

APPLICATION FOR REVOCATION OF AN AUTHORISATION FOR PROPOSED CONDUCT AND SUBSTITUTION OF A REPLACEMENT

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

APPLICANT

1. Provide details of the applicants to revocation and substitution, including:

1.1. Name, Address (registered office), Telephone Number and ACN

Australian Property Institute Limited (API) – ACN 608 309 128

Registered Office:

Level 3, 60 York Street

Sydney

NSW 2000

Phone: [REDACTED]

1.2. Contact Name, Position, Telephone Number and Email Address

Ms Amelia Hodge

Chief Executive Officer

Phone: [REDACTED]

Email: [REDACTED]

1.3. Description of Business Activities

The API is a professional peak body, with over 8,000 members, representing the interests of property professionals throughout Australia. The 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.

1.4. Email Address for Service of Documents

Carina Zeccola, Managing Partner – Griffin Legal

Email: [REDACTED]

Phone: [REDACTED]

AUTHORISATION TO BE REVOKED (THE EXISTING AUTHORISATION)

2. Provide details of the authorisation sought to be revoked including:

2.1. The registration number and date of the authorisation which is to be revoked

The API is seeking re-authorisation via revocation of authorisation A91522 and substitution with a new authorisation.

Authorisation A91522 was granted on 6 July 2016 for the API and its current and future members to make and give effect to clauses in the API Constitution, the API Code of Professional Conduct for Members and associated policies. Authorisation A91522 is due to expire on 28 July 2021.

The API was formerly 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 of its Constitution and By-laws, which set out the standards of professional behaviour required of members of AIVLE. Since the 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. The API sought revocation of authorisation A90545 when the API sought to change its status from an incorporated association to a company limited by guarantee (which took effect 1 January 2016). That transition required changes to the API's constitution and for relevant By-laws to be converted to policies. A90545 was revoked and substituted with A91522.

2.2. Other persons and/or classes or persons who are a party to the authorisation which is to be revoked

The proposed Arrangements will be entered into and given effect to by the Applicant – being the same party subject to the existing authorisation. For further details, refer to the Submission accompanying this form.

2.3. The basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire

Revocation of authorisation A91522 is sought on the basis that it is due to expire on 28 July 2021 and the Applicant seeks to continue the authorised conduct. The API seeks to make and give effect to clauses contained within:

- the API Constitution;
- the API Membership Policy;
- the API Code of Ethics;
- the API Standards Steering Committee Charter;
- the API CPD Policy;
- the API Rules of Professional Conduct; and
- Professional Conduct Policy Suite (including Appeals Tribunal Policy Suite).

These documents will collectively be referred to as the **Arrangements** and are a revised suite of governance and policy documents.

It is considered that reauthorisation would not constitute a minor variation to the previous authorisation and as such a revocation and substituted authorisation is warranted.

The Applicant wishes to maintain the legal protection conferred by the existing Authorisation by revoking it and substituting a new authorisation, taking into consideration the evolving needs of members and the property industry.

AUTHORISATION TO BE SUBSTITUTED (THE NEW AUTHORISATION)

3. If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf, authorisation is sought. Where relevant provide

3.1. name, address (registered office), telephone number, and ACN

Not Applicable

3.2. contact person's name, telephone number, and email address

Not Applicable

3.3. a description of business activities

Not Applicable

THE PROPOSED CONDUCT

4. Provide details of the proposed conduct, including:

4.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct

The Applicant wishes 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 system for membership terms and sanction.

The clauses requiring authorisation include:

- *the API Constitution;*
 - clause 5.3
 - clause 5.4
 - clause 5.9
 - clause 6.1
 - clause 6.2
 - clause 15.1
- *The API Membership Policy;*
 - section 2
 - section 4

- section 6
- section 7
- section 8
- section 10
- section 14
- *API Code of Ethics;*
 - clause 2.1
 - Fundamental Principals 1 – 5
- *API Standards Steering Committee Charter;*
 - section 1
 - section 3
 - section 4
- *API CPD Policy;*
 - section 3
 - section 4
 - section 9.1
 - section 10.1
- *the API Rules of Professional Conduct (in its entirety);*
- *Professional Conduct Policy Suite (including Appeals Tribunal Policy Suite):*
 1. *Professional Conduct Policy*
 - section 1
 - section 3
 - section 4
 - section 5
 - section 7
 - section 10
 - section 13.1
 - section 14
 - section 15
 - section 16
 2. *Professional Conduct Committee Charter*
 - section 4
 - Section 7
 3. *Appeals Tribunal Policy*

- section 3
- section 4
- section 5.2
- section 6
- section 9
- section 12.2
- section 13
- section 15
- section 18

Further details in respect of this is contained in the Submission accompanying this form.

