



Australian
Competition &
Consumer
Commission

Determination

Application for Minor Variation of Authorisation A90545

lodged by

The Australian Property Institute

in respect of

proposed changes to the Australian Property Institute's Rules of Conduct

Date: 12 November 2008

Authorisation no.: A90545

Public Register no.: C2008/1492

Commissioners: Samuel
Kell
Schaper
Court
King
Martin
Willett

Summary

The ACCC has decided to grant a minor variation to authorisation A90545 covering amendments to the Australian Property Institute's (the API) Rules of Conduct that seek to clarify the rules that govern the conduct of Provisional Members and the requirements of other API members in respect of supervising Provisional Members.

The authorisation process

The Australian Competition and Consumer Commission (ACCC) can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

A party to whom authorisation has been granted may also apply to the ACCC for a minor variation.

The application for minor variation

On 11 September 2008 the API lodged an application for minor variation of authorisation A90545 under section 91A of the Act. The application for minor variation concerns proposed changes to the API's Rules of Conduct. The Rules of Conduct govern how API Members undertake property valuations.

The API provided the ACCC with an amended copy of its Rules of Conduct on 8 October 2008.

The API proposes a series of amendments to the Rules of Conduct that broadly seek to clarify the nature of the supervision to be provided by Members of the API when supervising Provisional Members who are undertaking property valuations. The amendments also seek to restrict the ability of Provisional Members, Provisional Associate Members and Graduate Members to undertake property valuations in their own right.

Each of the proposed amendments is set out in more detail in Chapter 1 of this Determination.

The proposed amendments to the API's Rules of Conduct, provided at [Appendix A](#), underlines the changes for which minor authorisation is sought.

Background

Authorisation A90545 was conditionally granted by the Trade Practices Commission (TPC) on 29 April 1994 to the Australian Institute of Valuers and Land Economists (AIVLE). The API was formerly known as AIVLE.

In summary, AIVLE originally sought authorisation for a revised Code of Ethics and to certain clauses of its Constitution and By-laws. The Constitution and By-laws enumerate the standards of professional behaviour required of institute members.

Since authorisation was first granted by the TPC, the ACCC has received three applications for minor variation:

- i. application lodged on 22 April 2005 - the ACCC approved the majority of the proposed changes on 31 August 2005
- ii. application lodged on 20 November 2006 - the ACCC approved the majority of the proposed changes on 22 February 2007 and
- iii. application lodged on 18 September 2007 - the ACCC approved all of the proposed changes on 14 November 2007.

Further information on the API's original application for authorisation and subsequent applications for minor variation is provided in Chapter 2 of this Determination.

ACCC assessment of the current application for minor variation

The ACCC is satisfied that the variations to authorisation A90545 are minor.

The ACCC is satisfied that the variations which are the subject of this application are not likely to result in a reduction in the benefit to the public that arose from the original authorisation.

Further information on the ACCC assessment of the application for minor variation is provided in Chapter 4 of this Determination.

ACCC Determination

The ACCC varies authorisation A90545 to cover the amended API Rules of Conduct.

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1. Introduction

Authorisation

- 1.1. The Australian Competition and Consumer Commission (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 conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2. The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an 'authorisation'.
- 1.3. The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.4. The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.

Minor variation

- 1.5. A person to whom an authorisation has been granted may subsequently determine that it wishes to vary the authorised arrangements. Depending on the nature of the proposed variation, the person may apply to the ACCC for a minor variation to the authorisation.
- 1.6. The ACCC must, if it is satisfied that the proposed variation is minor, invite submissions from interested parties. After consideration of the application and any submissions received, the ACCC may make a determination varying the authorisation or dismissing the application.
- 1.7. The ACCC may grant a minor variation to an authorisation, where it is satisfied that the variation will not result in a reduction in the net public benefit that originated from the authorised arrangements.

