

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

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

The Australian Property Institute Ltd (API), 608 309 128

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

The API is a professional peak body, representing the interests of more than 8,600 property professionals throughout Australia. API's 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 profession.

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

Mr Michael John Zissler
Chief Executive Officer
Australian Property Institute
Level 1, 6 Campion Street
Deakin
ACT 3600

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:**

The API was formally known as the Australian Institute of Valuers and Land Economists (AIVLE). Authorisation A90545 was conditionally granted by the Trade Practices Commission (TPC) on 29 April 1994 to the AIVLE. Authorisation A90545 was granted to AIVLE for a revised Code of Ethics and for certain clauses

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of its Constitution and By-laws, which set out the standards of professional behaviour required of members of AIVLE.

Since authorisation was first granted to AIVLE, the API made four subsequent applications to the ACCC for minor variations, the last of which was granted on 12 November 2008.

(b) Provide details of the basis upon which revocation is sought:

Revocation of authorisation A90545 is sought on the basis of the change in API's status from an incorporated association to a company limited by guarantee, which will take effect on 1 January 2016. The transition has required changes to be made to the API's constitution and for the relevant By-laws to be converted to policies. It is considered that this would not constitute a minor variation to the previous authorisation and as such a revocation and substituted authorisation is warranted.

3. Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought;

(Refer to direction 4)

The Applicants wish to make and give effect to an agreement to adhere to standards of best practice and professional behaviour required of API members, administered in accordance with the API's constitution and accompanying policies, which provide a regime for membership and sanction. Authorisation is sought for clauses contained in the following documents (collectively referred to as the **Arrangements**):

- the API Constitution;
- the API Members Policy;
- the API Complaints Policy;
- the API National Education Board Policy;
- the API Valuation Standards Board Policy;
- the API Australian Property Standards Board Policy;
- the API Appeals Board Policy; and
- the API Code of Professional Conduct for Members

By becoming members of API and subsequently being bound by the API constitution and policies, the Arrangements may be seen to constitute an arrangement between competitors which has the effect of restricting, preventing or limiting the supply of services. Furthermore, the Arrangements contain provisions which provide for the termination of the membership of members which may also

constitute an arrangement between competitors that has the purpose of restricting, preventing or limiting the supply of services within the property industry.

For further details in respect of the nature of the Arrangements, refer to the Submission accompanying this form.

- (b) **Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:**

The Arrangements relate to the provision of services within the property industry. For further details refer to the Submission accompanying this form.

- (c) **The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:**

Authorisation is sought for a period of 5 years. For further details, refer to the Submission accompanying this form.

4. **Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

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

The proposed arrangements will be entered into and given effect to by the Applicant. For further details, refer to the Submission accompanying this form.

- (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)

This application is made by the API and on behalf of current and future members of API. API members include residential, commercial and plant and machinery valuers, property advisors, property analysts, property fund and asset managers, property facility managers, property lawyers and property researchers and academics.

- (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:**

Not Applicable

5. Public benefit claims

(a) Arguments in support of application for substitution of authorisation:

The Applicant submits that the Arrangements will ensure that public confidence in the property profession and members of the API is maintained. For further details refer to the Submission accompanying this form.

(See Direction 6 of this Form)

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

Refer to the Submission accompanying this form.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (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):

(See Direction 7 of this Form)

This application affects the supply of services within the Australian property industry. API members constitute approximately 80% of service providers within the market. For further details refer to the Submission accompanying this form.

7. Public detriments

(a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

(See Direction 8 of this Form)

The Applicant submits that the Arrangements will not result in any public detriment, taking into account that professional standards for API members have been authorised by the TPC since 1994. For further details refer to the Submission accompanying this form.

(b) Facts and evidence relevant to these detriments:

Refer to the Submission accompanying this form.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

(a) Is this application to be so expressed?

No

- (b) If so, the following information is to be furnished:
- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(See Direction 9 of this Form)

Not Applicable

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

(See Direction 5 of this Form)

Not Applicable

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

Not Applicable

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not Applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not Applicable

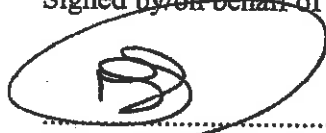
10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Mr Michael John Zissler
Chief Executive Officer
Australian Property Institute
Level 1, 6 Campion Street
Deakin
ACT 3600

Dated... 22 DECEMBER 2015

Signed by/on behalf of the applicant



(Signature)

MICHAEL JOHN ZISSLER

(Full Name)

AUSTRALIAN PROPERTY INSTITUTE

(Organisation)

CHIEF EXECUTIVE OFFICER

(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Submission to the
Australian Competition
and Consumer
Commission in support
of the Application for
Revocation and
Substitution of a New
Authorisation

Australian Property Institute Ltd

December 2015

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INTRODUCTION

1.1 Application for Revocation and Substitution of a New Authorisation

This submission is made by the Applicant in support of an application for revocation and substitution of a new authorisation under sections 88(1A) and 88(1) of the *Competition and Consumer Act 2010 (Cth)* (**the Act**).

The Applicant seeks revocation of authorisation A90545 and substitution by way of a new authorisation to make and give effect to arrangements whereby members of the Australian Property Institute Ltd (**API**) agree to be bound by professional standards and obligations which will be administered by the API in accordance with the API's Constitution and accompanying policies (collectively referred to as the **Arrangements**).

The Arrangements provide for membership application procedures, a tiered membership structure, professional standard obligations, professional development and education requirements, complaints and disciplinary procedures and termination of membership rights.

The Arrangements may constitute a contract or arrangement or understanding that may contain a cartel provision or an exclusionary provision or might have the purpose or effect of substantially limiting competition within the meaning of section 45 of the Act. The Applicant is seeking authorisation to make and give effect to the Arrangements for a period of five years.

BACKGROUND

2.1 The Applicant

The API is the peak professional body for the property profession in Australia. The API was formerly known as the Australian Institute of Land Valuers and Land Economists (**AIVLE**). Today the API represents the interests of more than 8,600 property professionals throughout Australia. 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 profession.

The API plays a key industry role and is highly regarded and respected throughout Australia. API produces a range of leading property publications

including the Australia and New Zealand Property Journal and a range of other professional and educational texts. The API also develops software packages providing proforma templates for residential mortgage valuation work undertaken by members of the API.

Members of API fall into tiered categories based on the qualifications and experience of the applicant. Members of the API are bound by the API's Code of Professional Conduct.

To ensure that best practice governance standards are adopted, the API is in the process of transitioning from an incorporated association to a company limited by guarantee. The API transition to company status will be effective 1 January 2016. The proposed Arrangements will apply to the API in its new corporate entity status.

Reason for transition to company status

On 8 September 2015, the API received a notice from the South Australian Corporate Affairs Commission (the **Commission**) providing a direction to the API that the Commission considers API's operations are more appropriately suited to operating as a company limited by guarantee. API was given three months from the date of receipt of the notice to formally request the transition.

Approval for transition

On Thursday 22 October 2015, API held an Extraordinary General Meeting (EGM). 1019 members of API by proxy or in person voted and 90% approved the following three motions:

- 1. that, in accordance with the notice received from the Government of South Australia Consumer and Business Services dated 8 September 2015, the Australian Property Institute Incorporated, an incorporated association incorporated under the Associations Incorporations Act 1985 (SA) convert to a company limited by guarantee incorporated under the Corporations Act 2001 (Cth) (Company) effective on the later of either 1 January 2016 or such date as the registration of a company limited by guarantee is effective with the Australian Securities and Investments Commission;*
- 2. that the constitution of the Australian Property Institute Incorporated be repealed effective on the later of either 1 January 2016 or such date as the registration of a company limited by guarantee is effective with the Australian Securities and Investments Commission; and*

3. that the Members adopt the accompanying Constitution effective from the date set out in Extraordinary Resolution 2 above.

A copy of the minutes of the EGM are included at **Annexure A**.

Effect of company status on API's structure

API was governed by a National Council, which comprised of the National President and one councillor from each State and Territory Division. API Inc's National Council oversaw the management and operations of the API Inc.

As a Company the API will be managed by a Board of Directors in accordance with Clause 9 of the API's Constitution, included at **Annexure B**. Seven of the Directors will be elected. Elected Directors must be members of the API. The elected Directors may appoint a further two Directors because of their special business acumen or technical skills.

2.2 The Market

Members of the API operate within the property market and are made up of experts in property including valuers, property advisors, property managers, property analysts and facilitators. API members provide professional property services associated with valuation, finance, property law, property development, land economics, education, construction and assets and fund management. API members provide services in every Australian State and Territory.

The services API members provide can include: residential, commercial and plan and machinery valuations; property and advisory services; sales, acquisition and leasing advice; legal advice related to property transactions; investment analysis and research; and property and asset management.

In some States government regulations specify that property professionals must belong to a professional body such as the API. Many leading Australian financial institutions also require property professionals who carry out mortgage valuation work to be members of the API.

The API also develops software packages, such as PropertyPro, which provides a proforma template for residential mortgage valuation work. The proforma is the preferred format for the majority of Australia's leading financial institutions.

API estimates that its members constitute approximately 80% of current service providers within the Australian property market.

2.3 Background to the revocation and substitution application

AIVLE sought authorisation for a revised Code of Ethics and for particular clauses of its Constitution and By-Laws in 1994. Authorisation A90545 was conditionally granted to AIVLE on 29 April 1994 by the Trade Practices Commission (TPC).

Since A90545 was first granted, the API made 4 subsequent applications for minor variations. These were granted on 31 August 2005, 22 February 2007, 14 November 2007 and 12 November 2008.

This application is made as a revocation and substituted application due to the change in API's status from an incorporated association to a company limited by guarantee, which has required changes to be made to the Constitution and relevant By-Laws are to be converted to policies.

A minor variation is defined under section 87ZP(1) of the Act as:

"...a single variation that does not involve a material change in the effect of the authorisation"

The ACCC Authorisation Guidelines provide that a variation will only be considered minor if it changes the conduct or the nature of the authorisation that has been granted in a way that is not substantial or significant.

Given the change to the API's structure as a result of its transition to company status and the resulting amendments to the API's constitution, it is considered that this application cannot be made as a minor variation application and as such a revocation of A90545 and substitution of a new authorisation is warranted.

ARRANGEMENT FOR WHICH AUTHORISATION IS SOUGHT

3.1 Summary

Authorisation is sought for clauses contained within the API Constitution and accompanying policies (collectively referred to as the **Arrangements**) which may constitute exclusionary provisions and/or cartel conduct and/or provisions of an arrangement which may have the purpose or effect of substantially lessening competition, due to their terms and the mandatory nature of the Arrangements.

Members of the API compete with each other in the provision of services within the property industry. By becoming members of API and subsequently

being bound by the API Constitution and policies, the Arrangements may be seen to constitute an arrangement between competitors which has the effect of restricting, preventing or limiting the supply of services. Furthermore, the Arrangements contain provisions which provide for the termination of members which may also constitute an arrangement between competitors that has the purpose of restricting, preventing or limiting the supply of services within the property industry.

3.2 The Arrangements

The Arrangements for which API seeks authorisation are contained in the following:

1. The API Constitution, included at **Annexure B**;
2. The API Members Policy, included at **Annexure C**;
3. The API Complaints Policy, included at **Annexure D**;
4. The API National Education Board Policy, included at **Annexure E**;
5. The API Valuation Standards Board Policy included at **Annexure F**;
6. The API Australian Property Standards Board Policy included at **Annexure G**;
7. The API Appeals Board Policy included at **Annexure H**; and
8. The Australian Property Institute Code of Professional Conduct for Members included at **Annexure I**.

The particular aspects of the Arrangements for which authorisation are sought relate to the rules and standards governing members of API. These aspects are detailed fully below.

Applications for Membership

- (a) Under Part 5 of the API Constitution, a person will become a member of the API upon submitting an application and upon meeting the criteria applicable to the relevant category of membership set out in the Constitution. The API Directors have responsibility under the Constitution for accepting applications for membership.
- (b) The qualification requirements for each category of membership are set out in the API Members Policy. All applicants must also demonstrate they are a person of good character and repute.
- (c) The API may certify members in accordance with the Members Policy. Applicants for certification must satisfy the relevant qualification requirements outlined in the policy.

- (d) The API National Education Board Policy sets out that API National Education Board shall develop and provide advice on education and entry matters on behalf of API members.
- (e) Under clause 5.1 of the API Constitution, all members have a right to attend, speak and vote at General Meetings of API except for Provisional members, who have the right to attend General Meetings but no right to vote or speak, and Affiliate members, who have no right to attend, vote or speak at General Meetings.

Members to comply with rules and standards

- (a) Clause 5.3 of the Constitution provides that, upon submitting an application for membership, a member undertakes to be bound by API's Constitution and Policies.
- (b) Clause 15 of the Constitution stipulates that the Directors of API may make Policies as required under the Constitution and which, in the Directors' opinion are necessary or desirable for the control, administration and management of the API's affairs.
- (c) Members of the API are required to adhere to the Code of Professional Practice. Section 1 of the Members Policy provides that the Board of Directors may issue an amended Code of Professional Practice from time to time.
- (d) Under the API Australian Property Boards Standard Policy, the Australian Property Standards Board will develop and provide advice on property (excluding valuation) matters in relation to technical standards and professional conduct.
- (e) Under the API Australian Valuation Standards Board Policy, the Australian Valuation Standards Board will develop and provide advice on valuation matters in relation to technical standards and professional conduct.

Members are subject to disciplinary procedures

- (a) Clause 5.4 of the Constitution provides that the Policies of the company will set out the procedure for suspending or cancelling membership.
- (b) Clause 6.2 of the Constitution allows the API Board of Directors to make a Policy or Policies for:
 - i. the discipline of members;
 - ii. the formation and administration of a Professional Standards Committee; and

- iii. for the termination of members.

Directors have discretion to refer an allegation against a member for investigation and determination under the procedures set out in the Policies.

The API Complaints Policy

- (a) This Policy sets out detailed procedures for the handling of complaints. It provides for: the appointment of a Complaints Officer to investigate complaints; the formation and operation of a Complaints Committee to hear charges laid by the Complaints Officer; and for the Appeals Tribunal to hear appeals from decisions of the Complaints Committee.
- (b) Under section 2 of the policy Members may be found guilty of professional misconduct if:
 - (i) they commit a breach of the Code of Professional Conduct;
 - (ii) they are found guilty by a court of law of a criminal offence punishable by imprisonment;
 - (iii) they engage in conduct that is dishonest or fraudulent;
 - (iv) they engage in conduct which is prejudicial to the good name and reputation of the API; or
 - (v) they obtained admission to the API by improper means.
- (c) Where a member is found guilty of professional misconduct the Complaints Committee may lay charges that impose a range of sanctions as laid out in section 12 of the policy. Potential sanctions include: publicly reprimanding the member, ordering the member to pay the costs of the investigation, suspension of membership and expulsion of the member from the API.
- (d) Procedural fairness is afforded to members in the following ways:
 - (i) complaints must be set out in writing and describe the alleged conduct. The Complaints Officer may require the complainant to give further information in relation to the complaint.
 - (ii) the Complaints Officer must give written notice to the member about whom the complaint is made and must detail the nature of the complaint, the identity of the complainant, any action taken by the Complaints Officer and the member's rights to make submissions;
 - (iii) the Complaints Officer must investigate complaints and must act independently during the investigation;
 - (iv) the final decision as to whether to lay charges against a member rests with the Complaints Committee. In conducting enquiries, the Complaints Committee must provide the member with a reasonable

- opportunity to respond to the substance of the complaint, provide any relevant information and address the Committee in person;
- (v) if a charge of professional misconduct is laid against a member, the member may request a hearing;
 - (vi) members may appeal decisions of the Complaints Committee to the Appeals Tribunal. The Appeals Tribunal may confirm, amend or set aside a decision of the Complaints Committee.

The API Appeals Tribunal Policy

This policy establishes the Appeals Tribunal (the Tribunal), which will be made up of members of the general community as appointed by the Board of API. Under section 1.3 of the policy, with the exception of the chairperson of the Complaints Committee, a person will not be eligible to be nominated to the Tribunal if they are an existing member of the API or if they have been a member of the Complaints Committee in the past 12 months. This ensures the independence of the Tribunal. The policy lays out the procedure for hearings conducted by the Tribunal. Appellants are entitled to legal representation at hearings.

The API Code of Professional Conduct

The API Code of Professional Conduct restricts conduct of members by:

- (a) providing a guideline and framework for relationships with clients; requiring members to carry out their professional duties ethically, with honesty, competence and in good faith, without personal bias and in a manner which upholds the values and reputation of the property and valuation profession;
- (b) requiring members to operate within the limits of their qualifications and experience, ensuring members do not accept instructions in a field of practice in which they do not have sufficient knowledge or skill;
- (c) requiring members to take reasonable steps to identify circumstances that could be construed as a conflict of interest and stipulating clear guidelines for conduct in such circumstances;
- (d) requiring members to maintain the strictest independence and impartiality when making a valuation and/or where the exercise of objective judgment is required; and
- (e) requiring that those members who are qualified to undertake valuations do so in a manner that ensures valuations are carried out by appropriately qualified professionals and that clients are provided with full information in relation to the sources of information used in reaching the valuation.

3.3 The Arrangements in Practice

The Arrangements have been in operation and regularly reviewed by the API since the granting of A90545. In addition to the API's internal review of the complaints handling procedure, the API is subject to an external review by the Professional Standards Council ("PSC") as a result of the API's Limited Liability Scheme registration.

The API through APIV Limited is required to report to the PSC annually and provide data on complaints received and any disciplinary measures that have been taken throughout the year. It also notes any actions the API has taken to consider improvements in professional standards and consumer risk reduction. This process provides independent verification of the API's dispute resolution process.

The API has a dedicated Complaints Officer who receives the initial complaint and conducts a review of the matter to determine whether a summary dismissal under section 6 of the Complaints Policy applies or whether further investigation and referral to the Complaints Committee is required. In 2014, eighteen formal complaints were received, representing a small decrease in comparison to the prior year.

The most common issues raised related to errors and delays in the valuation report, dissatisfaction with quantum, poor standards of communication, undisclosed conflicts of interest and differences of opinions when selecting comparable sales figures. Seven of the eighteen complaints from 2014 were dismissed in accordance with the relevant By-Law at the time, which is equivalent to Section 6 of the current Complaints Policy.