4.2. an outline of any changes to the conduct between the existing authorisation and the new authorisation

The API is seeking substitute authorisation to make and give effect to the revised suite of governance and policy documents identified in the Arrangements. The API has developed these documents which provide standards of best practice and professional behaviour required of API members.

The Arrangements sought relate to the rules and standards governing members of the API. There are some clauses within the Arrangements that the Applicant deems it prudent to highlight and address. These largely relate to the membership criteria and requirements as well as the disciplinary procedure and appeals process.

Authorisation is sought for making and giving effect to the clauses contained in the Arrangements.

The new provisions requiring authorisation for the first time are contained at:

- *API Code of Ethics;*
 - clause 2.1
 - Fundamental Principals 1 – 5
- *API Standards Steering Committee Charter;*
 - section 1
 - section 3
 - section 4
- *API CPD Policy;*
 - section 3
 - section 4
 - section 9.1

- section 10.1
- *the API Rules of Professional Conduct (in its entirety); and*
- *Professional Conduct Policy Suite (including Appeals Tribunal Policy Suite)*
 1. *Professional Conduct Policy*
 - section 1
 - section 3
 - section 4
 - section 5
 - section 7
 - section 10
 - section 13.1
 - section 14
 - section 15
 - section 16
 2. *Professional Conduct Committee Charter*
 - section 4
 - Section 7
 3. *Appeals Tribunal Policy*
 - section 3
 - section 4
 - section 5.2
 - section 6
 - section 9
 - section 12.2
 - section 13
 - section 15
 - section 18

Further details in respect of the nature of the Arrangements is contained in the Submission accompanying this form.

4.3. **the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct, ie:**

- **cartel conduct (Division 1 of Part IV)**
- **contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)**
- **concerted practices (s. 45)**
- **secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)**
- **misuse of market power (s. 46)**
- **exclusive dealing (s.47)**
- **resale price maintenance (s. 48) and/or**
- **a dual listed company arrangement (s. 49)**

The proposed conduct listed at section 4.1 above, may attract Section 45 of the Act relating to contracts, arrangements or understandings that restrict dealings or affect competition as well as Division 1 of Part IV of the Act relating to cartel conduct.

The API membership is made up of competitors from various different businesses who all sign up to the same standards when joining the API. These members sit on the Board, committees (such as the API Standards Steering Committee) and working groups to further the work of the API in setting its standards. The Board of the API is made up of members of the property profession responsible for the governance of the organisation and setting standards which apply to the entire profession.

The API also advocates for consumers to use professionals who are members of the API noting the high standards API maintains for its membership. Certain property professionals, such as valuers, do not have a specified regulator. By engaging a member of the API, consumers have an assurance that members are required to comply by a certain set of standards and are held accountable to those standards.

This also means that API can terminate the membership of a member in accordance with its policies and procedures. API seeks authorisation for the ability to set and enforce terms of membership and to terminate membership.

Certain members of API are compelled to also be members of APIV. The compulsion does not apply to all membership categories of API. Members of the API who are practising valuers are compelled (by virtue of clause 14 of Annexure B of the Submission) to also become a member of the Australian Property Institute Valuers Limited (APIV) to participate in the APIV professional standards scheme, providing a limit on the civil liability of professionals for occupational claims. APIV is a related entity of the API. API seeks authorisation for this compulsion. This may be considered to restrict or affect competition pursuant to section 45 of the Act. It is possible section 47 of the Act may also apply by way of exclusive dealing, whereby valuers who are members of API are compelled to also be a member of

APIV to access its limited liability capping scheme – however we note that API and APIV are related bodies corporate.

4.4. the rationale for the proposed conduct

By becoming API members and being bound by the Arrangements, this may continue to be seen to constitute an arrangement between competitors which has the effect of restricting, preventing or limiting the supply of services. 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.

4.5. the term of authorisation sought and reasons for seeking this period.

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

5. Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.

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.

The classes of persons who may be impacted by the proposed conduct include:

- Practising valuers and members of the API – who are required to comply with the policies implemented by the API
- The clients of API members, for example the banks – who engage the services of API members and rely upon the API to uphold its policies and standards
- Employers in the property industry – who employ property professionals and expect their employees to comply with the industry standards set by the API
- Other industry bodies such as the Real Estate Institute of Australia (REIA)
- Offices of the Valuer-General, such as the Office of the Valuer-General
- Land information entities and statutory authorities responsible for property and land information, such as Landgate

MARKET INFORMATION AND CONCENTRATION

6. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

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. **Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

This application relates to the property industry. API is the leading and contemporary membership organisation for property professionals and produces a range of leading property publications and a range of other professional educational programs and events and online resources.

The relevant services provided by API members are property services, including property valuations.

8. **In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

API estimates that its members constitute approximately 80% of current service providers within the Australian property market. For further details refer to the Submission accompanying this form.

