

# Land Valuers Licensing Board

## Annual Report 2010-2011



Land Valuers Licensing Board



**THE HON. SIMON O'BRIEN MLC**  
**Minister for Finance; Commerce; Small Business**

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 2010 to 30 June 2011.

A handwritten signature in black ink, appearing to read 'Bryan Gardiner', with a large, sweeping initial 'B'.

**Bryan Gardiner**  
**CHAIRMAN**

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## STATEMENT FROM THE CHAIRMAN

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I'm pleased to present the Land Valuers Licensing Board's annual report for the past financial year. Legislative amendments to the *Land Valuers Licensing Act 1978* have been completed and as a result the Land Valuers Licensing Board will terminate on 30 June 2011 and its functions transferred to the Commissioner for Consumer Protection.

The Council of Australian Governments has affirmed their commitment to a national licensing system over a range of occupational areas, including land valuers, over the next few years. However, land valuers will not come into national licensing until a date to be fixed after 1 July 2013 and work on the regulations relevant to land valuers will be undertaken by the National Occupational Licensing Authority.

Throughout the year the Board continued to provide an effective service to both consumers and the industry, amidst a period of economic and prospective regulatory change.

The Board continued a high level of activity during the year, taking an increasingly proactive approach to its regulatory role. Most significantly, the Board actively pursued opportunities to improve the legislative framework within which land valuers operate, seeking to clarify legislative ambiguities and to improve the effectiveness of licensing and investigations carried out under the Act.

As in previous years, there had been a relatively small number of complaints over the course of the year. While no systemic issues were identified from the complaints received, the Board noted that in a number of valuation reports that came to its attention, the licensed valuer failed to annex the clients' instructions in accordance with the Licensed Valuers Code of Conduct.

The Board continued to utilise e-bulletins as an effective means of encouraging awareness of current issues facing licensees and the industry. The six monthly newsletters were also successful in keeping licensees informed of issues that arose from the complaints and policy developments throughout the year.

I would like to take this opportunity to thank all Board members for their determined commitment to the work of the Board and to express my sincere appreciation for the support provided by them and their deputies who have committed a great deal of time and effort to Board matters. Each person brought to the Board their own special expertise, which collectively, contributed significantly to the Board's achievements.

On behalf of the Board and myself, I wish to acknowledge the support provided by the Ministry and those officers in the Department of Commerce who assisted the Board in carrying out its statutory functions.

Finally, I wish the Commissioner for Consumer Protection, Ms Anne Driscoll, every success in the ongoing regulation of the industry.

Bryan Gardiner

**CHAIRMAN**

## THE LAND VALUERS LICENSING BOARD

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### ROLE AND FUNCTIONS OF THE LAND VALUERS LICENSING BOARD

The Land Valuers Licensing Board (the Board) was a licensing and supervisory authority, established under the *Land Valuers Licensing Act 1978* (the Act), for people who conduct valuations of land. The Board was responsible to the Minister for Commerce.

The Act and the *Land Valuers Licensing Regulations 1979* (the Regulations) set out the licensing requirements for land valuers. The Act also invested the Board with the authority to inquire into whether a licensed valuer had complied with the Act and make allegations to the State Administrative Tribunal (SAT) that there was proper cause for disciplinary action against a licensed land valuer.

The *Licensed Valuers Code of Conduct* (the Code) established by the Board pursuant to the Act, with the approval of the Minister, provides for enforceable standards of conduct for land valuers and fixed maximum amounts of remuneration for the various services rendered by licensed valuers. The Board contributed to the public policy agenda by making recommendations on legislative matters to the Minister.

### COMPOSITION OF THE BOARD

The Act required 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 as follows:

- (a) a Chairman who is a legal practitioner or a barrister or solicitor of the Supreme Court of another State or Territory 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)];
- (b) one member who is nominated by the Minister [section 6(1)(b)];
- (c) 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)];
- (d) 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)].

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

## **BOARD PROFILE**

### ***Mr Bryan Gardiner (Chairman)***

Mr Gardiner was appointed, pursuant to section 6(1)(a) of the Act, as Chairman of the Board on 26 November 2002.