The remaining complaints have been or are being dealt with via a process of mediation or recommendations handed down by the Complaints Committee. The most recent report lodged with the PSC identified and provided insights into the complaints trends over the previous couple of years and has recommended courses of action to reduce these types of complaints in the future. The highest number of complaints involved alleged incorrect details in the valuation report and it was suggested that the increased workloads of valuers and shorter turnaround timeframes for the production of such reports has contributed to this trend.

It has been recommended that the API monitors the trend and engages with stakeholders and members to seek solutions to reduce the pressures surrounding timing and delivery conditions of the valuation reports.

An increasing trend of undisclosed conflicts of interest has also been identified and the API will use this data to review the need to increase the education programs to members on the issue of independence.

3.4 Purpose of the Arrangements

The purpose of the Arrangements for which authorisation is sought is primarily to set and maintain the highest standards of professional practice, education, ethics and professional conduct for members of API and the broader property profession.

3.5 Length for which authorisation is sought

This is an application for authorisation for a period of 5 years. A period of 5 years is necessary to provide certainty and stability to API members in respect of the enforceability and application of the above described Arrangements. The Applicant notes that the authorisation A90545 was an unlimited in its duration.

PUBLIC BENEFIT OF THE ARRANGEMENTS

4.1 Public confidence in the property industry

The primary purpose of the Arrangements, as stated above, is to maintain high standards of professional practice, education, ethics and professional conduct for members of the API. This is seen as an essential to maintaining public confidence in the members of the API.

To obtain entry as a member of the API, candidates are required to undertake API approved qualifications and may be subject to additional admission requirements, including a professional interview and supplemental testing. Once admitted to the API, members are subject to ongoing Continuing Professional Development requirements to ensure that they remain current in a rapidly changing industry and promote a highly skilled profession.

All API members conduct themselves in accordance with our Code of Professional Conduct, which is a public statement of the principles, values and behaviours that are expected of our members.

Should a member breach the Code of Professional Conduct or otherwise engage in behaviour that is deemed to be professional misconduct, the API has disciplinary procedures in place to deter and mitigate such behaviour.

The API disciplinary regime provides a mechanism for members of the public and others who are aggrieved by the conduct of a member to make a

complaint about that property professional and provides the API with the power to lay charges and enforce sanctions against the member and in doing so, provides the public with the benefit of protection against unethical and poor professional behaviour.

The API is highly regarded and respected throughout Australia and in some states, government regulations specify that property professionals must belong to a member association, such as the API. Many leading Australian financial institutions also require property professionals who carry out mortgage valuation work to be members of the API. The Applicants consider that the Arrangements for which authorisation is sought provide protection for consumers over and above existing protection available under relevant legislation.

PUBLIC DETRIMENTS OF THE ARRANGEMENTS

5.1 No change in any public detriment as a result of the Arrangements

The Applicant submits that these Arrangements will not result in any public detriment given the fact that the Arrangements are substantially similar to those for which authorisation A90545 was previously granted.

Indeed, the Applicant submits that public detriment would arise if the application were not granted as it would expose existing consumers to the risk that professional standards to which they have accustomed may be weakened.

PUBLIC BENEFIT OUTWEIGHS PUBLIC DETRIMENT

6.1 Public benefit outweighs public detriment

The API is highly regarded and respected throughout Australia and plays a key industry role. The market coverage of API members is an indication of the respect and confidence that consumers have in the API's members. The Arrangements for which authorisation is sought will continue to uphold the highest standards of professional practice, education, ethics and professional conduct for API's members. The API is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of its membership.

The existing authorisation A90545 was granted in recognition of the fact that the public benefit in consumer protection outweighs any public detriment that may arise out of the practice and ethical standards imposed on API members. As the Arrangements for which this authorisation is sought do not differ significantly in substance from the arrangements authorised under A90545 and subsequent variations, it is submitted that the public benefit outweighs

the public detriment and the authorisation should be granted consistent with the previous authorisation referred to above.

A

THE AUSTRALIAN PROPERTY INSTITUTE EXTRAORDINARY GENERAL MEETING

Thursday 22 October 2015 Time: 1:00pm (ACDT)

Glenroy Conference Room

Mercure Grosvenor Hotel Adelaide

125 North Terrace ADELAIDE SA 5000

National Office

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MINUTES OF MEETING

1 Opening – Welcome & Apologies

PRESENT: Tyrone Hodge (President), Robert Smyth (Vice President), Charles Spanjer (Vice President), Garrick Smith, Chris Shaw, Phil Willington, Mark Kay, Robert Hecek, Andrew Cubbins (National Councillors) – See Full Attendance on Registration Form

APOLOGIES: Greg Preston & Brooke Parish

CHAIRMAN: Tyrone Hodge

ALSO PRESENT: Mike Zissler – Chief Executive Officer/Returning Officer
Peter McGrath – Griffin Legal
Nick Langley – Chief Operations Officer
Lynette Pinder – Transition Project Officer
Sylvia O’Keefe – Members Services Manager SA
Abbey Fearnhead – Support Officer SA

1.1 Meeting commenced at: 1:01 pm

1.2 Welcome

A quorum was identified as present.

The traditional owners were formally acknowledged.

Kerry Herron LFAPI was acknowledged.

1.3 Confirmation of Minutes

The minutes of the API Incorporated Annual General Meeting held on 28 May 2015 were accepted as a true and correct record of the meeting.

Moved: Tyrone Hodge

Seconded: Rob Smyth

Approved: Unanimously

1.4 Business

Having formally welcomed the attendees the Chair outlined the rules and procedures of the meeting as set out in the Constitution.

The Chief Executive Office, as Returning Officer, outlined the business of the meeting including the background to the meeting and the reading of the resolutions.

The Chair asked for any questions on this item of business. No questions were raised.

The meeting was advised of the nature of the online electronic voting, the audit process and the certifications from CorpVote. It was confirmed that the electronic votes were treated as proxy votes. The proxy voting closed COB on 19 October 2015.

The Chair then formally moved the following resolutions seconded by Philip Willington.

1. That, in accordance with the notice received from the Government of South Australia Consumer and Business Services dated 8 September 2015, the Australian Property Institute Incorporated, an incorporated association incorporated under the Associations Incorporations Act 1985 (SA) convert to a company limited by guarantee incorporated under the Corporations Act 2001 (Cth) (Company) effective on the later of either 1 January 2016 or such date as the registration of a company limited by guarantee is effective with the Australian Securities and Investments Commission.
2. That the constitution of the Australian Property Institute Incorporated be repealed effective on the later of either 1 January 2016 or such date as the registration of the Company is effective with the Australian Securities and Investments Commission.
3. That the Members adopt the accompanying Constitution for the Company effective from the date set out in Extraordinary Resolution 2 above.

The Chair declared that a poll be taken to consider the resolutions. The meeting was suspended at 1:08 pm in order for members to cast their votes and to allow the Returning Officer with Scrutineers to count the votes.

The meeting reopened at 1:26 pm and the returning Officer provided the meeting with a report.

The results of the voting were as follows:

There were a total of 1019 votes recorded.

Resolution 1.

For:	930
Against:	43
Abstain:	46
Declared:	Passed

Resolution 2

For:	925
Against:	46
Abstain:	48
Declared:	Passed

Resolution 3

For: 917
Against: 54
Abstain: 48
Declared: Passed

The Chair congratulated the meeting and members on an historic decision and thanked all for their attendance.

There being no further business the meeting closed 1:28 pm

Tyrone Hodge

**President
The Australian Property Institute Incorporated**

B



CONSTITUTION

AUSTRALIAN PROPERTY INSTITUTE LIMITED

ACN:

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1. Definitions and Interpretations

1.1 Definitions

In this Constitution unless the context requires otherwise:

- (a) **AGM or Annual General Meeting** means the Annual General Meeting of the Company required to be held by the Company in each calendar year under the Corporations Act;
- (b) **Appointed Director** means a Director appointed under clause 9.10;
- (c) **CEO** means a person appointed as chief executive officer of the Company by the Directors pursuant to clause 12;
- (d) **Chair** means the person elected as the Chair of the Company under clause 11.7(a) or any person appointed to chair a meeting of the Company or a meeting of the Directors pursuant to this Constitution;
- (e) **Committee** means a committee established by the Directors under clause 14;
- (f) **Commonwealth** means the Commonwealth of Australia;
- (g) **Company** means the Australian Property Institute Limited ACN: XXX XXX XXX;
- (h) **Company Secretary** means a person appointed as a company secretary of the Company by the Directors under clause 13;
- (i) **Conflicts Register** means the register of conflicts declared by Directors maintained by the Company Secretary in accordance with clause 11.10;
- (j) **Constitution** means this Constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution;
- (k) **Corporations Act** means the *Corporations Act 2001 (Cth)* as modified and amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company;
- (l) **Delegations Register** means a register of delegations made by the Directors in accordance with clause 10.6(b)(v) maintained by the Company Secretary;
- (m) **Director** means a director of the Company and includes Elected Directors and Appointed Directors;
- (n) **Directors** means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution;
- (o) **Division** means a division of the Company under clause 5.13 representing a State which operates in accordance with the Policies;
- (p) **Elected Director** means a Director elected under clause 9;
- (q) **Fee** means any money owed by a Member to the Company as set out in this Constitution or the Policies;
- (r) **First Appointed Directors** means the persons referred to in clause 1.3 of Schedule 1;

- (s) **First Elected Directors** means the persons referred to in clause 1.2 of Schedule 1;
- (t) **General Meeting** means a general meeting of Members and includes the AGM;
- (u) **Institute** means the Australian Property Institute an incorporated association registered in the state of South Australia;
- (v) **Member** means a person admitted to the Company as an member under clause 5;
- (w) **Nominations Committee** means the nominations committee appointed pursuant to clause 14.1(b)(ii);
- (x) **Objects** means the objects of the Company in clause 2;
- (y) **Official Position** means, in connection with any Division holds a position, whether elected or appointed, as President, vice president, secretary, treasurer, councillor or equivalent of that Division;
- (z) **Policy** means a policy made under clauses 6.2 and 15;
- (aa) **President** means a president of a Division;
- (bb) **Purpose Statement** means the purpose of the Company as set out in clause 2 of Schedule 2 and as amended from time to time;
- (cc) **Register of Members** means the membership register maintained by the Company Secretary pursuant to clause 5.8(a);
- (dd) **Special Resolution** means a resolution that must be passed by a majority of at least 75% of votes exercisable by Voting Members at the relevant General Meeting in accordance with this Constitution and/or the Corporations Act;
- (ee) **State** means the States of Australia, which shall be deemed to include each of the Northern Territory and the Australian Capital Territory;
- (ff) **Subscription** means any money owed by a Member to the Company as set out in this Constitution or the Policies;
- (gg) **Telecommunications Meeting** means a meeting held by telephone, video, any other technology (or any combination of these technologies), which permits each Director at a meeting of Directors to communicate with any other participant;
- (hh) **Terms of Reference** means a terms of reference for any Committee established in accordance with clause 14;
- (ii) **Transitional Provisions** means the provisions referred to at clause 9.2 and as set out at Schedule 1 to this Constitution;
- (jj) **Vision** means the vision of the Company as set out in clause 1 of Schedule 2 and as amended from time to time;
- (kk) **Voting** means voting by way of ballot, poll, electronic means or any other method determined by the Directors or as set out in the Policies from time to time; and
- (ll) **Voting Member** means:

- (i) in relation to a General Meeting, those Members present in person or by proxy and entitled and eligible to vote; and
- (ii) in relation to a ballot held electronically, means those Members entitled and eligible to vote on the day the ballot is issued.

1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to the Company is a reference to the Australian Property Institute Limited ACN XXX XXX XXX, a company limited by guarantee;
- (b) a reference to a Member present at a General Meeting means the Member present in person or by proxy;
- (c) a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) words importing any gender include all other genders;
- (e) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (f) a reference to an organisation includes a reference to its successors;
- (g) the singular includes the plural and vice versa;
- (h) a reference to a law includes regulations and instruments made under it;
- (i) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (j) the words include, includes, including and for example are not to be interpreted as words of limitation;
- (k) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (l) writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

1.3 Corporations Act

In this Constitution:

- (a) unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;

- (b) the provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company;
- (c) in the event that any of the provisions in this Constitution are in breach of any of the provisions of the Corporations Act then the provisions will be read down to the extent that they will comply with the Corporations Act and any provision that is in breach of the Corporations Act will be deemed to be struck out and will not form part of this Constitution; and
- (d) in the event that the Corporations Act permits an act to be done, a decision to be made or a meeting to be held in a way that is more convenient for the Company or the Directors or is more favourable to the Members or the Directors than as required or permitted by this Constitution then the Directors may, but will not be obliged to, make the decision, take the action, give the notice or hold the meeting or do the particular thing as permitted and in the time and in the manner permitted by the Corporations Act.

1.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

2. Objects

2.1 The Objects of the Company are to:

- (a) carry on the conduct of the Company in conformity with the Vision and Purpose Statement of the Company;
- (b) provide education to Members and property professionals including but not limited to continuing professional development;
- (c) provide advocacy with key industry stakeholders in the areas of influential relationships, legislative design and standards of professional practice in both the private and public sectors;
- (d) provide services for Members in the areas including, but not limited to, management and leadership, career advisory, industry research, access to information, access to insurance services, advocacy, networking both nationally and internationally;
- (e) conduct industry research;
- (f) develop, maintain and uphold professional standards; and
- (g) undertake any other actions or activities necessary, incidental or conducive to advance these Objects and the conduct of the business activities of the Company.

3. Powers

- 3.1** Solely for furthering the Objects under clause 2, the Company, in addition to the any other powers it has under the Corporations Act, has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Corporations Act.

4. Income and Property of Company

4.1 Sole Purpose

The income and property of the Company will only be applied towards the promotion of the Objects of the Company.

4.2 Payments to Members

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) as reimbursement for expenses properly incurred on behalf of the Company; or
- (c) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (d) in return for services as a Director but only in accordance with the provisions of this Constitution; or
- (e) of reasonable rent for premises let to the Company by them.

5. Membership

5.1 Categories of Members and right to attend and vote

As at the date of this Constitution, Members of the Company shall fall into one of the following categories:

- (a) Life Fellows who have the right to attend, speak and vote at General Meetings of the Company;
- (b) Fellows who have the right to attend, speak and vote at General Meetings of the Company;
- (c) Associates who have the right to attend, speak and vote at General Meetings of the Company;
- (d) Provisional Members who have the right to attend General Meetings of the Company but have no right to vote or speak;
- (e) Affiliate Members who have no right to attend General Meetings of the Company and no right to vote or speak; or

- (f) such other category of Member as may be created by the Board in accordance with this Constitution and the Policies.

5.2 Life Fellows

Life Fellowship is the highest honour that can be bestowed by the Company for longstanding and valued service to the Company.

5.3 Admission of Members

A person will become a Member, and the Directors will direct the Company Secretary to record their name in the Register of Members kept by the Company, only upon meeting the criteria applicable to the relevant category of membership set out in this Constitution and the Policies and provided the Member has submitted an application, which is accepted by the Directors, in which the Member undertakes to:

- (a) be bound by this Constitution and the Policies (including Policies specific to the relevant category of Membership);
- (b) pay the fees and subscriptions determined to apply to the Member under clause 7; and
- (c) support the Company in the encouragement and promotion of its Objects.

5.4 Subject to this Constitution the Policies of the Company will set out:

- (a) the categories of Membership;
- (b) the criteria to be met by each category of Member;
- (c) the categories of Affiliate Members and the privileges and benefits of each category of Affiliate Member which shall not include the right to receive notice, attend or to vote at, General Meetings; and
- (d) the procedure for suspending or cancelling Membership.

5.5 At the time of adoption of this Constitution, the first Members of the Company shall be those persons who were Members of the Institute immediately before the incorporation of the Company.

5.6 A Member agrees to comply with this Constitution and the Policies and support the Company and the Objects.

5.7 A Member is entitled to any benefits of Membership prescribed to apply to Members in the Constitution and Policies.

5.8 General

- (a) The Company Secretary must keep a Register of Members in accordance with the Corporations Act.

- (b) No Member whose Membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of Membership.
- (c) Membership is personal to each Member. No Member shall, or purport to, assign the rights comprising or associated with Membership to any other person and any attempt to do so shall be void.
- (d) A Member must treat all staff, contractors and representatives of the Company with respect and courtesy at all times.
- (e) A Member must not act in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company.

5.9 Limited Liability

Members have no liability in that capacity except as set out in clause 20.

5.10 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) death;
- (c) the termination of their Membership according to this Constitution or the Policies;
- (d) without limiting the foregoing, that Member no longer meeting the requirements for Membership according to clause 5.4.

5.11 Resignation

For the purposes of clause 5.10(a), a Member may resign as a Member of the Company by giving 14 days written notice to the Directors.

5.12 Forfeiture of Rights

A Member who ceases to be a Member shall forfeit all right in and claim upon the Company or the Directors for damages or otherwise, or claim upon the property of the Company including its intellectual property rights.

5.13 Divisions

- (a) The Company will recognise only one Division in each State for ensuring the efficient administration of the Company in the whole of that State in accordance with the Policies as determined by the Directors. For the avoidance of doubt, Divisions are not separate legal entities and at all times are subject to the Policies and the direction or delegations of the Directors; and
- (b) at the time of adoption of this Constitution, the Divisions of the Company will be those Divisions which are recognised by the Company as the recognised Division in their respective State.

6. Standards and Discipline of Members

6.1 Jurisdiction

All Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Company whether under the Policies or under this Constitution.

6.2 Professional Standards Policies

- (a) The Directors may make a Policy or Policies:
 - (i) for the hearing and determination of:
 - (A) grievances by any Member who feels aggrieved by a decision or action of the Company (or a Division); and
 - (B) disputes between Members relating to the conduct or administration of the Company; and
 - (C) complaints by a member of the public;
 - (ii) for the discipline of Members;
 - (iii) for the formation and administration of a Professional Standards Committee which must be independent of any party before it on the matter which is the subject of the appeal in question; and
 - (iv) for the termination of Members.
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member has:
 - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies or any other resolution or determination of the Directors or any duly authorised Committee; or
 - (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company; or
 - (iii) prejudiced the Company or brought the Company or themselves into disrepute;for investigation or determination either under the procedures set down in the Policies or by such other procedure and/or by persons as the Directors consider appropriate.