9. **In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

There is nothing in the proposed conduct that would limit or prevent any ability for valuers who are API members to raise prices on their services, reduce choice, reduce innovation or coordinate rather than compete vigorously. The API and APIV standards scheme, including the proposed conduct limits the ability for valuers to reduce quality of their services. The proposed conduct facilitates existing competitors (e.g. valuers who are existing members of the API) the entry of new competitors (e.g. valuers who are currently not members of the API) which could include the introduction of new products and services, and also innovation through new insights on conducting property valuations and knowledge sharing between existing API members and prospective API members.

Notably, the standards set by the organisation are approved by Committees and a Board which represent the property profession and have the ability to influence the policies set. This is balanced with the inclusion of two independent appointed directors on the API Board.

9.1. **existing competitors**

An existing competitor of API is the Royal Institution of Chartered Surveyors (RICS), a UK-based membership body comprising of professional surveyors. RICS has two Australian-based offices and members in the Oceania region. RICS also have a professional standards scheme, RICS Valuers Limited. Other existing competitors include the Real Estate Institute of Australia whose membership is comprised of Real Estate Institutes in the Australian Capital Territory, New South Wales, Northern Territory, South Australia, Tasmania, Victoria and Western Australia. There is also the National Real Estate Association which is an industry-based association of individual members which is based in Victoria and the Property Council of Australia. These other organisations whilst operating

for members in the property industry, do not engage with valuers in the way which API does noting that API represents the majority of valuers in Australia.

9.2. **likely entry by new competitors**

There is no barrier to entry by new competitors.

9.3. **any countervailing power of customers and/or suppliers**

Not applicable

9.4. **any other relevant factors**

Not applicable

PUBLIC BENEFIT

10. **Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

Public benefit under authorisation A91522

For further information, data, data, documents or other evidence relevant to the ACCC's assessment of the public benefits, please refer to the Submission accompanying this form.

Formal Complaints

The formal complaints received by API from 2016-2020 are detailed in the Submission accompanying this form.

PUBLIC DETRIMENT INCLUDING ANY COMPETITION EFFECTS

11. **Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

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.

CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS

12. **Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators**

Actual or potential competitors

Name: Grant Warner, Chief Executive Officer
Organisation: The Australian Institute of Quantity Surveyors
Ph: [REDACTED]
Email: [REDACTED]

Customers and suppliers, Trade or industry associations and regulators

Name: Mark Lim
Organisation: Commonwealth Bank of Australia
Ph: [REDACTED]
Email: [REDACTED]

Name: Lester Cousins, Valuer-General Western Australia
Organisation: Landgate Western Australia
Ph: [REDACTED]
Email: [REDACTED]

Name: Anna Neelagama, Chief Executive Officer
Organisation: Real Estate Institute of Australia (REIA)
Ph: [REDACTED]
Email: [REDACTED]

Name: Graeme Gammie
Organisation: Landgate
Ph: [REDACTED]
Email: [REDACTED]

ADDITIONAL INFORMATION

13. **Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.**

Previous determinations

API's original authorisation (A90545) was a conditional authorisation and granted by the Trade Practices Commission (TPC) on 29 April 1994 to API's predecessor body, the Australian Institute of Valuers and Land Economists (AIVLE).

The TPC imposed nine conditions on the original authorisation to protect against anti-competitive detriment.

API assures the ACCC that API has not amended their policies or governing documents in such a way which would raise the same concerns justifying the previous imposition of conditions.

With respect to the Arrangements API presently seeks to have authorised and the concerns raised by the TPC in 1994, API comments as follows:

TPC Condition	Relevance to current application
<p>The supply of continuing professional development courses</p> <p>The TPC did not authorise the requirement that members acquire 50 per cent of continuing development points directly from AIVLE.</p>	<p>There is nothing in the Arrangements requiring members acquire 50% of continuing development (CPD) points directly from API.</p> <p>Under API's Continuing Professional Development Policy, members are required to complete 20 CPD points each CPD year. The policy does not prescribe API as the only entity through which CPD points can be obtained. For example, members may earn CPD points through higher education coursework.</p>
<p>Defamatory statements</p> <p>The TPC did not authorise a blanket prohibition on members making defamatory statements against other members. It considered that this prohibition could be used to prevent a member from bringing a legitimate complaint against another member.</p>	<p>There is nothing in the Arrangements constituting a blanket prohibition on members making defamatory statements. Conversely, members are permitted to make complaints about other members. Further, the Professional Review Form contemplates that complaints may be made regarding defamation.</p>
<p>Preventing kerb-side valuations (rather than valuation based on full internal and external inspection of a property)</p> <p>The TPC did not authorise a prohibition on kerb-side valuation and required disclosure if kerb-side valuation was performed.</p>	<p>There is nothing in the Arrangements which prohibits kerb-side valuations.</p> <p>Restricted Assessments, including kerb-side valuations, are governed by API Rules of Professional Conduct. Under the Capped Liability Scheme, the Professional Indemnity Insurance Policy will not indemnify a member for any claim directly or indirectly related to, based upon or attributable to or in consequence of any kerbside assessment or restricted assessment, unless conducted in strict compliance with the API guidelines.</p>