The application for minor variation

- 1.8. On 11 September 2008 the Australian Property Institute (the API) lodged an application for minor variation to authorisation A90545 under section 91A of the Act.
- 1.9. The minor variation currently sought by the API relates to changes to its Rules of Conduct only. The Rules of Conduct govern how API members undertake property valuations. The proposed amendments concern changes to the following:
 - a restriction on the Provisional Associate Members and Graduate Members to undertake property valuations in their own right (amended rule 1.21)
 - Members' obligations when co-signing valuation reports for Provisional Members (new rules 1.23 and 1.24)

- clarification of the nature of the supervision to be provided by Members of the API when supervising Provisional Members (new rule 1.25)
 - the ability of Provisional Members who hold the designation of Residential Property Valuer to undertake valuations of non-residential properties, subject to the property being co-inspected by a supervising valuer (new rule 2.2)
 - the inclusion of non-residential property in valuations that Provisional Members, who hold certain API approved qualifications, must have co-inspected by a supervising Member (amended rule 2.3)
 - clarification that a Provisional Member needs to hold the designation of Residential Property Valuer in order to undertake residential property valuation for certain purposes (amended rule 2.4) and
 - Provisional Member's obligations when signing valuation reports (new rule 2.6).
- 1.10 The proposed amendments to the API's Rules of Conduct, provided at Appendix A, underlines the changes for which minor authorisation is sought.
- 1.11 A full copy of the API's application for minor variation is available from the ACCC's website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations & notifications registers' links¹.
- 1.12 The API previously sought to vary its Rules of Conduct in September 2007. Among other things, the API introduced the new Provisional class of membership with restricted rights as to conducting unsupervised residential property valuations. Further detail in relation to the API's September 2007 application is provided in Chapter 2 of this Determination.

¹ The ACCC notes that the proposed changes to the wording of rules 2.3 and 2.4 are not underlined in the version of the rules provided to the ACCC.

2. Background to the application

The applicant

- 2.1. The API is the peak professional body for property valuers in Australia. The API has a membership of approximately 7,500 various property professionals. API members include residential, commercial and plant and machinery valuers, property advisers, property fund and asset managers, property lawyers and property academics.²
- 2.2. The API states that its primary role is to set and maintain the highest standards of professional practice, education, ethics and professional conduct for its members and the broader property professions.³
- 2.3. The members of the API are bound by:
 - a Code of Ethics
 - the Rules of Conduct and
 - Professional Practice Standards.
- 2.4. The API is governed by a National Council, comprised of the National President and one councillor from each State or Territory Division. The API's National Council oversees the management and operations of the API.⁴

Property valuation in Australia

- 2.5. Prior to 1995, land valuation in the private sector was regulated by the Commonwealth under the *Land Agents, Brokers and Valuers Act 1973*. The passage of the *Land Valuers Act 1994 (Cth)*, in effect deregulated the land valuation industry in Australia. However since 1995 a mix of state regulations and legislation has emerged, which means there is little consistency in the registration requirements for property valuers across Australia.
- 2.6. While there exists a level of inconsistency between different states in relation to the licensing requirements for property valuers, the API is recognised as the peak professional body. Victoria, Tasmania, South Australia and the two territories either require licensed valuers to be members of the API or require them to have undertaken API accredited training.⁵ New South Wales, Queensland and Western Australia maintain State based licensing programs with differing educational and practical experience requirements.⁶

² www.propertyinstitute.com.au

³ Ibid.

⁴ Ibid.

⁵ Australian Property Institute, *Submission to the Productivity Commission – Review of Mutual Recognition Schemes*, July 2008, pages 7 – 8.

⁶ Ibid.

- 2.7. The Office of Consumer and Business Affairs (SA) estimated in 1999 that 70 per cent of the Australian property valuation industry were members of the API.⁷ The ACCC considers it reasonable to assume that this percentage has increased since 1999 as various States have since incorporated the API into their property valuer licensing requirements.
- 2.8. The Productivity Commission is currently undertaking a review of the Mutual Recognition Agreement (MRA). The MRA has potential application to how State's recognise each others property valuation licences. The API's submission to the review expressed support for a national licensing system for property valuers.⁸ The Productivity Commission intends to complete the review in January 2009.