7. Fees and Subscriptions

7.1 The Directors must determine from time to time:

- (a) the amount (if any) payable by an applicant for Membership;
- (b) the amount of the annual Subscription fee payable by each Member, or any category of Members;
- (c) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
- (d) the payment method and the due date for payment.
- (e) Each Member must pay to the Company the amounts determined under this clause 7.

7.2 Non-Payment of Fees

Subject to clause 7.3(a), the right of a Member to attend and vote at a General Meeting is suspended while the payment of any subscription or other amount determined under clause 7 is in arrears greater than 30 days.

7.3 Deferral or reduction of Subscriptions

- (a) The Directors may defer the obligations of a Member to pay a Subscription or other amount, or reduce (including to zero) the subscription or other amount payable by a Member, if the Directors are satisfied that:
 - (i) there are reasonable grounds for doing so;
 - (ii) the Company will not be materially disadvantaged as a result; and
 - (iii) the Member agrees to pay the deferred or (if greater than zero) the reduced Subscription or other amount within a time fixed by the Directors.
- (b) If the Directors defer or reduce a Subscription or other amount payable by a Member under this clause 7.3, that Member will retain their rights to attend and vote at a General Meeting, unless otherwise specified by the Directors.

8. General Meetings

8.1 Annual General Meeting

AGMs of the Company are to be held:

- (a) according to the Corporations Act; and
- (b) at a date and venue determined by the Directors.

8.2 Power to convene General Meeting

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Corporations Act.
- (b) The Members eligible to vote may convene a General Meeting, which must comply with the requirements of the Corporations Act.

8.3 Notice of a General Meeting

- (a) Notice of a General Meeting of Members must be given:
 - (i) to all Members entitled to attend the General Meeting, the Directors, and the auditor of the Company; and
 - (ii) in accordance with clause 18 and the Corporations Act.
- (b) At least 45 days prior to the proposed date of the AGM, the CEO will request from Members who have the right to attend and vote at the meeting, notices of motions, which must be received no less than 28 days prior to the AGM.
- (c) At least 21 days notice of the time and place of a General Meeting must be given, together with:
 - (i) all information required to be included in accordance with the Corporations Act;
 - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
 - (iii) where applicable, any notice of motion received from any Member, who have the right to attend and vote at the meeting, or Director in accordance with the Corporations Act; and
 - (iv) where applicable, a list of all nominations recommended to the Members by the Nominations Committee for positions to be elected at the relevant General Meeting.

8.4 No other business

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

8.5 Cancellation or postponement of General Meeting

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Corporations Act;
- (b) the Directors at the request of Members; or
- (c) a court.

8.6 Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Member entitled to attend the General Meeting; and
- (b) each other person entitled to notice of a General Meeting under the Corporations Act.

8.7 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as, or different, to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

8.8 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days notice of that General Meeting is required to be given by clause 8.22 or the Corporations Act.

8.9 Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

8.10 Representative, proxy or attorney at postponed General Meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

8.11 Non-receipt of notice

The non-receipt of a notice convening, cancelling or postponing a General Meeting, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

8.12 Right to appoint proxy

- (a) A Voting Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Corporations Act.
- (b) A proxy may be revoked by the appointing Member at any time by notice in writing to the Company.

8.13 Form of proxy

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Corporations Act.

8.14 Attorney of Member

A Member may appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

8.15 Lodgment of proxy or attorney documents

- (a) A proxy or attorney of a Voting Member may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received by the Company:
 - (i) at the office, the electronic address specified for that purpose in the notice of meeting; and
 - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by the Company.

8.16 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy or attorney:

- (i) to agree to a General Meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) to speak to any proposed resolution; and
 - (iii) to demand or join in demanding a poll on any resolution.
- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy or attorney on how to vote on those resolutions, the appointment is taken to confer authority:
- (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion; and
 - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
- (i) at the postponed or adjourned meeting; or
 - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- (e) The instrument appointing a proxy may provide for the Chair to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

8.17 Proceedings at General Meeting

- (a) Number for a quorum

The number of Members who must be present in person and eligible to vote for a quorum to exist at a General Meeting is twenty (20).

- (b) Requirement for a quorum

An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.

(c) Quorum and time

If, within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:

- (i) if convened by, or on requisition of, Members, is dissolved; and
- (ii) in any other case stands adjourned to such other day, time and place as the Chair determines.

8.18 Adjourned meeting

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those Members then present shall constitute a quorum.

8.19 Chair to preside over General Meetings

- (a) The Chair is entitled to preside as Chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
 - (i) a Director (or other person) chosen by a majority of the Directors present; or
 - (ii) the only Director present; or
 - (iii) a Voting Member who is chosen by a majority of the Voting Members present.

8.20 Conduct of General Meetings

- (a) The Chair of the General Meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;
 - (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chair under this clause 8.20 is final.

8.21 Adjournment of General Meeting

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.

- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the Voting Members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

8.22 Notice of adjourned meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) Where a meeting is adjourned for 30 days or more, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

8.23 Questions decided by majority

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

8.24 Equality of votes

Where an equal number of votes are cast in favour of and against the resolution, the Chair may exercise a second and casting vote in addition to the Chair's deliberate vote.

8.25 Declaration of results

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the Chair that a resolution has on a show of hands been lost or carried or lost or carried unanimously, or by a particular majority and an entry to that effect in the minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

8.26 Poll

- (a) If a poll is properly demanded in accordance with the Corporations Act or by the Chair of the meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

8.27 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
 - (i) may not be raised except at that meeting; and
 - (ii) must be referred to the Chair, whose decision is final.
- (b) A vote not disallowed under the objection, is valid for all purposes.

8.28 Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote, the Chair must decide it and the Chair's decision made is final.

8.29 Voting of Members

- (a) At a General Meeting, on a show of hands and on a poll or any other method of Voting, each of the Voting Members shall have the votes set out in this clause 8.29.
- (b) Each Voting Member will receive one vote.
- (c) The Voting Members shall be:
 - (i) Life Fellows;
 - (ii) Fellows;
 - (iii) Associates;
 - (iv) such other person in a category of Membership which has been granted voting rights pursuant to this Constitution and the Policies.

8.30 Election of Directors

- (a) Elections for Elected Directors shall be by ballot in accordance with this clause 8.30 at the relevant General Meeting on papers prepared by the CEO.
- (b) The ballot for an election to fill one or more Elected Director positions will be conducted in accordance with the following procedure:
 - (i) if at the close of nominations and following a recommendation by the Nominations Committee to the Directors for an election to fill one or more Elected Director positions the number of nominees is equal to or less than the number of positions to be filled, then no election is to take place and those eligible nominees will be taken to be elected to fill one or more of the Elected Director positions; and
 - (ii) if at the close of nominations and following a recommendation by the Nominations Committee to the Board for an election to fill one or more

Elected Director positions there are more nominees than the number of positions to be filled, a ballot will be conducted electronically and the nominee/s who receives the highest number of votes will be elected to fill the Elected Director positions. If two or more eligible nominees get the same number of votes and at the relevant time there is only one Elected Director position to be filled the Chair may exercise a casting vote in addition to the Chair's deliberate vote.

9. Directors

9.1 Number of Directors

- (a) There must be not less than seven (7) and not more than nine (9) Directors.
- (b) Subject to clause 9.1(a), not more than seven (7) Directors are to be elected by the Members (**Elected Directors**), and not more than two (2) Directors are to be appointed under clause 9.10 (**Appointed Directors**).
- (c) Not more than two (2) Elected Directors who reside in the one State are eligible to be elected.
- (d) The First Elected Directors and First Appointed Directors shall be as set out in the Transitional Provisions.

9.2 Transitional Provisions

In relation to the election and appointment of Directors at and from the commencement of this Constitution, the Transitional Provisions will be in force until such time as they have no effect.

9.3 Eligibility

- (a) For the period from the commencement of this Constitution a person who:
 - (i) is an employee of the Company; or
 - (ii) holds an Official Position with a Division; or
 - (iii) is the President;(each a **Disqualifying Position**) may not hold office as a Director.
- (b) A Director who accepts a Disqualifying Position must notify the other Directors of that fact immediately and is deemed to have vacated office as a Director with the position being filled as a casual vacancy. In the event that this results in there being no remaining Directors, an election for Directors will be held in accordance with this clause 9.
- (c) Notwithstanding clause 9.3(a) a person elected or appointed as a Director at the time of holding a Disqualifying Position must resign from that Disqualifying Position within 30 days.

- (d) No person shall be eligible to stand as an Elected Director or be an Appointed Director if, during the proposed term of office, they would be in breach of clause 9.8.
- (e) An Elected Director must be a Member of the Company.
- (f) The Directors may determine position or role descriptions or necessary qualifications for Director positions and shall advise the Nominations Committee of such role description and qualifications and in making a recommendation to the Members and the Directors the Nominations Committee may take account of any Policy determined by the Directors.

9.4 Nomination for election

- (a) At least 90 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the CEO will request from Members nominations (which comply with this clause 9.4) for elections to positions falling vacant, which must be received no less than 60 days prior to the AGM.
- (b) Any Member may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the next AGM.
- (c) A nomination must:
 - (i) be in the form required by the Directors or this Constitution;
 - (ii) signed by the nominator and nominee who must be Members;
 - (iii) be submitted to the Nominations Committee appointed by the Directors to administer nominations for Directors; and
 - (iv) the Nominations Committee shall make recommendations to the Directors in accordance with the Policies and for the avoidance of doubt the primary function of the Nominations Committee is to ensure the appropriate skill sets are satisfied when making recommendations to the Directors.

9.5 Term of office of Directors generally

Subject to clauses, 9.1, 9.3, 9.8 and 9.9, an Elected Director will hold office for a term of two years.

9.6 Office held until end of meeting

A retiring Elected Director holds office until the end of the General Meeting at which that Elected Director retires but, subject to the requirement of this Constitution, including clause 9.8, is eligible for re-election.

9.7 Elected Director elected at General Meeting

- (a) At a General Meeting:
 - (i) at which an Elected Director retires; or

- (ii) at the commencement of which there is a vacancy in the office of an Elected Director,

there will be a vote of the Voting Members conducted in accordance with clause 8.30 to fill the vacancy.

- (b) Subject to clauses 9.8 and 9.13, an Elected Director elected under this clause 9.7 takes office at the end of the meeting at which they are elected for a period of two (2) years.

9.8 Maximum term of office for Directors

- (a) Subject to clause 9.8(c) a Director may not serve more than two (2) terms as a Director (whether they be consecutive or not consecutive), including where one of the terms is as an Appointed Director.
- (b) For the purpose of clause 9.8(a), service:
 - (i) by a person filling a casual vacancy in an Elected Director position under clause 9.9(b) for any period will be treated as a term;
 - (ii) by a person in an Appointed Director position under clause 9.10 for any period will be treated as a term; and
 - (iii) by a First Elected Director prior to their resignation in accordance with the Transitional Provisions will be treated as a term.
- (c) A Director who has served a maximum term in accordance with clause 9.8(a) shall not be eligible to be a Director until the passing of a minimum of six (6) years from the end of their maximum term of service.

9.9 Casual vacancy in ranks of Elected Directors

- (a) The Directors may at any time appoint a person to fill a casual vacancy (as caused pursuant to clause 9.14) in the rank of the Directors.
- (b) A person appointed under clause 9.9(a) holds office until the next Annual General Meeting at which time they can offer themselves for re-election or in the case of an Appointed Director they can offer themselves for re-appointment by the Directors.

9.10 Appointed Directors

- (a) In addition to the Elected Directors, the Directors may themselves appoint up to two (2) persons to be Directors because of their special business acumen and/or technical skills. These persons will be known as the **Appointed Directors**.
- (b) The First Appointed Directors as set out in the Transitional Provisions will be appointed by the Directors on a recommendation from the Nominations Committee in accordance with a criteria determined by the Directors.
- (c) Subject to clauses 9.8 and 9.13, an Appointed Director holds office for a term determined by the Directors not to exceed two (2) years and the appointment will be on such other terms as the Directors may determine.

- (d) A person may only serve two (2) terms as an Appointed Director but, subject to the clause 9.8(c) and any other requirements of this Constitution, are otherwise eligible to be elected to an Elected Director position if they meet the eligibility criteria outlined in clause 9.3.
- (e) The Directors following a recommendation from the Nominations Committee may at any time appoint a person to fill a casual vacancy (as defined in clause 9.9) in the rank of the Appointed Directors and decide such appointment shall be for the unexpired term of the retiring Appointed Director and to ensure the continuity of the rotation of Appointed Directors.

9.11 Remuneration of Directors

- (a) Subject to clause 9.14, a Director may be paid for services as a Director provided the following conditions are satisfied:
 - (i) a resolution is approved by the Members in General Meeting; and
 - (ii) such payment complying with the Corporations Act; and
 - (iii) following the recommendations of an external report commissioned by the Directors into board remuneration which shall be conducted by a suitably qualified person or organisation.
- (b) Directors of the Company may also, with the approval of the Directors, and subject to the Corporations Act be paid or reimbursed as the case may be, by the Company for:
 - (i) services rendered to it other than as a Director; and
 - (ii) their reasonable travelling, accommodation and other expenses when:
 - A. travelling to or from meetings of the Directors, a Committee or the Company; or
 - B. otherwise engaged in the affairs of the Company.

9.12 Honorarium

The Company may in General Meeting by ordinary resolution determine to pay a Director an ex-gratia payment.

9.13 Removal of Director

- (a) Subject to the provisions of the Corporations Act, the Company may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with clause 9.13(a) cannot be re-appointed as a Director within three (3) years of their removal.

9.14 Vacation of office

The office of a Director becomes vacant in accordance with the Corporations Act and also if the Director:

- (a) is removed in accordance with clause 9.13;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns from office by notice in writing to the Company;
- (d) accepts appointment to, or becomes the holder of, a Disqualifying Position as set out in clause 9.3 and does not resign from that position within 30 days;
- (e) is not present at three (3) consecutive Directors' meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Act.

9.15 Alternate Director

A Director cannot appoint an alternate.

10. Powers and Duties of Directors

10.1 Directors to manage the Company

The Directors are to manage the Company's business and may exercise those of the Company's powers that are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in General Meeting.

10.2 Specific powers of Directors

Without limiting clause 10.1, the Directors may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person and in all cases to do all things necessary in pursuance of the Company's Objects.

10.3 Time, etc

Subject to the Corporations Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may at their absolute discretion extend that time, period or date as they think fit.

10.4 Appointment of attorney

The Directors may appoint any person to be the Company's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions they think fit.

10.5 Provisions in power of attorney

A power of attorney granted under clause 10.4 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

10.6 Delegation of powers

- (a) Without limiting clause 12.4 the Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to the CEO or any employee of the Company or any other person as they think fit.
- (b) Any delegation by the Directors of their powers:
 - (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
 - (ii) may be either general or limited in any way provided in the terms of the delegation;
 - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) may include the power to delegate; and
 - (v) must be entered into the Delegations Register which shall be maintained by the Company Secretary.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

10.7 Code of Conduct and Board Charter

The Directors must:

- (a) adopt a code of conduct and board charter for Directors; and
- (b) periodically review the code of conduct and board charter in light of the general principles of good corporate governance but in any event such review must be conducted annually.

11. Proceedings of Directors

11.1 Directors meetings

- (a) Subject to clause 11.1(b), the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

- (b) The Directors must meet at least four (4) times in each calendar year.

11.2 Questions decided by majority

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

11.3 Chair's casting vote

The Chair of the meeting will have a casting vote in addition to the Chair's deliberate vote.

11.4 Quorum

The quorum necessary for the transaction of business at a meeting will be a majority of the total number of Directors or such greater number as may be fixed by the Directors.

11.5 Effect of vacancy

- (a) The continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

11.6 Convening meetings

- (a) A Director may, and the CEO on the request of a Director must, convene a Directors' meeting.
- (b) Notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors). Notice of a meeting of Directors may be given in person, or by post or by telephone or other electronic means.
- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to the Company in person or by post or by telephone or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at a meeting of Directors.

11.7 Election of Chair

- (a) The Directors may elect one of their number to be the Chair by a majority vote.

- (b) The Director elected to be Chair under clause 11.7(a) will remain Chair for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the Chair specifies a fixed term for the appointment.
- (c) Despite clause 11.7(b), if:
 - (i) there is no person elected as Chair; or
 - (ii) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chair is unwilling to act,the Directors present may elect one of their number to be Chair of the meeting.

11.8 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors, subject to the quorum set out in clause 11.4 being satisfied, vote in favour of the resolution and sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. A document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of clause 11.8(a) and is taken to be signed when received by the Company in legible form.
- (c) The resolution is passed when the last Director required to achieve a majority signs and submits the resolution pursuant to this clause 11.

11.9 Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office.

11.10 Directors' Interests

- (a) A Director shall declare to the Directors any material personal interest or related party transaction (**Conflict of Interest**), as defined by the Corporations Act, as soon as practicable after that Director becomes aware of their Conflict of Interest in the matter.
- (b) Where a Director declares a Conflict of Interest, that Director must absent himself or herself from discussion of such matter unless otherwise determined by the Directors and shall not be entitled to vote in respect of such matter.

- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The Conflict of Interest shall be entered into the Conflict Register which shall be maintained by the Company Secretary.

11.11 Minutes

The Directors must cause minutes of meetings to be made and kept according to the Corporations Act.

11.12 Telecommunication Meetings of the Board of Directors

- (a) A Directors' Meeting may be held by means of a Telecommunication Meeting, provided that:
 - (i) the number of Directors (as applicable) participating is not less than a quorum required for a Directors' Meeting (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this clause 11.12.

11.13 Conduct of Telecommunication Meeting

The following provisions apply to a Telecommunication Meeting of the Directors:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must announce his or her presence to all other persons taking part in the meeting;
- (d) a person may not leave a Telecommunication Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the Chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and
- (f) a minute of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

12. Chief Executive Officer

12.1 Appointment of CEO

The Directors will appoint a CEO.

12.2 Powers, duties and authorities of CEO

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Directors.

12.3 Suspension and removal of CEO

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

12.4 Delegation by Directors to CEO

The Directors may delegate to the CEO the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) employ and terminate the employment of employees of the Company;
- (c) manage the financial and other reporting mechanisms of the Company;
- (d) approve and incur expenditure subject to specified expenditure limits and delegations entered into the Delegations Register;
- (e) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Company; and
- (f) any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

12.5 CEO to attend meetings

The CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Company, all meetings of the Directors and any Committees and may speak on any matter that is being discussed in the meeting, but does not have a vote.