<p>Criticism of other members via advertising</p> <p>TPC did not authorise a clause which prevented “<i>advertising which may potentially injure another member</i>”. The TPC considered that this provision provided no public benefit because the general law already provides the appropriate limits on what can be published in advertising.</p>	<p>There is nothing in the Arrangements which prevents advertising which may potentially injure another member.</p>
<p>Preventing membership based on criminal convictions</p> <p>The TPC authorised a clause excluding members convicted of any offence punishable by imprisonment irrespective of the sentence imposed on condition that this clause was amended to read “<i>a member who is convicted of an offence involving dishonesty is in breach of this code of ethics</i>”.</p>	<p>The API Board has discretion under section 8.2.3 of the API Membership Policy to terminate the membership of a member if they have been convicted of an offence punishable with imprisonment for three months or more and which detrimentally impacts the good name or the reputation of the API, or any offence in connection with the promotion, formation or management of a corporation.</p> <p>This is a limited discretion. API does not impose an unrestricted bar on membership for members convicted of any offence punishable by imprisonment.</p>
<p>Limiting a member’s rights to external merits and judicial review of decisions of the AIVLE appeals body</p> <p>The TPC authorised this on condition that appeals against decisions of AIVLE’s dispute resolution body may be subject to judicial or merits review</p>	<p>The Professional Conduct Policy Suite includes an Appeals Tribunal Policy setting out in section 5 that a member has a right of appeal for a review of the sanctions imposed by the Professional Conduct Policy, or the lack of procedural fairness afforded during the handling and management of the Professional Review and/or Disciplinary Assessment.</p>
<p>Fines that can be imposed on members</p> <p>The TPC authorised this on condition that the maximum fine which could be imposed on members was limited.</p>	<p>Under section 14.1(h) of API’s Professional Conduct Policy, the Professional Conduct Panel may order the Member to pay API or APIV a penalty of an amount no more than \$5,000 and the costs of processing the Professional Review and/or Disciplinary Assessment. A member may also be required to pay the costs of any appeal if the appeal is dismissed in accordance with section 12.2 of the Appeals Tribunal Policy.</p>

<p>Award of costs following dispute resolution</p> <p>The TPC was concerned about the breadth of the discretion given to appeal bodies in the AIVLE dispute resolution regime to award costs. The TPC authorised on condition that costs will be awarded to successful parties in proportion to the extent of their success.</p>	<p>The API Appeals Tribunal does not have discretion to award costs to successful parties. Administrative costs relating to appeals are attributed based on outcome.</p> <p>Section 12 of the Appeals Tribunal Policy sets out requirements for administrative costs, for example an Appellant will bear any administrative costs associated with processing an appeal if the appeal is dismissed. Section 14.1(i) states that if the Professional Conduct Panel finds the Member is guilty of Professional Misconduct, the Panel may order the member to pay the costs of processing the Professional Review and/or Disciplinary Assessment.</p>
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Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

Ms Amelia Hodge
Chief Executive Officer
Australian Property Institute
Level 3, 60 York Street
Sydney
NSW 2000

Dated **6 May 2021**

Signed by/on behalf of the applicant:



.....
(Signature)

AMELIA HODGE
(Full Name)

AUSTRALIAN PROPERTY INSTITUTE LIMITED
(Organisation)

CHIEF EXECUTIVE OFFICER
(Position in Organisation)

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated

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

Australian Property Institute Limited

May 2021

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INTRODUCTION

1.1 Application for Revocation and Substitution of a New Authorisation

This submission is made by the Applicant, the Australian Property Institute Limited (the **API**), in support of an application for revocation and substitution of a new authorisation under section 88(1) and section 91C of the *Competition and Consumer Act 2010* (Cth) (**the Act**).

The Applicant seeks revocation of authorisation A91522 and substitution by way of a new authorisation to make and give effect to arrangements whereby members of the 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 are substantively the same as those considered by the Australian Competition and Consumer Commission (**ACCC**) in granting authorisation A91522, however the API's policies have been revised since that authorisation was made to reflect current and best practices.

The Arrangements continue to 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 lessening 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.

The API is seeking re-authorisation of similar arrangements, as authorised in A91522. The API and its members continue to support these arrangements and the API's conduct under these arrangements has delivered the anticipated benefits of the initial authorisation.

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 8,000 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 is the leading and contemporary membership organisation for property professionals and produces a range of leading property publications and a range of other professional educational programs and events and online resources. The API also develops software packages providing proforma templates for residential mortgage valuation work undertaken by members of the API.

