

Australian Property Institute Limited

# RULES OF PROFESSIONAL CONDUCT

**Reference** Rules of Professional Conduct

**Effective** 4 April 2021

**Owner** API Board

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## Rules of Professional Conduct

### Preamble

The Rules of Professional Conduct (*Rules*) are an interpretation and expansion of the Code of Ethics of the Australian Property Institute Limited (*API*), as determined by the Board.

The purpose of the *Rules* is to ensure that high standards of professional behaviour are observed by all *Members*.

The *Rules* do not attempt to provide a detailed or exhaustive list of what to do in every situation. Instead, the *Rules* represent a framework for professional conduct and aims to provide assistance and clarification to *Members* and those who interact with and engage the professional services of *Members*.

Rules 1 to 9 apply to all *Members*, with Rules 10 to 14 also applicable to *API Valuer Members (Valuers)* when undertaking and providing valuation services.

Every *Member* of the *API* must comply with the *Rules*. A breach of the *Rules* may constitute professional misconduct which may be investigated by the *API* in accordance with the procedures outlined in *API Policies*.

The Board may approve additional rules that apply to specific membership categories and/or certifications from time to time.

The Rules of Professional Conduct is effective from 4 April 2021.

## Definitions

The definitions below have been included for interpretation and understanding of certain stated terms used within these *Rules*. Where a defined term is included in these *Rules* it is identified as an italicised term.

**'CPV'** means the API's certification of Certified Practising Valuer.

**'draft valuation report'** means a valuation report prepared by a *Primary Valuer*, but prior to its release/delivery to the client.

**'may'** describes actions and procedures that *Members* have a responsibility to consider. Matters described in this fashion require the *Members* attention and understanding. How and whether the *Member* implements/follows these matters in undertaking the professional services will depend on the exercise of professional judgment by the *Member*, taking into account the circumstances and the objectives of these *Rules*.

**'Member'** means a member of the API under the Membership Policy which may include

- **Associate** (AAPI)
- **Fellow** (FAPI)
- **Life Fellow** (LFAPI)
- **Provisional Member** (PMAPI)
- **Student Member**
- **MAPI** membership

**'must'** indicates an unconditional responsibility to follow/comply with the actions and procedures described within these *Rules*. The *Member must* comply with the actions and procedures in all circumstances where it is described as a requirement within these *Rules*.

**'Primary Valuer'** in respect of real property or plant, machinery and equipment valuations means an *API Valuer Member (Valuer)*, who inspected the property, undertook the valuation and prepared the report, and;

1. in the case of a real property valuation, is;

- (a) a Provisional Member of API with RPV - PMAPI RPV, or
- (b) an Associate Member of API with CPV - AAPI CPV, or
- (c) a Fellow Member of API with CPV - FAPI CPV, or
- (d) a Life Fellow Member of API with CPV - LFAPI CPV.

2. in the case of a plant, machinery and equipment valuation, is;

- (a) an Associate Member of API with CPV (P&M) - AAPI CPV (P&M), or
- (b) a Fellow Member of API with CPV (P&M) - FAPI CPV (P&M), or
- (c) a Life Fellow Member of API with CPV (P&M) - LFAPI CPV (P&M).

**'residential property'** means:

- (i) Vacant land on which the construction of a single dwelling is not prohibited by law;
- (ii) land or a lot on which there is not more than two dwellings (either existing or in the course of construction) and any other improvements incidental thereto;
- (iii) rural residential land where there is a dwelling entitlement;
- (iv) a unit or lot entitlement (including a proposed unit or entitlement) under a strata scheme or other group title scheme comprising not more than two dwellings (either existing or in the course of construction) and other improvements incidental thereto; or
- (v) a single residential "company title" apartment which is covered under the exemption provided to the API by ASIC;

PROVIDED however that

- (vi) the highest and best permitted use of the land must be residential use;
- (vii) the land or lot must not be used wholly or predominantly for non-residential purposes;
- (viii) the land or lot is not capable of being subdivided into more than two parcels;
- (ix) the land does not contain a block of residential flats/units/apartments held under single ownership;
- (x) the land is held under freehold title; and
- (xi) the land is not within a retirement village, nursing home (or similar).