Mr Gardiner is a qualified legal practitioner operating as a consultant to a firm which, amongst other matters, handles issues relating to property transactions.

### ***Mr John McNamara (Member and Deputy Chairman)***

Mr McNamara was first appointed, pursuant to Section 6(1)(c) of the Act, as a Member of the Board on 18 January 1994

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

***Deputy:*** Mr John Martin

### ***Ms Patria Jafferries (Member)***

Ms Patria Jafferries was appointed, pursuant to section 6(1)(b) of the Act, on 25 June 2008.

Ms Jafferries has extensive experience in a wide range of business types including banking, charitable organisations and small business development, and in 2000 she was named the National Telstra Australian Business Woman of the Year. Ms Jafferries is currently the Executive Director of His Majesty's Foundation and an adjunct professor for a tertiary institution.

***Deputy:*** Ms Hazel Butorac

### ***Mrs Erica Walker (Member)***

Mrs Walker was first appointed pursuant to Section 6(1)(c) of the Act as a Member of the Board on 26 October 2005.

Mrs Walker has a Master of Commerce (Property) and has lectured in valuation and property studies units at a tertiary institution. She has been a licensed valuer since 1995, is an Associate Member of the Australian Property Institute and is currently a director of a property development company.

***Deputy:*** Mr Tony Gorman

**Mr Kingsley Lewis (Member)**

Mr Lewis was appointed pursuant to Section 6(1)(d) of the Act. He was first appointed as a member on 22 October 1999.

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, as well as a former Director of a commercial real estate company.

**Deputy:** Mr John Sheridan

**REMUNERATION OF BOARD MEMBERS**

Under the Act, Board members are remunerated pursuant to rates fixed by the Governor. The following rates applied during the course of the year:

**Chairman**

For meetings of four hours or less	\$330
For meetings of more than four hours duration	\$510

**Members**

For meetings of four hours or less	\$220
For meetings of more than four hours duration	\$340

## **BOARD ADMINISTRATION**

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### **BOARD MEETINGS**

The Board held 12 meetings during the financial year. The Board generally met every month and considered 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 valuers.

### **BOARD SERVICES**

The Department of Commerce (the Department), through its State Government budget allocation, funded the provision of services to the Board.

Administrative and support services were supplied to the Board by the Finance and Valuation Industries Branch of the Department.