Authorisation A90545

- 2.9. Authorisation A90545 was granted by the Trade Practices Commission (TPC) on 29 April 1994 to the Australian Institute of Valuers and Land Economists (AIVLE). The API was formerly known as AIVLE. No time limit was stipulated under the authorisation.
- 2.10. In summary, AIVLE originally sought authorisation for a revised Code of Ethics and to certain clauses of its Constitution and By-laws. The Constitution and By-laws enumerate the standards of professional behaviour required of API members. AIVLE sought authorisation for these provisions in anticipation of Commonwealth and State government reforms that would deregulate registered professions such as property valuers.
- 2.11. The TPC identified a number of potential anti-competitive detriments from the proposed conduct. In light of these concerns, the TPC granted authorisation subject to eight conditions. In summary, the eight conditions concerned particular provisions of the AIVLE's Code of Ethics, Constitution and By-Laws. Broadly, the TPC was concerned that certain components of AIVLE's proposed conduct would, or might, have the effect of substantially lessening competition within the meaning of section 45 of the Act.
- 2.12. A full copy of the TPC's Determination is available with the current API application for minor variation on the ACCC's website (www.accc.gov.au) by following the 'Public Registers' and 'Authorisations & notifications registers' links.
- 2.13. Since authorisation was first granted by the TPC, the ACCC has received three applications for minor variation under section 91A of the Act.

⁷ Office of Consumer and Business Affairs, *National Competition Policy Review of the Land Valuers Act 1994*, December 1999, page 20.

⁸ Australian Property Institute, *Submission to the Productivity Commission – Review of Mutual Recognition Schemes*, July 2008, page 13.

Minor Variation – August 2005

- 2.14. On 22 April 2005 the API lodged an application for a minor variation of authorisation A90545. Broadly, the API sought to make variations to its Code of Ethics, certain clauses of its Constitution and By-laws and to introduce the new Rules of Conduct.
- 2.15. On 31 August 2005 the ACCC made a determination varying authorisation A90545 for the majority of items for which the API sought minor variation. However, the ACCC did not vary authorisation A90545 for three proposed variations to the API's By-laws. In summary, these proposed variations were not accepted by the ACCC as they did not meet one or more of the conditions required by the TPC in the initial authorisation. Therefore, the ACCC concluded that the three proposed variations would be likely to result in a reduction in the net public benefit of authorisation A90545.

Minor Variation – February 2007

- 2.16. On 20 November 2006 the API lodged an application for a minor variation of authorisation A90545. Broadly, the API sought to make amendments to the complaints and disciplinary regimes in the API's Constitution and By-laws.
- 2.17. On 22 February 2007 the ACCC made a determination varying authorisation A90545 for a number of items for which API sought minor variation. However, the ACCC did not vary authorisation A90545 for one of the proposed variations to the API's By-laws. In summary, the ACCC considered that the proposed variation, which removed the appeal process for API members against any decision of the Complaints Committee, would result in a reduction in the net public benefit caused by the authorisation.

Minor Variation – November 2007

- 2.18. On 18 September 2007 the API lodged an application for minor variation of authorisation A90545. In summary, the changes for which the API sought minor variation can be broken into two components:
- The API sought to address the ACCC's concerns regarding the lack of an appeal process identified in the minor variation determination in February 2007. The API proposed to provide for an appeal process to decisions by the API's Complaints Committee through changes to clauses 24.3.6 – 24.3.15 of the API's Constitution.
 - The API proposed to introduce a new class of membership, Provisional, which would have restricted rights as to the signing of property valuations. The proposal involved the Provisional Membership class replacing the Technical Associate, Provisional Associate and Graduate membership classes. The API submitted that the proposed changes were designed to improve protection for the public by preventing student members doing unsupervised valuations. The proposed changes required amendments to the API's Constitution, By-Laws and Rules of Conduct.
- 2.19. On 14 November 2007 the ACCC made a determination varying authorisation A90545 for all of the items for which API sought minor variation.

3. Statutory provisions

- 3.1 Section 87ZD of the Act defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation.
- 3.2 Section 91A of the Act provides that the ACCC must, if it is satisfied that the proposed variation is a minor variation, invite submissions from interested parties. After consideration of the application and any submissions received, the ACCC may make a determination varying the authorisation or dismissing the application.
- 3.3 Section 91A(4) of the Act provides that the ACCC may grant a minor variation to an authorisation granted under section 88(1), where it is satisfied that 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.

