

Australian Capital Territory

Civil Law (Wrongs) Australian Property Institute Valuers Limited Scheme 2021 (No 1)

Disallowable instrument DI2021-213

made under the

Civil Law (Wrongs) Act 2002, schedule 4, section 4.10 (Schemes are subject to disallowance)

1 Name of instrument

This instrument is the *Civil Law (Wrongs) Australian Property Institute Valuers Limited Scheme 2021 (No 1)*.

2 Commencement

This instrument commences on 1 September 2021.

3 Notice

I give notice of the Professional Standards Council of Victoria's approval of the attached Australian Property Institute Valuers Limited Scheme, which has effect until 31 August 2026.

Shane Rattenbury MLA
Attorney-General
28 August 2021

Professional Standards Act 2003 (Vic)

**THE AUSTRALIAN PROPERTY
INSTITUTE VALUERS LIMITED
PROFESSIONAL STANDARDS SCHEME**

PREAMBLE

- A. The Australian Property Institute Valuers Limited (APIV) is an occupational association.
- B. The APIV has made an application to the Professional Standards Council (PSC), established by the Professional Standards Act 2003 (Vic) (the Act), for approval of a scheme under the Act.
- C. The Scheme is prepared by the APIV for the purposes of limiting Occupational Liability to the extent to which such liability may be limited under the Act.
- D. The APIV has furnished the PSC with a detailed list of the risk management strategies, currently in place and intended to be implemented, in respect of its Members and the means by which those strategies are intended to be implemented.
- E. The APIV has furnished the PSC with APIV Insurance Standards with which Participating Members must comply for purposes of this Scheme.
- F. The Scheme is intended to remain in force for five (5) years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended pursuant to Section 34 of the Act.
- G. The Scheme is intended to operate in Victoria. This Scheme is also intended to operate in the Australian Capital Territory, New South Wales, the Northern Territory of Australia, Queensland, South Australia, Tasmania and Western Australia by way of mutual recognition under the Professional Standards Legislation.
- H. Section 12GNA(2) of *Australian Securities and Investments Commission Act 2001* (Cth); section 137(2) of *Competition and Consumer Act 2010* (Cth); and section 1044B(2) of *Corporations Act 2001* (Cth) provide for limited liability where a professional standards scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed by the Commonwealth.

THE AUSTRALIAN PROPERTY INSTITUTE VALUERS LIMITED PROFESSIONAL STANDARDS SCHEME

1. Occupational association

- 1.1. The Scheme is a scheme under the Act prepared by the APIV whose registered address is:

Level 3, 60-62 York Street

Sydney NSW 2000

- 1.2. The Scheme is intended to operate in Victoria, the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and Western Australia.
- 1.3. The Scheme is intended to limit Occupational Liability by insurance arrangements pursuant to Section 23 of the Act. The relevant insurance arrangements are the APIV Insurance Standards.

2. Persons to Whom the Scheme Appliesⁱ

- 2.1. The Scheme applies to:

2.1.1 all Members who are natural persons and who hold the API certification of Certified Practising Valuer, Certified Practising Valuer (Plant & Machinery) or Residential Property Valuer; and

2.1.2 all Corporate Members.

- 2.2. This Scheme also applies to all persons who were Participating Members at the time of any act or omission giving rise to Occupational Liability.ⁱⁱ

- 2.3. The APIV may, on application by a person referred to in clause 2.1, exempt that person from the Scheme from the date on which the exemption is granted or a later date specified in the exemption. This clause does not apply to a person to whom the Scheme applies by operation of Sections 20, 21 or 22 of the Act.

- 2.4 All Participating Members are required to hold or have the benefit of a Professional Indemnity Insurance Policy against Occupational Liability that complies with the APIV Insurance Standards and the insurance requirements set out in Clause 3.2, unless exempted by the APIV.

3. Limitation of Liability

- 3.1. This Scheme only affects the liability for Damages arising from a single cause of action to the extent to which the liability results in Damages exceeding \$1,000,000.

