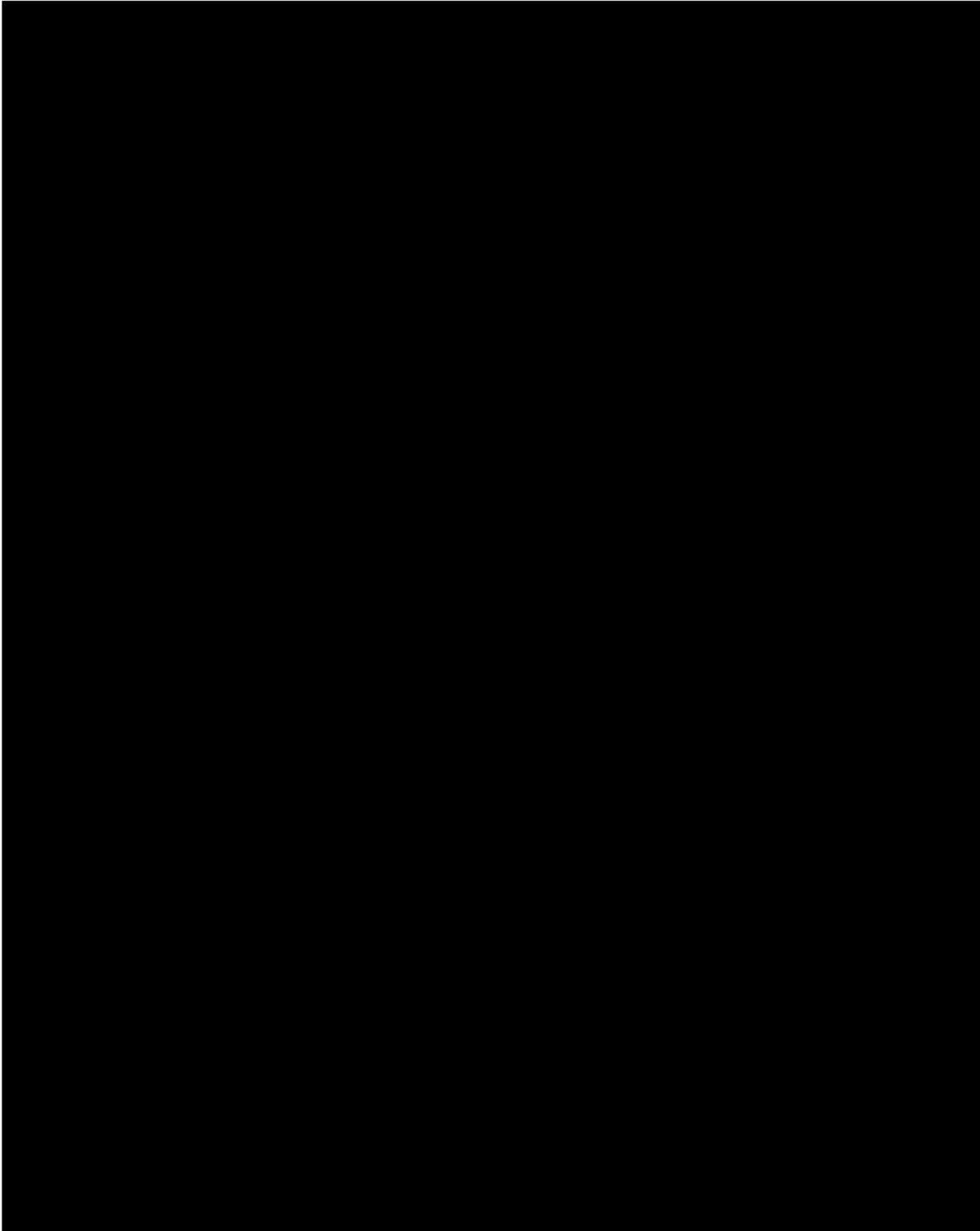


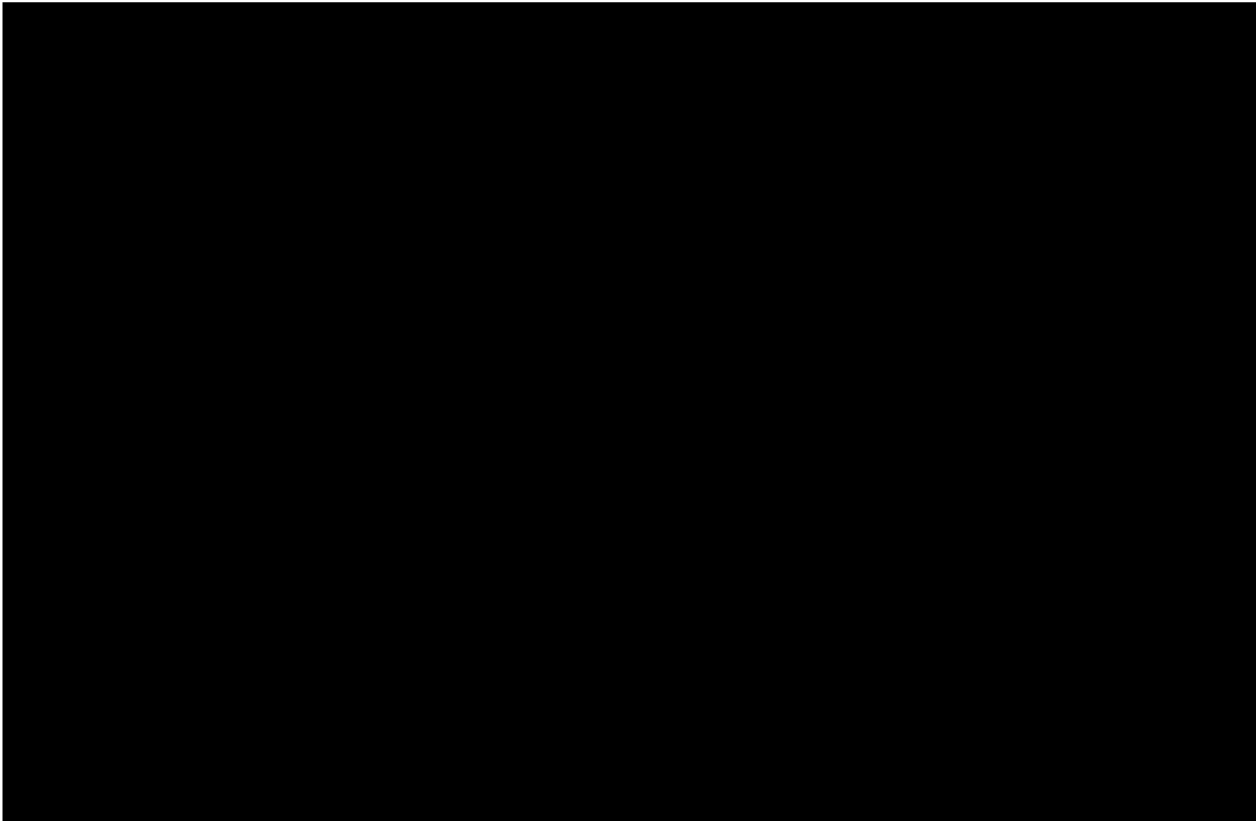
**Submission on Discussion Document – Review of the Occupational Regulation of Valuers**

**Date: 8 July 2014**



**About the Submitter**





**Question one: do you agree that there is a lack of accountability and transparency in relation to the VRB's operations?**

6. In short, "yes".

7. In my opinion there is a basic lack of guidance/transparency as to the disciplinary process to be followed. This reflects the very basic disciplinary machinery/statutory process contained within the current Act. A more prescriptive regime would help address this.

**Question two: do you agree that the composition of the Valuers Registration Board is problematic? If so, how?**

8. In short, "yes".

9. In my opinion, the Board would be significantly enhanced by including additional members who are not valuers. Ideally, these people would have relevant expertise. Widening the pool would also reduce conflict of interest related issues which are starting to crop up from time to time.

10. In particular, the inclusion of a lawyer with expertise in professional discipline would be of benefit. The reality is that professional discipline has become a much more specialised sub-area of law than it was only a decade ago. Inclusion of an appropriately qualified lawyer

would help to ensure appropriate procedures were followed. Further, I think this would help ensure a more efficient process from start to finish. In particular, I think it would help ensure written Decisions following disciplinary proceedings were issued in a timely fashion. The Courts have recently issued targets for judges to meet in writing decisions. In general terms judgements should ordinarily be written within three months. The VRB would infrequently meet such a target.

