation Referring to Valuation and/or the Valuation of Land Act 1944**

Body Corporate and Community Management Act 1997  
City of Brisbane Act 1926  
Land Act 1994  
Land Tax Act 1915  
Local Government Act 1993  
Stamps Act 1894  
State Housing Act 1945  
State Housing (Freeholding of Land) Act 1957

**APPENDIX E: CONSULTATION**

Department of Queensland Treasury

Department of Natural Resources

Department of State Development

Department of Equity and Fair Trade

Department of the Premier and Cabinet

Department of Justice and Attorney-General

Department of Communication and Information, Local Government and Planning

Department of Main Roads

Department of Housing

Department of Public Works

Department of Employment, Training and Industrial Relations

The Valuers Registration Board of Queensland

The Australian Property Institute

The Property Council of Australia

The Real Estate Institute of Queensland

The Local Government Association of Queensland

The Urban Development Institute of Australia (Qld)

Queensland Consumers Association

Department of Natural Resources and Environment, Victoria

Department of Environment and Land Management, Tasmania

Ministry of Fair Trading, Western Australia

Office of Consumer and Business Affairs, South Australia

Department of Fair Trade, New South Wales