Members of the API fall into tiered categories based on the qualifications and experience of the applicant. Members of the API are bound by the API's Rules of Professional Conduct (formerly called the Code of Conduct) and API's Code of Ethics.

2.2 Authorisation of Arrangements

The API is currently authorised under A91522 to give effect to clauses in its Constitution, the API Code of Professional Conduct for Members and associated policies. As A91522 is due to expire on 28 July 2021, and to ensure that best practice governance standards are maintained, the API wishes to revoke the existing authorisation and substitute this with a new authorisation.

The API seeks authorisation to make and give effect to clauses contained within the following documents:

1. API Constitution;
 - clause 5.3
 - clause 5.4
 - clause 5.9
 - clause 6.1
 - clause 6.2
 - clause 15.1

2. API Membership Policy;
 - section 2
 - section 4
 - section 6
 - section 7
 - section 8
 - section 10
 - section 14
3. API Code of Ethics;
 - clause 2.1
 - Fundamental Principals 1 – 5
4. API Standards Steering Committee Charter;
 - section 1
 - section 3
 - section 4
5. API CPD Policy;
 - section 3
 - section 4
 - section 9.1
 - section 10.1
6. the API Rules of Professional Conduct (in its entirety); and
7. Professional Conduct Policy Suite (including Appeals Tribunal Policy Suite).
 - (a) Professional Conduct Policy
 - section 1
 - section 3
 - section 4
 - section 5
 - section 7
 - section 10
 - section 13.1

- section 14
 - section 15
 - section 16
- (b) Professional Conduct Committee Charter
- section 4
 - Section 7
- (c) Appeals Tribunal Policy
- section 3
 - section 4
 - section 5.2
 - section 6
 - section 9
 - section 12.2
 - section 13
 - section 15
 - section 18

(Collectively referred to as the **Arrangements**)

Many of these documents were authorised by the ACCC under authorisation A91522 on 16 July 2016, however, these documents have since been revised. For reference, the following documents were approved by the ACCC under authorisation A91522:

1. the API Constitution;
2. the API Members Policy;
3. the API Complaints Policy;
4. the API National Education Board Policy;
5. the API Valuation Standards Board Policy;
6. the API Australian Property Standards Board Policy;
7. the API Appeals Board Policy; and
8. the API Code of Professional Conduct for Members.

(Collectively referred to as the **Old Arrangements**)

2.3 The Market

Members of the API operate within the property market and are made up of experts in property including residential, commercial and plant and machinery valuers, property advisors, property analysts, property fund and asset managers, property facility managers, property lawyers, property researchers and academics.

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 can provide include; residential, commercial and plant 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.

2.4 Background to the revocation and substitution application

Authorisation A91522 was granted on 6 July 2016 and is due to expire on 28 July 2021. That application was made as a revocation and substitution application due to the change in API's status from an incorporated association to a company limited by guarantee, which required changes to be made to the API's Constitution and relevant By-Laws to be converted to policies.

Authorisation A91522 was a substitution in place of the revocation of authorisation A90545. Authorisation A90545 was conditionally granted to AIVLE on 29 April 1994 by the Trade Practices Commission and authorised API's revised Code of Ethics and particular clauses of API's Constitution and By-Laws in 1994.

This application is made as a revocation and substituted application because the current authorisation (A91522) is due to expire on 28 July 2021 and the Applicant is intending to engage in substantially the same conduct. The new authorisation will give effect to a revised suite of governance and policy documents identified above as the Arrangements.

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 Competition Exemptions Team within the ACCC has confirmed that a decision to extend the duration of the current authorisation would not be granted as a minor variation, and accordingly reauthorisation (revocation and substitution) is required in order to gain legal protection beyond July 2021.

For this reason, the Applicant is applying for a revocation of authorisation A91522 and substitution of a replacement, in accordance with section 91C of the Act.

ARRANGEMENT FOR WHICH AUTHORISATION IS SOUGHT

3.1 Summary

Authorisation is sought for clauses contained within 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 mandatory nature.

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.

Members of the API who are practising valuers are also compelled to also become a member of the Australian Property Institute Valuers Limited (**APIV**) to participate in the APIV professional standards scheme, providing a limit on the civil liability of professionals for occupational claims. APIV is a related entity of the API.

3.2 The Arrangements

The Arrangements for which API seeks authorisation are contained within:

1. API Constitution, included at **Annexure A**;
2. API Membership Policy, included at **Annexure B**;
3. API Code of Ethics, included at **Annexure C**;
4. API Standards Steering Committee Charter, included at **Annexure D**;
5. API CPD Policy, included at **Annexure E**;
6. API Rules of Professional Conduct, included at **Annexure F**; and
7. Professional Conduct Policy Suite (including Appeals Tribunal Policy Suite), included at **Annexure G**.

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. Although the policy documents have been revised since authorisation A91522, the Arrangements continue to remain substantially the same as the Old Arrangements.