### **CODE OF CONDUCT AND ETHICS FOR BOARD MEMBERS AND OFFICERS**

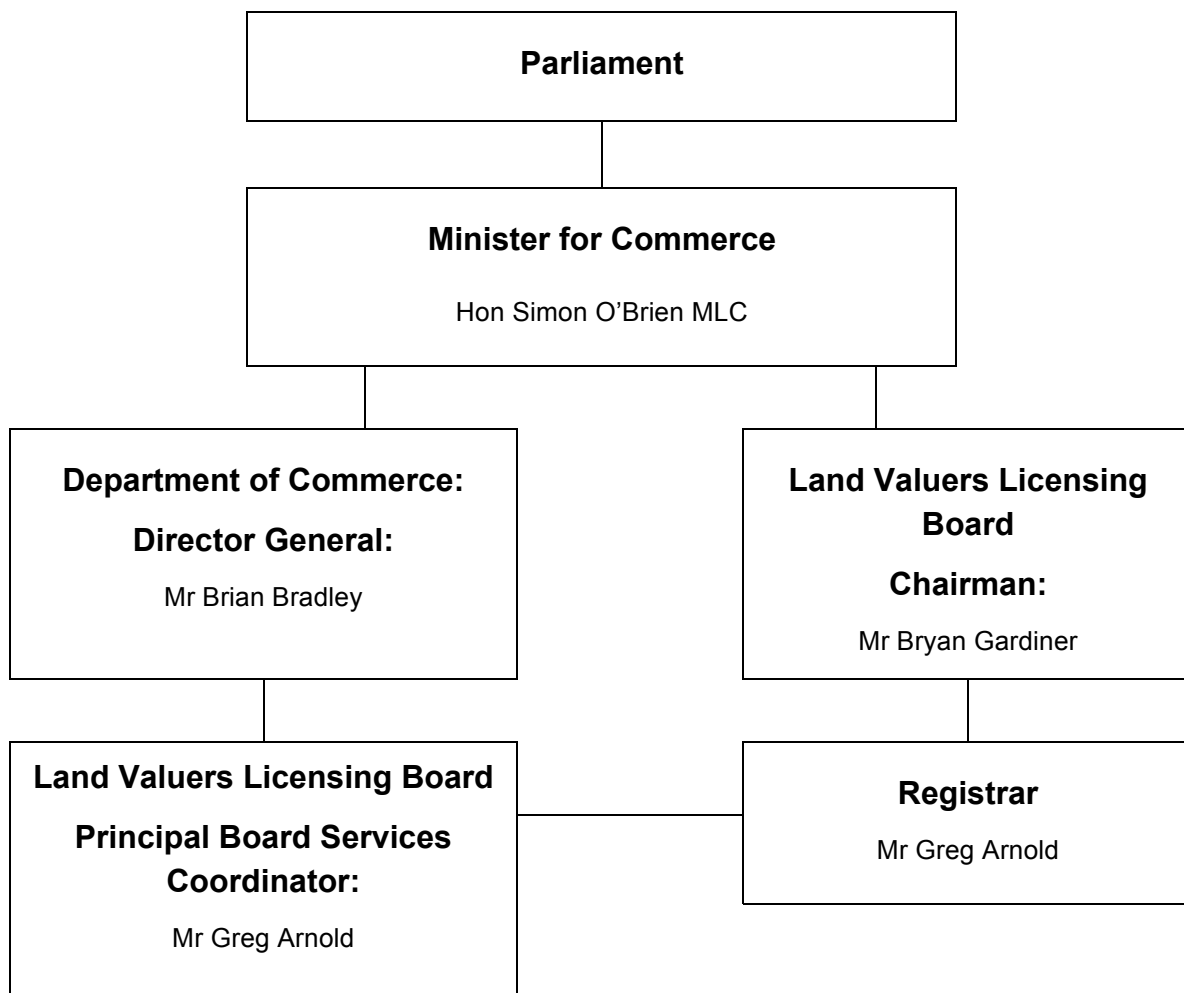
As a state statutory body, the Board was required to adhere to the Western Australian Public Sector Code of Ethics. The Code of Ethics sets out the values and behaviour expected of members of state statutory bodies.

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



# ORGANISATIONAL STRUCTURE

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## LICENSING

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### LICENCE REQUIREMENTS

The Board could grant a land valuers licence to an individual who met the requirements of the Act and the educational requirements prescribed in the Regulations.

Applicants for a land valuers licence must apply under one of three categories:

- (a) As a member of the Australian Property Institute [s. 19(b) of the Act]; or
- (b) As the holder of a prescribed degree, diploma, certificate or other award who has also had:
  - (i) two years' satisfactory practical experience in the valuation of land for the period of 2 years immediately preceding the date of application; and
  - (ii) a total of not less than four years' satisfactory practical experience in the valuation of land within the ten-year period immediately preceding the date of application [s. 19(c) of the Act]; or
- (c) As a person who has previously held a licence under the Act within the period of five years immediately preceding the date of application [s. 19(d) of the Act].

The following degrees are prescribed under s. 19(c) of the Act:

- Degree of Bachelor of Commerce (Property) awarded by the Curtin University of Technology;
- Degree in Bachelor of Business (Valuation and Land Administration) awarded by the Western Australian Institute of Technology;
- Degree in Bachelor of Business (Valuation and Land Economy) awarded by the Western Australian Institute of Technology; and
- Degree in Bachelor of Business (Valuation and Land Economy) awarded by the Curtin University of Technology.

In Western Australia, the only degree currently offered is the Bachelor of Commerce (Property), awarded by the Curtin University of Technology.