13. Company Secretary

13.1 Appointment of Company Secretary

There must be at least one Company Secretary who is to be appointed by the Directors.

13.2 Suspension and removal of Company Secretary

The Directors may suspend or remove a Company Secretary from that office.

13.3 Powers, duties and authorities of Company Secretary

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

13.4 Registers

The Company Secretary shall establish and maintain the Delegations Register, the Conflicts Register and the Register of Members.

14. Committees

14.1 Committees

- (a) The Directors may delegate any of their powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation.
- (b) The Committees of the Company may include, but will not be limited to:
 - (i) Finance, Audit and Risk Committee;
 - (ii) Nominations Committee;
 - (iii) Governance and Strategy Committee; and
 - (iv) Presidents' Forum.
- (c) The Committees formation and functions will be set out in the Policies as determined by the Directors from time to time and the Directors will approve the Terms of Reference in respect of each Committee with the Terms of Reference reviewed as required but in any event no less than annually; and
- (d) Each Committee specified in this clause or constituted by the Directors in accordance with this clause, will comprise persons as determined by the Directors and with the Chair of the Committee also appointed by the Directors.

14.2 Presidents' Forum

- (a) Presidents' Forum will meet four (4) times annually and will comprise the Chair and each President or a delegate nominated by the President.

14.3 Powers delegated to Committees

- (a) A Committee must exercise the powers delegated to it according to the terms of the delegation and set out in the relevant Terms of Reference and any directions of the Directors.
- (b) A Committee must act in accordance with the Terms of Reference of that Committee as determined by the Directors.
- (c) Powers delegated to and exercised by a Committee are taken to have been exercised by the Directors.

14.4 Committee meetings

Unless otherwise determined by the Directors, Committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

15. Policies

15.1 Making and amending Policies

- (a) In addition to the Policies made pursuant to clause 6.2, the Directors may from time to time make Policies:
 - (i) that are required to be made under this Constitution; and
 - (ii) which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those Policies.
- (b) The Policies referred to in clauses 6.2 and 15.1(a) take effect 28 days after the service of the Policy on the Members and shall be in force and effect on and from that date.

15.2 Effect of Policies

A Policy:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution; and
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution.

16. Inspection of Records

16.1 Right of the Members to inspect records

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as required by law.

17. Accounts

17.1 Accounting Records

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act.

17.2 Auditor

A properly qualified auditor or auditors shall be appointed or removed by the Directors in accordance with Corporations Act and the remuneration of such auditor or auditors will be fixed and duties regulated in accordance with the Corporations Act. The report of the auditors will be distributed to Members in accordance with the Corporations Act.

18. Service of Documents

18.1 Document Includes notice

In this clause 18, document includes a notice.

18.2 Methods of service on a Member

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register of Members or an alternative address nominated by the Member; or
- (c) by sending it to an electronic address nominated by the Member.

18.3 Methods of service on the Company

A Member may give a document to the Company:

- (a) by delivering it to the registered office of the Company (the **Registered Office**);
- (b) by sending it by post to the Registered Office; or
- (c) by sending it to an electronic address nominated by the Company.

18.4 Post

A document sent by post if sent to an address:

- (a) in Australia, may be sent by ordinary post; and
- (b) outside Australia, or sent from an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the fifth business day after the date of its posting.

18.5 Electronic transmission

If a document is sent by electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the electronic transmission; and
- (b) have been delivered on the business day following its transmission.

19. Indemnity

19.1 Indemnity of officers

- (a) This clause **19** applies to every person who is or has been:
 - (i) a Director, CEO, or Company Secretary of the Company; and
 - (ii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Directors in each case determine.
- (b) Each person referred to in paragraph **19.1(a)** is referred to as an **Indemnified Officer** for the purposes of the rest of clause **19**.
- (c) The Company will indemnify each Indemnified Officer out of the property of the Company against:
 - (i) every liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company; and
 - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company, unless:
 - (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
 - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

19.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

19.3 Deed

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by clause 19.1 on the terms the Directors think fit (as long as they are consistent with clause 19).

20. Winding Up

20.1 Contributions of Members on winding up

- (a) Each Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their membership ceases.
- (b) The contribution is for:
 - (i) payment of the Company's debts and liabilities contracted before their membership ceased;
 - (ii) the costs of winding up; and
 - (iii) adjustment of the rights of the contributories among themselves; and such amount not to exceed \$1.00.

20.2 Excess property on winding up

- (a) If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
 - (i) having objects similar to those of the Company; and
 - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) That body is, or those bodies are, to be determined by the Voting Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

21. Amendments to Constitution, Vision and Purpose Statement

- 21.1** This Constitution may be amended or repealed in accordance with this Constitution and the Corporations Act
- 21.2** Amendments to this Constitution will be made by Special Resolution passed at either an Annual General Meeting or General Meeting.
- 21.3** A Special Resolution amending, adopting or repealing the Constitution takes effect:
- (a) If no later date is specified in the Special Resolution, then on the date on which the resolution is passed; or
 - (b) On a later date specified in, or determined in accordance with, the Special Resolution.
- 21.4** For the avoidance of doubt, the Vision and Purpose Statement of the Company may be amended from time to time by the Directors in the ordinary course of the Directors' business and such change does not require a Special Resolution.

SCHEDULE 1

1. Transitional Provisions

1.1 Definitions

In these Transitional Provisions to the Constitution unless the context requires otherwise:

- (a) **“First Appointed Directors”** means the persons referred to in clause 1.3 of this Schedule 1 who will take office from the date this Constitution commences;
- (b) **“First Elected Directors”** means the persons referred to in clause 1.2 of this Schedule 1 who shall take office pursuant to their appointment by the Board;

1.2 The First Elected Directors will be the members of the governing body of the Institute elected by their Division prior to the Date of this Constitution (**National Councilors**) as follows:

- (a) National Councilor elected by the Australian Capital Territory Division;
- (b) National Councilor elected by the New South Wales Division;
- (c) National Councilor elected by the Queensland Division;
- (d) National Councilor elected by the South Australian Division;
- (e) National Councilor elected by the Tasmanian Division;
- (f) National Councilor elected by the Victorian Division; and
- (g) National Councilor elected by the Western Australian Division.

1.3 The First Appointed Directors will be:

- (a) an Appointed Director appointed by the Directors in accordance with clause 9.10; and
- (b) the Specialist National Councilor – Legal who was a member of the governing body of the Institute prior to the Date of this Constitution.

1.4 At the first Annual General Meeting following the adoption of this Constitution:

- (a) four (4) of the First Elected Directors will retire from office as follows:
 - (i) National Councilor elected by the Australian Capital Territory Division;
 - (ii) National Councilor elected by the South Australian Division;
 - (iii) National Councilor elected by the Tasmanian Division; and
 - (iv) National Councilor elected by the Western Australian Division.
- (b) the Appointed Director, Specialist National Councilor – Legal appointed under clause 1.3(b) will retire from office.

1.5 Those retiring First Elected Directors pursuant to clause 1.4 of this Schedule 1 will, subject to the requirements of this Constitution, be eligible for re-election by the Members as Elected Directors.

1.6 For the avoidance of doubt the following First Elected Directors shall remain in office until the second Annual General Meeting following the adoption of this Constitution:

- (a) National Councilor elected by the New South Wales Division;

- (b) National Councilor elected by the Queensland Division; and
 - (c) National Councilor elected by the Victorian Division.
- 1.7** The four (4) vacancies created by the retirement of the First Elected Directors pursuant to clause 1.4 of this Schedule 1 will be filled as follows:
- (a) At least 45 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the CEO will request from Members nominations (which comply with this clause 9.4) for elections to positions falling vacant, which must be received no less than 28 days prior to the Annual General Meeting;
 - (b) Any Member may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the Annual General Meeting however only nominees from the Australian Capital Territory, South Australian, Tasmanian and Western Australian Divisions will be accepted;
 - (c) A nomination must:
 - (iii) be in the form required by the Directors or this Constitution;
 - (iv) signed by the nominator and nominee who must be Members; and
 - (v) be submitted to the Nominations Committee or any Committee appointed by the Directors to administer nominations for Directors.
 - (d) Members from the Australian Capital Territory, South Australian, Tasmanian and Western Australian Divisions will vote by electronic ballot for the nominees from their Division;
 - (e) The nominee from each Division with the highest number of votes will be elected as a Director for a period of two years in accordance with the Constitution.
- 1.8** The vacant Appointed Director position created in accordance with clause 1.4(b) of this Schedule 1 will be filled in accordance with the provisions of clause 9.10.
- 1.9** At the second Annual General Meeting following the adoption of this Constitution:
- (a) the remaining three (3) First Elected Directors pursuant to clause 1.6 of this Schedule 1 above will retire from office. Those retiring First Elected Directors will, subject to the requirements of this Constitution, be eligible for re-election by the Members; and
 - (b) the vacant positions created by the retirement of the remaining three (3) First Elected Directors will be filled in accordance with the provisions of clause 8.30.
- 1.10** For the avoidance of doubt all positions whether Elected Directors or Appointed Directors during the operation of the Transitional Provisions shall be referred to the Nominations Committee which shall make recommendations to the Members through the Board having regard to the skills assessment of the Director nominees and as otherwise set out in this Constitution.
- 1.11** Immediately following the second Annual General Meeting, these Transitional Provisions will cease to have effect.

SCHEDULE 2

1. Vision:

The API is committed to being a Members First organisation for property professionals with all of the API's efforts guided by the API's values of Independence, Objectivity and Authority. The API aims to be the home for property professionals in Australia.

2. Purpose Statement:

To achieve the Vision, the API's purpose is to be the leading and contemporary membership organisation for property professionals that develops and supports our members who advise community and business

For the purposes of this Schedule 2, API means the Company.

Australian Property Institute
Limited

Membership Policy

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Membership Policy

Australian Property Institute Limited

1. Rules Governing Conduct of Members

- 1.1 The Board of Directors (**the Board**) of the Australian Property Institute Limited (**the API**) shall from time to time prepare and distribute to the Members a new edition of the Code of Professional Practice.
- 1.2 The Chief Executive Officer will give notice in writing of the amendments to each Member and Affiliate of the API.

2. Admission as a Provisional Associate

- 2.1 Any application for Provisional Associate Membership of the API will be made to the Chief Executive Officer:
 - (a) on forms prescribed by the Board; and
 - (b) accompanied by the fees prescribed by the Board; and
 - (c) with the proof of the qualifications required by the Board.

The fees will be payable to the API at the time of application.

- 2.2 Every applicant for admission as a Provisional Associate Member must:
 - (a) be a person of good character and repute; and
 - (b) have passed the examinations in an accredited course of study in property as required by the Board for Provisional Associate Membership.
- 2.3 Every application received that satisfies Section 2.2 will be referred to the Membership Committee for recommendation.

3. Admission as a Provisional Member

- 3.1 Any application for Provisional Membership of the API will be made to the Chief Executive Officer:
 - (a) on forms prescribed by the Board;
 - (b) accompanied by the fees prescribed by the Board; and
 - (c) with proof of the qualifications required by the Board.

The fees will be payable to the API at the time of application.

3.2 Every applicant for admission as a Provisional Member must:

- (a) be of good character and repute;
- (b) have passed any examination and tests required by the Board; or
- (c) have completed an API Endorsed Course or degree equivalent; or
- (d) have completed an API approved partially qualifying degree; and
applications submitted will be referred to the Membership Committee, which will satisfy itself as to whether or not the applicant has a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application; or
- (e) have completed an API approved overseas qualification other than an API approved partially qualifying degree, with less than five years Approved Professional Experience; and
applications submitted will be referred to the Membership Committee, which will satisfy itself as to whether or not the applicant has a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application.

3.3 Applicants who have completed a partially qualifying engineering degree will satisfy the requirements of 3.2(c).

3.4 Any graduate of a course that ceases to be accredited by the API has a maximum of five years after the cessation of accreditation in which to apply for Provisional Membership.

3.5 The Board will consider the recommendations of the Membership Committee but may also inform itself in regard to any application from any other source. The Chief Executive Officer shall notify the applicant of the decision as soon as possible.

3.6 Provisional Members who have completed an API endorsed valuation qualification and have completed a minimum one years Approved Professional Experience in valuation will be eligible to sit a Professional Interview for the designation of Residential Property Valuer.

4. Admission as a Graduate Member

4.1 This category of membership no longer exists.

5. Admission as an Associate Member

5.1 Any application for Associate Membership of the API will be made to the Chief Executive Officer:

- (a) on forms prescribed by the Board;
- (b) accompanied by the fees prescribed by the Board; and
- (c) with proof of the qualifications required by Board.

The fees will be payable to the API at the time of application.

5.2 Every applicant for admission as an Associate Member must:

- (a) be of good character and repute;
- (b) have passed any examinations and tests required by the Board;
- (c) have had such approved professional experience as is required in this Policy.

5.3 Every applicant for admission as an Associate member shall be referred to the Membership Committee which will satisfy itself as to whether or not:

- (a) applicants who have an API accredited Higher Education Bachelor Degree have a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application;
- (b) applicants who have an API approved Higher Education partially qualifying Bachelor Degree will have a period of at least five years Approved Professional Experience gained within the eight years immediately prior to the date of application; or in the case of a partially qualifying degree for Plant & Machinery Valuation, have an aggregated period of at least three years Approved Professional Experience in the five years immediately prior to the date of application;
- (c) applicants who have an API approved Higher Education partially qualifying Bachelor Degree with an API endorsed Higher Education post graduate upgrade qualification have a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application;
- (d) applicants who have an API recognised prior qualification with an API endorsed Higher Education post graduate upgrade qualification have a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application;
- (e) applicants who have an Australian Higher Education Bachelor Degree that is not endorsed or partially qualifying and an API endorsed Higher Education postgraduate upgrade qualification have a period of at least three years Approved Professional Experience gained within the five years immediately prior to the date of application;
- (f) applicants who have an Overseas Degree (deemed equivalent to an Australian Higher Education Bachelor Degree) and an API endorsed Higher Education postgraduate upgrade qualification have a period of at least three years Approved Professional Experience gained within the five years immediately prior to the date of application;
- (g) applicants with an API approved overseas partially qualifying degree (deemed equivalent to an Australian Higher Education Bachelor Degree) have an aggregated period of five years Approved Professional Experience gained within the eight years immediately prior to the date of application including a minimum of one year Approved Professional Experience gained within Australia and successful completion of an Australian Property Law subject delivered by an API endorsed Higher Education provider;
- (h) applicants with an API approved overseas partially qualifying degree (deemed equivalent to an Australian Higher Education Bachelor Degree) with an API endorsed Higher Education post graduate upgrade qualification have a period of at least two years Approved Professional Experience gained within the four years immediately prior to the date of application;

- (i) applicants who have Associate, Fellow or Life Fellow equivalent Membership of a comparable property professional association;
- (j) applicants who have an API approved overseas property specialisation degree (deemed as an Australian Higher Education Bachelor Degree equivalent) have a period of two years Approved Professional Experience gained within the four years immediately prior to the date of application, including a minimum one year Approved Professional Experience gained within Australia and successful completion of an Australian Property Law subject delivered by an API endorsed Higher Education provider, except for applicants from New Zealand where the one year Approved Professional Experience gained within Australia and successful completion of an Australian Property Law subject requirements are waived; or
- (k) applications other than those listed above shall be referred to the National Education Board for clarification.

5.4 If the Membership Committee is satisfied that the applicant satisfies the requirements in Sections 5.2 and 5.3 then the API will conduct a Professional interview and/or practical test and/or such other tests to determine the property knowledge of the applicant as laid down by the National Education Board.

5.5 The Board will consider the recommendations of the Membership Committee but may also inform itself in regard to any application from any other source. The Chief Executive Officer shall notify the applicant of the decision as soon as possible.

5.6 If the Membership Committee is satisfied that the applicant satisfies the requirements of Section 5.2 and has ten years or more of approved professional experience, then the API will need only to conduct a membership induction session as laid down by the National Education Committee.

6. Admission of Members from Comparable Property Professional Associations

6.1 Every applicant for admission as a Provisional Member or Associate Member who is a Member or has been a member of a comparable property professional association must provide evidence of holding or once holding the membership level of Associate, Fellow or Life Fellow or equivalent.

7. Advance in Status from Associate to Fellow

7.1 Every applicant for advancement in status from Associate to Fellow will make application to the Chief Executive Officer:

- (a) on the appropriate form;
- (b) accompanied by such application fee as is determined by the Board.

The fees will be payable to the API at the time of application.

7.2 Every applicant for advancement in status from Associate to Fellow must satisfy the following requirements:

- (a) have been an Associate Member for a period of at least ten years immediately prior to

- the date of application and have practised in the property profession in full time employment for an aggregated total of ten years prior to the date of application;
- (b) be recommended in writing by at least three Fellows to whom the applicant is personally known;
 - (c) have satisfied the Membership Committee that the applicant is a person of good character and repute; and
 - (d) have an established professional reputation and high ethical standards and be held in high esteem within the property professions.
- 7.3 Every applicant for advancement in status from Associate to Fellow must satisfy at least three of the following criteria:
- (a) have served the property professions with distinction;
 - (b) have been engaged in a senior position for at least five years;
 - (c) have been recognised as having a high level of competence in the property profession;
 - (d) have demonstrated substantial managerial or professional ability in a property discipline or have made a substantial contribution to the advancement of the profession or the development and dissemination of property knowledge; or
 - (e) have made a significant personal contribution over a reasonable period to the property profession through serving on the Board or the National Professional Committee or a Divisional Council or Standing Committee, the preparation and delivery of significant papers to conventions or the API Journal or otherwise have been involved in communicating ideas to the profession or in any other way to have gained the respect of his peers for his work for the advancement of the profession.
- 7.4 The members of the Membership Committee shall make such enquires as are necessary to satisfy itself whether in its opinion the applicant conforms with the requirements of the Constitution and this Policy in regard to advancement.
- 7.5 The Chief Executive Officer shall advise the applicant of the decision of the Membership Committee and shall take such necessary action to ensure that the Member is provided with the appropriate certificate.
- 7.6 Any Member whose application for advancement is rejected by the membership Committee may, upon payment of such fee as may be determined by the Board, request the Board in writing that the application be reconsidered.
- 7.7 Upon such application under Section 7.6 being received, the Board may appoint a special committee of three Members that are either Life Fellows or Fellows of the API to review the case, making such investigation of the matter as it may deem necessary.
- 7.8 The findings of the special committee formed under Section 7.7 will be reported to the Board, which will consider the appeal and advise the applicant and the Membership Committee of its decision. Such decision will be final and no further applications will be considered from the applicant for a period of at least two years from the date of the Board's rejection of the application.

