



**Australian
Competition &
Consumer
Commission**

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7 December 2006

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Dear <<Salutation>>

**Australian Property Institute
Application for Minor Variation to Authorisation A90545**

The Australian Competition and Consumer Commission (the ACCC) has received an application for minor variation to authorisation A90545 from the Australian Property Institute (API).

The TPC granted authorisation A90545 to API on 29 April 1994 with respect of its code of ethics and accompanying regulations, clause 9 (previously 10.2 and 11) of its constitution and clauses 27 – 30 (previously clause 24) of its by-laws. The ACCC granted a minor variation to authorisation A90545 on 31 August 2005 to amend its code of ethics, rules of conduct, constitution and by-laws.

Background

The ACCC is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

The Act allows a party to an existing authorisation to apply for a minor variation to that authorisation. The ACCC may only make a minor variation to an existing authorisation if it is satisfied that, in all the circumstances, the variation would not result, or would be



likely not to result, in a reduction in the extent to which the benefit to the public of the authorisation outweighs any detriment to the public caused by the authorisation.

In assessing the likely impact of an application for minor variation on the existing overall benefit to the public of an authorisation, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following the consultation process, the ACCC issues a final decision. No draft decision is issued in response to a minor variation application.

Australian Property Institute proposed minor variation

The minor variation sought by API relates to changes to its Complaints Regime:

- sections 27 to 29 of the by-laws replaced by new sections 23 to 25, and
- a few consequential changes to the API Constitution at clause 9.

A copy of the API's submission and the proposed changes is attached.

Your views are sought

To assist the ACCC in its consideration of API's application you are invited to make a written submission to the ACCC regarding the likely public benefits and detriments of the proposed variations to authorisation A90545.

In particular, the ACCC also would appreciate your views on the following issues:

- any particular concerns you may have regarding paragraph 24.3.6 which establishes that there is no appeal against any decision of the Complaints Committee.
- any other concerns you may have regarding the impact of restructuring of the Complaints Regime.

The ACCC asks for submissions to be in writing so they can be made publicly available. Submissions are placed on a public register and may be also placed on the ACCC's website.

Should you lodge a submission with the ACCC you may request that information included in the submission not be placed on the ACCC's Public Register. Information excluded from the Public Register will still be considered by the ACCC when reaching its decision. Relevant guidelines are attached for your information.

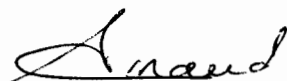
Submissions should reach the ACCC by close of business **Friday 22 December 2006**
at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or faxed on
(02) 6243 1211.

Should you have any queries regarding this matter, please do not hesitate to contact
Ilona Balint on (02) 6243 1113.

Yours sincerely



Isabelle Arnaud
Director, Adjudication Branch



SPIER CONSULTING

REGULATORY STRATEGIES & SOLUTIONS

**Mr Scott Gregson
General Manager
Adjudication
ACCC
PO Box 1199
DICKSON ACT 2602**

FILE No:
DOC:
MARS/PRISM:

17 November 2006

Dear Mr Gregson,

**APPLICATION FOR A MINOR VARIATION TO AUTHORISATION A90545
ON BEHALF OF THE AUSTRALIAN PROPERTY INSTITUTE.**

I represent the Australian Property Institute. (API)

This is an application on behalf of the Australian Property Institute for minor variation to authorisation A90545 under section 91 A of the TPA.

On 31 August 2005 the ACCC granted a minor variation for authorisation A90545. Since then the API has extensively reviewed its Complaints Regime and has agreed on a new regime.

The Review took into account the ACCC observations made in its decision of 31 August 2005.

In establishing the Review the API stated that the guiding principles of the Review were,

"The aims of a disciplinary regime should be to preserve and maintain the profession's integrity, suppress and redress dishonourable conduct or practices, provide for amicable settlement or adjustment of disputes, and consider and deal with matters affecting the professional interest of its members." Professional Standards Council, 2001.



Furthermore any such regime should factor in the following criteria,

- Fairness
- Transparency
- Accountable
- Timeliness.
- Appropriate dispute resolution.
- Data collection and publication of data.
- Accessibility
- Continuous review.
- Cost effective.
- Commitment by stakeholders.

