


Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 199

Submittor: Australian Property Institute
(Tasmanian Division)
Mr Paul Wilson
Divisional President
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HOBART TAS 7000
 - (03) 6224 2343

**SUBMISSION FROM THE AUSTRALIAN PROPERTY
INSTITUTE (TASMANIAN DIVISION)**

TO THE

**SENATE SELECT COMMITTEE ON SUPERANNUATION
AND FINANCIAL SERVICES**

We refer to your written request on 4 June 2001 and respond as follows:

BACKGROUND

The Australian Property Institute, formerly the Australian Institute of Valuers and Land Economists has a long history of representing professional property experts, commencing in 1926.

Members of the Australian Property Institute include valuers, professional property advisers, analysts and facilitators.

The Institute represents the interests of over 7000 property specialists throughout Australia including 105 in Tasmania.

MEMBERSHIP

Membership of the Australian Property Institute is only awarded to graduates in a property discipline, or property related field, with appropriate experience. By far the most common avenue of membership is by completing an approved academic course, gaining a minimum 18 months approved practical experience under the direct supervision of an Associate or fellow member, and then completing a viva voce examination conducted by the Institute.

The approved courses are at UG1 standard and are typically 3-4 years full time and lead to a Bachelor of Business (Land Economy) or similar.

STANDARDS OF PRACTICE

The membership of the Australian Property Institute is bound by:

- a. Constitution
- b. By Laws
- c. Code of Ethics
- d. Rules of Conduct

The Code of Ethics is a public document of the principles, values and behaviour expected of Members of the Institute. It relates to the following:

- compliance with standards
- professional duty
- competence
- conflict of interest
- confidentiality
- the profession

The Rules of Conduct are an interpretation and expansion of the Code of Ethics of the Institute. These rules are mandatory for all Members.

Copies of both the Code of Ethics and the Rules of Conduct are attached as appendices to this submission.

In addition to the Code of Ethics and the Rules of Conduct, Members are bound by the Institute's Constitution, By-Laws and mandatory sections of the Code of Professional Practice.

COMPLAINTS

Clause 9 of the Institute's Constitution covers 'Complaints'. This clause states that if a written complaint against a Member is made to the Institute, it will be referred to the relevant Division to be dealt with in accordance with the By-Laws.

A complaint may be made by:

- a member of the general public
- a Member or Affiliate of the Institute
- any Council, Board, Standing Committee or Committee or Group of the Institute.

The By-Laws comprehensively cover the handling of the complaint, hearing of the complaint, mediation, penalties, costs and appeals.

Complaints shall be heard if a Member has

- violated any part of the Institute's Constitution, By-Laws or mandatory sections of the Code of Professional Practice

- committed any criminal offence punishable by imprisonment
- knowingly been involved in any dishonest practice or dealing
- engaged in conduct prejudicial to the good name of the Institute
- obtained admission to the Institute by improper means.

If a complaint is upheld, the Divisional Council may impose one or more of the following penalties:

- reprimand the Member
- admonish the Member
- impose a fine of up to \$5,000
- suspend membership for up to 2 years
- recommend to National Council that the Member be excluded from membership or suspended for more than 2 years
- where applicable, refer the matter to the Valuers Registration Board

RECENT EXPERIENCE OF THE INSITUTE

During the past five years the Tasmanian Division has:

- Received various phone calls which have not resulted in the lodgement of complaints.
- Received some phone calls which have resulted in the Divisional President speaking with the complainant and the complainees but no written complaint received
- Written complaint from one Member against the perceived unethical business practice of another Member. Complaints procedures were followed and one Member was fined.

CONTINUING PROFESSIONAL DEVELOPMENT

All Members of the Institute must achieve 20 Continuing Professional Development (CPD) points each year. One CPD point accrues for each hour spent directly on CPD.

Each Member is responsible for keeping an annual record of participation in recognised CPD activities.

Penalties for non-compliance with the CPD requirements without adequate reason are:

- admonishment for the first instance of non-compliance
- suspension of membership and admonishment for the second instance
- expulsion from membership and admonishment for the third instance

Members can ask to receive a Practising Certificate by satisfying the CPD requirements and submitting their record to the Institute. Many prudent lending organisations require the annual sighting of a Certificate for the Member to remain on their 'Panel of Valuers'.