Membership Eligibility

The requirements and process for becoming an API member are set out in the Arrangements. As noted by the ACCC in Determination A91522, membership of the API is voluntary, non-exclusive and is not a mandatory requirement to offer services in the property industry. The following parts of the following documents set out the membership requirement or process:

- (a) Section 5 of the API Constitution provides that:
 - (i) 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;
 - (ii) the API Directors have responsibility under the Constitution for accepting membership applications;
 - (iii) the API policies will set out the criteria to be met by each category of Member and procedure for suspension, cancellation and termination of membership, and these are set out in the API Membership Policy;
 - (iv) 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;

- (v) a person ceases to be a member on the termination of their membership according to the API Constitution or Policies.
- (b) The API Membership Policy:
 - (i) Section 2 sets out member obligations, including requirements for API members to observe and comply with the API Constitution, any policies, rules, or valuation standards, protocols or guidelines prepared and published or adopted by the API or the APIV where relevant – which is a related entity of API (further details are below). Members are also required to carry out their professional services ethically, with honesty, competence in good faith without personal bias and without detrimentally impacting the good name and reputation of the API.
 - (ii) Section 4 sets out eligibility requirements and admission processes (including that eligibility for each Membership Category is established by the CEO under the direction of the API Board).
 - (iii) Section 6 includes reciprocity arrangements subject to Rules approved by the API Board.
 - (iv) Section 10 refers to re-admission to membership, including where a member has been removed.
 - (v) Section 14 requires all members who hold Residential Property Valuer (RPV) or Certified Practising Valuer (CPV) certification who undertake valuations of real property in Australia and who reside in a State/Territory in which the APIV Ltd Professional Standards Scheme is operational, must (unless exempted) participate in the APIV Ltd Professional Standards Scheme.

Members to comply with rules and standards

Members of the API must agree to be bound by the Arrangements as a condition of membership.

- (a) Clause 5.3 of the API Constitution provides that, upon submitting an application for membership, a member undertakes to be bound by the API's Constitution and Policies. This includes compliance with the API Rules of Professional Conduct.
- (b) Clause 15.1 of the API Constitution gives the API Board of Directors the power to make and implement policies from time to time which in their opinion are necessary or desirable for the control, administration and management of the API's affairs.
- (c) Section 7 of the API Membership Policy requires certain Members to satisfy API's CPD requirements relevant to their membership category.

- (d) Clause 2.1 of the API Code of Ethics requires every Member to comply with the Code of Ethics in the provision of professional services to clients in accordance with the five listed Fundamental Principles. This document is reviewed and approved by the Board.
- (e) Section 1 of the API Standards Steering Committee Charter establishes a Committee which develops and provides advice on technical and professional valuation and property related matters on behalf of API Members. The Committee provides advice and policy recommendations on professional conduct, standards, guidance papers and valuation protocols.
- (f) Clause 3.1 of the API CPD Policy requires members to complete a certain level of CPD points each year. Clause 9.1 provides API with the right to audit CPD compliance and clause 10.1 of the API CPD Policy provides for non-compliance with the Policy which is managed under the relevant API policies.
- (g) Both the Professional Conduct Policy (Section 14) and Appeals Tribunal Policy (Section 16) require Members to observe and comply with the API Constitution, APIV Constitution, policies set by the API and APIV, rules and/or codes set by the API and APIV and valuation standards or valuation protocol or valuation and property guidelines prepared and published or adopted by the API and APIV.
- (h) A breach of the API Rules of Professional Conduct may constitute professional misconduct which may be investigated by the API in accordance with the procedures outlined in the API Policies.

Compulsory membership to APIV Ltd

Members who hold the categories of Residential Property Valuer (RPV) or Certified Practicing Valuer (CPV) must also be members of APIV Ltd Professional Standards Scheme

Clause 14.1 of the API Membership Policy compels all Members holding Residential Property Valuer (RPV) or Certified Practicing Valuer (CPV) certification who undertake valuations of real property in Australia and who reside in a State or Territory in which the APIV Ltd Professional Standards Scheme is operational to, unless exempted, participate in the APIV Ltd Professional Standards Scheme.

Disciplinary procedures

Members are subject to disciplinary procedures under the Arrangements:

- (a) Clause 5.4 of the API Constitution provides that the Policies of the API will set out the procedure for suspending or cancelling membership.