That Review has resulted in a new Complaints regime. The new regime does not change the overall conduct previously authorised by the ACCC but improves on the existing system. In the view of the API the new regime improves,

- Timeliness
- Transparency
- External review
- Fairness
- Accountability
- Scope

And is less costly.

In the view of the API the changes constitute a minor variation. Any anti competitive effect of the Complaints regime has not been added to yet public benefit has increased in that members and the general public will have greater confidence in the regime.

The previous regime is that which is attached to the 2005 ACCC decision. The new regime replaces the previous clauses 28 and 29 of the API by laws and makes few consequential amendments to the API Constitution.

Essentially the changes are,

- Complaints can now be lodged against all categories of API members,
 - Complaint investigations are to be done by a semi independent person.
 - There are different processes for minor and major breaches.
 - The legalist process of referral of matters to a National Prosecutor no longer exists.
 - There is a totally external review body.
 - There is to be reporting of regime outcomes both in aggregate and on most individual decisions.
 - It generally removes unwarranted layers in the regime.
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- It limits discretion of the review bodies.
 - Generally improves transparency.

Attachment A sets out the changes to the Constitution and By Laws.

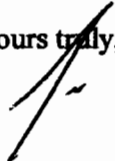
Attachment B- is a flow chart of the previous regime.

Attachment C- is a flow chart of the new regime. I will email this as well.

I will email you the up to date consolidated Constitution, By Laws, Code of Conduct and Code of Ethics.

I look forward to hearing from you on this Application. Should you wish any further information please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Hank Spier', written over the typed name.

Hank Spier



Australian Property Institute

Australian Property Institute

By Laws

September 2006
(Amended 1 & 7 September 2006)

Australian Property Institute
(ABN 49 007 505 866)
National Office
6 Champion Street
Deakin ACT 2600

Telephone: 02 6282 2411
Facsimile: 02 6285 2194
Email: national@api.org.au
Website: <http://www.api.org.au>

Section 23: Complaints

23.1 Interpretation

- 23.1.1 These provisions replace all other disciplinary complaints procedures issued by the Institute.
- 23.1.2 Subject to Section 23.1.3, any complaint that has progressed past the Complaints Committee decision stage should be dealt with under those procedures in place at the time the complaint was initially lodged.
- 23.1.3 A Member complained of can choose to have a complaint dealt with under any new procedures even though the complaint had progressed past the Complaints Committee stage when the new procedures came into effect.
- 23.1.4 Where a Member resigns the investigation of any outstanding disciplinary complaint will cease but not be deleted from the records system maintained by the Institute.
- 23.1.5 Where a former Member of the Institute applies to join the Institute any past incomplete disciplinary complaints will be finalised before membership is considered.
- 23.1.6 Any disciplinary breach emanating from a Complaints Committee is a breach brought against that Member by the Institute and for the purpose of Disciplinary Tribunals and Appeals Procedures the complainant is the Institute.
- 23.1.7 Where a complaint has been lodged against a National Councillor, Divisional Councillor, Board or Committee member, or any member of a Divisional complaints structure, those persons shall stand down from their position until the matter is resolved.

23.2 Definitions

- 23.2.1 “Serious breach”- For the purposes of these By Laws a “serious breach” will be any matter that;
- relates to issues of dishonesty or criminal conduct;
 - relates to a refusal to comply with a Complaint Committee, Disciplinary Tribunal or External Appeals Committee Order;
 - involves three or more minor breaches; and
 - are from time to time deemed to be major by the Divisional or National Councils.

23.2.2 “Times frames” – All mentions of a period of days is to be read as business days.

23.2.3 Subject to other provisions of these By Laws, the Institute will keep details of any particular complaint confidential.

