

Land Valuers Licensing Board



**Annual Report
2002/2003**



Department of Consumer
and Employment Protection
Government of Western Australia

THE HON. JOHN KOBELKE MLA
Minister for Consumer and Employment Protection

In accordance with Section 31 of the *Land Valuers Licensing Act 1978*, the Land Valuers Licensing Board is pleased to submit for your information and for presentation to Parliament the Annual Report for the period 1 July 2002 to 30 June 2003.

Bryan Gardiner
CHAIRPERSON

Contents

STATEMENT FROM THE CHAIRPERSON	1
THE LAND VALUERS LICENSING BOARD	2
ROLE AND FUNCTIONS OF THE LAND VALUERS LICENSING BOARD	2
COMPOSITION OF THE BOARD	2
BOARD PROFILE	3
REMUNERATION OF BOARD MEMBERS.....	4
BOARD ADMINISTRATION.....	5
BOARD MEETINGS	5
BOARD SERVICES	5
CODE OF CONDUCT AND ETHICS FOR BOARD MEMBERS AND OFFICERS.....	5
ORGANISATIONAL STRUCTURE	6
LICENSING	7
LICENCE REQUIREMENTS	7
NUMBER OF LAND VALUERS	7
NEW APPLICATIONS	8
LICENCE RENEWALS	8
MUTUAL RECOGNITION.....	9
INVESTIGATIONS.....	9
COMPLAINTS AGAINST LAND VALUERS	10
BOARD INQUIRIES.....	10
BOARD COMMITTEES	12
LEGISLATION	13
SUGGESTED LEGISLATIVE AMENDMENTS.....	13
LAND VALUERS CODE OF CONDUCT	14
LAND VALUERS AMENDMENT REGULATIONS 2002	15
THE STATE ADMINISTRATIVE TRIBUNAL	15
EDUCATION AND AWARENESS.....	16
INTERNET WEBSITE.....	16
PUBLICATIONS.....	16
TELEPHONE AND COUNTER SERVICE.....	16
STAFF TRAINING INITIATIVES.....	16
REVENUE AND EXPENDITURE	17

STATEMENT FROM THE CHAIRPERSON

I am pleased to have been appointed as Chairman of the Land Valuers Licensing Board during the financial year.

The Board has continued a high level of activity during the year with a number of matters under review to ensure that issues within the jurisdiction of the Board are both current and relevant. All Board members have given a strong commitment to their role on the Board. In particular, I would like to acknowledge the additional workload undertaken by Board member Mr John McNamara and deputy Board member Mr John Persse.

I also wish to acknowledge the commitment made by my predecessor as Board Chair, Ms Vickie Scarff who devoted six years to this role and whose efforts have gone a long way to ensuring that the Board can discharge its functions.

In addition, on behalf of the Board I would also like to express the Board's appreciation for the support provided by the Minister for Consumer and Employment Protection, Hon John Kobelke MLA.

THE LAND VALUERS LICENSING BOARD

ROLE AND FUNCTIONS OF THE LAND VALUERS LICENSING BOARD

The Land Valuers Licensing Board is a licensing and supervisory authority for people who conduct valuations of land. The Board is responsible to the Minister for Consumer and Employment Protection.

The Board administers the licensing system for land valuers, acts as a disciplinary body and contributes to the public policy agenda by making recommendations on legislative matters to the Minister.

The Board is established under the Land Valuers Licensing Act 1978 ("the Act"). The Act and the Land Valuers Licensing Regulations 1979 ("the Regulations") set out the licensing requirements for land valuers and invest the Board with the authority to hold disciplinary Inquiries. A Code of Conduct is established under the Act and provides for enforceable standards of conduct for land valuers. There is also a Gazetted Schedule which regulates the maximum amounts of remuneration for the various kinds of services rendered by licensed valuers.

COMPOSITION OF THE BOARD

The Act requires that the Board be comprised of members with a range of legal and valuation expertise. The composition of the Board and the qualifications relevant to each position are prescribed in Section 6 of the Act.