Alternatively, the following categories of membership of the Royal Institution of Chartered Surveyors (RICS) are also prescribed qualifications under s. 19(c) of the Act:

- Membership as a Chartered General Practice Surveyor (obtained before 1 January 2000);
- Membership as a Chartered Valuation Surveyor; and
- Membership as a Chartered Commercial Property Surveyor.

The Board also granted licences pursuant to the *Mutual Recognition (Western Australia) Act 2001* where a person had an equivalent licence or registration in another jurisdiction. Presently Queensland, New South Wales, South Australia and Tasmania are the only Australian States or Territories that register land valuers, while mutual recognition also applies to New Zealand.

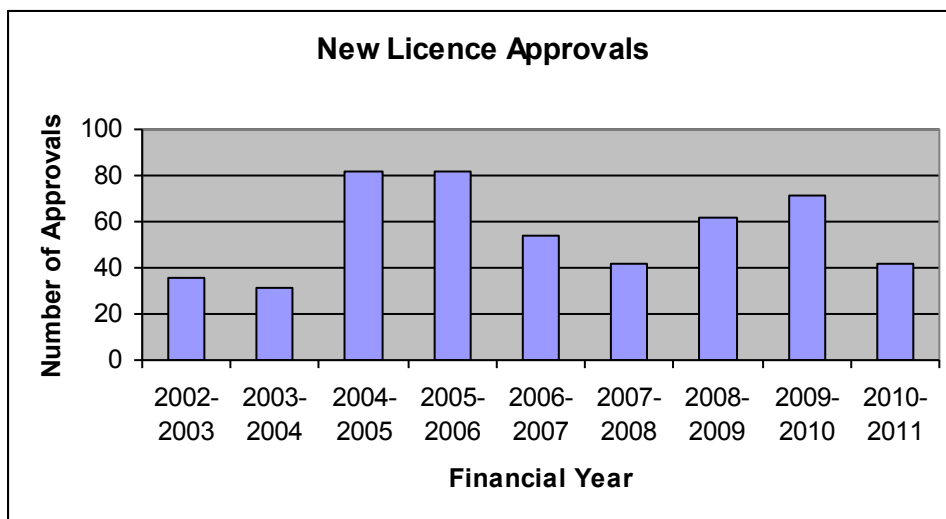
### NUMBER OF LAND VALUERS

At 30 June 2011 there were 770 land valuers licensed in Western Australia.

### NEW APPLICATIONS

Licences are granted on a triennial basis (i.e. for a three year period). During the year, 42 applications for new licences were granted, of which 5 were granted pursuant to the *Mutual Recognition (Western Australia) Act 2001*. No applications were declined.

The graph below shows the number of new applications for a land valuers licence in the past nine years.



### OBJECTIONS

In accordance with the provisions of the Act, any person may lodge an objection to the grant of a licence. The Board had jurisdiction for receiving and considering objections to the grant of a licence. However, no objections were lodged during the year.

## LICENCE RENEWALS AND EXPIRIES

Land valuers have up to 28 days after the expiration of their licence to make an application for renewal for a further three-year period. A late fee applies to land valuers lodging their renewal applications within this 28-day period.

During the year there were 170 licence renewals and 22 land valuers' licences were either expired or surrendered during the period.

## MUTUAL RECOGNITION

As noted above, land valuers licensed in other Australian jurisdictions may obtain a Western Australian licence under the provisions of the *Mutual Recognition (Western Australia) Act 2001*. The Board had raised with the other State authorities, as well as the Department, its concern that licensing requirements should be consistent across jurisdictions to ensure that professional standards and consumer protection are maintained.

In July 2008, the Council of Australian Governments (COAG) agreed to establish a national trade licensing system. This system will be applied across a range of economically important vocations, including property agents. Land valuers will fall within this category. Under this system mutual recognition of licensed land valuers will not be necessary as licensed valuers would be permitted to practise within any Australian jurisdiction.