**Question three: do you agree with the proposal to constitute a new board which would include laypeople with specialist expertise?**

11. Yes. Explained above. Apart from the inclusion of a lawyer, the primary qualifications for a layperson should be somebody who is astute, fair, and preferably has some experience or knowledge of the regulation of industry bodies, and at least a passing interest in property.

**Question six: do you think that a tiered complaints system could deliver the benefits outlined above? If not, why not and do you have any thoughts on how else those benefits might be realised?**

12. Yes. In my opinion, a tiered complaints system is a good idea, and works well from what I have observed in other professions.
13. I agree that a Complaints Committee (similar to a Standards Committee in the lawyers' context) is a good mechanism for dealing with the majority of complaints which are minor to moderate in seriousness. In my opinion, again, such a Committee should include a lawyer as one of its members for the same reasons as those outlined above. Rather than explain the workings of a lawyers Standards Committee in this submission, reference can be had to the Lawyers and Conveyancers Act 2006.
14. Beyond that, I agree that a Disciplinary Committee (similar, I presume, to the Disciplinary Tribunal in the lawyers' context) would be a good mechanism for addressing the more serious complaints. I would envisage such a Committee operating in a similar way to the current Board of Inquiry with a relatively formal hearing process.
15. As noted below, there would likely be different powers of punishment available to the two bodies – the more serious powers of strike off and suspension being reserved for the Disciplinary Tribunal. This acts as a *de facto* filter in the sense that where a practitioner is potentially in line for strike off/suspension (either because of the seriousness of the breach, or because of a previous disciplinary history), the matter would automatically be referred to the Tribunal for consideration.