4. Submissions received by the ACCC

Applicant's submission

- 4.1. In providing the ACCC with its application for minor variation on 11 September 2008 the API outlined its reasoning for the proposed changes to the Rules of Conduct. The covering letter to the application states:
- the underlying premise for the changes to Rule of Conduct 1.21 is to ensure that Institute members undertaking valuations have the requisite knowledge and experience to provide valuations at a professional level for the benefit of themselves and their clients.⁹
- 4.2. The API further added that the proposed amendments have been developed in response to:
- change in the property market and resultant increase in claims against members, particularly those in the residential mortgage security area.
- 4.3. More broadly the API outlined the position and responsibilities of the Provisional class of membership:
- Recent changes to the Institute's membership classes are aimed at providing a Provisional level of membership through which members would articulate to become Associate members...The Institute is mindful that once a member has attained Associate membership with the certification of Certified Practising Valuer (CPV), then that member has the required qualifications and experience to undertake a range of valuation work in their own right.
- 4.4. The API submitted that the proposed changes will have little impact on competition and in fact enhance the public benefit that the ACCC has found previously.

⁹ API application for minor variation to authorisation A90545, 11 September 2008, covering letter.

Interested party submissions

- 4.5. The ACCC wrote to 42 potentially interested parties inviting them to provide a submission in relation to this application. A summary of the submissions received by the ACCC is outlined below.

Valuer General of Victoria

- 4.6. The Valuer General of Victoria supports the API's proposed amendments to its Rules of Conduct.

New South Wales Valuer General

- 4.7. The New South Wales Valuer General supports the API's proposed amendments to its Rules of Conduct.

Insurance Council of Australia

- 4.8. The Insurance Council of Australia (the ICA) supports the API's proposed amendments to its Rules of Conduct. The ICA submits that:

the new Rules provide greater clarity as to the types of valuations that can be undertaken by Provisional Members. As the changes will help ensure that API members have the requisite knowledge and experience to provide professional valuations, the Insurance Council supports the amendments.¹⁰

- 4.9. The ICA further adds that there is a concern amongst members of the ICA who are lender mortgage insurers that API Members who are not Certified Practising Valuers (CPV) are able to perform valuations without the requirement for the property to be co-inspected by a CPV, rather than just having valuation reports co-signed. The ICA calls for the Rules of Conduct to be strengthened to address this concern. However, the ICA notes that this issue is not directly relevant to the application for minor variation.

Real Estate Institute of Australia

- 4.10. The Real Estate Institute of Australia (REIA) does not object to the API's proposed amendments to its Rules of Conduct. However, the REIA considers that the API's proposed amendments to have greater supervision of Provisional Members may negatively impact on the level of real estate activity, including
- valuations may become more conservative decreasing the potential borrowings of home buyers and decreasing competition in some market segments and
 - the cost of valuations may increase, which may result in higher loan applications fees and therefore may, at the margin, impact on housing affordability.

¹⁰ Submission by Insurance Council of Australia, 28 October 2008.

5. ACCC assessment

- 5.1. In order to vary an authorisation, the ACCC needs to be satisfied that the minor variation would not result, or would likely not to result, in a reduction in the extent to which the benefit to the public from the original authorisation outweighs any detriment to the public caused by the original authorisation.
- 5.2. The extent to which the proposed variations to the Rules of Conduct are consistent with the original conditions of the authorisation is a relevant consideration. Should the variation be inconsistent with the conditions of authorisation, then they would be likely to result in a reduction in the net public benefit from authorisation A90545.

Conditions with Authorisation A90545

- 5.3. The ACCC considers that the proposed changes are not inconsistent with the conditions that the TPC originally placed on authorisation A90545. The conditions the TPC placed on the authorisation related to specific clauses of the AIVLE's Constitution, By-laws and Code of Ethics. Firstly, the TPC was concerned that some of the clauses placed anti-competitive restrictions on AIVLE members. For example, the TPC determined that one clause had the effect of limiting the ability of AIVLE members to undertake advertising that may damage AIVLE or another member. Secondly, the TPC was concerned that some clauses in respect of the complaints and appeals process may deny AIVLE members natural justice. For example, the TPC determined that one clause relating to the Review Committee members did not ensure that the members of the Committee would be independent of AIVLE.
- 5.4. This application for minor variation concerns proposed changes to the rules and obligations under the Rules of Conduct in respect of Provisional Members. Provisional Membership was introduced as a class of membership under the ACCC's minor variation determination in November 2007.