8. Election of a Life Fellow

- 8.1 The Board, as provided for in Clause 5 of the Constitution, will consider nominations for elevation to the Membership class of Life Fellow.

9. Examination of Members

- 9.1 The Board may cause examinations to be conducted of persons applying for admission as Members or for advancement in status, and for this purpose may appoint examiners, set courses, subjects and standards, issue notifications and certificates as to qualification, and do all such things in any way referring to such examinations as the Board may determine.
- 9.2 The Board may, in lieu of conducting examinations as referred to in Section 9.1, accept from applicants for Membership or advancement in status, documentary proof of satisfactory completion of such courses or studies conducted by any Australian or foreign tertiary institution.

10. Professional interview, Practical and Other Tests, and Membership Induction

- 10.1 The determination of the amount and type of Approved Professional Experience to be required for Membership will be made by the Board.
- 10.2 The Board on advice from the National Education Committee, and the National Professional Committee will, from time to time, review the guidelines for the professional interview and for the process of membership induction.
- 10.3 The test or tests will be conducted by an examination panel of at least two Members, or two Members of the same certification if relevant, as applied for by the applicant. A membership induction session will be conducted by nominees of the Membership Committee. Examiners must read and be conversant with the document 'Examiners Notes for the Professional Interview' prior to attending the interview.
- 10.4 The Examiners are required to complete the interview in accordance with the Examiner's Notes. In the case of an unsatisfactory professional interview a written record of the applicant's performance against each criteria is to be maintained. This is to be sufficiently detailed so that it may be utilized at some later time to assist an unsuccessful applicant.
- 10.5 The interview process for Admission as an Associate or for the gaining of Certified Practising Valuer or Certified Practising Valuer (Plant and Machinery) may be conducted at the same time or separately.
- 10.6 Examiners will adhere to the provisions of privacy legislation in respect of personal information supplied by applicants, or provided in Referees' Reports.
- 10.7 After reviewing the results of the examination, the Membership Committee will make its recommendations to the Board.
- 10.8 An applicant who fails the professional interview will have a right of appeal to the Board and will be allowed twenty eight days after formal notification in which to exercise this right. This appeal must be in writing directed to the Chief Executive Officer and accompanied by whatever fee is prescribed by the Board.

- 10.9 An applicant who fails and who does not exercise the right of appeal will stand deferred for a period of at least six months from the date of the previous test.
- 10.10 Should an appeal be sustained, the Board, in its absolute discretion, may remit in whole or in part the fee paid in respect of the lodgement of appeal.
- 10.11 If a notice of appeal be lodged, the Membership Committee will arrange for a post examination to be conducted as early as conveniently possible.
- 10.12 The Chief Executive Officer will appoint at least two persons (but excluding those who conducted the original test or tests) to conduct the post examination.
- 10.13 An applicant who fails the post examination will not be permitted to present for another test or tests until a period of twelve months has elapsed from the date of the previous post examination.
- 10.14 An applicant who fails three attempts at the professional interview must show cause to the Membership Committee and be subsequently recommended by the Membership Committee to be able to sit for another professional interview.
- 10.15 Subject to the appeal process outlined in section 10.14, the decision of the Membership Committee shall be final, except that a Member or applicant dissatisfied with the Membership Committee decision may appeal to the Board.

11. Notification of Membership

- 11.1 Upon the Membership Committee making its decision, the Chief Executive Officer will advise the applicant accordingly. The Chief Executive Officer will also take such steps as are necessary to ensure that an applicant who has been granted Membership of the API is presented with a certificate of Membership as soon as practicable thereafter.

12. Certification of Members

- 12.1 The Board may approve the certification of Members. A Member may hold more than one certification.

13. Gaining a Certification

- 13.1 Any application for a certification will be made to the Chief Executive Officer:

- (a) on forms prescribed by the Board;
- (b) accompanied by the fees prescribed by the Board; and
- (c) With proof of the qualifications required by the Board.

The fees will be payable to the API at the time of the application.

- 13.2 On receipt, the Chief Executive Officer shall refer the application to the Membership Committee for consideration.

14. Certified Practising Valuer

14.1 All new applicants for Certified Practising Valuer must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) two years Approved Professional Experience in valuation gained within the four years immediately prior to the date of application; and
- (c) successful completion of a professional interview in valuation principles and practice.

15. Certified Practising Valuer (P&M)

15.1 All new applicants for Certified Practising Valuer (Plant & Machinery) must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) two years Approved Professional Experience in Plant & Machinery valuation, gained within the four years immediately prior to the date of application, or in the case of a partially qualifying degree for Plant & Machinery Valuation, have an aggregated period of at least three years Approved Professional Experience in the five years immediately prior to the date of application; and
- (c) successful completion of a professional interview in valuation principles and practice.

16. Certified Practising Valuer (Business)

16.1 All new applicants for Certified Practising Valuer (Business) must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) two years Approved Professional Experience in Business and or intangible asset valuation gained within the four years immediately prior to the date of application; and
- (c) successful completion of a professional interview in valuation principles and practice.

17. Certified Property Practitioner

17.1 All applicants for Certified Property Practitioner must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) two years Approved Professional Experience in the relevant field of either:
 - (i) Sales, Leasing & Negotiation;
 - (ii) Property Research;
 - (iii) Property Consultancy;
 - (iv) Property Education;
 - (v) Property Law;
 - (vi) Property Finance;

(vii) Corporate Real Estate; or

(viii) Government,

gained within the four years immediately prior to the date of application;

(c) successful completion of a professional interview in the relevant field.

17.2 Members gaining the certification of Certified Property Practitioner (CPP) in the field of Education, Law or Finance will use the certification CPP(Ed), CPP(Law), CPP(Fin) or CPP(Gov) respectively.

18. Certified Commercial Property Manager

18.1 All applicants for Certified Commercial Property Manager must satisfy the following requirements:

(a) have a recognised academic qualification as determined by the Board;

(b) two years Approved Professional Experience in commercial property management gained within the four years immediately prior to the date of application;

(c) successful completion of a professional interview in property management principles and practice.

19. Certified Facilities Manager

19.1 All applicants for Certified Facilities Manager must satisfy the following requirements:

(a) have a recognised academic qualification as determined by the Board;

(b) two years Approved Professional Experience in facilities management gained within the four years immediately prior to the date of application;

(c) successful completion of a professional interview in facilities management principles and practice.

20. Certified Funds Manager

20.1 All applicants for Certified Funds Manager must satisfy the following requirements:

(a) have a recognised academic qualification as determined by the Board;

(b) two years Approved Professional Experience in funds management or analysis gained within the four years immediately prior to the date of application;

(c) successful completion of a professional interview in funds management.

21. Certified Asset Manager

21.1 All applicants for Certified Asset Manager must satisfy the following requirements:

(a) have a recognised academic qualification as determined by the Board;

(b) two years Approved Professional Experience in asset management or analysis gained

- within the four years immediately prior to the date of application;
- (c) successful completion of a professional interview in asset management.

22. Certified Development Practitioner

22.1 All applicants for Certified Development Practitioner must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) two years Approved Professional Experience in property development gained within the four years immediately prior to the date of application;
- (c) successful completion of a professional interview in the relevant property development field.

23. Australian Valuation Standards Committee and Australian Property Standards Committee Professional Experience Discretion

23.1 Notwithstanding Sections 14 to 16 above and 24 below, the Australian Valuation Standards Committee shall have discretionary power concerning the level of minimum professional experience required, and may consider special case applications for certification where the minimum professional experience falls outside the Policy.

23.2 Notwithstanding Sections 17 to 22 above, the Australian Property Standards Committee shall have discretionary power concerning the level of minimum professional experience required, and may consider special case applications for certification where the minimum professional experience falls outside this Policy.

24. Designation of Residential Property Valuer

24.1 The Board may approve the designation of Provisional Members as Residential Property Valuer.

24.2 Any application for the designation of Residential Property Valuer will be made to the Chief Executive Officer:

- (a) on forms prescribed by the Board;
- (b) accompanied by the fees prescribed by the Board; and
- (c) with proof of the qualifications required by the Board.

The fees will be payable to the API at the time of application.

24.3 Upon receipt, the Chief Executive Officer shall refer the application to the Membership Committee for consideration.

24.4 All new applicants for Residential Property Valuer must satisfy the following requirements:

- (a) have a recognised academic qualification as determined by the Board;
- (b) one years Approved Professional Experience in residential valuation gained within the two

years immediately prior to the date of application; and

- (c) successful completion of a professional interview in residential valuation principles and practice.
- 24.5 The Membership Committee but may also inform itself in regard to any application from any other source. The Chief Executive Officer shall notify the applicant of the decision as soon as possible following the decision of the Membership Committee.
- 24.6 Provisional Members who have completed an API endorsed valuation qualification and have completed a minimum one year's Approved Professional Experience in valuation will be eligible to sit a Professional Interview for the designation of Residential Property Valuer.

25. Continuing Professional Development (CPD)

- 25.1 Members (excluding Affiliate Members) must satisfy the API's CPD requirements as prescribed in the Continuing Professional Development Policy.

26. Admission as a Student Member

- 26.1 Any application for Student Membership will be made to the Chief Executive Officer on forms prescribed by the Board of Directors, and accompanied by the fees prescribed by the Board and proof of qualifications required by the Board. The fees will be payable to the API at the time of application.
- (a) Every applicant for admission as a Student Member must:
 - (b) be a person of good character and repute;
 - (c) be undertaking an accredited course of the API.
- 26.2 Every application for admission as a Student Member will be referred to the Membership Committee for recommendation.
- 26.3 The Board will consider the recommendations of the Membership Committee but may also inform itself in regard to any application from any other source. The Chief Executive Officer shall notify the applicant of the decision as soon as possible.
- 26.4 The Board shall, at any time, have the ability to make enquiries on the current status of Student Members so as to satisfy itself as to the bona fides of this status.
- 26.5 Where the Board has issued written requests to a Student member on two separate occasions for proof of current enrolment in an API accredited course, and the Member concerned has failed to provide such evidence, the Board may terminate the membership of the Member concerned.

27. Change to a Retired Member

- 27.1 On application to the Chief Executive Officer for Retired Membership, a Member who has retired from practice in the property profession, does not receive any fee, retainer or income from practicing in the property profession, and who is not engaged in any other profession or

business, may be transferred to the Affiliate Class of Membership, upon payment of the annual subscription as determined by the Board be provided with such services as are decided by the Board and be permitted to attend meetings of the API.

- 27.2 A Retired Member will not be entitled to vote at any General meetings or be elected as a Member of the Board.

28. Change to a Non-Practising Member

- 28.1 On application to the Chief Executive Officer and the payment of the annual subscription as determined by the Board, a Member may be granted a transfer to the Non-Practising Member Affiliate class.

- 28.2 A Non-Practising Member shall receive the level of services as determined by the Board.

- 28.3 A Non-Practising Member shall have no requirement to complete the Continuing Professional Development (CPD) requirements, subject to Section 28.

- 28.4 Non-Practising Member shall have no right to use the API's logo or to advertise in a manner that indicates active Membership. However a Non-Practising Member may continue to use any post-nominals to which he was previously entitled.

- 28.5 A Non-Practising Member shall provide an annual declaration to the Chief Executive Officer that the member does not receive any fee, retainer or income from practicing in the property profession. A Member who is not engaged in any facet of the property industry may be deemed to be Non-Practising. A Member whose employment is in any way reliant on or enhanced by property related or API recognised qualifications is deemed to be practising.

- 28.6 Where a Member provides false and/or misleading information to the Chief Executive Officer in relation to Section 28.1 to 28.5, the Board may refuse the application, or in the case of existing Non-Practising Members may terminate the membership of the Member concerned.

- 28.7 Where the Chief Executive Officer has issued written requests to a non-Practising Member on two separate occasions for an annual declaration in accordance with Section 28.5, and the Member concerned has failed to provide such evidence, the Board may terminate the membership of the Member concerned.

29. Appointment as an Honorary Member

- 29.1 Any Person who has rendered services to the API which, in the opinion of the Board, entitle that person to distinction, or any other person upon whom the Board desires to confer distinction because of the person's knowledge and experience in pursuits connected with the property profession may be admitted as an Honorary member on a resolution passed by at least three quarters of those present at a meeting of the Board.

30. Appointment as an Honorary Fellow

- 30.1 The Board may by a resolution passed by at least three quarters of those present at any meeting of the Board elect a person as an Honorary Fellow of the API without entrance fee or subscription notwithstanding that they would not otherwise be eligible as a Member.

- 30.2 Such an election must not take place unless a notice of proposal to elect has been placed on the agenda paper of that Board meeting which has been circulated at least seven days in advance of the meeting date.

- 30.3 An Honorary Fellow will be a person who, by reason of status or experience, may in the opinion of the Board be able to render assistance in promoting the objects of the API and who is not necessarily engaged in the property profession. An Honorary Fellow will have the privilege of being present and taking part in all meetings of the API but will have no right to vote.

31. Admission as an International Member

- 31.1 Any application for International membership of the API will be made to the Chief Executive Officer on forms prescribed by the Board, accompanied by the fees prescribed by the Board and proof of qualifications required by the Board. The fees will be payable to the API at the time of application.
- 31.2 Every applicant for admission as an International Member must:
- (a) be of good character and repute;
 - (b) have passed any examinations and tests required by the Board;
 - (c) have had such professional experience as is required in this Policy;
 - (d) be a member of a relevant property professional organisation as recognised by the API.
- 31.3 Every applicant for admission as an International member shall be referred to the Membership Committee who will determine whether or not:
- (a) Applicants who have an API approved overseas property specialisation degree (deemed as an Australian Higher Education Bachelor Degree equivalent) have a period of two years relevant professional experience gained within the four years immediately prior to the date of application; or
 - (b) Applicants with an API approved overseas partially qualifying degree (deemed equivalent to an Australian Higher Education Bachelor Degree) have an aggregated period of five years relevant professional experience gained within the eight years immediately prior to the date of application; or
 - (c) Applicants who have Associate, Fellow or Life Fellow equivalent Membership of a comparable property professional association, which is any body or association that is listed in Schedule 2 of this Policy or may be added to that list by special resolution of the Board.
- 31.4 If the Membership Committee is satisfied that the applicant satisfies the requirements in the CPD requirements as set out in the Continuing Professional Development Policy, then the Chief Executive Officer will conduct such tests to determine the property knowledge of the applicant as laid down by the National Education Board and Australian Standards Committee.
- 31.5 An International Member may use the post-nominals as indicated in the Symbols Policy.
- 31.6 All other requirements for the International Membership shall be in accordance with the provisions detailed in the API's Membership Entry and Advancement Policy as referenced in Schedule 1 of this Policy.

32. Cessation of Membership

32.1 A Member will cease to be a member on death or if:

- (a) the Member gives notice of resignation in writing as required by this Policy; and,**
- (b) the Membership Committee accepts the resignation.**

32.2 The Membership Committee may, by resolution, which must be conveyed to the Member in writing, terminate the membership of a Member for any of the following reasons:

- (a) the Member becomes bankrupt or insolvent; or**
- (b) the Member becomes of unsound mind within the meaning of the law for the time being relating to mental health operative in the place in which the Member resides; or**
- (c) the Member's subscription, levies or other amounts due to the API are overdue for a period of three months; or**
- (d) the Member is or has been convicted of:**
 - (i) an offence punishable with imprisonment for three months or more and which detrimentally impacts the good name of the reputation of the API; or**
 - (ii) any offence in connection with the promotion, formation or management of a corporation.**
- (e) the Complaints Committee makes a decision pursuant to a complaint to terminate the Member's membership.**

32.3 The Member may appeal to the Board against the termination of membership made pursuant to Section 25.2 (a to d) and the Board may, if it allows the appeal, reinstate that person as a Member.

32.4 The provisions of this Policy will not prejudice any right of the API to recover all arrears including the subscription for the current year.

33. Resignations

33.1 Any Member who wishes to resign membership must forward a written resignation to the Chief Executive Officer. The resignation will take effect as from the date upon which the Board accepts the resignation. After acceptance of the resignation, the former Member shall not use any means to imply existing membership status.

33.2 Any Member who wishes to resign a certification/designation must forward a written resignation to the Chief Executive Officer. The resignation will take effect as from the date upon which the Board accepts the resignation. After notification of acceptance of the resignation, the Member shall not use any means to imply the holding of that certification/designation.

33.3 When seeking readmission/reinstatement to the API via respective policies outlined in section 28.1, the member may choose if they wish to be reinstated with the certifications/designations

that were held at the time of their resignation/transfer to affiliate. The member must meet all the test/requirements of any certification/designation they may seek to hold.

34. Transfer to Another Division

- 34.1 Members should be attached to the Division of the API in their preferred practice location.
- 34.2 Any member who wishes to transfer membership to another Division will advise the Division from which they wish to transfer of the proposed action in writing on the prescribed form.
- 34.3 International Members are not entitled to transfer their membership to another Division and must satisfy the entry requirements for Associate Membership should they wish to relocate to Australia.

35. Re-Admission to Membership

- 35.1 Except in relation to a Member removed in accordance with Section 25.2 (e), the Board may re-admit to membership, without loss of status, any Member who resigned, was removed from membership or who transferred to the non-practising member or retired member classes of Affiliate, in accordance with the API's Membership Re-admission Policy.
- 35.2 A Member removed in accordance with Section 25.2 (e) may be readmitted to membership in accordance with Section 28.1 subject to such terms and conditions deemed appropriate by the Complaints Policy but also subject to the endorsement of the Board.
- 35.3 Any applicant for re-admission who is required by the Board to pass a professional interview and who fails has the right of appeal under the provisions of Section 10.