**Question seven: Do you think it is possible to reduce the reliance on check valuations and, if so, how might this be done?**

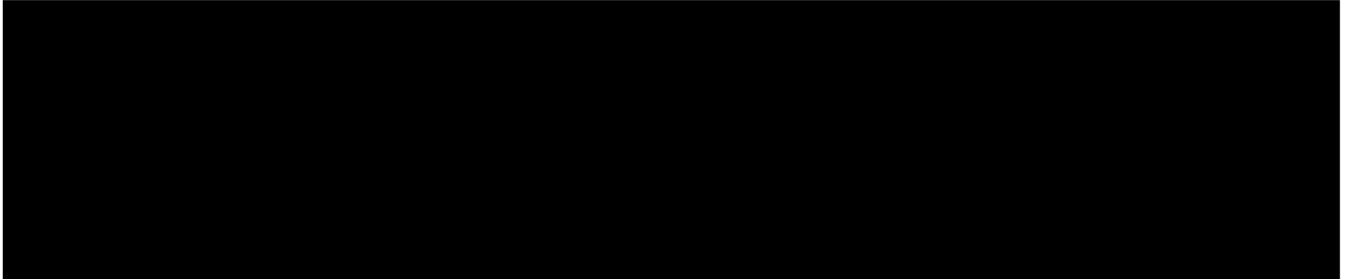
16. This is not an easy question to answer. It is circumstance dependent.
17. In the majority of cases that I have been involved with, the primary issue is an allegation of a significant over or undervaluation. Occasionally, the result is self-evident usually revealed by a fundamental methodological flaw. In these cases, I would have thought that a Complaints Committee drawing on its specialist expertise could sometimes deal with the complaint without the need for an independent retrospective or "check" valuation.
18. However, more commonly there are issues relating to reliance on an inappropriate basket of comparable sales, or misinterpretation of those sales. In these cases, in the absence of an independent retrospective valuation, my view is it would be very difficult to establish wrongdoing on the part of the valuer. Put another way, wrongdoing is only usually established by comparison with at least one, and usually two, other valuations undertaken by valuers familiar with the relevant part of the market.
19. Accordingly, in my opinion, there will be many cases where it is not possible to reduce reliance on retrospective or "check" valuations.
20. I note that for other complaint types – which tend to focus on breaches of mandatory standards and/or basic ethical issues – in my opinion, a Complaints Committee should be able to deal with these issues without the need for expert evidence. It should be able to draw on its own professional knowledge and common sense to assess whether a particular valuer has fallen short. With some exceptions, this is what occurs in other regimes.

**Question eight: is the range of sanctions proposed above adequate? If not, what other sanctions would be appropriate?**

21. It is certainly a vast improvement on what is currently contained in the Act. In addition, in my opinion, it would be useful to at least consider the following powers (there may be more):
  - a. The power to reduce and/or cancel fees rendered for work and order reimbursement; and
  - b. The power to require a person not to practice on his or her own account and/or practice subject to supervision by another registered valuer.
22. Obviously there should be some consideration given to what particular powers each disciplinary body had. For example, it might be that the Complaints Committee has the power to fine up to \$10,000 with the Disciplinary Committee having a bigger stick to wield. In a similar vein, it would be inappropriate for the Complaints Committee to be able to

suspend or deregister a valuer. The most serious remedies should be reserved for the Disciplinary Committee.

**Question 10: do you agree with the proposal for the VRB to undertake more analysis of complaints and outcomes? Why/why not?**



**Question 14: should see CPD mandatory? Why/why not?**

24. Yes. My personal opinion is that any profession should insist on its members remaining up-to-date. The reality is things do change. Imposing a basic CPD requirement is one mechanism for ensuring currency. The lawyers have recently done it and those that moaned loudest about it, were invariably the ones most in need of it! Others simply saw it as an ongoing obligation which they were happy to comply with. As often happens in these cases, there was a vocal minority.

**Question 18: what do you consider are the benefits and costs of implementing any or all of the proposals?**

25. This is an extremely broad question. However, fundamentally, the current Act needs an overhaul to bring it into line with what can legitimately be expected in the regulation of a Profession. In my opinion, this would be to the benefit of the profession itself, and to consumers who use its services.

### **Conclusion**

26. Thank you for the opportunity to make a submission. I would be more than happy to expand on any of the areas I have already commented on.