Members' rules and obligations

- 5.5. The ACCC considers that the proposed changes clarify the rules imposed on Provisional Members in relation to supervised non-residential property valuations and the obligations on API Members in respect of Provisional Members. As previously mentioned, the ACCC's November 2007 Determination authorised the amendments to the Rules of Conduct, By-laws and Constitution which introduced the Provisional class of membership and the restrictions imposed on Provisional Members.

- 5.6. The ACCC notes that academic literature in 1998 indicated that there was an unsatisfactory level of valuation inaccuracy in the Australian property market from both a client and empirical perspective.¹¹ However, research published in 2004, points to an improvement in the quality of valuation reports in Australia.¹² The API is noted as having made a significant contribution to the development of guidance notes and practice standards for property valuers.¹³
- 5.7. The ACCC notes the concern of the REIA that greater involvement of certain members of the API in a supervisory capacity may result in more conservative valuations and potentially higher home loan application costs. To the extent that valuations may differ as a result of the proposed changes the ACCC considers that the amendments are likely to lead to a greater level of accuracy in valuation reports. In this regard, the ICA supports the proposed amendments, claiming that its mortgage insurer members are exposed to financial loss if the valuation is inaccurate.
- 5.8. Further, the ACCC notes that Provisional Membership of the API and associated restrictions on the ability of these members to undertake unsupervised residential property valuations was introduced on 1 January 2008. These changes were made under an ACCC minor variation determination in November 2007. The ACCC has received no information that indicates that these changes resulted in an increase in costs to property purchasers or a reduction of prices and lower activity levels in the market.
- 5.9. The ACCC considers that the proposed changes may provide benefit to the public through clarifying the valuation activities that Provisional Members are able to undertake. In particular, through ensuring that Provisional Members' valuations are co-inspected and signed by more qualified API Members there is a greater likelihood that the valuation will be accurate and hence of greater benefit to the user of the valuation.
- 5.10. The ACCC recognises that professional bodies such as the API play an important role in ensuring that members have the necessary training and experience to undertake the roles in their profession to a satisfactory standard. The ACCC considers the proposed changes will strengthen the training and experience requirements for API Members who wish to undertake non-residential property valuations in their own right. Therefore the ACCC considers the proposed amendments are unlikely to result in a reduction in the net public benefit of authorisation A90545.

¹¹ Newell, G, *The quality of valuation reports in Australia: 1998* in Australian Property Journal, 35(7), 1999, pages 605 -608 & Parker, D, *Valuation Accuracy – An Australian Perspective*, 4th Pacific Rim Real Estate Conference, January 1998, page 17.

¹² Newell, G, *Client perceptions of the quality of valuation reports in Australia*, Pacific Rim Property Research Journal, 10(4), 2004, page 447.

¹³ *Ibid*, page 442.

6. Determination

- 6.1. On 11 September 2008 the Australian Property Institute (the API) lodged an application for minor variation of authorisation A90545 under section 91A of the Act. Authorisation A90545 was granted by the Trade Practices Commission on 29 April 1994.
- 6.2. The ACCC is satisfied that the proposed variations are minor.
- 6.3. The ACCC is satisfied that the public benefit test in section 91A(4) of the Act is met. In particular, the variations which are the subject of this application are unlikely to result in a reduction in the net benefit to the public that arose from the original authorisation.
- 6.4. Pursuant to section 91A(3) of the Act, the ACCC makes this determination varying authorisation A90545 to allow:
- the addition of the following rules to the API's Rules of Conduct as set out in Appendix A:
 - i. Rule 1.23
 - ii. Rule 1.24
 - iii. Rule 1.25
 - iv. Rule 2.2
 - v. Rule 2.6
 - changes to the wording of the following rules in the API's Rules of Conduct as set out in Appendix A:
 - i. Rule 1.21
 - ii. Rule 2.3
 - iii. Rule 2.4
- 6.5. This determination is made on 12 November 2008. If no application for a review is made to the Australian Competition Tribunal in accordance with section 101 of the Act, this determination will come into effect on 4 December 2008.