36. Certificates of Membership

- 36.1 Every Life Fellow, Fellow, Associate, Provisional Associate, Provisional Member and other members as the Board may determine, will be entitled to obtain a certificate of membership subject to any conditions the Board may determine, and on payment of any fees or other sums the Board may determine.
- 36.2 Any person ceasing to be a member must return to the Chief Executive Officer their certificate of membership, but any Fellow, Associate, Provisional Associate, Provisional Member or International member retiring from practice may, at the pleasure of the Board, retain the certificate.

37. Registers of Members and Affiliates

- 37.1 The Chief Executive Officer, with the support of the National Manager under the Membership Services and Advocacy Portfolio, must keep a register of all Members and Affiliates of the API.
- 37.2 Every Member must furnish the National Manager under the Membership Services and Advocacy Portfolio, with all required information to enable him or her to compile a record of qualifications of members.
- 37.3 The names of Life Fellows, Honorary Fellows and International Members being Board appointments may only be entered in, or removed from the registers of the API by authority of the Board.

37.4 The names of Fellows, Associates, Provisional Associates and Provisional Members together with affiliates of the Institute, may be entered in, or removed from the register by authority of the Chief Executive Officer.

38. Membership Documentation and Prescribed Forms

38.1 Documentation, including any prescribed forms, Explanatory Notes, membership entry requirements, policy and procedures or any other documentation relating to membership of the API shall be in accordance with the policy and procedure documents referenced in Schedule 1 of this Policy.

39. Membership of APIV Ltd

39.1 All members in the following membership classes, who undertake valuations of real property in Australia and who reside in a State or Territory in which the APIV Ltd Limitation of Liability Scheme is operational, must, unless exempted, participate in the APIV Ltd Limitation of Liability Scheme;

- (a) Life Fellow Member (who hold the certification of Certified Practising Valuer);
- (b) Fellow Member (who hold the certification of Certified Practising Valuer);
- (c) Associate Member (who hold the certification of Certified Practising Valuer); and
- (d) Provisional Member (who hold the designation of Residential Property Valuer).

40. Grandfathering and Transitional Arrangements for Technical Associates, Provisional Associates and Students

40.1 The movement of Technical Associates, Provisional Associates, and student to other classes of membership shall be in accordance with the policy and procedure document referenced at Schedule 1 of this Policy.

41. Use of API's Symbols

41.1 The API's symbols, including but not limited to the logo and post-nominals are to be used by Members in accordance with the Symbols Policy.

SCHEDULE 1

- **Membership Entry & Advancement Policy (incl. Application Forms and Explanatory Notes)**
- **Membership Induction**
- **Professional Interview**
- **Provisional Membership transitional arrangements**

SCHEDULE 2

- **Royal Institution of Chartered Surveyors (General Practice Division)**
- **Property Institute of New Zealand**
- **Appraisal Institute of Canada**
- **Hong Kong Institute of Surveyors (General Practice Division)**
- **Singapore Institute of Surveyors and Valuers (General Practice Division)**

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Australian Property Institute
Limited

Complaints Policy

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Complaints Policy

Australian Property Institute Limited

1. Objectives

1.1 The object of this Policy is to provide:

- (a) a means of redress for complaints about Members of the Australian Property Institute Limited (the API);
- (b) guidelines and procedures for the handling of complaints;
- (c) for the appointment of a Complaints Officer to investigate complaints received by the API;
- (d) for the formation and operation of a Complaints Committee to hear charges laid by the Complaints Officer; and
- (e) for the formation and operation of an Appeals Tribunal to hear appeals from decisions of the Complaints Committee.

2. Professional Misconduct

2.1 A Member is guilty of Professional Misconduct if:

- (a) they commit a breach of the Code of Professional Conduct;
- (b) they are found guilty by a court of law of a criminal offence which is punishable by imprisonment and the Board of the API (the Board) determines that their offence and the penalty imposed detrimentally impacts or has the potential to detrimentally impact on the good name and reputation of the API;
- (c) they engage in conduct which is dishonest or fraudulent;
- (d) they engage in conduct which is prejudicial to the good name and reputation of the API; or
- (e) they obtained admission to the API by improper means.

3. Application of this Policy to Former Members

3.1 This Policy applies to a former Member of the API, in relation to conduct happening while the former Member was a Member, in the same way as it applies to a current Member.

4. Notification of Complaints

4.1 Members must promptly notify the Complaints Officer about every civil or criminal claim, complaint, accusation, charge, notification or settlement brought against them that has the reasonable potential to detrimentally impact on the reputation of the API or result in Professional Misconduct and must promptly notify the Complaints Officer of the outcome.

5. Making of Complaints

- 5.1 A person who is aggrieved by the conduct of a Member may complain to the API.
- 5.2 If considered necessary and in the interests of the API, the Complaints Officer may, of his or her own initiative, or if instructed by the Chief Executive Officer or the Board, commence an investigation into the conduct of a Member, in which circumstance the API will be considered to be the complainant.
- 5.3 A complaint must be in writing and addressed to the Complaints Officer.
- 5.4 A complaint must:
- (a) include a full name, address and valid telephone number of the complainant; and
 - (b) identify the Member who is being complained about; and
 - (c) describe the alleged conduct the subject of the complaint.
- 5.5 The Complaints Officer may, by written notice given to the complainant, require the complainant to do either or both of the following within the reasonable period stated in the notice:
- (a) to give further information about the complaint;
 - (b) to verify the complaint, or any further information, by statutory declaration.

6. Summary Dismissal of Complaints

- 6.1 The Complaints Officer may, upon the recommendation of the chairperson of the Complaints Committee or two Complaints Committee members, dismiss a complaint without completing an investigation if:
- (a) the complainant fails to supply the further information requested by the Complaints Officer by the notice served pursuant to section 5.5 within the time required by that notice;
 - (b) the complaint is vexatious, misconceived, frivolous or lacking in substance;
 - (c) the complaint was made more than 3 years after the conduct complained of is alleged to have happened;
 - (d) the conduct complained about has been the subject of a previous or current complaint to the API;
 - (e) the only issue of concern to the complainant is the quantum of a valuation; or
 - (f) the complainant does not agree, in writing, that their identity can be revealed to the Member complained about.
- 6.2 The Complaints Officer must notify the complainant in writing if a complaint is dismissed pursuant to section 6.1.

6.3 The notice must be given as soon as practicable after the day that the decision to dismiss the complaint is made by the Complaints Officer.

6.4 The notice must specify the grounds upon which the complaint has been dismissed.

7. Notice of Complaint

7.1 The Complaints Officer must give written notice to the Member about whom a complaint is made.

7.2 The notice must be given as soon as practicable after the day the complaint is received pursuant to section 5.

7.3 The notice must advise the Member about:

- (a) the nature of the complaint;
- (b) the identity of the complainant;
- (c) any action already taken by the Complaints Officer in relation to the complaint;
- (d) the Member's right to make submissions to the Complaints Officer within the reasonable period stated in the notice, unless the Complaints Officer has told the Member that the complaint has been dismissed, or is intended to be dismissed.

7.4 This section 7 does not require the Complaints Officer to give written notice to the Member about whom a complaint is made until the Complaints Officer has had time to consider the complaint, seek further information about the complaint from the complainant or otherwise undertake preliminary inquiries into the complaint and properly prepare the notice.

7.5 The Complaints Officer must give written notice of any complaint as required by a scheme registered under the Professional Standards legislation in a State or Territory.

8. Withdrawal of Complaints

8.1 A complaint under this Policy may, subject to this section, be withdrawn by the complainant.

8.2 Withdrawal of a complaint may be made by oral, written or other form of communication to the Complaints Officer.

8.3 If a complaint is withdrawn orally the Complaints Officer must:

- (a) make a written record of the withdrawal; and
- (b) give the complainant a copy of the record, or send a copy of it addressed to the complainant at the complainant's address.

8.4 A complaint may be withdrawn at any time however such withdrawal does not restrict any other complaint with respect to the same or similar facts being brought by the API against the Member.

- 8.5 If a complaint is withdrawn, a further complaint by the complainant about the matter that is the subject of the withdrawn complaint cannot be made to the API unless the Complaints Officer is satisfied that it is appropriate to make a further complaint in the circumstances.
- 8.6 If a complaint is properly withdrawn, no further action may be taken under this Policy in relation to the complaint, unless the Complaints Officer or the Board, as the case may be, is satisfied that investigation or further investigation of the facts surrounding the complaint is justified in the particular circumstances, as permitted under section 5.2 in which case a new complaint shall be brought by the API pursuant to section 5.2.

9. Investigation of Complaint

- 9.1 Subject to section 6, the Complaints Officer must investigate each complaint properly made.
- 9.2 The Complaints Officer must act independently based on information and evidence found during the investigation and use their own knowledge and expertise in their assessment of the complaint.
- 9.3 The Complaints Officer may be assisted by such Members as the Complaints Officer deems appropriate to carry out such investigations and may by written notice given to a Member, request that person:
- (a) to attend before the Complaints Officer, at a reasonable time and place specified in the notice, and there and then answer any questions; and
 - (b) to produce to the Complaints Officer, at a reasonable time and place specified in the notice, a document or thing in the person's custody or under the person's control.
- 9.4 A Member who receives a notice pursuant to section 9.3 must comply with the notice in the time specified in the notice. A complainant who receives a notice pursuant to section 9.3 must comply with the notice in the time specified in the notice for the complaint to remain current. If the complainant does not comply with such notice within a reasonable time the Complaints Officer may deem the complaint to have been withdrawn pursuant to section 8.
- 9.5 If the conduct complained about is subject to current proceedings before a Court or State licensing body, the Complaints Officer must suspend the investigation pending the outcome of those proceedings and any appeal of those proceedings.
- 9.6 At the completion of the investigation, the Complaints Officer must submit a report to the chairperson of the Complaints Committee.
- 9.7 The Complaints Officer is not required to provide a copy of the report to the complainant or the Member.

10. Action by Complaints Committee

- 10.1 Where the Complaints Officer refers a complaint to the Complaints Committee, the

Complaints Committee must conduct enquiries or cause enquiries to be conducted following which the Complaints Committee must make findings on whether, in the Complaints Committee's view, the conduct referred to the Complaints Committee comprises a breach of the Code of Professional Conduct.

10.2 On receipt of the report from the Complaints Officer the Complaints Committee must consider the report at a meeting of the Complaints Committee and:

- (a) if the report indicates that no charge has been made out because there is no prima facie case of Professional Misconduct:
 - (i) the Complaints Committee may dismiss the complaint; or
 - (ii) the Complaints Committee may direct the Complaints Officer to make further enquiries or investigation as is reasonably considered necessary to ensure that a proper investigation of the complaint has taken place.
- (b) if the report indicates that a prima facie case for Professional Misconduct has been made out against the Member, the Complaints Committee may:
 - (i) lay a charge against the Member for Professional Misconduct and take such action as required by section 11;
 - (ii) direct the Complaints Officer to make further enquiries or investigation as is reasonably considered necessary to ensure that a proper investigation of the complaint has taken place; or
 - (iii) take no further action and give the complainant the reason/s in writing, and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - (iv) resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice on the resolution of the matter in writing; or
 - (v) cause the Complaints Officer to engage another appropriately qualified person to make enquiries into the complaint; or
 - (vi) cause the cessation of enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Policy, this will constitute finalisation of such matters and no further action is required.

10.3 If the Complaints Committee dismisses the complaint:

- (a) the Complaints Officer must notify the complainant and the relevant Member in writing of the dismissal;
- (b) the notice must be given as soon as practicable after the day that the complaint is dismissed; and
- (c) the notice must include a brief statement of reasons upon which the complaint has been dismissed

- 10.4 If the Complaints Committee directs the Complaints Officer to make further enquiries or investigation, the Complaints Officer must undertake those further enquiries or investigation within a reasonable time and must submit a further report to the Complaints Committee about the complaint.
- 10.5 If the Complaints Committee lays a charge against a Member for Professional Misconduct pursuant to 10.2(b)(i) the Complaints Officer must give written notice of the charge of Professional Misconduct to the Chief Executive Officer.
- 10.6 The Complaints Committee will conduct business in the absence of the public. It will ensure that proper records of its deliberations are maintained for such reasonable period as the Chief Executive Officer deems necessary.
- 10.7 In conducting enquiries, the Complaints Committee should follow the rules of procedural fairness and must -
- (a) provide the Member the subject of the complaint with a reasonable opportunity to respond to the substance of the complaint;
 - (b) provide the Member the subject of the complaint with an opportunity to place before the Complaints Committee any information the Member considers relevant to the enquiry;
 - (c) provide the Member the subject of the complaint with an opportunity to address the Complaints Committee in person;
 - (d) hear all parties to a matter and consider submissions before deciding the substance of any complaint;
 - (e) make reasonable enquiries before making any recommendations;
 - (f) act fairly and without prejudice or bias;
 - (g) ensure that no person decides a case in which they have a conflict of interest;
 - (h) conduct the enquiries without undue delay.

Where the Member the subject of the complaint declines or fails to take the opportunity provided to respond to the substance of the allegation against them, the Complaints Committee should proceed to finalise the matter in the Members absence.

11. Notice of Charge of Professional Misconduct

- 11.1 If the Complaints Committee lays a charge against the Member for Professional Misconduct pursuant to section 10.2(b)(i), the Complaints Committee must give to the Member written notice of the charge of Professional Misconduct.
- 11.2 The notice must state:
- (a) the Professional Misconduct alleged against the Member; and
 - (b) the facts and circumstances forming the basis for the allegations;

- (c) a day, at least 14 days after the day the notice is given, by which the Member may, in relation to the allegations stated in the notice:
 - (i) make written representations about the facts and circumstances forming the basis for the allegations; or
 - (ii) request a hearing for the evidence supporting the charge of Professional Misconduct to be heard.

- 11.3 If the Member does not request a hearing, the Complaints Committee may conduct a hearing into the matter where it is of the reasonable opinion that it is necessary to properly consider the matter.

- 11.4 If the Member requests a hearing, or the Complaints Committee decides to conduct a hearing pursuant to section 11.3, the Member must be advised of the time and place of the hearing. If the Member proposes to attend with legal representation the Member must provide the Complaints Committee with at least 7 days' notice of such legal representation.

- 11.5 Any hearing conducted by the Complaints Committee must be pursuant to section 31.

- 11.6 After following the procedures set out in this section 11, the Complaints Committee may do any of the following:
 - (a) Make a finding that the Member is guilty of Professional Misconduct and impose any one or more or none of the sanctions under section 12; or
 - (b) Make a finding that the Member is not guilty of Professional Misconduct and dismiss the complaint.

- 11.7 The Complaints Officer must give a written notice of any finding of the Complaints Committee under section 11 to the Chief Executive Officer.

12. Sanctions

- 12.1 Subject to section 11, the Complaints Committee may impose any one or more or none of the following sanctions against a Member:
 - (a) publicly reprimand the Member;
 - (b) order the Member to give an undertaking to abstain from particular conduct;
 - (c) order the Member to give an apology for particular conduct;
 - (d) counsel the Member;
 - (e) order the Member to pay to the API a penalty of an amount no more than an amount equivalent to twenty times the annual membership fee for the current year;
 - (f) order that the Member undertake additional CPD training as specified;
 - (g) order that the Member must undertake such other education or compliance program as the Complaints Committee thinks fit;

- (h) suspend the Member from membership of the API, for such period and on such terms or conditions as the Complaints Committee thinks fit;
- (i) 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 Complaints Committee thinks fit;
- (j) require the Member to take such steps as the Complaints Committee may determine to correct the effects of any Professional Misconduct found to have been engaged in;
- (k) expel the Member from membership of the API;
- (l) order that the Member pay the costs of the investigation and the hearing;
- (m) suspend or expel the Member from membership of any board, committee, panel or group of the API.
- (n) censure the member;
- (o) cause to be published in the Australian Property Journal or such other publication, details of the Professional Misconduct. In doing so it may cause the Member's identity to be disclosed or to be withheld.
- (p) Refer the matter to the Board with a recommendation that the Member be prosecuted for a breach of the law;
- (q) Refer the matter to any relevant statutory investigative or law enforcement authority.

12.2 Before taking disciplinary action against a Member the Complaints Committee shall have regard to the following:

- (a) any penalty already imposed on the Member as a result of external legal proceedings (including without limitation, proceedings or investigations by State or Territory regulatory bodies, and any other external bodies) brought against that Member in relation to the same facts and circumstances giving rise to the complaint before the Committee.
- (b) the seriousness of the breach;
- (c) whether the breach can be easily remedied or rectified;
- (d) whether the Member has remedied or rectified their conduct;
- (e) whether the Member has expressed contrition;
- (f) whether the breach is technical or trivial only;
- (g) whether the breach represents repeated conduct;
- (h) the age, physical or mental health or special infirmity of the Member;
- (i) the degree of reckless intention or negligence of the Member;
- (j) the extent to which the breach has affected other parties or the API as a whole;
- (k) the harm or potential harm to the reputation of the API arising from the conduct;
- (l) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;

- (m) whether an educative approach would be more appropriate than a punitive approach;
- (n) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action; and
- (o) what action or remedy would be in the public interest.

12.3 The Complaints Committee must give the Member a written notice of its decision to take action against the Member under this section 12, together with a statement of reasons for the decision and advising the Member of their right of appeal.

12.4 The Complaints Committee must advise the complainant in writing the details of any decision made against the Member under this section 12.

12.5 The Complaints Committee may publish, in a newspaper, journal or on its website, notice of any action taken under this section 12.

12.6 The Complaints Committee may recommend to the Board such revisions to the Code of Professional Conduct as it deems reasonably appropriate.

13. Appeal of Decision

13.1 A Member against whom a decision of the Complaints Committee is made pursuant to section 11.5 (decision of Complaints Committee) and section 12 (Sanctions) may apply to the Appeals Tribunal for a review of such decision(s).

13.2 The API shall establish the Appeals Tribunal pursuant to the Appeals Tribunal Policy.

13.3 A complainant is not entitled to appeal against a decision of the Complaints Committee.

13.4 Any appeal to the Appeals Tribunal must be commenced by submitting a notice of appeal to the Complaints Officer within 21 days after receiving written notice of the Complaints Committee's decision.

13.5 The notice of appeal must, at the time of lodgment, specify:

- (a) the decision and the date of the decision being appealed;
- (b) whether the appeal is from all or part of the decision of the Complaints Committee;
- (c) if the appeal is from part of the decision—the part appealed from;
- (d) the grounds of the appeal; and
- (e) the order(s) sought.