The membership of the Board comprises:

- a Chairperson who is a legal practitioner of not less than seven years standing who is nominated by the Minister from a panel of names submitted by the Law Society of Western Australia [section 6(1)(a) of the Act];
- one member who is nominated by the Minister [section 6(1)(b)];
- two members who are experienced in the valuation of land, are members of the Australian Property Institute, and are nominated by the Minister from a panel of names submitted by the Western Australian Division of that Institute [section 6(1)(c)];
- one member who is experienced in the valuation of land, is a member of the Australian Property Institute, and is nominated by the Minister from a panel of names submitted by the Real Estate Institute of Western Australia [section 6(1)(d) of the Act].

Each member may be appointed for a period of not more than four years, but is eligible for re-appointment. The Governor may appoint a person as the deputy of a member.

BOARD PROFILE

Mr Bryan Gardiner (Chairperson)

Mr Gardiner was appointed pursuant to Section 6(1)(a) of the Act. He was appointed as Chairperson on 26 November 2002 and his current term expires on 21 October 2005.

Mr Gardiner is a qualified legal practitioner operating his own practice which, among other matters, handles issues relating to property transactions. He is also a director of an international company and a Government appointee on a regulatory Commission.

Dr John Bollig (Member)

Dr Bollig was appointed pursuant to Section 6(1)(b) of the Act. He was first appointed on 1 November 2000 and was re-appointed during the year. His current term expires on 31 October 2003.

Dr Bollig has an educational background in architecture, environmental science and town planning, and experience as a director in a number of private and public company groups.

Deputy: Ms Patricia Addison

Mr John McNamara (Member and Deputy Chairperson)

Mr McNamara was appointed pursuant to Section 6(1)(c) of the Act. He was first appointed as a member on 18 January 1994 and was re-appointed during the year. His current term expires on 31 October 2003.

Mr McNamara has extensive experience as a land valuer. He is a past- National President of the Australian Property Institute and a Life Fellow of the Institute.

Deputy: Mr John Martin

Ms Jenny Le-Fevre

Ms Le-Fevre was appointed pursuant to Section 6(1)(c) of the Act. She was first appointed as a member on 7 May 1996 and was re-appointed during the year. Her current term expires on 30 October 2005.

Ms Le-Fevre has extensive experience as a land valuer, is a Fellow of the Australian Property Institute and operates a valuation practice.

Deputy: Mr John Persse

Mr Kingsley Lewis

Mr Lewis was appointed pursuant to Section 6(1)(d) of the Act. He was first appointed as a member on 22 October 1999 and was re-appointed during the year. His current term expires on 21 October 2005.

Mr Lewis has extensive experience as a land valuer, is a Fellow of the Australian Property Institute and a member of the Real Estate Institute of Western Australia.

Deputy: Keith Wilson

Retiring Board Member

Ms Vickie Scarff (Chairperson)

Ms Scarff was appointed pursuant to Section 6(1)(a) of the Act. She was first appointed as Chairperson on 22 October 1996 and her term expired on 21 October 2002. Ms Scarff opted not to nominate for re-appointment.

REMUNERATION OF BOARD MEMBERS

Board members are remunerated on the basis of their attendance at meetings. For some years, the Chairperson has received \$280 per day and \$185 per half day. Members received \$186 per day and \$123 per half day.

During the year, the Board approached the Minister regarding the level of remuneration. As a consequence, the Executive Council approved the following new rates:

Chairperson

For meetings of four hours or less - \$310

For meetings of more than four hours duration - \$470

For hearing inquiries - \$155 per hour

Members

For meetings of four hours or less - \$210

For meetings of more than four hours duration - \$320

For hearing inquiries of four hours or less - \$210

For hearing inquiries of more than four hours duration - \$320

BOARD ADMINISTRATION

BOARD MEETINGS

The Board held 11 meetings during the financial year.

The Board generally meets every month and considers matters such as applications for land valuers licences, policy and legislation issues, industry education issues, compliance matters and, where required, applications for disciplinary proceedings against licensed land valuers.

BOARD SERVICES

The Department of Consumer and Employment Protection ("the Department") funds the provision of services to the Board.