- (b) Clause 6.1 of the API Constitution requires Members to submit to the jurisdiction, procedures, penalties and appeal mechanisms in the Polices and the Constitution.
- (c) Clause 6.2 of the API Constitution specifies that the API Board of 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 State Committee); 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.
- (d) Clause 6.2 of the API Constitution allows Directors, in their sole discretion, to refer an allegation against a member for investigation and determination under the procedures set out in the policies.
- (e) The API Professional Conduct Policy includes provision for professional review and disciplinary assessment procedure, including sanctions, specified in section 14, that the Professional Conduct Panel may impose if a member is found to be guilty of professional misconduct. Section 16 allows for a Member to apply to the Appeals Tribunal Committee for a review of the sanctions imposed by the Professional Conduct Panel.
- (f) The Professional Conduct Committee Charter provides for the composition of the Professional Conduct Committee and appointment of its members.
- (g) The Appeals Tribunal Policy outlines the appeal procedure, including potential for costs to be borne by the appellant and formation of the Appeals Tribunal Panel. The Appeals Tribunal Policy allows a member to apply for a review regarding a lack of procedural fairness afforded during the handling and management of the professional review and/or disciplinary assessment.
- (h) The Professional Conduct Officer may investigate a former member, if the alleged professional misconduct occurred while the former member was a member.

- (i) Section 8 of the API Membership Policy provides that the API Board may, by resolution, terminate the membership of a Member where the Member becomes bankrupt or insolvent, becomes of unsound mind, is (or has been) convicted of an offence punishable with imprisonment for three months or more, or in connection with the promotion, formation or management of a corporation or the API Board makes a decision pursuant to a complaint to terminate the membership. A member may appeal against the termination of their membership and the Board may, if it allows the appeal, reinstate that person as a member.

3.3 The Arrangements in Practice

The Old Arrangements have been in operation and regularly reviewed by the API since the granting of A91522 and similar arrangements have been in place since authorisation A90545. The complaints handling procedure remains substantially the same under the Arrangements proposed for authorisation.

APIV (ACN 143 638 975) is a related entity of the API. Members of API who are valuers are entitled to also become a member of APIV. APIV holds and maintains the Limited Liability Scheme registration for valuers through the Professional Standards Council (**PSC**).

It is not possible to be a member of APIV, and to therefore access the Limited Liability Scheme, without being a member of API.

Formal Complaints

In addition to the API's internal review of the complaints handling procedure, APIV is subject to an external review by the PSC.

API, and APIV, 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, and APIV, has taken to consider improvements in professional standards and consumer risk reduction. This process provides independent verification of the API's, and APIV'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 clause 6 of the Complaints Policy applies or whether further investigation and referral to the Complaints Committee is required. The following number of complaints have been received in the previous years:

- In 2020, 19 formal complaints were received.

- In 2019, 22 formal complaints were received.
- In 2018, 32 formal complaints were received.
- In 2017, 46 formal complaints were received.
- In 2016, 38 formal complaints were received.

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.

102 of the 157 from the past 5 years were dismissed in accordance with the relevant API policy. The new Professional Conduct Policy allows dismissal of a complaint by the Professional Conduct Panel following a preliminary assessment.

The remaining complaints have been or are being dealt with via recommendations handed down by the Complaints Committee. API encourages alternative dispute resolution for complaints but otherwise follows its policies in handling complaints.

The most recent report lodged with the PSC in 2019 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, such as revising the form used to lodge a complaint. Themes and trends have followed similar patterns over the years, most commonly concerning errors and delays in the valuation report, dissatisfaction with quantum, poor standards of communication, non compliance with property standards and a small number of fraud cases.

It has been recommended by the Professional Standards Council (**PSC**) 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.

The highest cause of complaint allegations against API members, in the most recent report lodged with the PSC, relates to the quantum of a valuation i.e. the assessed value of a property noted in a valuation report. In accordance with policy, the API will not consider a complaint where the only issue in dispute is the quantum of the valuation. These complaints are still recorded to reflect the true nature of complaints received by the API.

Allegations of professional misconduct with respect to member relations with clients was the second highest complaint category. Four of the eleven complaints

closed in 2019 recorded that the complainant alleged the member engaged in professional misconduct with respect to relations with their client. A small or zero percentage of complaints considered by the Complaints Committee were found to involve professional misconduct.

The API has also identified a consistent trend of complaint allegations regarding not meeting professional standards when conducting a valuation though there appears to be a common misunderstanding for complainants regarding policy. The API analyses and considers whether the member has taken the requisite steps when preparing and completing their valuation and does not determine the accuracy of a valuation, nor investigate or determine the outcome of a dispute or difference of opinion between a complainant and a member as to the assessed market value or market rent.