13.6 The notice of appeal cannot raise any issue that was not before the Complaints Committee in relation to the subject of the complaint.

13.7 If a valid notice of appeal is lodged pursuant to this section 13, the Complaints Officer must, within 14 days from receiving the notice of appeal:

- (a) provide notice in writing of the appeal to:
 - (i) the chairperson of the Appeals Tribunal;
 - (ii) the Member who is the subject of the complaint;
 - (iii) the complainant; and
 - (iv) the Chief Executive Officer of the API; and
- (b) provide the Appeals Tribunal and the Member with an Appeal Book containing the following documents:
 - (i) the original complaint;
 - (ii) all correspondence and written communication in relation to the complaint;
 - (iii) the report(s) prepared by the Complaints Officer and submitted to the Complaints Committee, if such report(s) were admitted into evidence before the Complaints Committee;
 - (iv) the charge formulated from the complaint;
 - (v) a record of the Complaints Committee hearing;
 - (vi) the decision and statement of reasons of the Complaints Committee; and
 - (vii) a copy of the notice of appeal.

13.8 Within 21 days from receiving the Appeal Book, the appellant may serve any further submissions on the Appeals Tribunal and the Complaints Officer in support of the grounds of the appeal.

14. Withdrawal of Appeal

14.1 A Member who has appealed from a decision of the Complaints Committee may withdraw an appeal by giving notice in writing to the Chair of the Appeals Tribunal.

14.2 The notice referred to in Section 14.1 must be received by the Chair of the Appeals Tribunal no later than seven (7) days before the day scheduled for the hearing. After this time, the Member will be responsible for any costs incurred by the Appeals Tribunal and the API.

15. Powers of Appeal Tribunal

15.1 The Appeals Tribunal may do any one or more of the following:

- (a) confirm, amend or set aside the decision of the Complaints Committee;
- (b) vary the sanction imposed by the Complaints Committee; and
- (c) make such other order that it considers appropriate.

15.2 The Appeals Tribunal must notify the Complaints Officer, the Member and the complainant of its decision and must give the parties written reasons for its decision.

- 15.3 If the appeal is unsuccessful, the Appeals Tribunal may, if it sees fit, order the Member to pay the reasonable costs of the Appeals Tribunal and the API. The Member will be suspended from membership until such costs are paid. If the costs are not paid by the next renewal date for membership the Member's membership will be terminated. The Member will not be entitled to be readmitted as a member until the costs are paid together with interest calculated pursuant to the Supreme Court rules (or equivalent jurisdiction) of the State or Territory to which the Member's prior membership was related.
- 15.4 A decision of the Appeals Tribunal is binding upon the complainant and the Member who is the subject of the complaint, and the Board cannot overrule or vary the decision of the Appeals Tribunal.
- 15.5 The Complaints Officer must give a written notice of any decision of the Appeals Tribunal under section 15 to the Chief Executive Officer.

16. Record of Complaints

- 16.1 The Complaints Officer must make and keep a record of all of the complaints dealt with under this Policy, and must keep a copy of all decisions of the Complaints Committee and the Appeals Tribunal.
- 16.2 The Complaints Officer shall have the discretion, subject to direction by the Board, to decide what is contained on the register in relation to each complaint.
- 16.3 The Complaints Officer may, upon request by the Board, publish the outcome of any decisions by the Complaints Committee or the Appeals Tribunal or any details contained in the register maintained by the Complaints Officer.
- 16.4 The API shall publish regular information about the outcome of complaints against Members including an annual overview of the operation of the API's complaints procedures.

17. Reporting of Complaints, Claims, Notifications and Settlements

- 17.1 The Complaints Officer will report every civil or criminal claim, complaint, accusation, charge, notification and settlement involving a Member, of which the API has notice pursuant to this Policy, to the Professional Standards Council as required by a scheme registered under the Professional Standards legislation in a State or Territory.
- 17.2 Where a Member has been expelled the Chief Executive Officer may notify the ASIC and any relevant State and Territory regulators where required to do so.
- 17.3 Where a Member has engaged in conduct which relates to a potential breach of the Financial Services Reform Act 2001 (as amended from time to time) the Chief Executive Officer may notify the relevant statutory authority.

18. Confidentiality

- 18.1 This section 18 applies to:

- (a) a complainant;
- (b) a Member complained about under this Section;
- (c) the Complaints Officer;
- (d) the members of the Complaints Committee; and
- (e) the members of the Appeals Tribunal.

18.2 The persons to whom this section applies must not disclose information obtained relating to a complaint, except to any of the following—

- (a) any court, tribunal or other person acting judicially;
a regulatory authority of any State or Territory;
- (b) any officer of, or Australian legal practitioner instructed by--
 - (i) a regulatory authority of any State or Territory; or
 - (ii) any State or Territory, or the Commonwealth; or
 - (iii) an authority of any State or Territory or the Commonwealth

in relation to any proceeding, inquiry or other matter pending or contemplated arising out of the complaints procedure of the API;

- (c) a police officer of any State or Territory or the Commonwealth if the relevant person believes, on reasonable grounds, that the information relates to an offence that may have been committed by a Member;
- (d) a client or former client of the Member, if the information relates to that client or former client;
- (e) as otherwise permitted by this Policy;
- (f) any other person as permitted in writing by the Member complained about.

19. Keeping Complainants Informed

19.1 The Complaints Officer may keep the complainant informed of the progress of a complaint provided always that the Complaints Officer must not provide any information to a complainant in relation to the progress of the complaint where in the opinion of the Complaints Officer, to do so:

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

20. Enforcement of Sanctions

- 20.1 All sanctions ordered against a Member pursuant to this Policy will be enforced and implemented by the Complaints Officer.
- 20.2 In the event that an application is made to the Appeals Tribunal for a review of a decision of the Complaints Committee pursuant to section 13, the API must stay any sanction against a Member, pending a final determination by the Appeals Tribunal.
- 20.3 Where a Member is suspended from membership of the API, the Member must continue to satisfy the API's CPD requirements.

21. Suspension of Membership

- 21.1 Where a person's membership of the API is suspended in accordance with this Policy:
- (a) the API may publish a notice of the suspension in the journal;
- AND that person:
- (b) must not use the API Members' logo;
 - (c) shall not be entitled to use any post nominals relating to his or her position or membership of the API;
 - (d) shall not be entitled to receive any referral of work from the API; and
 - (e) shall not be entitled to vote,
- for the period determined at the time of suspension.

22. Transitional Provision

- 22.1 Any complaint which was notified to the API prior to the commencement of an amendment to this Policy, shall be dealt with in accordance with the Policy which was in force as at the date the complaint was first notified to the API.

23. Appointment of Complaints Officer

- 23.1 The Board will appoint a person to manage, investigate and respond to complaints relating to Professional Misconduct. Such person will be known as the Complaints Officer.
- 23.2 The role of the Complaints Officer is to:
- (a) assist members of the public with enquiries relating to the API's complaints procedure;
 - (b) issue notices to various persons relating to complaints made under this Policy;
 - (c) coordinate and investigate complaints made under this Policy;
 - (d) make summary determinations about complaints made under this Policy;
 - (e) present charges to the Complaints Committee for disciplinary action against a Member;

- (f) assist the Complaints Committee in its consideration of complaints made under this Policy;
- (g) assist the Appeals Tribunal in its consideration of appeals made under this Policy;
- (h) keep a record of all complaints and notifications received by the API relating to a Member;
- (i) report to various authorities as required by law; and
- (j) such other roles as directed in writing by the Board from time to time.

23.3 The conduct of the Complaints Officer will be subject to the terms and conditions of his or her employment, as agreed in writing with the Board from time to time.

24. Powers of Complaints Officer

24.1 The Complaints Officer may make any inquiry that he or she considers necessary or expedient for the purposes of carrying out the Complaints Officer's role, including –

- (a) investigating any complaint lodged pursuant to this Policy; and
- (b) determining whether any other cause exists that might be considered a proper cause for disciplinary action.

24.2 Subject to the approval of the Chief Executive Officer, the Complaints Officer may engage persons with such expertise that the Complaints Officer deems necessary to assist the Complaints Officer to carry out the Complaints Officer's role.

25. Vacancy in the Position of Complaints Officer

25.1 If a casual vacancy occurs in the position of the Complaints Officer, the Board shall appoint the professional standards manager, or such other appropriate person to fill the vacancy until such time as a suitably qualified person is employed to carry out the role of Complaints Officer.

26. Appointment of a Complaints Committee

26.1 There shall be a committee established to be known as the Complaints Committee. The Complaints Committee will have a chairperson and a deputy chairperson. The Complaints Committee will be properly comprised and able to consider and determine a matter if the chairperson of the Complaints Committee sits alone or at least three eligible members of the Complaints Committee which include the chairperson of the Complaints Committee and/or the deputy chairperson of the Complaints Committee sit to consider and determine a matter.

26.2 The Complaints Committee, its chairperson and deputy chairperson shall be appointed by the Board and shall report directly to the Board.

26.3 Divisional Councils have the right, but are not obliged, to provide a minimum of two and a maximum of four nominees, who are suitably experienced and qualified, to be members of

the Complaints Committee.

- 26.4 The Board must consider and appoint nominees to the Complaints Committee annually and where convenient to the Board at the Board Meeting held immediately before the Annual General Meeting of the API.
- 26.5 When appointing Members to the Complaints Committee, the Board must:
- (a) Appoint a minimum of one representative from each Division who has made nominations, to be members of the Complaints Committee ('Committee Members');
 - (b) be cognisant of achieving a representation of the various disciplines of membership of the API; and
 - (c) nominate one Committee Member as chairperson of the Complaints Committee and one as deputy chairperson of the Complaints Committee.
- 26.6 A Committee member shall be appointed to the Complaints Committee for a minimum of 2 years.
- 26.7 Subject to section 26.8, for each complaint to be considered by the Complaints Committee under this Policy, either the chairperson of the Complaints Committee must:
- (a) independently consider the complaint; or
 - (b) appoint not less than two additional Complaints Committee members to jointly consider the complaint. Such appointment may take into account the complexity of the complaint but will at all times be at the discretion of the chairperson of the Complaint Committee.
- 26.8 A Committee member will not be eligible for appointment for a particular complaint where that member has a conflict of interest.
- 26.9 For the purposes of section 26.8, a Committee member will have a *conflict of interest* in any of the following circumstances –
- (a) the member complained about is a Member of the Division who nominated the Committee member;
 - (b) the Committee member is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (c) the Committee member has or has had an existing commercial or personal relationship with the complainant or the member accused; or
 - (d) the Committee member is or has been in any way involved in the circumstances giving rise to the complaint.

27. Vacancy

- 27.1 The Board may terminate the appointment of a Committee Member for inability, inefficiency,

or misbehaviour.

27.2 The office of a member of the Complaints Committee becomes vacant if —

- (a) an alternative nomination is made by the relevant Divisional Council in accordance with section 26.4 and such alternative is endorsed by the Board; or
- (b) his or her appointment is terminated pursuant to section 27.1; or
- (c) he or she is declared bankrupt or is a person whose affairs are administered under insolvency laws; or
- (d) he or she becomes permanently incapable of performing his or her duties as a member of the Complaints Committee as determined by the Board; or
- (e) he or she withdraws from his or her acceptance of the nomination by written notice addressed to the chairperson of the Complaints Committee or in the case of the chairperson of the Complaints Committee to the Board; or
- (f) he or she ceases to hold any qualification required for his or her becoming or being a member of the Complaints Committee.

28. Validity of acts of Complaints Officer or Committee

28.1 No act, proceeding, or determination of the Complaints Officer or Complaints Committee shall be invalid on the ground only of any vacancy in the office of any member of the Complaints Committee or of any defect in the appointment of any member of the Complaints Committee or the Complaints Officer.

29. Remuneration of Members

29.1 The members of the Complaints Committee shall be paid such remuneration, allowances and expenses as may from time to time be approved by the Chief Executive Officer, in his or her absolute discretion.

30. Meetings of the Committee

30.1 The Complaints Committee shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Policy and the Chief Executive Officer may at any time require the chairperson to convene a meeting of the Complaints Committee.

30.2 When considered necessary and in the interests of efficiency, it will be appropriate for the Complaints Committee to conduct a meeting by teleconference or videoconference.

30.3 The chairperson of the Complaints Committee shall preside at all meetings of the Complaints Committee at which he or she is present and the deputy chairperson shall preside at all meetings at which he or she, but not the chairperson, is present.

30.4 A quorum of the Complaints Committee will comprise either:

- i) The chairperson of the complaints committee sitting alone; or

- ii) at least three eligible members of the Complaints Committee one of whom is either the chairperson of the Complaints Committee or the deputy chairperson of the Complaints Committee.

30.5 All determinations and decisions to be made by the Complaints Committee shall be decided by a majority of the votes of the members present and voting. When required to make a final determination, the chairperson will have a casting vote.

30.6 The Complaints Committee shall cause accurate minutes to be kept of its proceedings at its meetings.

31. Hearings before the Committee

31.1 The Complaints Committee must give reasonable notice to the Member who is the subject of a complaint, of the time and place at which it intends to hear the complaint, and must advise the Member of his or her right to appear, give evidence and be represented at the hearing.

31.2 The Committee must give reasonable notice to the complainant of the time and place at which it intends to hear the complaint, and must advise the complainant whether they will be required to give evidence at the hearing.

31.3 If a person to whom notice has been given pursuant to sections 31.1 or 31.2 does not attend at the time and place fixed by the notice, the Committee may hear the proceedings in his or her absence.

31.4 At the hearing of a complaint:

- (a) the Complaints Officer must present the charge to the Committee on behalf of the complainant; and
- (b) every Member who is the subject of the complaint must be given a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Committee.

31.5 The Complaints Committee may appoint a person with such qualifications as it thinks fit to assist in proceedings before the Committee, provided however that such person must at all times act impartially and must not have a conflict of interest.

31.6 For the purposes of section 31.5, a person will have a *conflict of interest* in any of the following circumstances –

- (a) the person is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
- (b) the person has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
- (c) the person is or has been in any way involved in the circumstances giving rise to the complaint.

- 31.7 Any member the subject of a complaint before the Complaints Committee:
- (a) shall be entitled to appear personally or by a legal practitioner; or
 - (b) may, by leave of the Committee, be represented by a person other than a legal practitioner.

- 31.8 Documents should not be admitted into evidence if:
- (a) they have not been made available to the Member complained of within a reasonable time prior to the hearing; or
 - (b) their introduction causes prejudice to the Member except where such prejudice can be adequately dealt with by the Member.

This timeframe and the determination of prejudice will be at the discretion of the chairperson of the Complaints Committee. If any party wishes to introduce additional documentary evidence outside of this time frame, the chairperson may, if necessary, adjourn the hearing to allow the other party sufficient time to consider the evidence.

- 31.9 Minutes of the hearing of the Complaints Committee must be kept and upon request a copy given to the Member who is the subject of the complaint. The complainant may obtain a copy of the minutes upon request to the Complaints Officer, and shall be provided with a copy upon payment of a fee prescribed by the API.

- 31.10 To the extent that it is not prescribed in this Policy or a statute, the Committee shall determine its own procedure, including directions for the provision of written submissions and evidence and will not be bound by any rules of evidence that may bind a court or tribunal of a State or Territory of Australia.

32. Powers of the Committee

- 32.1 In the exercise of its powers in proceedings under this Policy, the Complaints Committee may
- (a) require the attendance before the Committee of the complainant and/or the presentation of such evidence (as is deemed necessary by the Complaints Officer), to be provided to the Committee;
 - (b) require the attendance before the Committee of the Member complained about;
 - (c) require the production of any books, papers, or documents by the complainant or the Member complained about;
 - (d) inspect any books, papers or documents produced before it, and subject to the owner's consent make copies of any of them, or of any of their contents;
 - (e) require any person to make oath or affirmation that he or she will truly answer all questions put by the Committee relating to any matter being inquired into by the Committee; and
 - (f) request any person and require any Member appearing before the Committee to give evidence, to answer any relevant questions put by the Committee, or by any other

person appearing before the Committee.

32.2 In the course of any proceedings, the Complaints Committee may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact there from that it considers proper; or**
- (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.**

32.3 In any proceedings the Complaints Committee shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

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Australian Property Institute Limited

National Education Committee Policy

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Policy

National Education Committee

Australian Property Institute Limited

1. Role and Composition of the National Education Committee

- 1.1 In accordance with the Constitution Clause 14, the Australian Property Institute Limited (**the Company**) shall establish a National Education Committee (**NEC**) to develop and provide advice on education and entry requirement matters on behalf of Members of the Company on a national basis.
- 1.2 The NEC shall report directly to the Company.
- 1.3 The NEC will comprise eleven (11) members as follows who shall be appointed by the Company in accordance with clauses 1.5 and 1.6 of this Policy:
- (a) eight (8) Members of the Company in the class of Life Fellow, Fellow and Associate;
 - (b) a Director of the Company;
 - (c) a representative of the Young Members Committee (who shall be a non-voting member with observer status; and
 - (d) a representative of the Property Institute of New Zealand.
- 1.4 Divisional Councils have the right, but are not obligated, to provide a minimum of two and maximum of four nominees for consideration by the Company for appointment to the NEC at the Company meeting held immediately before the Annual General Meeting of the Company.
- 1.5 A maximum of two Members of the Company who specialise in disciplines not covered through Divisional nominees may be nominated by the chairperson for positions on the NEC.
- 1.6 The Company in appointing Members to the NEC must, where nominations have been received, appoint a minimum of one representative from each Division and shall be cognizant of achieving a representation of practitioners and tertiary institutions offering Company accredited courses.
- 1.7 The Company shall appoint an alternate for each Divisional member of the NEC. These members shall be known as Alternate Members. The Company in appointing members shall, as far as practicable, ensure that an Alternate Member represents the same area of practice (practitioner or academic) as the appointed member.
- 1.8 The Company can, by resolution, terminate a Member's or an Alternate Member's appointment to the NEC.