23.3 Complaints Process

23.3.1 All complaints must be in writing.

23.3.2 If a complaint is made to the Institute in writing that a Member has allegedly:

(a) violated any part of the Institute’s Constitution or By Laws;

(b) committed any criminal offence punishable by imprisonment;

(c) committed any civil offence involving dishonesty or fraud;

(d) engaged in conduct prejudicial to the good name of the Institute;
or

(e) obtained admission to the Institute by improper means,

the complaint will be handled in accordance with the procedures set out in the By Laws.

23.3.3 Upon the receipt of a written Complaint the Divisional Complaints Chair shall appoint a Complaints Advisor to consider the particular complaint.

23.3.4 On receipt of a written complaint, the Divisional Complaints Chair shall advise the party in writing that the matter has been referred to a Complaints Advisor.

23.3.5 A complaint shall not be pursued if:

(a) the complainant does not agree, in writing, that their identity can be revealed to the member complained of;

(b) the information provided by the complainant does not disclose a breach of the Institute’s Constitution, By Laws, Code of Ethics, Rules of Conduct or Practice Standards;

(c) it is more appropriate that the complaint be dealt with by a Court or an external complaints, disciplinary, conciliation, or arbitration body or procedure;

- (d) the matter should be put on hold pending the outcome of a Court or other tribunal's decision, as there may still be an Institute disciplinary matter;
 - (e) the complainant is seeking compensation or reimbursement only and is not alleging that a Member has been in breach;
 - (f) the act or omission giving rise to the complaint occurred before the date of commencement of the relevant By law.
 - (g) the subject matter of the particular complaint was comprised in a same complaint by the same person (or any one or more of them) previously considered by the Complaints Committee or the Disciplinary Tribunal and finalized;
 - (h) the Divisional Complaints Chair and the Complaints Advisor are of the view, that the complaint is frivolous or vexatious or is being pursued by the complainant in a frivolous or vexatious manner or for an improper purpose;
 - (i) the complaint is against a non API-Member;
 - (j) the complaint is in relation to a breach of a commercial contract only;
 - (k) the sole issue of concern to the complainant is one of quantum of a valuation.
- 23.3.6 Subject to time frames set out in these By-Laws, the Institute shall set appropriate indicative time frames for the handling of complaints.
- 23.3.7 Where the Complaints Advisor, in conjunction with the Divisional Complaints Chair, decides that the matter is not to be pursued the complainant shall be informed in writing.
- 23.3.8 Where the Complaints Advisor decides that the complaint is to be pursued the Member shall be advised in writing.
- 23.3.9 The Complaints Advisor will prepare the appropriate report for the Complaints Committee in relation to the matter.
- 23.3.10 The Complaints Advisor will have carriage of any matter throughout the disciplinary process.
- 23.3.11 The Complaints Advisor may present the matter on behalf of the Institute in the Complaints Committee, the Tribunal and the External Appeals Committee. The Complaints Committee Chair can appoint someone else to present the matter on behalf of the Institute in the Tribunal or the External Appeals Committee.

- 23.3.12 In preparing the report, the Complaints Advisor may obtain additional information, including from the complainant and the Member who is the subject of the complaint.
- 23.3.13 The Complaints Advisor may use all legal means to conduct the investigation of a complaint and may conduct the investigation in any manner that the Complaints Advisor considers fit.
- 23.3.14 The Complaints Advisor may require a Member to produce to the Complaints Advisor documents (including records kept in electronic form) within the possession, custody or control of the Member, by way of notice in writing to the Member specifying particular documents or categories of documents, provided that the documents or categories so required to be produced must in the Complaints Advisor's reasonable opinion be potentially relevant to the subject matter of a current investigation being conducted by the Complaints Advisor. A Member who receives such a notice must produce the documents required to the Complaints Advisor in the time specified in the Notice.