As at 31 December 2020, the complaints register notes:

Complaints	2016	2017	2018	2019	2020 YTD	2016 to 2020 YTD
Complaint enquiries	60	32	36	38	90	256
Complaints received	38	46	32	22	19	157
Of the complaints received:						
Active: Under investigation	0	0	1	2	6	11
Active: Sanctions Imposed	0	0	1	1	0	2
Active: Suspended	2	0	0	1	1	4
Closed: Dismissed	21	31	26	13	11	102
Closed: Charged with professional misconduct	4	7	1	1	0	13
Closed: Withdrawn	11	8	3	4	1	27

Type of Complaints Received (including those carried forward to 2020) & Investigated in 2020

Relations with client	45%
Non-compliance with Professional Standards	45%
Quantum	37%
Non-compliance with Ethical Requirements	25%

Other	11%
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The following should be noted:

- the above figures exclude suspended complaints.
- the category Other includes:
 - Non-compliance with Membership Obligations
 - Defamation
 - Non-API Member

We provide the following breakdown of the source of complaints received by API:

Complaints Received	2016	2017	2018	2019	2020 YTD	2016 to 2020 YTD
Number of complaints made by the API	4	6	3	2	0	15
Number of complaints received from other members of the API	1	5	1	0	2	9
Number of complaints received from consumers	32	33	26	15	12	118
Number of complaints received other professionals	1	2	2	5	5	15

3.4 Purpose of the Arrangements

The purpose of the Arrangements for which authorisation is sought is primarily to continue 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

The Applicant notes that it sought authorisation for a period of 5 years for A91522. The preceding authorisation (A90545) was unlimited in duration.

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 New Arrangements.

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 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 API's Rules 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 API Rules of Professional Conduct or otherwise engage in behaviour that is deemed to be professional misconduct, the API 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 have and will continue to use its disciplinary regimes for the public benefit.

The Professional Conduct Policy and disciplinary regime ensures procedural fairness is provided during the process of investigation and enforcement of complaints and allows for any aggrieved member to appeal a decision. The API submits that this mitigates potential public detriment.

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 Applicant considers that the Arrangements for which authorisation is sought provide protection for consumers over and above existing protection available under relevant legislation.

4.2 Information, data, documents or other evidence relevant to the ACCC's assessment of the public benefit

The Applicant submits that the Arrangements will ensure the continued public confidence in the property profession and members of the API is maintained.

The Arrangements have resulted, and will continue to result, in public benefit by:

- (a) requiring higher industry standards than those required by legislation;
- (b) improving consumer protection and building consumer confidence in the market through the enforcement of those standards;
- (c) ensuring members of the API who fall within one of the categories of its professional liability capping scheme – being certified practising valuers and residential property valuers – join the scheme (through APIV) to ensure the viability of the profession and to protect and assist consumers and members, and improve standards;
- (d) incentivising members to deal more equitably with consumers;
- (e) facilitate self-regulation in the property services industry;
- (f) implementing a dispute resolution procedure which achieves high coverage in the property services industry, whereby API can sanction non-compliance by members – this delivers additional public benefits to the protections in the *Australian Consumer Law* and promotes confidence in property services;
- (g) increasing efficiencies – to the extent that the Arrangements standards recognised education and training, and specific appropriate member conduct which is likely to have the effect of promoting higher professional standards than would otherwise be achieved.

Public benefit under authorisation A91522

The efficiencies realised under API's existing authorisation A91522 include:

- Improvement and maintenance of the standards of valuers in the absence of a government regulator
- Making CPD obligatory and auditing the process
- Introduction of a mandatory ethics course which wasn't previously incorporated into CPD
- Creation of new, innovative platforms. For example, API software PropertyPRO, which is a standardised platform created for valuers to complete their valuation reports
- API sits on the International Valuation Standards Council (IVSC) and implements those professional standards domestically within Australia
- Investigation of complaints and holding of members to a high standard
- Increased consumer confidence in the property profession and in acquiring property services

To assist the ACCC in assessing public benefit, a copy of the Australian Property Institute Valuers Limited Professional Standards Scheme, as submitted to the Professional Standards Council, has been included as part of the Submission accompanying this Form.

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 they are substantially similar to those for which authorisation A91522 and A90545 were 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 A91522 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.

The API submits the Arrangements, require higher industry standards than those required by legislation and improve consumer protections which builds consumer confidence in the market through the enforcement of those standards. This is consistent with the ACCC's statement in authorisation A91522.

Without authorisation the API may be unable to enforce its standards of professional conduct as set out in the Arrangements. This could mean the API would be unable to sanction its members who have engaged in professional misconduct, and consequently cause public detriment.

The Arrangements are likely to result in public benefit by increasing consumer confidence when purchasing property services. The operation and enforcement of the API's professional conduct regime is likely to generate an incentive for API members to deal more equitably with consumers and facilitate a level of self-regulation in the property services industry.

API's policies achieve high coverage in the property services industry and the API can sanction non-compliance by members. Although many consumers would have access to protections under the Australian Consumer Law, the Arrangements are likely to deliver additional public benefits and promote confidence in the property services industry.

The Arrangements are also likely to result in efficiencies to the extent that they standardise recognised education and training or specifies appropriate member conduct. This has the effect of promoting higher professional standards than would otherwise be achieved.

As the Arrangements for which this authorisation is sought do not differ significantly in substance from the arrangements authorised under A90545 and A91522, it is submitted that the public benefit outweighs the public detriment and the authorisation should be granted consistent with previous authorisations.