**'residential property valuation'** means a valuation of a *'residential property'* including but not limited to the following:

- (i) A valuation for potential marketing purposes;
- (ii) a rental valuation of a *residential property*;
- (iii) a valuation for rating and/or tax assessment purposes;
- (iv) a costing estimate/report for insurance purposes of a single dwelling (also see (viii) below)
- (v) a mortgage or loan security valuation; or
- (vi) a valuation of individual entitlements under a Strata Title or similar;

BUT a *residential property valuation* DOES NOT include:

- (vii) A valuation of *residential property* for compensation or resumption purposes;
- (viii) a costing estimate/report for insurance purposes on behalf of an owner's corporation for a strata scheme (or similar);
- (ix) a valuation of common property within a residential strata scheme (or similar);
- (x) a valuation of a *residential property* for the purposes of providing any expert evidence to a Court or Tribunal (or similar) or Family Law Court related valuations; or
- (xi) a valuation of residential timeshare interests.

**'Review'** means the process where the *Supervising Member* has:

- reviewed the *draft valuation report* and working papers from the file; and
- based upon the *Review* and appropriate questioning of the *Primary Valuer* who undertook the valuation, is satisfied that there is a reasonable basis for the valuation process undertaken and the valuation methodology adopted by the *Primary Valuer*.

**'RPV'** means the *API's* certification of Residential Property Valuer.

**'should'** indicates responsibilities that are presumptively mandatory. The *Member must* comply with requirements of this type unless the *Member* demonstrates that alternative actions which were followed under the circumstances were sufficient to achieve the objectives of these *Rules*.

In the rare circumstances in which a *Member* believes the objectives of these *Rules* can be met by alternative means, the *Member must* document, in the report, opinion or advice provided, why the indicated action under these *Rules* was not deemed to be necessary and/or appropriate to be followed/complied with.

If a *Rule* outlines an action or procedure that the *Member "should"* follow, consideration of the action or procedure is presumptively mandatory, while the action or procedure is not.

**'Supervising Member'** means an *API Member* who holds *CPV* and has been appointed by the firm to undertake the *Review* of, and countersign, the valuation report.

## 1. Professional and Personal Conduct

- 1.1. *Members must* 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 API.
- 1.2. *Members must* comply with the relevant *Rules* as applicable to their relevant membership category, as amended from time to time.
- 1.3. *Members must* not falsify or misrepresent their professional qualifications, API membership category and certifications or professional experience.
- 1.4. A *Member must* not include false or misleading claims in any advertisement for their services.
- 1.5. A *Member must* operate within the limits of their qualifications and experience and *must* not accept instructions in a field of practice in which they possess insufficient knowledge and skill to provide competent services to the client, unless the *Member* obtains fully informed written consent from the client to undertake the services, or they undertake the services in conjunction with a person having the required competence.
- 1.6. A *Member must* obtain or confirm in writing all instructions and variations of instructions of the client or the client's representatives.
- 1.7. A *Member must* properly supervise all services carried out for and on the *Member's* behalf.
- 1.8. A *Member must* take such steps as are reasonably necessary to maintain and improve their knowledge and skill in the fields in which they practice.
- 1.9. A *Member must* not provide any advice or make any statement without reasonable foundation unless it is appropriately qualified or limited.

- 1.10. A *Member must* complete the work or services required by the *Member's* retainer, unless
- (a) The *Member* and the *Member's* client have otherwise agreed in writing;
  - (b) the *Member* is discharged from the retainer by the client, in writing; or
  - (c) the *Member* terminates the retainer for just cause, and on reasonable written notice to the client taking into account relevant circumstances.
- 1.11. A *Member must* not, during, or after termination of a retainer, disclose to any other person, who is not a partner or employee of the *Member's* firm, any confidential information provided directly or indirectly by a client or to a client, unless:
- (a) the client authorises the disclosure in writing;
  - (b) the *Member* is permitted or compelled by law to disclose;
  - (c) the *Member* discloses information for the sole purpose of avoiding the probable involvement in, engagement or concealment of a felony; or
  - (d) it is reasonably necessary to do so in order to reply to, or defend any charge or complaint in relation to conduct or professional behaviour brought against the *Member* or his or her partners, associates or employees.
- 1.12. Fees and terms *may* be negotiated with a client on an agreed basis, provided however that the fees payable to a *Member* do not depend upon a client-nominated outcome.
- 1.13. Where information critical to the assignment being undertaken is relied upon by a *Member*, the source of that information *must* either be disclosed in the report, opinion or advice, or contained in the working papers supporting the report, opinion or advice, and be appropriately attributed in either case, unless the information is protected by confidentiality, or the *Member* is prevented by privacy laws or legislation from disclosing or referring to the source.
- 1.14. A *Member must* not directly or indirectly exert undue pressure or influence on any persons, whether by the offer or provision of any payment gift or favour or otherwise, for the purpose of securing instructions for work.
- 1.15. A *Member should* not accept or proceed with an instruction from any party where there is reason to believe that undue pressure or influence may or will be exerted by either the instructing party or any third party.