The Institute currently has a requirement (By-Law 19.9) to conduct a five percent random audit of the CPD records of Members . Most likely, as from 2002 the random audit will be increased to fifteen percent of Members.

INSTITUTE INITIATIVES

The Institute has supplied to all Members a copy of Professional Practice 1999 and Professional Practice 2000. These are comprehensive manuals which set out the Code of Ethics, Rules of Conduct, Practice Standards, Best Practice Guidance Notes, guides to compliance, CPD Activity, business focus, client focus plus the Constitution and By-Laws. (P.P. 1999 only).

The manuals therefore represent the Australian Property Institute's Code of Professional Practice. The standards and guidance notes are approved by the Australian Valuation and Property Standards Board (AVPSB) of which the Australian Property Institute is the sponsor.

The purpose of the Code of Professional Practice is to present for the benefit of Members of the Australian Property Institute, their clients and other interested parties, information that impacts in varying ways, but always seeking to state requirements clearly, guide where warranted and enhance the service provided by the Institute to its Members and by Members to their clients.

The Institute has a strategic action plan for the years 1999 – 2002. One of the goals is to reinforce the professional practice standards of Members

The Institute is in the process of developing a compulsory national CPD module for all valuer Members to be undertaken each year on professional risk management and loss prevention techniques. A separate CPD certificate is to be issued annually for compliance and failure to comply will make the valuer ineligible for CPD compliance.

The Institute publishes the Australian Property Journal and distributes it to all members every three months. The Journal provides local, national and international articles, covers relevant court decisions and keeps Members up to date with the latest techniques, best practice standards and industry information.

CONCLUSION

The Australian Property Institute provides a comprehensive framework covering the education, admission, standards, ongoing training, regulation, promotion and advancement of its Members.

The Institute is the premier Institute for property professionals in Australia.

Code of Ethics

This Code is a public statement of the principles, values and behaviour expected of Members of the Institute.

1. COMPLIANCE WITH STANDARDS

Members shall, at all times, observe the requirements of the Code of Ethics, the Rules of Conduct and the Practice **Standards and Guidance Notes of the Institute**.

2. PROFESSIONAL DUTY

It is the duty of Members to render service to their clients and employers with fidelity, to practise their vocation with integrity, honour and professionalism, to act impartially and objectively when providing independent advice, and to respect the public interest.

3. COMPETENCE

A Member shall not accept instructions in a matter where, based on a reasonable objective standard, the Member does not have the competence, skill and/or experience to complete the assignment to the acceptable professional standard in accordance with this Code of Ethics, the Rules of Conduct and the Practice Standards and Guidance Notes of the Institute, unless the assignment is completed in conjunction with a qualified and suitably experienced practitioner.

4. CONFLICT OF INTEREST

Members shall consider and identify any actual or potential conflict of interest when carrying out their professional duties, and shall not act in a matter where such conflict or potential conflict has been identified by the Member or any other interested party unless all interested parties have been made aware of the situation and have consented to the Member continuing in the task.

5. CONFIDENTIALITY

Members must observe the requirements of confidentiality in their dealings with clients and the public.

6. THE PROFESSION

Members shall at all times conduct business in a manner befitting their profession and the Rules of Conduct of the Institute and in accordance with reasonable public expectations of professional persons.

Rules of Conduct

The Rules of Conduct are an interpretation and expansion of the **Code of Ethics** of the Institute. The following Rules are mandatory for all members.

Rule 1: Professional and Personal Conduct

1.1 Members shall conduct their professional duties and activities in a manner that reflects credit upon themselves and their profession. High standards of competence, honesty, loyalty, integrity and fairness shall be observed at all times.

1.2 Members are bound by and agree to abide by all Fundamental Rules which include the Code of Ethics, Rules of Conduct, Constitution, By-Laws, Practice Standards and compliance with CPD as adopted by the Institute.