Appendix A — Australian Property Institute - Rules of Conduct



Australian Property Institute

Rules of Conduct

1 August 2008

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>

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Rules of Conduct

The Rules of Conduct are an interpretation and expansion of the Code of Ethics of the Institute. These Rules are mandatory for all Members.

Rule 1: Professional and Personal Conduct

- 1.1 Members shall conduct their professional duties and activities in a manner that reflects credit upon themselves and their profession. High standards of competence, honesty, loyalty, integrity and fairness shall be observed at all times.
- 1.2 Members are bound by and agree to abide by all Fundamental Rules which include the Code of Ethics, Rules of Conduct, Constitution, By-Laws, Practice Standards and compliance with CPD as adopted by the Institute.
- 1.3 Members shall not accept an assignment that is contingent upon or influenced by any condition or requirement for a predetermined result where the exercise of objective judgment is required. Members shall maintain the strictest independence and impartiality in undertaking their professional duties. To this end, no Member shall:
 - (a) adopt the role of advocate in a case where their duty is to exercise independence and impartiality;
 - (b)
 - (i) act as an advocate and as an expert in the same matter;
 - (ii) act as an advocate in a matter where another member of the same firm has acted as an expert in the same matter
 - (iii) act as an expert in a matter where another member of the same firm has acted as an advocate in the same matter.
 - (c) allow the performance of their professional duties to be improperly influenced by the needs or preferences of a client or other party;
 - (d) rely upon critical information supplied by a client without appropriate qualification or confirmation from other sources;
 - (e) act in any other way inconsistent with the duties of independence and impartiality.

Same Matter is defined as being;

A matter in which it may reasonably be construed that the member, or another representative from the member's firm, has acted or is acting as either an expert or advocate in a related context concerning the subject property.

- 1.4 Members shall not provide any advice or make any statement without reasonable foundation unless it is appropriately qualified or limited.
- 1.5 Members shall not claim or present professional qualifications which may be subject to erroneous interpretations or which they do not possess.

- 1.6 Members shall not accept instructions beyond their competence; however, assignments may be undertaken in conjunction with a person having the required competence after disclosure to the client.
- 1.7 Fees may be negotiated with a client on any agreed basis that does not:
 - (a) infringe any statute, rule of conduct or regulation;
 - (b) depend on a client-nominated particular outcome of any valuation or other independent objective advice.
- 1.8 No Member shall pay by commission, allowance or other benefit any person who may introduce clients to them without appropriate disclosure.
- 1.9 Members shall not accept payment or favours from another party, which may affect their relationship with a client.
- 1.10 A valuation shall not be performed by a Certified Practising Valuer without an inspection of the property concerned. The inspection shall be sufficiently comprehensive to enable the Member to complete the valuation in accordance with the Practice Standards of the Institute. Where, however, a client's instructions expressly exclude the requirements for a comprehensive inspection and these instructions are accepted by the Member then the limitations to the valuation must be clearly acknowledged by the Member and client.
- 1.11 Members shall not reproduce any work or reference prepared and presented by any other Member, person, body or authority which creates the impression that it is their own.
- 1.12 Members shall be fair and honest in any public criticism of the Institute or fellow Members.
- 1.13 Members shall include in reports, references to any relevant assumptions, conditions, requirements and limitations arising from their instructions or inquiries, or imposed from any other source.
- 1.14 Members shall retain for as long as legally required, adequate file notes which substantiate their opinions by way of inquiry, objective comparison, deduction and calculation.
- 1.15 Where information critical to the assignment being undertaken is relied upon by a Member, the source of that information should either be disclosed in the relevant report or contained in the working papers supporting the relevant report and be appropriately attributed in either case, unless the information is protected by confidentiality, or the member is prevented by privacy or other like laws from disclosing or referring to the source.
- 1.16 Members shall accept full responsibility for the content of their reports. Where the report relies on professional opinion from outside experts, the degree of reliance must be indicated.