## 2. Relationships with Clients

- 2.1. A *Member should* act promptly and efficiently in the servicing of the client's instructions.
- 2.2. A *Member should*, in the case of unavoidable delay, communicate to the client(s) the progress being made in respect of the instructions issued to the *Member*.
- 2.3. A *Member should*, in the case of joint instructions, communicate to all clients at the same time.

### 3. Conflict of Interest

- 3.1. A *Member should* take reasonable steps to identify circumstances that could be construed as a conflict of interest.
- 3.2. In any dealings with a client, a *Member should* make appropriate endeavors to ensure that any real, perceived, or potential conflict of interest does not arise between the *Member*, or an associate of the *Member*, and the client.
- 3.3. The *Member must*, where any real, perceived, or potential conflict of interest may arise bring this to the attention of the instructing party within a reasonable time frame.
- 3.4. Subject to Rule 3.5, a *Member must* not accept instructions from a client or continue to provide services to a client where the provision of those services is likely to create a real, perceived, or potential conflict of interest.
- 3.5. Where a real, perceived, or potential conflict of interest arises, or where a *Member* identifies circumstances that could be construed as a conflict of interest, the *Member must*:
  - (a) inform the client, and any other interested party, in writing, of the real, perceived, or potential conflict of interest prior to accepting or completing the professional services;
  - (b) encourage and recommend that the client obtain independent professional advice;
  - (c) decline proceeding with the instruction unless Rule 3.6 is complied with.
- 3.6. A *Member should* only accept the client's instructions, or continue to act for the client, if the *Member* informs the client, in writing, that neither the *Member* nor the *Member's* firm can act, or continue to act, for the client unless the instructions to proceed, despite the real, perceived, or actual conflict of interest, are confirmed in writing.

The written instructions *must* include an acknowledgement and acceptance of the real, perceived, or potential conflict of interest.

A *Member should* only accept the client's instruction or continue to act for the client if:

  - (a) the client provides a written confirmation of their instructions with an acknowledgement and acceptance of the real, perceived, or potential conflict of interest;
  - (b) any other interested party also provides confirmation that the *Member* and the *Members'* firm *may* accept the instructions or continue to provide the professional services to the client; and
  - (c) the *Member* discloses the conflict of interest in any document, report, opinion or advice prepared for the client relating to that matter.
- 3.7. A *Member must* not accept a payment or favour from any party if the payment or favour will create a real or perceived conflict between the *Member* and the client.
- 3.8. A payment or favour *may* only be accepted where it relates to the provision of the professional services by the *Member*, and the circumstances are fully disclosed to and consented to by all parties.

### 4. Impartiality

- 4.1. *Members must* maintain the strictest independence and impartiality when providing professional services and/or where the exercise of objective judgement is required. A *Member must* not:
  - (a) adopt the role of advocate in a case where their duty is to exercise independence and impartiality;
  - (b) act as an advocate and as an expert in the same matter;



- (c) act as an advocate in a matter where another person from the same organisation or having the same employer as the *Member* has acted or is acting as an expert in that matter;
- (d) act as an expert in a matter where another person from the same organisation or having the same employer as the *Member* has acted or is acting as an advocate in that matter;
- (e) allow the performance of their professional duties to be improperly influenced by the needs or preferences of a client or other party;
- (f) rely upon critical information supplied by a client without appropriate qualification or confirmation from other sources being taken into account and/or included in any report, opinion or advice; or
- (g) act in any way inconsistent with displaying independence and impartiality.