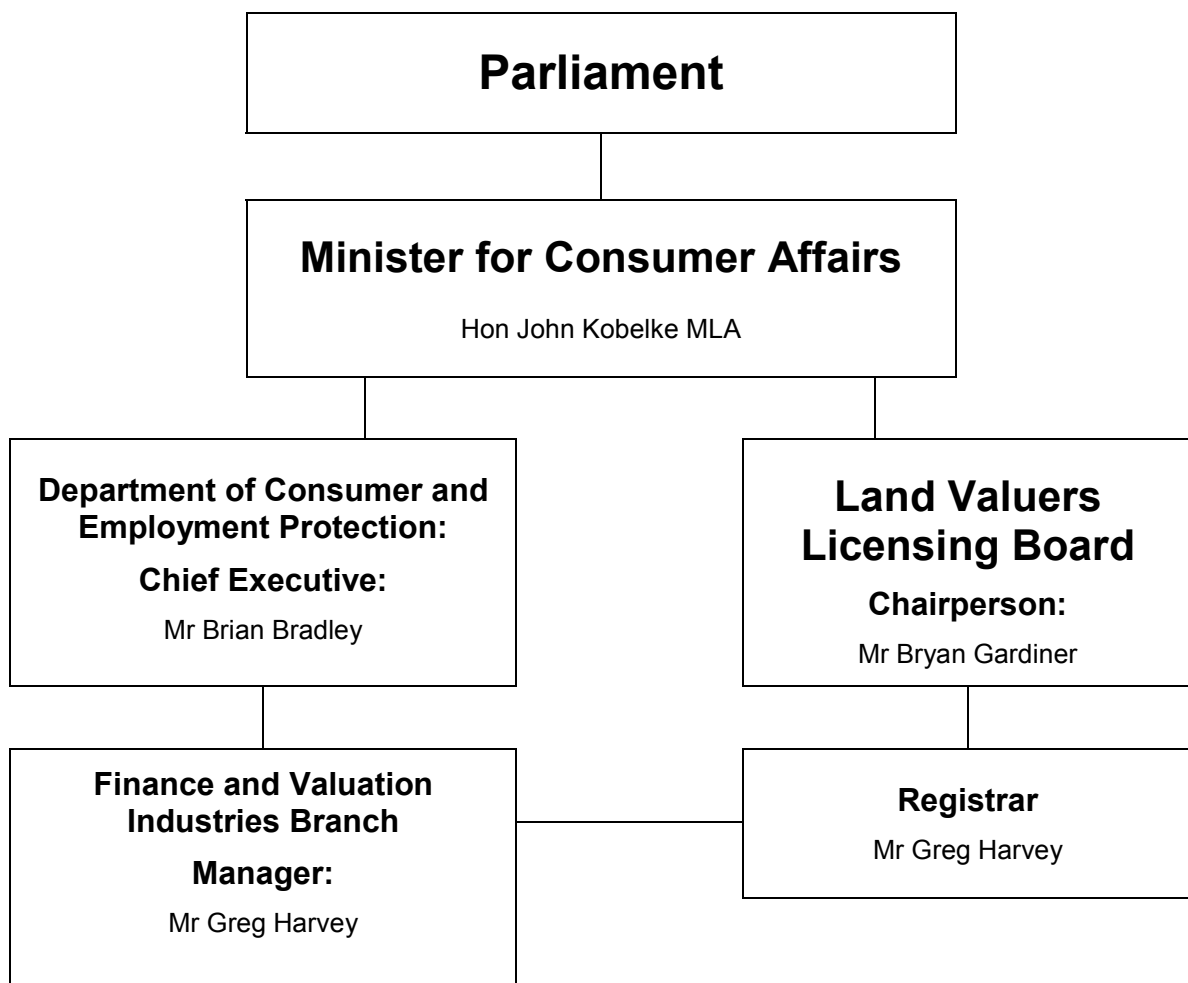
Administrative and support services are supplied to the Board by the Finance and Valuation Industries Branch of the Department. This branch also deals with Departmental matters relating to credit as well as providing support services to the Finance Brokers Supervisory Board and the Commercial Tribunal.

CODE OF CONDUCT AND ETHICS FOR BOARD MEMBERS AND OFFICERS

As a state statutory body, the Board is required to adhere to the Western Australian Public Sector Code of Ethics. The Code of Ethics sets out the values and behaviour expected of members of state statutory bodies.

The Board also adheres to a Code of Conduct developed for Board members and officers of the Board to complement the Code of Ethics. The Code defines appropriate conduct for Board members and provides guidance for ethical decision making by the Board.

ORGANISATIONAL STRUCTURE



LICENSING

LICENCE REQUIREMENTS

The Board may grant a land valuer's licence to an individual who meets the requirements of the Act and the educational requirements prescribed in the Regulations.