Section 24: Appointments to Complaints Committee and Disciplinary Tribunal

24.1 Appointment of a Divisional Complaints Chair and Panel

- 24.1.1 Each Divisional Council shall appoint a Member to be responsible for Divisional complaints procedures. This person shall be called the Divisional Complaints Chair. The Chair shall be appointed on an annual basis.
- 24.1.2 At the time of appointing the Divisional Complaints Chair, the Divisional Council shall appoint an Alternate Chair in the event that for any reason the Divisional Complaints Chair is unable to perform the Chair's duties. In this event, the Alternate Chair will act as the Divisional Complaints Chair for the duration the Chair, as appointed by the Divisional Council, is unable to perform the duties of Chair.
- 24.1.3 A Panel comprising not less than seven (7) Divisional Members shall be appointed on an annual basis by the Divisional Council.
- 24.1.4 The Divisional Complaints Chair shall, on an as required basis, select from the Panel a committee, hereinafter called the Complaints Committee, and a Chair of that Committee, hereinafter called the Chair of the Complaint Committee, to consider a specific complaint. The Complaints Committee shall comprise a minimum of three (3) members and so far as practicable be drawn from the relevant State Division but can, if deemed necessary by the Divisional Complaints Chairman, be drawn from other Divisions at the request of the President of the National Council.
- 24.1.5 No Member who is in any way concerned with the matter in question, or who is connected in any business entity, firm, corporation, or department with the Member accused or the party, who originated the complaint, shall be a member of the Complaints Committee.

24.2 Matters referred to Complaints Committee

- 24.2.1 Once the Complaints Advisor completes the appropriate report in relation to any complaint the Complaints Advisor shall forward the documentation to the Chair of the Complaints Committee.
- 24.2.2 Such report shall include and specify any possible breaches alleged against the Member complained of.
- 24.2.3 The Complaints Advisor shall advise the Member complained of, of the alleged breach and seek information in response to the alleged breach.

24.2.4 When in receipt of the Complaints Advisors report the Divisional Complaints Chair shall convene a Complaints Committee as provided for in Section 28.4.

24.2.5 A copy of the Complaints Advisor's report must be sent to the Member complained of and the Member shall be given a reasonable opportunity to respond to the information contained in the report.

24.2.6 The Complaints Committee will be bound by the principles of fairness and natural justice.

The Committee Chair will determine Committee procedures.

24.2.7 The Complaints Committee may hold a hearing into the matter where it feels that it is necessary to properly consider that matter.

24.2.8 Neither the person instigating the complaint, nor the Member complained of has a right to attend any hearing but the Complaints Committee can ask either to attend if it considers it appropriate.

24.2.9 If during the course of its examination of the evidence, the Complaints Committee determines that it requires further information or clarification; the matter may be referred back to the Divisional Complaints Advisor and the Member complained of informed.

24.2.10 If during the course of its examination of the evidence, the Complaints Committee determines that there are other issues that need to be addressed these matters may be referred back to the Complaints Advisor for further information and the Member complained of informed.

24.2.11 The Complaints Committee can make any one of the following decisions:

(a) Determine there may be a serious breach and refer the complaint to the Disciplinary Tribunal;

(b) Determine that the complaint can be dealt with by the Complaints Committee;

(c) Find that there is a breach as specified by the Complaints Advisor and impose a sanction, as set out in Section 24.3.1

(d) Find that there is a different breach and impose a sanction, or sanctions as set out in Section 24.3.1;

(e) Find there is no breach and dismiss the case.

- 24.2.12 The Member complained of can request (with the agreement of the Complaints Committee Chairman) that the complaint be considered by the Disciplinary Tribunal and not the Complaints Committee. Such request must be made as soon as the Member complained of has been advised of the matter by the Complaints Advisor.
- 24.2.13 The decision of the Complaints Committee Chairman as to whether or not to agree to the matter going direct to the Disciplinary Tribunal cannot be appealed.
- 24.2.14 Where the Complaints Committee dismisses the matter the Member must be advised in writing.
- 24.2.15 Where the Complaints Committee decides that the matter should be referred to the Disciplinary Tribunal the Chair of the Complaints Committee will formulate the charge and refer the matter to the Disciplinary Tribunal.
- 24.2.16 Where the matter is referred to the Disciplinary Tribunal the Member complained of must be informed in writing.