32. If a person, who or which was, at the time of the act or omission giving rise to Occupational Liability, a Participating Member and against whom a proceeding relating to Occupational Liability is brought, is able to satisfy the court that:
- 3.2.1 the person has the benefit of an insurance policy insuring such person against the Occupational Liability to which the cause of action relates, and
- 3.2.2 under which the amount payable in respect of that Occupational Liability is not less than the Monetary Ceiling relating to the class of person and the kind of Occupational Services to which the cause of action relates, that person is not liable in Damages in relation to that cause of action above the Monetary Ceiling specified in this Scheme.
33. For the purposes of the Scheme, an insurance policy must be a policy of a kind which complies with the APIV Insurance Standards.
34. The Monetary Ceiling (maximum amount of liability) for the purpose of limitation of liability under this Scheme is to be determined according to the following table:

Category	Assessed Value ("AV")	Monetary Ceiling
Category 1 Services Real Property Valuation Services	\$0 to \$3,500,000	\$1,000,000 (fixed)
	\$3,500,001 to \$7,500,000	AV x 33%
	\$7,500,001 to \$100,000,000	\$2,000,000 + (AV x 7.5%)
	\$100,000,001 or greater	\$10,000,000 (fixed)
Category	Category Description	Monetary Ceiling
Category 2 Services	Low Risk Valuation Services	\$1,000,000 (fixed)
Category 3 Services	Plant & Machinery Valuations	\$1,000,000 (fixed)
Category 4 Services	Other Occupational Services	\$1,000,000 (fixed)

35. For the avoidance of doubt, the applicable limitation of liability in respect of a Claim is the Monetary Ceiling as in force at the time at which the act or omission giving rise to the cause of action concerned occurred.
36. Where a person, who at the time of the acts or omissions referred to in clauses 3.6.1 and 3.6.2 was a Participating Member, incurs an Occupational Liability as a result of:
- 3.6.1 an act or omission by that person in the performance of Category 1 Services; and
- 3.6.2 an act or omission by that person in the performance of:

- (a) Category 2 Services;
- (b) Category 3 Services;
- (c) Category 4 Services; or
- (d) any combination of Category 2 Services, Category 3 Services and/or Category 4 Services;

such person's Occupational Liability under this Scheme for Damages in excess of the amount specified in clause 3.1 will be determined in accordance with those provisions of the Scheme relating to Category 1 Services only, as set out in the table at clause 3.3.

37. Clause 3.2 only affects liability for Damages arising from a single cause of action to the extent to which the liability in Damages exceeds such amount as is specified in Clause 3.1.

38. This Scheme limits the Occupational Liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of any person to whom the Scheme applied at the time the act or omission occurred.

39. Where a person who at the time of the acts or omissions referred to in this clause was a Participating Member, in respect of a single cause of action, incurs an Occupational Liability as a result of:

3.9.1 an act or omission in the performance of a Category 1 Service; and

3.9.2 an act or omission in the performance of one or more other Category 1 Service;

the Monetary Ceiling shall be calculated by reference to the highest Assessed Value.

3.10. Where, in respect of a Government Valuation, a person who was a Participating Member:

3.10.1 expressly extends reliance in respect of such Government Valuation to a Non-Government Entity; and

3.10.2 incurs a liability to such Non-Government Entity as a result of an act or omission by that Participating Member in the performance of the Government Valuation;

the relevant Occupational Service, for the purpose of calculating the applicable Monetary Ceiling in respect of such liability to the Non-Government Entity in accordance with clause 3.4 (only), will be deemed to be a Category 1 Service.

4. Conferral of discretionary authority

- 4.1. Pursuant to section 26 of the Act, this Scheme confers on the APIV a discretionary authority to specify, on application by a Participating Member, a higher monetary ceiling (maximum amount of liability) not exceeding \$20 million, in relation to the Participating Member either in all cases or in any specified case or class of case.

5. Definitions

- 5.1. Relevant definitions for the purposes of the Scheme are as follows:

“Act” means the *Professional Standards Act 2003* (Vic).

"API" means the Australian Property Institute Ltd ACN 608 309 128.

"APIV" means the Australian Property Institute Valuers Limited ACN 143 638 975.

"APIV Insurance Standards" means the insurance standards approved by the APIV and presented to, and considered by, the Professional Standards Councils in connection with the Councils' approval of the Scheme (subject to any amendment to such Insurance Standards as are subsequently approved by the APIV and presented to the Councils and approved or endorsed by the Councils in writing).