Applicants for a land valuer's licence apply under one of three categories:

- Members of the Australian Property Institute [s19(1)(b) of the Act]; or
 - Holders of a prescribed degree or diploma who have also had:
 - two years satisfactory practical experience in the valuation of land immediately preceding the date of application; and
 - a total of not less than four years satisfactory practical experience in the valuation of land within the period of ten years immediately preceding the date of application [s19(1)(c) of the Act];
- or
- Persons who have previously held a licence under the Act within the period of five years immediately proceeding the date of application [s19(1)(d) of the Act].

The required training qualifications are a Bachelor of Commerce or Bachelor of Business Degree, with property or valuation majors. In Western Australia, Curtin University of Technology currently delivers these courses.

NUMBER OF LAND VALUERS

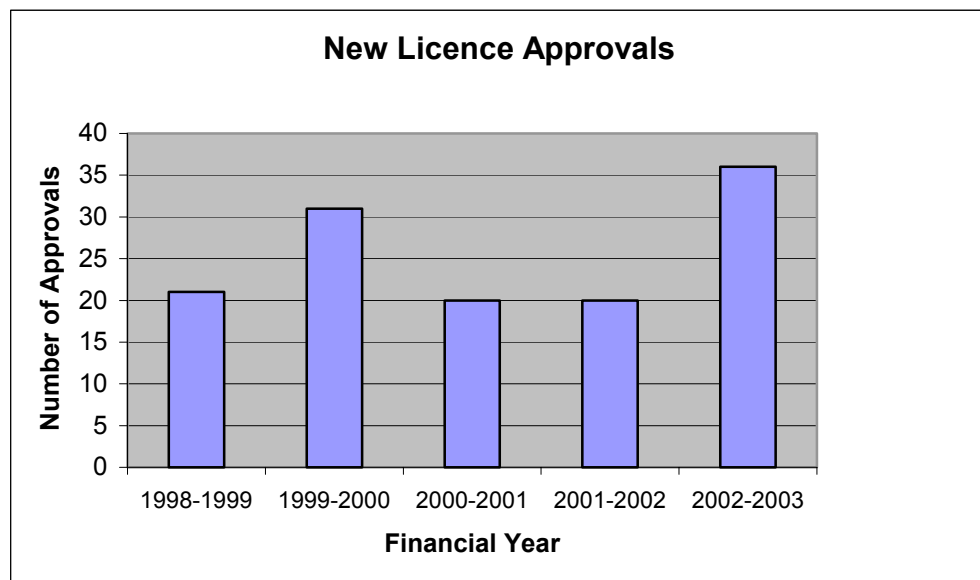
As of 30 June 2003 the total number of land valuers licensed in Western Australia was 516.

NEW APPLICATIONS

During the year, 36 applications for new licences were granted and three applications were declined.

Compared to some other occupations, the number of new people entering the industry are relatively low. This reflects the high qualifications required and the competitive nature of the industry.

The following graph shows the number of new applicants for a land valuer's licence in the past five years.



LICENCE RENEWALS

Historically, all licences have been renewed with a common renewal date (ie 30 June 2002 and every three years thereafter). New applicants paid a portion of the three year licence fee depending when their licence was granted. This has always created a peak of activity for the Board and the Department. However, based on advice received by the Department, all new licences are now granted for a three year period commencing from when the licence is granted.

Land valuers have up to 28 days after the expiration of their licence to make an application for renewal. A late fee applies to land valuers lodging their renewal applications within this 28-day period. Of the licences which expired on 30 June 2002, 69 valuers failed to renew for a further three years.

In accordance with the provisions of the Act, any person may lodge an objection to the grant of a licence. There were two objections received in response to licence

applications. In respect to one of the matters, a licence was subsequently granted subject to temporary conditions. The second objection did not proceed as the applicant withdrew his licence application.

The licence fees were reviewed by the Government and became effective from 1 July 2003. (Refer to Land Valuers Amendment Regulations 2002 section of the Report.)

MUTUAL RECOGNITION

Land valuers licensed in other Australian jurisdictions may receive a Western Australian licence under the provisions of the *Mutual Recognition (Western Australia) Act 1995*.

