



SPIER CONSULTING

REGULATORY STRATEGIES & SOLUTIONS

FILE No:
DOC:
MASS/PRISM

**Dr R Chadwick
General Manager
Adjudication
ACCC
PO Box 3131
Canberra ACT 2601.**

10 September 2008

Dear Dr Chadwick,

APPLICATION BY THE AUSTRALIAN PROPERTY INSTITUTE FOR MINOR VARIATION TO AUTHORISATION. (A 90545)

The Australian Property Institute is seeking a minor Variation to Authorisation A 90545.

The Australian Property Institute (API) is seeking Authorisation for proposed changes to its Rules of Conduct governing the conduct of a class of membership (Provisional Members) as well as restricting the activities of members who are Students, Provisional Associates and Graduates.

The changes to the Rules of Conduct governing the conduct of Provisional Members (Rule 2) have been amended to give clarification as to the type of valuation activities that Provisional Members can undertake. The amendments to Rule 1.21 have been introduced in response to the change in the property market and the resultant increase in claims against members, particularly those in the residential mortgage security area.

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. It is the Institute's view that a recent graduate of an endorsed university or TAFE course does not have sufficient professional experience to undertake valuations in their own right.

Current Provisional Associate and Graduate Members who undertake valuations will be encouraged to move to the new Provisional Membership class. Those who meet the requirements for Residential Property Valuers designation will be able to undertake valuations of residential property (primarily for mortgage security purposes) in their own right. However, they will require supervision for all other types of valuation until they attain Associate Membership with the certification of Certified Practising Valuers.



Recent changes to the Institute's membership classes is aimed at providing a Provisional level of Membership through which members would articulate to become Associate members (which is essentially the professional membership level). At the same time, those members who wish only to undertake residential mortgage security valuations can remain as Provisional Members with a designation of Residential Property Valuers (RPV). The Institute is mindful that once a member has attained Associate membership with the certification of Certified Practicing Valuer (CPV), then that member has the required qualifications and experience to undertake a range of valuation work in their own right.

Certified Practicing Valuer (CPV) is a certification that is available only to Associate, Fellow or Life Fellow members of the API. The certification is an acknowledgement by the API that the member has the requisite qualifications and experience to undertake valuations in their own right.

In the view of the API the changes have little impact on competition and in fact enhance the public benefit that the ACCC has found in the past in relation to the API rules.

The Changes to the Rules are attached and the actual changes underlines. If you wish I can email you the Changes and the entire Rules.

I would be happy to provide any additional material.

Yours truly,

A handwritten signature in black ink, appearing to read 'Hank Spier', written over a diagonal line.

Hank Spier

Form FA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Trade Practices Act 1974* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A90545

**AUSTRALIAN PROPERTY
INSTITUTE**.....

- (b) Description of business carried on by applicant:
(Refer to direction 3)

The Australian Property Institute represents the interests of more than 7,500 property professionals throughout Australia. API members include residential, commercial and plant and machinery valuers, property advisers, property analysts and fund managers, property lawyers, and property researchers and academics.

- (c) Address in Australia for service of documents on the applicant:

**6 CAMPION STREET DEAKIN ACT
2600**.....

2. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

Governance regime for the Institute including membership rules, disciplinary rules and Rules of Conduct.

Currently Authorisation

A.90545.....
.....

(b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

....See original authorisation
.....
.....

(c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:
(Refer to direction 4)

See attached letter.
.....
.....

(d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

..
The variation does not have any anti competitive effects and in fact improves the public benefits. Some is the consequence of issues raised previously by the ACCC.....
.....
.....

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

(a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

Same as existing authorisation.....
.....
.....

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

See original authorisation.....
.....

.....
.....

(c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

.....
.NA.....
.....
.....

4. Public benefit claims

(a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

See attached letter.

In the view of the Applicant the public benefit is enhanced by the variations.....

.....
(See Direction 6 of this Form)

(b) Facts and evidence relied upon in support of these claims:

.....
See attached letter.....
.....

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

.....
As per original authorisation.....

.....
(See Direction 7 of this Form)

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

See attached letter.

In the view of the Applicant the variations have no public detriment.....

(See Direction 8 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

See attached letter.....
.....
.....

7. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

.HANK SPIER, 92 JERVOIS STREET DEAKIN ACT 2600

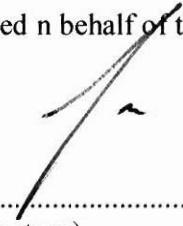
PHONE-02 62812030

FAX O2 62825183

SPIERCONSULTING@NETSPEED.COM.AU.....
.....

Dated..10 September 2008.....

Signed n behalf of the applicant



.....
(Signature)

..Hank Spier.....
(Full Name)



Australian Property Institute

Australian Property Institute

Rules of Conduct

1 August 2008

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

Telephone: 02 6282 2411
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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 A Student Member admitted to the Australian Property Institute on or after 1 October 2007 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.