2. Responsibilities of the National Education Committee

- 2.1 The NEC shall have responsibility for education and membership entry requirement matters, and any other business of the Company falling within the scope of the NEC's professional expertise as directed by the Company.
- 2.2 The NEC shall work in consultation with the Property and Valuation Standards Committees'

3. Tenure of National Education Committee Members

- 3.1 NEC members appointed in accordance with Section 1 shall hold office for a term of two years and may serve a maximum of four continuous terms, with the exception of the Young Members Committee representative who shall hold office for a term of one year which will not count toward any future term by the member concerned, should they be appointed to another committee of the Company. Tenure of NEC members will commence from the conclusion of the Company's Annual General Meeting.
- 3.2 The Director member of the NEC shall hold office for a term of one year and will be appointed annually.

4. Filling a Casual Vacancy

- 4.1 If a casual vacancy occurs on the NEC, the Company shall appoint a Member of the Company to fill the vacancy for the remaining term of the retiring NEC member subject to Section 1.6.

5. Substitute National Education Committee Members

- 5.1 The Alternate Member, as defined in Section 1.7, shall attend a meeting of the NEC as a replacement for the appointed member who is unable to attend a meeting of the NEC.
- 5.2 While the Alternate Member holds office as a NEC member, the Alternate Member will be entitled to receive notice of the meeting and to vote at the meeting.
- 5.3 The Alternate Member must vacate office if and when the Company so decides or when the absent NEC member is able to return to office.

6. Chairperson of the National Education Committee

- 6.1 The chairperson of the NEC will be appointed by the Board for a one year term.
- 6.2 The chairperson will be appointed annually for a maximum of three consecutive years.
- 6.3 The chairperson will preside over all meetings of the NEC. If the chairperson is absent, a chairperson for the meeting will be elected from amongst the members of the NEC present at the meeting.

7. Standing and Ad-Hoc Committees of the National Education Committee

- 7.1 The NEC may establish and dissolve committees to undertake specific tasks and advise on the specific matters that fall within the NEC's responsibilities in accordance with Section 0 of this Policy.

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Australian Property Institute Limited

Australian Valuation Standards Committee Policy

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Policy

Australian Valuation Standards Committee

Australian Property Institute Limited

1. Role and Composition of the Australian Valuation Standards Committee

- 1.1 The Australian Valuation Standards Committee (**ASVC**) is established by the Australian Property Institute Limited (**the Company**) in accordance with the provisions of Constitution Clause 14 to develop and provide advice on technical and professional valuation matters on behalf of Members of the Company on a national basis.
- 1.2 The ASVC shall report directly to the Board of the Company (**the Board**).
- 1.3 The ASVC will comprise twelve (12) members as follows who shall be appointed by the Board in accordance with clauses 1.5 and 1.6 of this Policy:
 - (a) eight (8) Members of the Company from the membership classes of Life Fellow, Fellow or Associate and who holds the certification of Certified Practising Valuer;
 - (b) one (1) member who shall be a representative of the Property Institute of New Zealand in the membership class of Member, Senior Member, Fellow or Life Fellow;
 - (c) a Director of the Company;
 - (d) a representative from the Australian Accounting Standards Board; and
 - (e) a representative of the Young Members Committee who shall be a non-voting member with observer status.
- 1.4 The AVSC may co-opt, from time to time, up to two specialists to assist in addressing specialised valuation issues.
- 1.5 Members holding a relevant membership class, in accordance with Section 1.3 above, may provide a nomination for consideration by the Board for appointment to the AVSC at the Board meeting held prior to the end of the calendar year.
- 1.6 Members' nominations must be provided in accordance with the provisions of the AVSC Operating Guidelines.
- 1.7 The Board in appointing members to the AVSC shall be cognisant of achieving

representation of the various valuation disciplines as outlined in the AVSC Operating Guidelines. While prioritising the requirement for covering the required skill sets, it is desirable but not mandatory to retain a distribution of Divisional representation.

- 1.8 The Board can, by resolution, terminate a Member's appointment to the AVSC.

2. Responsibilities of the Australian Valuation Standards Board

- 2.1 The AVSC will develop and provide advice and policy recommendations on valuation matters in relation to the following:
 - (a) technical standards (including Practice Standards, Guidance Notes and Information Papers);
 - (b) professional conduct; and
 - (c) any other business of the Company falling within the scope of the AVSC's professional expertise as directed by the Board.

3. Tenure of Australian Valuation Standards Committee Members

- 3.1 Members of the AVSC appointed in accordance with Section 1.3 shall hold office for a term of two (2) years and may serve a maximum of four (4) continuous terms, with the exception of the Young Members Committee representative who shall hold office for a term of one (1) year which will not count toward any future term by the AVSC member concerned, should they be appointed in a different capacity.
- 3.2 In making the initial appointments to the AVSC, the Company shall appoint half the members for a term of one (1) year and half for a term of two (2) years.
- 3.3 The Director representative appointed to the AVSC pursuant to section 1.3(c) will be appointed annually.
- 3.4 Tenure of a member of the AVSC will commence from 1 January in any given year.

4. Filling a Casual Vacancy

- 4.1 If a casual vacancy occurs on the AVSC, the Company shall appoint a replacement as a casual vacancy for the remaining term of the retiring member of the AVSC subject to Sections 1.3 and 1.6.

5. Chairperson of the Australian Valuation Standards Committee

- 5.1 The chairperson of the AVSC shall be appointed by the Company on an annual basis at the meeting held immediately prior to the Annual General Meeting of the Company and will take office from the conclusion of the Annual General Meeting.
- 5.2 The chairperson will preside over all meetings of the AVSC. If the chairperson is absent, a chairperson for the meeting will be elected from amongst the members of the AVSC present at the meeting.

6. Standing and Ad-Hoc Committees of the Australian Valuation Standards Committee

- 6.1 The AVSC may establish and dissolve committees to undertake specific tasks and advise on the specific matters that fall within the AVSC's responsibilities in accordance with Section 2 of this Policy.
- 6.2 The AVSC may establish committees to advise on matters of concern in relation to Section 2 of this Policy.

7. Australian Valuation Standards Board Professional Experience Discretion

- 7.1 In respect of the requirements of all new applicants for Certified Practising Valuers, Certified Practising Valuers (Plant & Machinery) and Certified Practising Valuers (Business) and the designation of Residential Property Valuers, the AVSB shall have discretionary power concerning the requirements for Approved Professional Experience set out in the Company Policies including but not limited to the Membership Policy.
- 7.2 The AVSC may consider special case applications for certification where the minimum professional experience of an applicant is outside the periods set out in the relevant Company Policy.

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Australian Property Institute Limited

Australian Property Standards Committee Policy

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POLICY

Australian Property Standards Committee

Australian Property Institute Limited

1. Role and Composition of the Australian Property Standards Board

- 1.1 The Australian Property Standards Committee (**APSC**) is established by the Australian Property Institute Limited (**the Company**) in accordance with the provisions of Constitution Clause 14 to develop and provide advice on technical and professional property (excluding valuation) matters on behalf of Members of the Company on a national basis.
- 1.2 The APSC shall report directly to the Board of the Company (**the Board**).
- 1.3 The APSC will comprise twelve (12) members as follows who shall be appointed by the Board in accordance with clauses 1.5 and 1.6 of this Policy:
 - (a) nine (9) Members of the Company from the membership classes of Life Fellow, Fellow or Associate and who hold the certification of Certified Property Practitioner, Certified Commercial Property Manager, Certified Facilities Manager, Certified Funds Manager, Certified Asset Manager or Certified Development Practitioner;
 - (b) one (1) member who shall be a representative of the Property Institute of New Zealand in the membership class of Member, Senior Member, Fellow or Life Fellow;
 - (c) a Director of the Company; and
 - (d) a representative of the Young Members Committee.
- 1.4 The APSC may co-opt, from time to time, up to two specialists to assist in addressing specialised property related issues.
- 1.5 Members holding a relevant membership class, in accordance with Section 1.3 above, may provide a nomination for consideration by the Board for appointment to the APSC at the Company meeting held prior to the end of the calendar year.
- 1.6 Members' nominations must be provided in accordance with the provisions of the APSC Operating Guidelines.
- 1.7 The Company in appointing Members to the APSC shall be cognizant of achieving representation of the various property disciplines as outlined in the APSC Operating Guidelines. While prioritising the requirement for covering the required skill sets, it is desirable but not mandatory to retain a distribution of Divisional representation.

1.8 The Company can, by resolution, terminate a Member's appointment to the APSC.

2. Responsibilities of the Australian Property Standards Committee

2.1 The APSC will develop and provide advice and policy recommendations on property (excluding valuation) matters in relation to the following:

- (a) technical standards (including Practice Standards, Guidance Notes and Information Papers);
- (b) professional conduct;
- (c) any other business of the Institute falling within the scope of the APSC's professional expertise as directed by the Company.

3. Tenure of Australian Property Standards Committee Members

3.1 Members of the APSC appointed in accordance with Section 1 of this Policy shall hold office for a term of two (2) years and may serve a maximum of four (4) continuous terms, with the exception of the Young Members Committee representative who shall hold office for a term of one year which will not count toward any future term by the APSC member concerned, should they be appointed in a different capacity.

3.2 In making the initial appointments to the APSC, the Company shall appoint half the members for a term of one year and half for a term of two (2) years.

3.3 The Director representative appointed to the APSC pursuant to 1.3(c) above will be appointed annually.

3.4 Tenure of a member of the APSC will commence from the 1st of January in any given year.

4. Filling a Casual Vacancy

4.1 If a casual vacancy occurs on the APSC, the Company shall appoint a Member to fill the vacancy for the remaining term of the retiring member of the APSC subject to Section 1.6 of this Policy.

5. Chairperson of Australian Property Standards Board

5.1 The chairperson shall be appointed by the Company on an annual basis at the meeting held immediately prior to the Annual General Meeting of the Company and will take office from the conclusion of the Annual General Meeting.

5.2 The chairperson will preside over all meetings of the APSC. If the chairperson is absent, a chairperson for the meeting will be elected from amongst the members of the APSC present at the meeting.

6. Standing and Ad-Hoc Committees of the Australian Property

Standards Committee

- 6.1 The APSC may establish and dissolve committees to undertake specific tasks and advise on specific matters that fall within the APSC's responsibilities pursuant to Section 0 of this Policy.

7. Australian Property Standards Committee Professional Experience Discretion

- 7.1 In respect of the requirements of all applicants for Certified Property Practitioner, Certified Commercial Property Manager, Certified Facilities Manager, Certified Funds Manager, Certified Asset Manager and Certified Development Practitioner, the APSC shall have discretionary power concerning the requirements for Approved Professional Experience set out in the Company Policies including but not limited to the Membership Policy.
- 7.2 The APSC may consider special case applications for certification where the minimum professional experience of an applicant is outside the periods set out in the relevant Company Policy.

Australian Property Institute
Limited

Appeals Tribunal
Policy

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1. Appointment of Appeals Tribunal

- 1.1** The Australian Property Institute Limited (**the API**) shall establish a Tribunal, which will be known as the 'Appeals Tribunal'.
- 1.2** The Board of the API (**the Board**) will as necessary seek nominations from the general community to become a member of the Appeals Tribunal ('Tribunal Members').
- 1.3** With the exception of the chairperson of the Complaint's Committee a person will not be eligible for nomination to the Appeals Tribunal if they are an existing member of the API or if they are a member of the Complaints Committee, or a former member of the Complaints Committee within the previous 12 months.
- 1.4** The Board may accept such nominations as it considers reasonable in its complete discretion. Unless otherwise nominated by the Board, the chairperson of the Complaints Committee will also assume the role of chairperson of the Appeals Tribunal and will be responsible for ensuring that nominations from the general community to become a member of the Appeals Tribunal are sought by the Board as and when necessary.
- 1.5** At the discretion of the Board and subject to appointment being necessary there must be not less than three Appeals Tribunal Members nominated and of those Tribunal Members there must be not less than two Tribunal Members who are lawyers with a current practising certificate and who have had not less than 7 years' legal experience.
- 1.6** In section 1.5, legal experience means —
 - (a)** standing and practice as a legal practitioner, with a licence to act as a legal practitioner in one or more Australian State or Territory; or
 - (b)** judicial service (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
 - (c)** a combination of both kinds of legal experience mentioned in paragraphs (a) and (b).
- 1.7** The Board will as necessary nominate one of the Tribunal Members as chairperson of the Appeals Tribunal and one as deputy chairperson of the Appeals Tribunal.
- 1.8** For each appeal to be considered by the Appeals Tribunal the chairperson of the Appeals Tribunal must appoint not less than three Tribunal members to the Appeals Tribunal to consider the appeal.
- 1.9** A Tribunal member will not be eligible for appointment to the Appeals Tribunal for a particular appeal where that member has a conflict of interest.
- 1.10** A Tribunal Member will have a conflict of interest if the Tribunal Member:
 - (a)** Is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (b)** has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
 - (c)** was involved in:

- i. making submissions in or giving evidence at the hearing of the conduct of the complaint; or
- ii. the decision of the Complaints Committee being appealed from, including being chairperson or a member of the Complaints Committee hearing the matter being appealed. However a conflict of interest will not arise where the conflict is alleged merely because the person sitting on the Appeals Tribunal is also the chairperson of the Complaints Committee.

2. Vacancy

- 2.1 A nomination to the Appeals Tribunal will remain valid for three years from the date of acceptance of a nomination.
- 2.2 The Board may terminate the appointment of a Tribunal Member for inability, inefficiency, or misbehaviour.
- 2.3 The office of a member of the Appeals Tribunal becomes vacant if —
 - (a) his or her nomination expires; or
 - (b) his or her appointment is terminated pursuant to this Policy; or
 - (c) he or she is declared bankrupt or a person whose affairs are under insolvency laws; or
 - (d) he or she becomes permanently incapable of performing his or her duties as a member of the Appeals Tribunal ; or
 - (e) he or she withdraws his or her nomination by written notice addressed to the Chief Executive Officer;
 - (f) he or she ceases to hold any qualification required for his or her becoming or being a member of the Tribunal; or
 - (g) he or she becomes a member of the API.

3. Validity of acts of Appeals Tribunal

- 3.1 No act, proceeding, or determination of the Appeals Tribunal shall be invalid on the ground only of any vacancy in the office of any member of the Appeals Tribunal or of any defect in the appointment of any member of the Appeals Tribunal, provided that any final determination on an appeal is made by at least two (2) members of the Appeals Tribunal, including the chairperson of the Appeals Tribunal.

4. Remuneration of members

- 4.1 The members of the Appeals Tribunal ~~may~~ shall be paid such remuneration, allowances and expenses as may from time to time be approved by the API.

5. Meetings of the Appeals Tribunal

- 5.1 The Appeals Tribunal shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Policy and the Board may at any time require the chairperson of the Appeals Tribunal to convene a meeting of the Tribunal.

- 5.2 When considered necessary and in the interests of efficiency, it will be appropriate for the Appeals Tribunal to conduct a meeting by teleconference, video conference or web conference.
- 5.3 The chairperson shall preside at all meetings of the Appeals Tribunal at which he or she is present and the deputy chairperson shall preside at all meetings at which he or she, but not the chairperson, is present, but where neither the chairperson nor the deputy chairperson is present at a meeting of the Appeals Tribunal, the members present shall appoint one of their number present to preside at the meeting.
- 5.4 At a meeting of the Appeals Tribunal, three members constitute a quorum.
- 5.5 The Appeals Tribunal shall cause accurate minutes to be kept of its proceedings at its meetings.

6. Hearings before the Appeals Tribunal

- 6.1 The Appeals Tribunal must give reasonable notice to an appellant of the time and place at which it intends to hear the complaint, and must advise the Member of his or her right to appear and be represented at the hearing.
- 6.2 The Appeals Tribunal must give reasonable notice to the complainant of the time and place at which it intends to hear the complaint.
- 6.3 If a person to whom notice has been given pursuant to 6.1 or 6.2 does not attend at the time and place fixed by the notice, the Appeals Tribunal may hear the proceedings in his or her absence.
- 6.4 Any appellant:
- (a) shall be entitled to appear personally or by a legal practitioner; or
 - (b) may, by leave of the Appeals Tribunal, be represented by a person other than a legal practitioner.
- 6.5 At the hearing of an appeal:
- (a) the Complaints Officer must respond to the appeal on behalf of the complainant; and
 - (b) the appellant must be given a reasonable opportunity to make submissions to the Appeals Tribunal.
- 6.6 The Appeals Tribunal may appoint a person with such qualifications as it thinks fit to assist in proceedings before the Appeals Tribunal, provided however that such person must at all times act impartially and must not have a conflict of interest.
- 6.7 A person will have a **conflict of interest** in any of the following circumstances –
- (a) the person is or has been connected in any business entity, firm, corporation or department with the complainant or the Member accused;
 - (b) the person has or has had an existing commercial or personal relationship with the complainant or the Member accused; or
 - (c) the person is or has been in any way involved in the circumstances giving rise to the complaint.
- 6.8 The Appeals Tribunal may, if it considers it appropriate and in the interests of justice to do so,

receive such further evidence about questions of fact, either orally, or in writing as it deems necessary.

- 6.9 A transcript or recording of the hearing of the Appeals Tribunal must be kept. The appellant or the complainant may obtain a copy of the transcript or recording upon request to the Complaints Officer, and shall be provided with a copy upon payment of a fee prescribed by the API.
- 6.10 To the extent that it is not prescribed, the Appeals Tribunal shall determine its own procedure, including directions for the provision of written submissions and evidence.
- 6.11 All determinations and decisions to be made by the Appeals Tribunal shall be decided by a majority of the votes of the members present and voting. When required to make a final determination, the chairperson will have a casting vote.

7. Powers of the Appeals Tribunal

- 7.1 In the exercise of its powers in proceedings under section 24, the Appeals Tribunal may —
- (a) request the attendance before the Appeals Tribunal of the complainant and /or of such evidence (as is deemed necessary by the Appeals Tribunal);
 - (b) require the attendance before the Appeals Tribunal of the appellant;
 - (c) require the production of any books, papers, or documents by the complainant or the Member complained about;
 - (d) inspect any books, papers or documents produced before it, and subject to the owner's consent make copies of any of them, or of any of their contents;
 - (e) require any person to make oath or affirmation that he or she will truly answer all questions put to him or her by the Tribunal relating to any matter being inquired into by the Tribunal; and
 - (f) request any person and require any member appearing before the Tribunal to give evidence, to answer any relevant questions put by the Tribunal, or by any other person appearing before the Tribunal.
- 7.2 In the course of any proceedings, the Appeals Tribunal may —
- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact there from that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.
- 7.3 In any proceedings the Appeals Tribunal shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.