INVESTIGATIONS

The Board relies on the Department of Consumer and Employment Protection to conduct investigations on behalf of the Board into complaints received against land valuers. The departmental staff conducting these investigations do so under the authority of the *Consumer Affairs Act (WA) 1971*. The investigations are conducted independently of the Board in order not to prejudice any investigations that proceed to Inquiry. The attrition of departmental staff causes regular setbacks for the Board while new staff are trained in an area which is often very complex.

In all cases, the investigation will focus on the valuer's application of proper practices and principles rather than the actual valuation figure. Due to the subjective nature of valuation and the fact that it is a professional opinion, the valuer's client may not agree with the actual value provided. Neither the Land Valuers Licensing Board nor the Department of Consumer and Employment Protection has the power to resolve a question about the validity of the amount of value or the consequences of your reliance upon the valuation. Nor can the Board or the Government deal with claims relating to financial losses. These must be made through the courts.

In cases where a complainant is able to provide reasonable evidence of alleged breaches of the Land Valuers Licensing Act, Regulations, Code of Conduct or Maximum Remuneration Schedule then a complaint should be lodged with the Board.

To assist in the proper functioning of the Board, a Complaints Committee comprising of senior departmental staff and a deputy member of the Board, who is a licensed land valuer, reviews, monitors and provides guidance on the investigation of complaints received against licensed valuers. Because of his role on the Complaints

Committee the deputy board member is precluded from sitting in judgement on any matters brought before the Board in the form of an inquiry.

The Committee reports to the Board at each meeting with brief details of complaints and matters which have been concluded due to lack of evidence or the like and also matters which are referred to the Board for further action (e.g. issue of warning or disciplinary inquiry). The establishment of the Committee ensures natural justice prevails by providing a balance between keeping Board members independent from complaint matters should they be required to sit in judgement on a complaint while at the same time keeping them abreast of conduct trends and developments.

Departmental investigators are not qualified land valuers. Therefore, as part of the investigation process, independent land valuers may be engaged to audit or provide a critique of a valuation which is the subject of a complaint. During the year the Board adopted a forensic procedure which provides instructions to those independent valuers.

COMPLAINTS AGAINST LAND VALUERS

During the year, seven complaints were received, being a marked decrease from the previous year. Two of the complaints were closed as the matters did not relate to a breach of the Act or related regulations while the remainder will continue to be investigated.

The reduction in the number of new complaints can be attributed to the drawing to conclusion of matters raised during the Royal Commission into the Finance Broking Industry held in the previous reporting year.

Complaints against land valuers

	1998/1999	1999/2000	2000/2001	2001/2002	2002/2003
Number of Complaints	4	18	29	19	7

BOARD INQUIRIES

Where a complaint indicates a breach of the Act, Regulations, Code of Conduct or Maximum Remuneration Notice, and the investigation and legal advice supports further action, the case may be brought to the Board on Inquiry. In an Inquiry the Board acts as a judicial tribunal.

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

The Board has the power to summon witnesses, inspect papers and documents, require a person to give evidence on oath or affirmation and require any person appearing before the Board to answer questions.

If the Board is satisfied, after conducting an Inquiry, that cause exists for a licensed valuer to be disciplined, it may:

- (a) reprimand or caution the licensed valuer;
- (b) impose a fine not exceeding \$500 on the valuer;
- (c) suspend or cancel the valuer's licence and, in addition, disqualify the valuer either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the Board, or until further order from the Board, from holding a licence.

While the Board has the statutory authority to discipline licensed valuers, where proper cause exists, it does not have the statutory authority to award compensation to persons who may have suffered civil damages. Persons seeking compensation from land valuers for alleged civil damages must do so by undertaking independent legal action.

Persons who consider they have suffered a loss as a result of a valuers alleged negligent or incompetent actions are nevertheless encouraged to notify the Board of any concerns they may have regarding the conduct of licensed valuers, so that those concerns may be investigated and, where appropriate, disciplinary action taken.

Inquiries Completed During 2002-2003

Number	Respondent(s)	Alleged Breaches	Outcome
1/2001	Clanan Richard Marr	Article 4 of the Code of Conduct (1985)	On 5 December 2002 the Board withdrew the Inquiry on the basis that Mr Marr failed to renew his licence. The Board has previously received legal advice that it has no jurisdiction to pursue an inquiry against an unlicensed valuer.
4/2001	Stephen Olifent	Sections 28(2)(b)&(c) of the Act	On 21 October 2002 the Board ordered that Mr Olifent's licence be suspended for 12 months and that he be fined \$500 and pay costs of \$6,300. The order for costs was suspended for 12 months.
4/2002	Glenn Franklin	Sections 28(2)(c) of the Act	On 5 May 2003 the Board resolved to withdraw this inquiry as it had been replaced with inquiry 3/2003.