24.3 Sanctions

- 24.3.1 Where the Complaints Committee determines a matter and finds a breach the Complaints Committee may impose the following sanctions upon the Member complained of:
- (a) Reprimand the Member.
 - (b) Publicly admonish the Member.
 - (c) Counsel the Member.
 - (d) Impose a payment to the Institute of up to \$5,000.
 - (e) Require the Member to undertake additional CPD training as specified.
- 24.3.2 The Complaints Committee can order more than one of the sanctions, where it considers that appropriate.
- 24.3.3 Where the Complaints Committee has decided a matter, the Member complained of must be informed in writing.
- 24.3.4 The Complaint Committee's determination shall be implemented by the Divisional Executive Officer.

24.3.5 The Chair of the Complaints Committee shall have a casting vote if required but the normal decision process will be by majority votes.

24.3.6 There can be no appeal against any decision of the Complaints Committee.

24.4 Disciplinary Tribunal

24.4.1 Each Divisional Complaints Chair shall appoint a Disciplinary Tribunal, including the appointment of a Chair of that Tribunal, hereinafter called the Chair of the Disciplinary Tribunal, to hear and determine any disciplinary charge brought against a Member of that Division originating from a complaint.

24.4.2 The Disciplinary Tribunal shall have a minimum of three (3) members at least one (1) of whom shall have legal qualifications and at least one of whom shall not be a Member of the Institute and so far as practicable be drawn from the relevant State Division but can, if deemed necessary by the Divisional Complaints Chairman, be drawn from other Divisions at the request of the President of the National Council.

24.4.3 No Member who is in any way concerned with the matter in question, or who is connected in any business entity, firm, corporation, or department with the Member accused or the party, who originated the complaint, shall be a member of a Complaints Committee or Disciplinary Tribunal.

24.4.4 Disciplinary Tribunal processes must be in private.

24.4.5 The member complained of may be legally represented before the Disciplinary Tribunal provided that:

(a) the Tribunal is advised not less than five (5) days prior to the date set down for the Tribunal hearing of the intention of the particular party to have legal representation, and the name and contact details of each such legal representative, and

(b) the Tribunal may, if it is satisfied that legal representation has served or may continue to serve to delay the hearing of the matter, terminate the right of the party to have legal representation in which event the legal representative or representatives must depart the hearing and take no further part in it and the hearing must proceed in the absence of that legal representation.

- 24.4.6 No party may be compelled to appear at a hearing of the Disciplinary Tribunal, but any party to a hearing may provide written submissions and evidence to the Chair of the Disciplinary Tribunal, at least three (3) days before the hearing.
- 24.4.7 The Disciplinary Tribunal may make such procedural arrangements as it thinks fit, including directions for the provision of written submissions and evidence.
- 24.4.8 The Disciplinary Tribunal may conduct hearings as it considers fit, having regard to the necessity that adequate consideration be given to matters before it.
- 24.4.9 The laws and rules of evidence do not apply to proceedings before the Disciplinary Tribunal.
- 24.4.10 The Disciplinary Tribunal may obtain legal advice and have legal advisers in attendance at a hearing.
- 24.4.11 The Disciplinary Tribunal may conduct hearings or other meetings of the Tribunal in person or by other means, provided that all members of the Tribunal are able to hear and speak to each other.
- 24.4.12 All determinations and decisions of the Disciplinary Tribunal are to be made by a majority of the members of the Tribunal.
- 24.4.13 The Member complained of in any matter shall be informed, at least 14 days prior to any hearing, of:
- (a) the name of the Disciplinary Tribunal Chair and members of the Disciplinary Tribunal;
 - (b) the exact nature of the Complaint and the disciplinary charge that the Member will be required to address;
 - (c) the time, date and place for the hearing;
 - (d) the right of the Member concerned to be heard in regard to the charge;
 - (e) whether the person instigating the complaint will be called to give evidence and/or provide a written submission in statutory declaration form;
 - (f) whether other witnesses will be called to give evidence and/or provide a written submission in statutory declaration form;
 - (g) what material the Member should bring to the hearing; and

(h) who will present the matter on behalf of the Institute.

24.4.14 The party who instigated the complaint shall, at least seven (7) days prior to any hearing, be informed of the time, date and place of the hearing and whether or not they will be required to give evidence at the hearing.

