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Mr John Vernon  
Senior Project Manager  
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NSW Office of Fair Trading  
PO BOX 972  
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Dear Mr Vernon,

### **Review of the *Valuers Act 2003***

Thank you for the opportunity to comment on the Position Paper published by the Office of Fair Trading (OFT) on the Review of the *Valuers Act 2003*.

The Position Paper has been considered by the Law Society's Property Law Committee (Committee). The Committee has the responsibility of considering and dealing with matters relating to property law and advising the Council of the Law Society on all issues relevant to that area of practice. The members of the Committee are senior property practitioners and experts.

The Committee notes that lawyers have a strong and continuing interest in the availability of efficient and properly regulated service industries forming part of, or providing services ancillary to, the real estate industry. Registered valuers provide significant services to the property industry.

### **General Comments**

The Committee considers that the present registration system for valuers is working well. This is evident by the extremely low level of complaints against valuers noted in the Position Paper. The Paper states that the low incidence of complaints can be partly attributed to the high level of industry association membership among valuers and the practice of peer review which aims to maintain high standards within the profession.



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The Committee suggests that present low level of complaints against valuers must be attributable, to a great extent, to the entry requirements for registration and the ethical practice requirements under a licensing system.

The Committee notes that the low level of complaints may also suggest that the protection of the consumer is achieved more effectively by professional indemnity insurance than by a disciplinary regime involving the investigation of consumer complaints about professional conduct issues.

The Committee does not accept that the national competition policy requires that unqualified practitioners in any field of endeavour should be allowed to compete with qualified persons. Registered valuers are qualified professionals who are experts in their field. The entry of unqualified people claiming to provide similar services for a lesser fee could amount to a dangerous erosion of a presently stable profession. It is also diametrically opposed to the principles of consumer protection.

### **Specific Questions**

#### **Question 1: Are the policy objectives of the Act still valid in today's market?**

The Paper states that the regulation of the valuation profession is predicated on an identified market failure and consumer risk. The current regulatory arrangements are intended to exclude from the marketplace persons who do not operate in ways which provide adequate consumer protection.

It is suggested in the Paper that it may not be appropriate for the consumer risks identified in relation to valuation services to be addressed by government intervention, including a registration system. The rationale for this is that, according to the Paper, approximately 80% of users of valuer services are "active, knowledgeable and astute intermediaries who adopt sophisticated methods in the selection of valuers and who have access to other means to address market imperfections". The Paper estimates that around 80% of valuer's "clients" are banks, legal practitioners, finance companies and other financial intermediaries who seek a valuation as part of their loan assessment process.

The Committee notes that solicitors seeking valuations on behalf of unsophisticated clients are acting as intermediaries only. Solicitors are not experts in valuations and rely on legislative intervention, in the form of a registration system with entry requirements which address issues of valuer's competency through requirements for valuers to meet certain educational requirements before they can be registered.

The Committee notes that the Paper presupposes that intermediaries have access to research tools and skills that enable them to evaluate the expertise of valuers outside of a licensing system. The Committee considers that this is not the case and that the cogent reasons for licensing which resulted in the registration system after the last review of the legislation by OFT remain valid.

The Paper notes that the rules of conduct prescribed under the *Valuers Regulation 2005* and their linking to the disciplinary process contained in the *Act*, addresses concerns previously raised by consumers concerning the ethical and professional conduct of valuers. While the Paper further notes that the Rules, being prescribed under the Regulation are not considered as part of the review of the *Act*, they formalise many of the membership requirements placed on valuers by industry associations. If unqualified persons are allowed to practice as valuers, there is no guarantee that they will voluntarily assume the membership requirements of these industry associations.

The Committee's answer to this question is "Yes".

**Question 2: Could these policy objectives be met by other means?**

The Committee considers that it is clear that there is a net public benefit to be gained by continuing the registration system.

The present low level of complaints against valuers must be attributable to a great extent to the entry requirements of licensing and the ethical practice requirements under a licensing system. The Committee considers that consumer risk cannot be adequately addressed by presupposing voluntary membership and compliance with membership requirements for industry associations.

The Committee's answer to question 2 is: "No".

**Conclusion**

The Committee appreciates the opportunity to comment on the Position Paper. If this review results in a proposal for legislative change, the Committee would appreciate the opportunity to consider any draft legislation at the earliest possible time.

Yours sincerely



**Joseph Catanzariti**  
President