

Australian Capital Territory

# **Civil Law (Wrongs) Australian Property Institute Valuers Limited Scheme 2010 (No 1)\***

**Disallowable instrument DI2010–198**

made under the

**Civil Law (Wrongs) Act 2002, section 4.10, schedule 4 (Approval of schemes by Minister)**

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**1 Name of instrument**

This instrument is the *Civil Law (Wrongs) Australian Property Institute Valuers Limited Scheme 2010 (No 1)*.

**2 Commencement**

This instrument commences on 1 September 2010.

**3 Approved scheme**

Pursuant to section 4.10, schedule 4 of the *Civil Law (Wrongs) Act 2002* I approve the attached Australian Property Institute Valuers Limited Scheme.

Simon Corbell MLA  
Attorney General  
30 August 2010

\*Name amended under Legislation Act, s 60

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# *Professional Standards Act 1994 (NSW)*

## **THE AUSTRALIAN PROPERTY INSTITUTE VALUERS LIMITED SCHEME**

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### **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, constituted under the *Professional Standards Act 1994* (NSW) (the Act), for 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 Council with a detailed list of the risk management strategies 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 Council with APIV insurance standards with which members must comply for purposes of this scheme.
- F. The scheme is intended to commence on 1 July 2010 and 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 32 of the Act.

### **THE AUSTRALIAN PROPERTY INSTITUTE VALUERS LIMITED SCHEME**

#### **1. Occupational association**

- 1.1 The Australian Property Institute Valuers Limited Scheme (the scheme) is a scheme under the *Professional Standards Act 1994* (NSW) (the Act) prepared by the Australian Property Institute Valuers Limited (APIV) whose business address is  
6 Campion Street,  
DEAKIN  
ACT 2600
- 1.2 The scheme is intended to operate in New South Wales, the Australian Capital Territory, the Northern Territory, Queensland, Victoria and Western Australia.

## 2. Persons to Whom the Scheme Applies<sup>1</sup>

- 2.1 The scheme applies to all members of the Australian Property Institute Valuers Limited, unless exempted by the APIV.
- 2.2 This scheme also applies to all persons to whom the scheme applied under clause 2.1 at the time of any act or omission giving rise to occupational liability.<sup>2</sup>
- 2.3 The APIV may, on application by a member to whom this Scheme applies, exempt the member from the Scheme provided that the Scheme does not apply to the person by operation of ss.18, 19 or 20 of the Act.

## 3. Limitation of Liability

- 3.1 This scheme only affects the liability for damages<sup>3</sup> arising from a single cause of action to the extent to which the liability results in damages exceeding \$2,000,000.
- 3.2 If a person, who was at the time of the act or omission giving rise to occupational liability, a person to whom this scheme applied and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:
  - (a) of a kind which complies with the APIV Insurance Standards,
  - (b) insuring such person against the occupational liability to which the cause of action relates, and
  - (c) under which the amount payable in respect of that occupational liability is not less than the monetary ceiling specified in the 4<sup>th</sup> column (titled “Monetary Ceiling”) of the table in Clause 3.3 of this scheme relating to the class of person and the kind of work 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.
- 3.3 The monetary ceiling (maximum amount of liability) required for the purposes of limitation of liability under this scheme at the time at which the act or omission

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<sup>1</sup> Sections 18 and 19 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 20 provides that the scheme may also apply to other persons as specified in that section. Section 20A extends the limitation of liability of persons to whom the scheme applies by virtue of sections 18 to 20.

<sup>2</sup> For the purposes of the operation of the scheme in New South Wales, "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 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, a breach 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 Part 13 or 14 of the *Real Property Act 1900* (NSW).

<sup>3</sup> Damages as defined in section 4(1) of the Act means (a) damages awarded in respect of a claim or counter-claim or claim by way of set-off and (b) costs in or in relation to the proceedings ordered to be paid in connection with such an award (other than costs incurred in enforcing a judgment or incurred on an appeal made by a defendant), and (c) any interest payable on the amount of those damages or costs.

giving rise to the cause of action occurred is to be determined according to the following table:

Class	Description	Upper End Value	Monetary Ceiling	Maximum Excess
1	Category A Member	\$0.0 million to < \$5.0million	\$ 2.0 million	\$ 30.0K
2	Category B Member	\$5.0 million to < \$10.0 million	\$ 3.0 million	\$ 50.0K
3	Category C Member	\$10.0 million to < \$15.0 million	\$ 4.0 million	\$ 50.0K
4	Category D Member	\$15.0 million to < \$40.0 million	\$ 5.0 million	\$ 50.0K
5	Category E Member	\$40.0 million >	\$10.0 million	\$100.0K

3.4 Clause 3.2 only affects liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding such amount as is specified in clause 3.1.

3.5 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.

#### 4. Conferral of discretionary authority

4.1 Pursuant to section 24<sup>4</sup> of the Act, this scheme confers on the APIV a discretionary authority to specify, on application by a person to whom the scheme applies, in relation to that person a higher monetary ceiling (maximum amount of liability) not exceeding \$20 million, in relation to the person either in all cases or in any specified case or class or case.

#### 5. Definitions

5.1 Relevant definitions for the purposes of the scheme are as follows:

"APIV" means the Australian Property Institute Valuers Limited.

"APIV Insurance Standards" mean the insurance standards approved by the APIV from time to time.

"Category A Member" means a person to whom the scheme applies and whose Upper End of Value is less than \$5 million.

"Category B Member" means a person to whom the scheme applies and whose Upper End Value is \$5 million or more but less than \$10 million.

"Category C Member" means a person to whom the scheme applies and whose Upper End Value is \$10 million or more but less than \$15 million.

"Category D Member" means a person to whom the scheme applies and whose Upper End Value is \$15 million or more but less than \$40 million.

"Category E Member" means a person to whom the scheme applies and whose Upper End Value is \$40 million or greater.

"most recent 12 month period" means the 12 months prior to the date and time of inception of the member's Professional Indemnity Insurance Policy.

"maximum excess" means the maximum excess outlined in the table at clause 3.3 applicable to the relevant member.

**'Professional Indemnity Insurance Policy'** means a policy of insurance that provides cover for the member in compliance with the insurance standards determined by the APIV from time to time.

**"the Act"** means the *Professional Standards Act 1994* (NSW).

**"Upper End Value"** means the highest valuation performed by the relevant member in the most recent 12 month period.

## **6. Duration**

- 6.1 This scheme will commence on 1 September 2010 and will be in force for a period of five (5) years from the date of commencement.