“Assessed Value” means an express statement of professional opinion by a person who is or was a Participating Member as to the value of any right, interest or benefit related to the ownership, occupation or use of real property or plant, machinery or equipment. Where a valuation states a range of values, rather than a single value, the Assessed Value shall be deemed to be the mid-point value in such range.

“Category 1 Services” means the Valuation of Real Property in Australia excluding any Low Risk Valuation Services.

“Category 2 Services” means the provision of Low Risk Valuation Services in Australia.

“Category 3 Services” means the provision of Plant & Machinery Valuation Services in Australia.

“Category 4 Services” means the provision of Other Occupational Services in Australia.

“Corporate Member” means a corporation which has been admitted as a Member pursuant to the eligibility criteria prescribed by the APIV Constitution.

“Damages” has the meaning given in Section 4 of the Act.

“Expert Determination” means any Valuation of Real Property undertaken for the purpose of making a determination acting as an expert pursuant to an agreement or deed where all relevant parties have agreed to indemnify, release or hold the valuer harmless in respect of any liability in connection with the valuation. An Expert Determination can be binding or non-binding.

“Expert Evidence Valuation” means any Valuation of Real Property undertaken for the purpose of providing expert evidence in relation to a proceeding before a court or tribunal where the expert’s primary duty is to the court or tribunal (excluding a Valuation of Real Property undertaken for Resumption purposes).

“Financial Reporting Valuation” means any Valuation of Real Property undertaken for the purpose of the preparation and issue of financial reports by any entity in the general course of the entity’s operations. It excludes special purpose financial reports prepared in respect of a specific transaction including any sale, merger, takeover or fundraising.

“Government Valuation” means any valuation prepared on instructions from any:

- (a) Government in Australia (including Federal, State or Territory and Local government);
- (b) Government department; or
- (c) Government agency; or
- (d) Government statutory or non-statutory body or authority.

“Insurance Valuation” means any assessment of the cost of replacement of destructible improvements to real property undertaken for the purpose of advising on the insurable value of such property in connection with the entry into, or proposed entry into, a contract of insurance.

“Low Risk Valuation Services” means any:

- (a) Valuation of Real Property undertaken in the capacity as an arbitrator;
- (b) Valuation of Real Property undertaken for the purpose of asset means testing;
- (c) Expert Determination;
- (d) Expert Evidence Valuation;
- (e) Financial Reporting Valuation;
- (f) Government Valuation;
- (g) Insurance Valuation;

- (h) assessment of any unit entitlement in respect of any subdivision, strata title, company title (or similar) property;
- (i) Valuation of Real Property undertaken for the purpose of determining a rate, tax, duty or levy that applies in respect of the property including but not limited to any council rates, Good & Services Tax or stamp duty; or
- (j) Valuation of Real Property undertaken for Resumption purposes.

“Member” means a member of the APIV.

“Monetary Ceiling” means the applicable monetary ceiling specified in clause 3.3 of the Scheme.

“Non-Government Entity” means a person or entity which is not a government entity of the type identified in the definition of Government Valuation at clause 5.1 (including, for the avoidance of doubt, any joint venture or partnership between one or more Government Entity(s) with one or more Non-Government Entity(s)).

“Occupation” means the occupational vocation carried out by Participating Members by application of the qualifications, training, skills, practices, disciplines, specialisations, standards, guidelines and experience of Certified Practising Valuers, Certified Practising Valuers (Plant & Machinery) and/or Residential Property Valuers.

“Occupational Liability” has the meaning given in Section 4 of the Act.

“Occupational Services” means any Category 1 Services, the Category 2 Services, the Category 3 Services and the Category 4 Services provided by a Participating Member in the performance of the Occupation.

“Other Occupational Services” means any Occupational Services provided by a Participating Member in the performance of the Occupation other than any:

- (a) Category 1 Services;
- (b) Category 2 Services;
- (c) Category 3 Services.

“Participating Member” means a Member to whom the Scheme applies pursuant to clause 2.1 and who has not been granted an exemption pursuant to clause 2.3.