- 1.17 Co-signatories to reports shall indicate the extent of their involvement or the capacity in which they are signing.
- 1.18 Members will fully cooperate with any request for information or directive from the Institute where a complaint has been lodged or where there is deemed to be a prima facie breach of the Rules of Conduct.
- 1.19 Members shall not maliciously or carelessly do anything to injure, directly or indirectly, the reputation, prospects or business of other Members.
- 1.20 Instructions accepted by Members should preferably be in writing and/or be confirmed in writing by the Member in sufficient detail to avoid any misinterpretation. Any variations or extensions of the original instructions should similarly be confirmed in writing.
- 1.21 From 1 January 2009, Student Members, Provisional Associate Members and Graduate Members shall not undertake valuations in their own right but may assist a Certified Practising Valuer, who is an Associate, Fellow or Life Fellow of the Institute in undertaking a valuation and may assist in the preparation of the valuation report.
- 1.22 A Member who is convicted of an offence involving dishonesty is in breach of these Rules of Conduct.
- 1.23 A Member must not co-sign a valuation undertaken by a Provisional Member, other than a valuation to which Rule 1.24 applies, unless:
- the Member holds the certification of Certified Practising Valuer;
 - the Member has formed an independent opinion as to value based upon reasonable grounds;
 - the Member is noted, adjacent to the Member's signature, to be the primary signatory; and
 - the Member has co-inspected the subject property.
- 1.24 A Member must not co-sign a valuation of Residential Property (as defined in Rule 2.5) undertaken by a Provisional Member who holds the designation of Residential Valuer, unless:
- the Member holds the certification of Certified Practising Valuer;
 - the purpose of the report is a purpose for which the Provisional Member is authorised by Rule 2.4 to undertake the valuation;
 - the valuation has been undertaken under the supervision of the Member.
- 1.25 For the purposes of Rule 1.24, supervision requires that the supervising Member has reviewed the valuation and working papers prepared by the Provisional Member and, based upon, such review and appropriate questioning of the Provisional Member obtained reasonable satisfaction that the value opinion contained in the valuation has been reached by the Provisional Member based on reasonable grounds. Supervision does not require the Member to physically inspect the subject property (unless otherwise stated).

Rule 2: Professional Conduct of Provisional Members

- 2.1 A Provisional Member who holds the designation of Residential Property Valuer, can undertake the valuation of residential properties on the condition that the valuation report is co-signed by the supervising valuer, who must be an API member who holds the certification of Certified Practising Valuer.
- 2.2 A Provisional Member who holds the designation of Residential Property Valuer can undertake the valuation of non-residential properties on the condition that the subject property is co-inspected (by the supervising valuer) and the valuation report is **co-signed by the supervising valuer**. The supervising valuer must be an API member who holds the certification of Certified Practising Valuer.
- 2.3 A Provisional Member who has completed an Institute approved valuation qualification (as referenced in the Institute's By-laws) may undertake the valuation of residential and non-residential property on the condition that the subject property is co-inspected (by the supervising valuer) and the valuation report is **co-signed by the supervising valuer**. The supervising valuer must be an API member who holds the certification of Certified Practising Valuer.
- 2.4 A Provisional Member who holds the designation of Residential Property Valuer may undertake the valuation of residential property for the purposes of;
- Mortgage security valuations,
 - Rating and Taxing valuations,
 - Valuing entitlements under a Strata Scheme or similar group title scheme,
 - other private residential property uses, excluding;
 - Land or a lot that is used wholly for non-residential purposes;
 - Real Property valuations for compensation or resumption purposes;
 - Valuations related to the provision of expert evidence or Family Court related proceedings.
- 2.5 For the purposes of Rule 2, residential property is defined as;
- Land on which is situated (or in the course of construction) not more than 2 dwellings and any other improvements incidental thereto;
 - Vacant land on which the construction of a single dwelling is not prohibited by law;
 - A lot or lots (including a proposed lot or lots) under a Strata Scheme or other group title scheme comprising not more than one dwelling and other improvements incidental thereto, whether constructed or in the course of construction;
 - Includes Rating and Taxing valuation, mortgage security valuations and valuations of other private residential properties;
 - Includes the ability to value individual entitlements under Strata Title or similar; and
 - the residential use must be the highest and best permitted use.