The Board was concerned that unless properly implemented, this system would reduce the standards of practice in valuation work in Western Australia to the lowest common denominator, presently existing in Victoria, South Australia and Tasmania where anyone can practise as a valuer without qualifications. The Board firmly believed the interests of the public and the valuers who serve them in this State will be preserved by maintaining the standards of practice and education currently in place in Western Australia.

## INVESTIGATIONS

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The Board relied on the Department to conduct investigations into complaints received against licensed land valuers. The staff conducting those investigations did so under the authority of the Act.

Investigations generally focus on the valuer's application of proper practices and principles of valuation 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 has the power to resolve a question about the validity of the amount of value or the consequences of a person's reliance upon the valuation. Neither the Board nor the Government can deal with claims relating to financial losses. These must be made through the courts.

Where a complainant is able to provide reasonable evidence of alleged breaches of the Act, Regulations or Code of Conduct a complaint could be lodged with the Board, but now with the Department.

The Board received compliance reports outlining the nature and status of all ongoing investigations for discussion at its meetings. Since departmental investigators are not qualified land valuers, as part of the investigation process, the Board Members applied their valuation expertise to assess complaints and provided technical directions to the investigators. The Chairperson was often called upon to provide legal guidance where appropriate.

In the lead up to the transition of the regulatory functions of the Board to the Department the Board oversaw the creation of a Pool of Valuers from which independent land valuers may be engaged to audit or provide a critique of a valuation, which is the subject of a complaint. The Board has in place a forensic procedure which provides guidance to the investigators and instructions to those independent valuers.

### COMPLAINTS AGAINST LAND VALUERS

During the year, 10 complaints were received which is generally in line with the number of complaints received in recent years. No serious systemic industry problems were identified in these complaints.

The Board feels that its effective use of e-bulletins brings risk management and other important issues to the attention of valuers, and that may be a significant contributing factor to the low complaint numbers.

### ***Complaints against land valuers***

	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
<b>Number of Complaints</b>	11	10	12	8	6	10

### ***Investigation Summary***

	<b>Issues concerning valuation practices</b>	<b>Issues relating to fees and charges</b>	<b>Licensing issues</b>	<b>Total</b>
Ongoing investigations as at 1 July 2010	2	0	0	2
Investigations commenced	9	1	0	10
Investigations concluded	7	0	0	7
Ongoing investigations as at 30 June 2011	4	1	0	5

### ***Outcome of Investigations Concluded***

<b>Outcomes</b>	<b>Number</b>
No action taken	7
Prosecutions commenced	0

### **STATE ADMINISTRATIVE TRIBUNAL DISCIPLINARY INQUIRIES**

Where a complaint indicated a breach of the Act, Regulations, or Code of Conduct, and the investigation and legal advice supports further action, the case would be brought to the Board with a recommendation that may include an application to the State Administrative Tribunal (SAT) for a disciplinary inquiry.

If the SAT is satisfied after conducting an inquiry that proper cause exists for a licensed land valuer to be disciplined, it can:

- (a) reprimand or caution the licensed valuer;
- (b) impose a fine not exceeding \$10,000 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 SAT, from holding a licence.

While SAT 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 licensed land valuer's 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.

#### ***Disciplinary Inquiries Ongoing During 2010/2011***

<b><i>Number</i></b>	<b><i>Respondent(s)</i></b>	<b><i>Alleged Basis for Disciplinary Action</i></b>	<b><i>Current Status</i></b>
N/A	N/A	N/A	N/A

Information concerning matters referred to SAT can be accessed at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au).

## LEGISLATION

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### PROPOSED LEGISLATIVE AMENDMENTS

For several years, the Board maintained a record of suggested legislative changes. In part, these arose from various matters presented to the Board, investigation of complaints against valuers and comparisons with legislation in other jurisdictions and with other occupational licensing regimes.

The suggested legislative changes will be passed to the Department upon the termination of the Board on 30 June 2011.

### LAND VALUERS CODE OF CONDUCT

The Board, with the approval of the Minister, prescribed a Code of Conduct under section 26 of the Act. The Code is an important method of regulating the operations of licensed land valuers and is legally binding. The Code was last reviewed and published in the Government Gazette in February 2007.