Ongoing Inquiries

Number	Respondent(s)	Alleged Breaches	Current Status
2/2002	Release of respondent's name suppressed as notice had not been issued to the respondent as at 30/06/03	Article 3(a) of the Code of Conduct (1985) and Section 28(2)(b) of the Act	The Board approved an Inquiry into these matters in February 2002. However, the matter is held in escrow as the respondent does not currently have a valid land valuer's licence.
3/2002	Bernard Worthington	28(2)(c) of the Act	Hearings were held between September 2002 and April 2003. The decision is reserved.
1/2003	Guiseppe Fanchi	28(2)(c) of the Act	Hearing (first mention) held on 7 May 2003. Further hearing dates to be set down during 2003/2004.
2/2003	Herbert Lee-Steere	28(2)(b)&(c) of the Act	Hearing (first mention) held on 7 May 2003. Further hearing dates to be set down during 2003/2004.
3/2003	Glenn Franklin	28(2)(b)&(c) of the Act	Hearing (first mention) held on 9 June 2003. Further hearing dates to be set down during 2003/2004.

The status of inquiries is reported as at 30 June 2003. More recent information can be obtained from the Board's website www.docep.wa.gov.au/landvaluers.

BOARD COMMITTEES

This year the Board established two subcommittees:

- Inquiry Processes Committee
- Complaints Committee

The **Inquiry Processes Committee** consists of the Board Chairperson, a Board member, the Registrar and the Principal Legal Officer of the Department.

The key objectives of the Inquiries Processes Committee are to ensure that:

- legal action to bring matters before the Board for formal Inquiry, or to initiate Court action, are taken in an effective, efficient and timely manner;
- proper procedures are followed in relation to any Inquiry before the Board;
- appropriate applications are made to the Courts in relation to disciplinary and enforcement matters; and

- any follow up action to the outcome of Inquiries and Court actions are appropriately undertaken on behalf of the Board.

The **Complaints Committee** consists of a Deputy Board Member, the Registrar, the Manager of the Finance and Valuation Industries Branch and the Principal Compliance Officer.

The key objectives of the Complaints Committee are to ensure that:

- complaints are investigated and any legal advice is sought in an effective, efficient and timely manner;
- appropriate matters become the subject of Applications for Inquiry before the Land Valuers Licensing Board;
- decisions regarding the closure of files, or further action to be taken by Officers on behalf of the Board, are appropriate; and
- systemic breaches of legislation or common problems in the industry are identified as early as possible and appropriate action is taken by the Board.

LEGISLATION

SUGGESTED LEGISLATIVE AMENDMENTS

Based on years of experience, the Board and Departmental officers have kept a record of suggested legislative changes. In part, these have arisen from various matters presented to the Board, investigation of complaints against licensed valuers and comparisons with legislation in other jurisdictions.

The Board is aware that the Minister is proposing legislative changes as a result of recommendations made by the Royal Commission into the Finance Broking Industry and the introduction of the State Administrative Tribunal. Accordingly, the Board's list of suggested legislative changes was forwarded to the Minister for consideration in any legislative amendments.

It is understood that the legislative changes proposed by the Minister will include greater consumer representation on the Board, increase penalties for breaches of industry regulation and extend the Board's jurisdiction to include valuers who, for various reasons, may cease to be licensed.

LAND VALUERS CODE OF CONDUCT

The Board, with the approval of the Minister, may prescribe a Code of Conduct under section 26 of the Act. The Code is an important method of regulating the operations of licensed valuers and is legally binding on the valuers. The Code was last reviewed and gazetted in 1999, after remaining unchanged since the original Code of 1985.

The Board is continuing its review of the Code and further comments on the revised Code were received from a small number of valuers, mostly in respect to the proposal to prohibit valuation statements that purport to predict future values. The inclusion of this matter in the revised Code arose from issues emanating from the Royal Commission into the Finance Broking Industry. Some valuers believe that such a restriction would be impractical in certain sectors of the industry.