## 5. Members and the API

### 5.1. *Members must not say or do anything that:*

- (a) purports to represent the views of the *API* unless expressly authorised to do so;
- (b) is likely to bring the *API*, the Board, API staff or officers or any other *Members* into disrepute or impact the public standing of the *API*.

### 5.2. *Members must not maliciously or carelessly say or do anything to injure or potentially injure, directly or indirectly, the reputation, prospects or business of other Members or the API.*

### 5.3. *When dealing with the API a Member must be frank, respectful, and honest and subject to any express requirement set out in any API Policy.*

### 5.4. *A Member must fully cooperate with any request for information or any directive from the API where a complaint or disciplinary matter has been raised with the API.*

### 5.5. *A Member must notify the API of any finding of professional misconduct against the Member in relation to;*

- (a) professional services undertaken by them, or
- (b) when holding themselves out as a *Member*, and

where such finding of professional misconduct specifically alleged a breach of these *Rules*; but excluding notifiable events under the *Member's* corporate employers Professional Indemnity Insurance Policy.

## 6. Plagiarism

### 6.1. *A Member must not, without appropriate acknowledgement, reproduce, paraphrase or summarise any work, words, ideas or intellectual property of another person which creates the impression that it is their own. All reports, opinions or advice prepared by Members must give appropriate acknowledgement of the ideas, scholarship and intellectual property of others insofar as these have been used and relied upon.*

## 7. Disclosure Requirements

- 7.1. Where all facts or information have not been ascertained or verified, written disclosure of this, together with a statement of the extent, if any, to which:
- (a) the failure to ascertain or verify the facts or information in question qualifies or affects the report, opinion or advice provided; or
  - (b) the advice or opinion provided relies on the professional opinion from outside experts *must* be included in the report, advice or opinion provided by the *Member*.
- 7.2. Where the *Member* is a counter signatory or co-signatory, the extent of their involvement and the capacity in which they are signing the report, opinion or advice *must* be disclosed in writing in the report, opinion or advice.

## 8. Maintaining Records

- 8.1. *Member must* retain in a place of safe keeping, adequate records to substantiate all reports, opinions or advice, all instructions from the client or the client's representative, and all other records and information on which the *Member's* professional opinion or advice was based. Such records *must* be kept for a minimum of seven (7) years or longer as per requirements under legislation or statutory regulation in the jurisdiction in which the *Member* is providing professional services.

## 9. Departure or Non-Compliance Provisions

- 9.1. Where a *Member* considers that a circumstance exists that warrants the departure from or non-compliance with any of these *Rules*, the *Member's* report, opinion or other advice *must* include a written statement that outlines:
- (a) the reasons for the departure or non-compliance with the *Rules*; and
  - (b) any impact the *Members* departure or non-compliance may have on the content of the opinion or advice.

## 10. Property Valuations

- 10.1. *API Valuer Members (Valuers)* undertaking valuations *must* comply with the International Valuation Standards (*IVS*) published by the International Valuations Standards Council (*IVSC*) applicable as at the date of valuation. The *API* has adopted the *IVS* in full.
- 10.2. *Valuers must* also comply with all applicable legislative requirements and any professional member obligations as published or adopted by the *API* and applicable at the date of valuation.
- 10.3. When signing a valuation report, opinion or advice a *Valuer must* state their *API* membership category and certification held.
- 10.4. Where a *Valuer* is a counter signatory or a co-signatory of a valuation report, opinion or advice, the extent of their involvement and the capacity in which they are signing *must* be disclosed.