24.5 Admission of Evidence

24.5.1 No documents will be admitted into evidence that have not been made available to the Member complained of within a reasonable time prior to the hearing. This timeframe will be at the discretion of the Chair of the Disciplinary Tribunal. If any party wishes to introduce additional documentary evidence, the Chair may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

24.6 Hearing Procedure

24.6.1 The procedures for the hearing shall be at the discretion of the Chair of the Disciplinary Tribunal.

24.6.2 A transcript of the hearing is to be kept and a copy given to the Member complained of and the person who instigated the complaint, if that person was asked by the Disciplinary Tribunal to be involved in the hearing. A fee may be charged by the Institute for copies of the transcript.

24.7 Disciplinary Tribunal's Decision

24.7.1 After the completion of the hearing, the Chair of the Disciplinary Tribunal shall furnish in writing to the Divisional Executive Officer, the Disciplinary Tribunal's decision, the reasons for the decision and any sanction to be imposed.

24.8 Sanctions

24.8.1 Where the Disciplinary Tribunal determines that a Member has not been involved in a breach, the Tribunal shall make a determination to dismiss the matter.

24.8.2 Where the Disciplinary Tribunal determines that a Member has been involved in a breach, the Tribunal shall make a determination of

breach against the Member complained of, and may impose one or more of the following sanctions,

- (a) reprimand the Member;
- (b) admonish the Member publicly;
- (c) counsel the Member;
- (d) suspend the Member from membership of the Institute, for such period and on such terms or conditions as the Tribunal thinks fit;
- (e) where the Member is already the subject of an order for suspension, continue that suspension for such period and on such terms or conditions as the Tribunal thinks fit;
- (f) require the Member to take such steps as the Tribunal may determine to correct the effects of any breach found to have been engaged in;
- (g) a payment to the Institute to be used as the Tribunal recommends, or in the absence of a recommendation, as the Divisional Council of the Institute determines; such penalty to be no more than \$10,000.00 for the first instance and no more than \$20,000.00 for any subsequent breach,
- (h) require the Member to undertake such education or compliance program as the Tribunal thinks fit, provided that the purpose of such program is to reduce the likelihood of future breaches by the Member;
- (i) expel the Member from membership of the Institute;
- (j) adjourn the proceeding subject to compliance with such conditions as to sanctions as the Tribunal may otherwise impose in accordance with this By Law.

24.8.3 The Disciplinary Tribunal may determine that the Member complained of has been involved in a breach but can, if the Tribunal considers it appropriate, determine not to find a breach but can still impose any of the sanctions set out in Section 24.8.2.

24.8.4 The Disciplinary Tribunal can award reasonable costs at its discretion against a Member involved in the matter before it.

24.8.5 The Disciplinary Tribunal may have a pre-sentence process to relay likely sanctions to the Member complained of, and give that Member an opportunity to state any objections to likely sanctions.

24.8.6 When determining any sanction, the Disciplinary Tribunal may take into consideration any penalty imposed on the Member as a result of external legal proceedings brought against that Member in relation to the same matter before the Tribunal.

- 24.8.7 A suspended Member must comply with the Institute's CPD requirements and provide a return for each year as normally required.
- 24.8.8 If a suspended Member breaches the conditions of suspension, then the penalty shall be expulsion from Membership unless, on application by the Member, the Divisional Council or National Council resolves otherwise.
- 24.8.9 No sanction shall be imposed on a Member until the completion of the Institute's appeal procedures

24.9 Notification of Decision

- 24.9.1 The Member complained of and the party who instigated the complaint shall be informed in writing of the Disciplinary Tribunal's decision, the reasons for the decision, and any right of appeal against the decision.
- 24.9.2 The Disciplinary Tribunal will issue a written determination within 30 days of its decision.
- 24.9.3 The parties concerned shall be advised that the Disciplinary Tribunal's written determination will be available for collection or delivery from the relevant Division's office at a specified date and time via the form requested by the parties. A fee may be charged.