In addition, in an earlier Court matter, a Judge commented on the role of a valuer who also acted as an advocate for his client. The Board concurs with the comments from the Court and included an appropriate clause in the revised Code. However, this matter continues to be the subject of discussion with Departmental officers advising the Minister.

The Board is keen to see the revised Code gazetted as soon as possible and will continue to work with interested parties to achieve a satisfactory solution.

MAXIMUM REMUNERATION SCHEDULE FOR LAND VALUERS

In accordance with the Act, the Board may (with the Minister's approval) publish maximum amounts of remuneration for licensed valuers. Apart from a goods and services tax adjustment in 2000, the remuneration notice was last published ten years ago.

The Board understands that the Minister does not believe that it would be appropriate, at this point in time, to deregulate land valuers' fees. Accordingly, and with the 'in principle' support of the Minister, the Board embarked on a review of the remuneration notice by seeking comments from the industry, banks and general public. From the comments received a revised remuneration notice was developed taking into consideration significant professional indemnity insurance costs as well as the general increased costs in conducting business over the past 10 years.

The revised notice was forwarded to the Minister in May 2003 and the Board is continuing to discuss matters of interest with Departmental officers advising the Minister.

LAND VALUERS AMENDMENT REGULATIONS 2002

The State Government regularly reviews the licence fees for a number of occupational industries. As a result, the following new licence fees were gazetted and became effective on 1 July 2002.

Schedule of fees as at 1 July 2002

NEW LICENCE FEES	
Time Period	Licence Fee
No more than 6mths	\$57.50
More than 6mths & no more than 12mths	\$115.00
More than 12mths & no more than 18 mths	\$170.50
More than 18mths & no more than 2 yrs	\$230.00
More than 2yrs & no more than 2yrs 6 mths	\$287.50
More than 2yrs 6 mths & no more than 3 yrs	\$340.50
OTHER FEES	
Licence Renewal	\$340.50
Examination Fee	\$ 39.00
Fee to inspect register	\$10.50
Certificate of Individual Registration (first page)	\$10.50
(each subsequent page)	\$2.00
Fee for certificate of ALL registrations in the register	\$124.00

THE STATE ADMINISTRATIVE TRIBUNAL

The Board was advised that the State Government proposes to introduce legislation which enact the State Administrative Tribunal (SAT). The role of SAT will include the disciplinary functions currently undertaken by a range of State statutory Boards and Committees.

The Board was initially advised that, in addition to losing its disciplinary function, it will also lose its licensing function. The fact the Board would effectively remain for policy advice matters only was a major concern for the Board members. The Board submitted its comments on the SAT proposal and was subsequently advised that the licensing and policy advice functions will remain with the Board.

EDUCATION AND AWARENESS

INTERNET WEBSITE

The Land Valuers' Licensing Board website which was launched last financial year continues to be a point of interest and an ideal form of communication in respect to the activities of the Board and general information for the industry and public.

The website provides information on a range of issues including:

- The Board and its functions;
- Legislation;
- Inquiry matters;
- Licensing;
- Register of licensed land valuers;
- Helpful hints for persons using the services of a land valuer; and
- Links to other related sites.

The website address is www.docep.wa.gov.au/landvaluers.

PUBLICATIONS

The Board continues to provide a publication entitled "*Notes on Land Valuers*" for persons using the services of a land valuer. The publication is also available on the Board's website.

TELEPHONE AND COUNTER SERVICE

The Department provides both a counter and telephone advice service to the public, on behalf of the Board. Both services are available during business hours for advice about the licensing and regulation of land valuers.

STAFF TRAINING INITIATIVES

The Department provides training for staff in respect to their specific tasks and also for general customer services and process improvement.

REVENUE AND EXPENDITURE

The Board is not a statutory authority for the purposes of the *Financial Administration and Audit Act 1985*.

All licensing fees paid to the Board are collected and brought to account by the Department of Consumer and Employment Protection and credited to the consolidated fund at State Treasury. The costs of maintaining the operations of the Board are met from funds appropriated by Parliament for the purposes of the Department. Amounts of income and expenditure are incorporated in the accounts of the Department and are published in the Department's Annual Report.

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisations providing services in relation to advertising, market research, polling, direct mail and media advertising. The Board has not incurred expenditure of this nature.