## 11. Undertaking Valuations

- 11.1. This *Rule* is applicable to Valuers undertaking valuations of assets including real property, and plant, machinery and equipment valuations.
- 11.2. For the avoidance of doubt, valuations include full personal inspections by the *Valuer* as well as limited on-site inspections and kerbside inspections by the *Valuer*.  
When undertaking a valuation, unless otherwise instructed in writing by the client, a *Valuer*, who is the *Primary Valuer*, must:
- (a) complete inspections and other investigations to enable the *Valuer* to satisfy themselves as to all material valuation considerations; and
  - (b) conduct inspections and other investigations to enable the *Valuer* to complete the valuation in accordance with accepted valuation practice.
- 11.3. If the asset is personally inspected by the *Valuer* or only subject to a limited or restricted inspection, in accordance with the written instructions from the client or the client representative, the *Valuer must* disclose in the valuation report, opinion or advice:
- (a) The extent of the restricted or limited inspection undertaken; and
  - (b) that the property was not personally inspected by the *Valuer* or only subject to a limited or restricted inspection in accordance with the written instructions from the client or the client's representative; and
  - (c) the effect that non-inspection or a limited or restricted inspection may have on the valuation provided.
- 11.4. When undertaking a valuation, the *Valuer must* take reasonable steps to:
- (a) gather sufficient relevant data in forming an opinion of value; or in the absence or deficiency of such data, explain in the valuation report the basis on which the opinion was formed; and
  - (b) ascertain relevant facts and information as a prudent valuer would have ascertained or verified in order to provide a professional valuation.
- 11.5. A *Valuer*, who is the *Primary Valuer*, must include in the valuation report, opinion or advice:
- (a) Details of the extent/form of physical inspection, of the asset, personally undertaken by the *Valuer* and;
  - (b) a statement of all assumptions made in arriving at an opinion of value and all conditions;
  - (c) any requirements or limitations arising from the client's instructions;
  - (d) any requirements or limitations arising due to any other circumstances;
  - (e) where all facts or information have not been ascertained or verified, written disclosure of this, together with a statement of the extent, if any, to which the failure to ascertain or verify the facts or information in question qualifies or affects the valuation provided; and
  - (f) the degree of reliance, if any, on information and/or professional opinion from others.

## 12. Plant, Machinery and Equipment Valuations

- 12.1. When undertaking a valuation of plant, machinery and equipment a *Valuer must* comply with these Rules as applicable for the professional services undertaking.
- 12.2. Appropriate procedures *may* include:
  - (a) Inspection of a representative sample of the assets where:
    - (i) the valuation includes a large population or similar assets or asset types;
    - (ii) the assets that are not inspected are relatively immaterial in the context of the overall engagement; and
  - (b) The review and comparison of various data sources that include but are not limited to:
    - (i) fixed asset registers;
    - (ii) maintenance databases and records;
    - (iii) lease/rental documents; and
    - (iv) purchase invoices.

## 13. Statutory Valuations

- 13.1. *Valuers* undertaking valuations for/or on behalf of a statutory body, *must* comply with the requirements of the statutory body that they have undertaken the professional services for.
- 13.2. Statutory valuations of property *must* also be undertaken in accordance with these *Rules* unless the specific instructions of the statutory body require otherwise.

## 14. Student and Provisional Members

- 14.1. Student Members *may* assist in undertaking a valuation and *may* assist in the preparation of the valuation report, but they *must* not undertake a valuation in their own right.
- 14.2. A Student Member *must* not sign a report, opinion or advice in any way that identifies them as a *Valuer*.
- 14.3. A Provisional Member (PMAPI) who does not hold the certification of *RPV* *may* assist in undertaking a valuation. This could include co-inspecting with a *Primary Valuer*.
- 14.4. A PMAPI who does not hold the certification of *RPV* *must* not sign a report, opinion or advice in any way that identifies them as a *Valuer*.
- 14.5. A PMAPI who holds the certification of *RPV* (PMAPI *RPV*) *may* undertake a *residential property valuation*, provided they comply with Rules 10 and 11, and that the report, opinion or advice is counter signed by a *Supervising Member*.
- 14.6. A *Supervising Member* *must* not counter sign a valuation of *residential property* undertaken by a PMAPI *RPV* unless the *Supervising Member*;
  - (a) is a *CPV*; and
  - (b) has undertaken a *Review* of the *draft valuation report* and working papers from the file; and based upon the *Review* and appropriate questioning of the *Primary Valuer* who undertook the valuation, is satisfied that there is a reasonable basis for the valuation process undertaken and the valuation methodology adopted by the *Primary Valuer*.
- 14.7. Rules 14.6 does not apply for restricted assessments conducted by a PMAPI *RPV* where the restricted assessment is undertaken in accordance with the API Restricted Assessment Supporting Memorandum.