24.10 Fees

- 24.10.1 The Complaints Advisor, members of the Complaints Committee appointed to consider the matter, and members of the Disciplinary Tribunal shall, at the discretion of the Divisional Council, be entitled to receive such fees, remuneration and disbursements as the Divisional Council in its absolute discretion may determine generally or in any individual case.

24.11 External Appeals Committee

- 24.11.1 The External Appeals Committee, shall be a three (3) member appeal body, including the Chair, appointed from time to time by National Council. The Chair, who must possess legal qualifications, shall be appointed by National Council. Neither any Complaints Advisor, any member of the Complaints Committee appointed to consider the matter, any person involved in any mediation of the complaint, any member of the Disciplinary Tribunal that originally dealt with the matter, or any member of the External Appeals Committee that made

the initial assessment of the appeal shall sit on the External Appeals Committee that reviews the complaint.

24.11.2 A majority of the members of the External Appeals Committee must not be Members of the Institute.

Section 25: Appeal Process

25.1 Appeal

25.1.1 The Member complained of may, within 21 days of being notified of the Disciplinary Tribunal's decision, appeal against that decision by notice in writing to the Chair of the External Appeals Committee.

25.1.2 The Institute (either by resolution of National Council or the Divisional Council of the Division of which the subject of the complaint is a Member) can also appeal a Disciplinary Tribunal decision and must do so within 21 days of the decision.

25.1.3 The Chair of the External Appeals Committee shall notify the appropriate Divisional Executive Officer that an appeal has been lodged and shall request copies of the relevant correspondence and records of proceedings held by that Division. This documentation may include:

- (a) the original complaint,
- (b) the charge formulated from this complaint,
- (c) all correspondence and written evidence in relation to the matter,
- (d) the record of the Disciplinary Tribunal's hearing.

25.1.4 This material will be provided to the appellant.

25.1.5 The appellant is to notify in writing the basis of the appeal including all documentation within 21 days of lodging the appeal. If the Appellant considers more time is necessary to prepare the appeal, the appellant may submit a request in writing to the Chair of the External Appeals Committee for an extension of time.

25.1.6 Parties to the appeal, other than the appellant, shall provide written responses to the appellant's submission within timeframes determined by the Chair of the External Appeals Committee.

25.1.7 If the appellant does not comply with the timeframe determined by the External Appeals Committee Chair and an approval for extension of time has not been granted by the Chair of the External Appeals Committee, the appeal shall be deemed to be abandoned and the parties informed accordingly in writing.

25.1.8 Where the Chair of the External Appeals Committee is of the view, that the material submitted by the appellant does not support a valid

appeal the Chair can dismiss the appeal and inform the parties in writing.

25.2 Withdrawal of Appeal

25.2.1 A Member may withdraw an appeal by giving notice in writing to the Chair of the External Appeals Committee.

25.2.2 The notice referred to in Section 25.2.1 must be received no later than seven (7) days before the day scheduled for the hearing. After this time, the Member who made the appeal will be responsible for any costs incurred by the External Appeals Committee and the Institute.

25.3 Conduct of Appeal Hearing

25.3.1 The procedure and conduct of the appeal hearing will be at the discretion of the Chair of the External Appeals Committee.

25.3.2 The External Appeals Committee will not, except where the Committee requests additional material, accept any additional material once the hearing has commenced.

25.3.3 Any party may be represented by legal counsel or other person on terms and conditions set by the External Appeals Committee.

25.4 Consequences of Appeal

25.4.1 The External Appeals Committee may uphold the appeal, dismiss the appeal or may vary the sanction imposed by the Disciplinary Tribunal.

25.4.2 The External Appeals Committee must give written reasons for its decision.

25.4.3 The National Director must be informed of the External Appeals Committee's decision.

25.5 Action By National Council

25.5.1 The National Council cannot overrule or vary the decision of the External Appeals Committee.

25.6 Costs

- 25.6.1 Costs of the hearing and reasonable costs of the parties may be awarded by the External Appeals Committee.

25.7 Notification to Parties

- 25.7.1 The National Director shall advise the parties of the External Appeals Committee's decision in writing.