Residential Property does not include;

- Land or a lot that is used wholly or predominantly for non-residential purposes;
- Land that is capable of being sub-divided into two or more parcels;
- Real Property Valuations for compensation or resumption; or
- Provision of any expert evidence and Family Law Court related valuations.

2.6 (a) A Provisional Member, when co-signing a report (other than for a residential property as defined in 2.5 above) must state that they are a Provisional Member of the Australian Property Institute (fully in words).

(b) A Provisional Member, who holds the designation of Residential Property Valuer must state that they are both a Provisional Member of the Australian Property Institute and a Residential Property Valuer (both fully in words) when signing a report for Residential Property as defined in 2.5 above.

Rule 3: Conflict of Interest

Members shall not accept or carry out any instruction where there may be, or may reasonably be construed to be a conflict of interest Members shall withdraw from any instruction if a conflict of interest arises or becomes known after an instruction has been accepted. An exception to this rule is where the conflict of interest is disclosed to and accepted by the party or parties.

3.1 Where a conflict of interest arises or could arise a Member shall promptly disclose the relevant facts to the client and where appropriate:

- (a) advise the client to obtain independent professional advice;
- (b) inform the client that neither the Member nor the firm can act or continue to act for the client unless the appointment or instruction is confirmed in writing acknowledging the actual or potential conflict of interest; and
- (c) disclose the matter in any relevant document or report.

3.2 Where a conflict arises or could arise between the interests of different clients of a Member or a firm or company of which a Member is a partner director or employee, a Member shall promptly disclose the relevant facts to the instructing client and where appropriate:

- (a) advise the client to obtain independent professional advice;
- (b) inform the client that neither the Member nor the firm can act or continue to act for the client unless the appointment or instruction is confirmed in writing acknowledging the actual or potential conflict of interest, and disclose the matter in any relevant document or report.

Rule 4: Client Relationships

- 4.1 Members shall not disclose to any other person or party any confidential information provided directly or indirectly by a client or to a client without the permission of the client except where there is a legal requirement for disclosure or the information is of public or common knowledge.
- 4.2 Members shall conduct themselves in a manner and demeanour which is neither detrimental to their profession nor likely to lessen the confidence of clients or the public in the Institute or the profession.
- 4.3 Members shall act promptly and efficiently in the servicing of the client's instructions.
- 4.4 Members shall, in the case of unavoidable delay, communicate to the client the progress being made in respect of the instructions issued to the Member.
- 4.5 Consistent with the duty of a Member to preserve the confidentiality of a client's affairs, a Member shall not accept a retainer to act for another person in any action or proceedings against, or in conflict with, the interests of the client.

Rule 5: Advertising

- 5.1 Any advertisement by a Member must not reflect adversely on the professional integrity of the Institute or its Members.
- 5.2 Members shall not include exaggerated or false claims in any advertisement.

Rule 6: Reference to the Institute

- 6.1 No Member or Members shall:
 - (a) purport to represent the views of the Institute unless expressly authorised to do so
 - (b) publicise the Institute or its Members generally in terminology which has not either already appeared in an advertisement published by the Institute or received the approval of the Institute.

Rule 7: Inducements for the Introduction of Clients

- 7.1 No Member shall invite instructions for work except in accordance with these Rules.
- 7.2 No Member shall directly or indirectly exert undue pressure or influence on any persons, whether by the offer or provision of any payment, gift or favour or otherwise, for the purpose of securing instructions for work, or accept instructions from any person where there is reason to believe that undue pressure or influence may have been exerted by a third party in expectation of receiving a reward for the introduction.

Rule 8: Departure Provisions

- 8.1 Where a Member considers circumstances exist that warrant departure from or non-compliance with any rule herein, the Member's report shall include a statement that outlines the reasons for the departure or non-compliance and any impact on the content of the report.