### MAXIMUM REMUNERATION FOR LAND VALUERS

The Act provided that the Board, with the approval of the Minister, by notice published in the Government Gazette fix the maximum amounts of remuneration for the various services rendered by licensed land valuers. The remuneration notice was last amended and published in the Government Gazette in September 2010 following a review by the Board based on submissions provided in a public consultation.

While the notice sets the *maximum* fee that can be levied by a licensed land valuer, it is important to note that market forces are such that many valuers may charge fees less than those allowed under the notice.

It is also worth noting that some of these fees are established on an hourly rate. The Board believed that it is prudent business practice for valuers to provide an estimate of, or cap, the costs where appropriate. Such an arrangement minimises the risk of a fee-related dispute arising with the client.



## PRESCRIBED FEES

The State Government prescribes the fees that apply to licensing and other services provided by the Board. The following prescribed fees are proposed to apply from 1 July 2011.

<b>LICENCES</b>	<b>TO 30 JUNE 2011</b>	<b>FROM 1 JULY 2011</b>
Application fee and grant of a licence for a 3 year period	\$702	\$723
Renewal fee for a 3 year period	\$702	\$723
Fee for duplicate licence	\$30.75	\$31.75
<b>OTHER</b>		
Inspection of register of licensed valuers	\$10.20	\$10.50
Certificate of individual registration (each subsequent page)	\$10.20 \$2	\$10.50 \$2
Certificate of all registrations in the register	\$125	\$129

## EDUCATION AND AWARENESS

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### INTERNET WEBSITE

The Land Valuers Licensing Board website, [www.commerce.wa.gov.au/landvaluers](http://www.commerce.wa.gov.au/landvaluers), was 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. During the past 12 months 8398 page hits were recorded.

The website provided information on a range of issues including:

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

### NEWSLETTER

The Board published its first Newsletter in December 2006. This continued to be produced twice a year, with the current newsletter sent in June 2011. The newsletter was distributed to all licensed land valuers and other interested parties and was also available on the website.

The Newsletter provided licensed valuers with information including licensing matters, relevant case studies arising from completed investigations and emerging trends or policy issues.

### E-BULLETINS

The Board commenced the issue of e-bulletins in May 2007 to licensed valuers who had provided the Board with details of their email address, and provided information on important issues by this means. These e-bulletins served as a supplement to the Newsletter and also enabled the Board to provide timely updates on emerging issues affecting the industry.

### PUBLICATIONS

Copies of the information leaflet entitled *Land Valuers* for persons using the services of a land valuer are available from the Department. This publication was last reviewed and updated over the course of the 2007/2008 financial year.

## **TELEPHONE AND COUNTER SERVICE**

The Department provided both a counter and telephone advice service to the public, on behalf of the Board. Both services will continue to be 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.

## **PROPOSALS FOR THE WORKLOAD IN THE COMING YEAR**

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As noted above, with the introduction of national occupational licensing the Department will now provide all administrative services through the Consumer Protection Division of the Department and the regulatory function of the Board will devolve to the Commissioner for Consumer Protection from 1 July 2011.

The Council of Australian Governments (COAG) has agreed that all responsibility for licensing of land valuers will be transferred to the Commonwealth Government. However, land valuers will not come into national licensing until a date to be fixed after 1 July 2013 and work on the regulations relevant to land valuers will be undertaken by the National Occupational Licensing Authority.

## REVENUE AND EXPENDITURE

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

All licensing fees paid by licensed valuers are collected and brought to account by the Department 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 did not incur expenditure of this nature.

## **Land Valuers Licensing Board**

Forrest Centre  
219 St Georges Terrace  
Perth Western Australia 6000

Licensing inquiries: (08) 9282 0837  
Facsimile: (08) 9282 0436

National Relay Service: 13 36 77

Mail: Locked Bag 14 Cloisters Square Western Australia 6850

Website: [www.commerce.wa.gov.au/landvaluers](http://www.commerce.wa.gov.au/landvaluers)