25.8 Quorums

- 25.8.1 A decision of the External Appeals Committee shall not be invalidated in consequence of a vacancy in its membership or the absence of any member provided that the decision is made by at least two (2) Members, including the Chair of that Committee.

25.9 Fees

- 25.9.1 Members of the External Appeals Committee shall be entitled to receive such fees, remuneration and disbursements as the National Council in its absolute discretion may determine generally or in any individual case.

25.10 Publication of Decisions

- 25.10.1 The Institute must maintain a Register of all determinations made by the Complaints Committee, the Disciplinary Tribunal and the External Appeals Committee and make the Register available for inspection by Members.
- 25.10.2 The National Director shall have the absolute discretion to decide what is contained on the Register in relation to each concluded matter.
- 25.10.3 The Institute may, as it sees fit, publish or otherwise make available to Members, any other persons or the public generally the content of, or an extract from or précis of, any determinations by the Complaints Committee, the Disciplinary Tribunal and the External Appeals Committee and the Register maintained by the Institute.
- 25.10.4 The Institute shall publish regular information about the outcome of disciplinary matters including an annual overview of the operation of the Institute's disciplinary regime.
- 25.10.5 Where a Member has been expelled the National Director shall advise ASIC and relevant State and Territory regulators.

25.10.6 Where a Member has been found to be in breach of conduct relating to the Financial Services Reform Act the National Director shall inform ASIC.

25.11 Keeping Complainants Informed

25.11.1 The Complaints Advisor may keep the person instigating the complaint informed of progress in handling the complaint provided always that the Complaints Advisor must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Complaints Advisor;

- (a) to do so may expose the Complaints Advisor or any Officer of the Institute to liability for civil damages;
- (b) to do so would or could prejudice, impede or in any other manner adversely affect the investigation of the complaint, or
- (c) to do so would deny procedural fairness to the Member, the subject of the complaint.



Australian Property Institute

Australian Property Institute

Constitution

**May 2006
(Amended 24 May 2006, AGM)**

Australian Property Institute
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Clause 9: Complaints

9.1 Complaint Made

9.1.1 If a written complaint against a Member is made to the Institute it will be referred to the Division of which the subject of the complaint is a Member to be dealt with in accordance with the By Laws.

9.2 Who May Make a Complaint

9.2.1 A complaint may be made by:

- a. a member of the general public;
- b. a Member or Affiliate of the Institute; or
- c. any Council, Board, Standing Committee or Committee or Group of the Institute.

9.3 Complaints Procedures

9.3.1 The National Council has the responsibility of implementing the complaints procedures in accordance with the By Laws.

9.4 Appeal

9.4.1 The Member against whom the complaint is made, or the Institute (either by resolution of National Council or the Divisional Council of the Division of which the subject of the complaint is a Member) may appeal against the decision of the Disciplinary Tribunal in accordance with the By Laws.

Interested Parties
Australian Bankers' Association
Australian Consumers' Association
Insurance Council of Australia
Australian Association of Permanent Building Societies
Real Estate Institute of Australia
Housing Industry Association Ltd
Property Council of Australia
Law Council of Australia
Department of Natural Resources & Mines
Office of Valuer-General Northern Territory
Department of Land Information Western Australia
Office of the Valuer General Tasmania
Department for Administrative & Information Services South Australia
Australian Valuation Office
Office of the Valuer-General New South Wales
Valuer-General Victoria Department of Sustainability and Environment
Australian Local Government Association
Royal Institute of Chartered Surveyors
Mortgage Industry Association of Australia
Colliers International
McCann Property & Planning
Ray L Davis & Co Pty Ltd
Knight Frank
Egan National Valuers
Able Business Valuations
Metropolitan Valuation Services
Carritt Taylor Valuations P/L
Advanced Valuations Pty Ltd
Australian Valuers & Advisory Property Services Pty Ltd
JLC Valuers
DTZ Australia (Vic) Pty Ltd
CB Richard Ellis
Evans Clarke National
Land Valuer's Licensing Board Western Australia
State Administrative Tribunal Western Australia
MFS Limited