“Plant & Machinery Valuation Services” means any valuation of any right, interest or benefit related to the ownership, possession or use of plant, machinery or equipment expressed as an Assessed Value.

“Professional Indemnity Insurance Policy” means a policy of insurance that

provides cover for the Participating Member in compliance with the APIV Insurance Standards.

“Professional Standards Legislation” means:

- (a) the Act;
- (b) *Professional Standards Act 1994* (NSW);
- (c) *Professional Standards Act 2004* (Qld);
- (d) *Professional Standards Act 2004* (SA);
- (e) *Professional Standards Act 2005* (Tas);
- (f) *Professional Standards Act 1997* (WA);
- (g) *Professional Standards Act 2004* (NT); and
- (h) *Civil Law (Wrongs) Act 2002* (ACT).

“Real Property Valuation Services” means the Valuation of Real Property but excluding any Low Risk Valuation Services.

“Resumption” means compulsory acquisition of land (including compulsory acquisition or appropriation of Crown land) under the provision of any Act of the Commonwealth or of a State or Territory authorising compulsory acquisition or appropriation of land.

“Scheme” means The Australian Property Institute Valuers Limited Professional Standards Scheme set out in this document.

“Valuation of Real Property” means any valuation of any right, interest or benefit related to the ownership, occupation or use of real property including land and all things that are a natural part of the land as well as any improvements to the land (but excluding plant, machinery and equipment) expressed as an Assessed Value.

6. Duration and commencement

6.1 The Scheme is intended to commence on the following day:

6.1.1 in Victoria, New South Wales, the Northern Territory, Queensland, Tasmania and Western Australia on 1 September 2021;

6.1.2 in the Australian Capital Territory and South Australia:

- (a) on the date provided in the relevant Minister’s notice in relation to the amendments, if a date is provided; or
- (b) on the first day two months after the day on which notice was given, in any other case.

- 6.2 This Scheme will be in force in Victoria for five (5) years from the date of commencement in that jurisdiction, unless:
- 6.2.1 it is revoked or ceases in accordance with the Act; or
 - 6.2.2 it is extended in accordance with the Act.
- 6.3 For any other jurisdiction, the Scheme will be in force for:
- 6.3.1 five (5) years from the date of commencement in that jurisdiction; or
 - 6.3.2 five (5) years from the date of commencement in Victoria; whichever period ends first
- 6.4 The Scheme will cease to operate in a jurisdiction referred to in clause 6.3 if it is revoked or ceases in accordance with the Professional Standards Legislation of that jurisdiction.

7. Other schemes

- 7.1 Notwithstanding anything to the contrary contained in this Scheme, if in particular circumstances giving rise to Occupational Liability, the liability of any person who is subject to this Scheme should be capped by both this Scheme and also by any other scheme under Professional Standards Legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

ⁱ Sections 20 and 21 of the Act provide that if the scheme applies to a body corporate, the scheme also applies to each officer of the body corporate and if the scheme applies to a person, the scheme also applies to each partner of the person, and if the scheme applies to a person the scheme also applies to each employee of the person, provided that if such officer of the corporation or partner of the person or employee of the person is entitled to be a member of the same occupational association, such officer, partner or employee is a member of the occupational association. Section 22 provides that the scheme may also apply to other persons as specified in that section.

ⁱⁱ For the purposes of the operation of the Scheme in Victoria, "Occupational Liability" has the same meaning as it has in the Act and excludes any liability which may not from time to time be limited pursuant to the Act. Similarly, for the purposes of the operation of the Scheme in other jurisdictions in which it applies, "Occupational Liability" has the same meaning as it has in the corresponding legislation of those jurisdictions and excludes any liability which may not from time to time be limited pursuant to that legislation.

Occupational liability is defined in s4(1) of the Act to mean 'civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted to be done by a member of an occupational association acting in the performance of his or her occupation'. However, s5(1) of the Act provides that the Act does not apply to liability for damages arising from the death of or personal injury to a person, abreach of trust or fraud or dishonesty. [Note: All jurisdictions other than NSW and WA exclude a lawyer acting in a personal injury matter.] Section 5(2) of the Act also provides that the Act does not apply to liability which may be the subject of proceedings under Section 110 of the *Transfer of Land Act* (Vic).