1.3 Members shall not accept an assignment that is contingent upon or influenced by any condition or requirement for a predetermined result where the exercise of objective judgment is required. Members shall maintain the strictest independence and impartiality in undertaking their professional duties. To this end, no Member shall:

- (a) adopt the role of advocate in a case where their duty is to exercise independence and impartiality;
- (b) allow the performance of their professional duties to be improperly influenced by the needs or preferences of a client or other party;
- (c) rely upon critical information supplied by a client without appropriate qualification or confirmation from other sources;
- (d) act in any other way inconsistent with the duties of independence and impartiality.

1.4 Members shall not provide any advice or make any statement without reasonable foundation unless it is appropriately qualified or limited.

1.5 Members shall not claim or present professional qualifications which may be subject to erroneous interpretations or which they do not possess.

1.6 Members shall not accept instructions beyond their competence; however, assignments may be undertaken in conjunction with a person having the required competence after disclosure to the client.

1.7 Fees may be negotiated with a client on any agreed basis that does not:

- (a) infringe any statute, rule of conduct or regulation;
- (b) depend on the outcome of any valuation or other independent objective advice.

1.8 No Member shall pay by commission, allowance or other benefit any person who may introduce clients to them without appropriate disclosure.

1.9 Members shall not accept payment or favours from another party which may affect their relationship with a client.

1.10 A valuation shall not be performed by a Certified Practising Valuer without an inspection of the property concerned. The inspection shall in all cases be sufficiently comprehensive to enable the Member to complete the valuation in accordance with the Practice Standards of the Institute.

1.11 Members shall not reproduce any work or reference prepared and presented by any other Member, person, body or authority which creates the impression that it is their own.

1.12 Members shall be fair and honest in any public criticism of the Institute or fellow Members.

1.13 Members shall include in reports references to any relevant assumptions, conditions, requirements and limitations arising from their instructions or inquiries, or imposed from any other source.

1.14 Members shall retain for as long as legally required, adequate file notes which substantiate their opinions by way of inquiry, objective comparison, deduction and calculation.

1.15 Where information critical to the assignment being undertaken is derived from external sources it must be clearly identified in any related report or advice prepared by a member and appropriately acknowledged.

1.16 Members shall accept full responsibility for the content of their reports. Where the report relies on professional opinion from outside experts, the degree of reliance must be indicated.

1.17 Co-signatories to reports shall indicate the extent of their involvement or the capacity in which they are signing.

1.18 Members will fully cooperate with any request for information or directive from the Institute where a complaint has been lodged or where there is deemed to be a prima facie breach of the Rules of Conduct.

1.19 Members shall not maliciously or carelessly do anything to injure, directly or indirectly, the reputation, prospects or business of other Members. 1.20 Instructions accepted by Members should preferably be in writing and/or be confirmed in writing by the Member in sufficient detail to avoid any misinterpretation. Any variations or extensions of the original instructions should similarly be confirmed in writing.

1.21 A Member who is convicted of an offence involving dishonesty is in breach of these Rules of Conduct.

Rule 2: Conflict of Interest

Members shall not accept or carry out any instruction where there may be, or may reasonably be construed to be a conflict of interest. Members shall withdraw from any instruction if a conflict of interest arises or becomes known after an instruction has been accepted. An exception to this rule is where the conflict of interest is disclosed to and accepted by the party or parties.

2.1 Where a conflict of interest arises or could arise a Member shall promptly disclose the relevant facts to the client and where appropriate:

- (a) advise the client to obtain independent professional advice;
- (b) inform the client that neither the Member nor the firm can act or continue to act for the client unless the appointment or instruction is confirmed in writing acknowledging the actual or potential conflict of interest; and
- (c) disclose the matter in any relevant document or report.

2.2 Where a conflict arises or could arise between the interests of different clients of a Member or a firm or company of which a Member is a partner director or employee, a Member shall promptly disclose the relevant facts to the instructing client and where appropriate:

- (a) advise the client to obtain independent professional advice;
- (b) inform the client that neither the Member nor the firm can act or continue to act for the client unless the appointment or instruction is confirmed in writing acknowledging the actual or potential conflict of interest; and
- (c) disclose the matter in any relevant document or report.

Rule 3: Client Relationships

3.1 Members shall not disclose to any other person or party any confidential information provided directly or indirectly by a client or to a client without the permission of the client except where there is a legal requirement for disclosure or the information is of public or common knowledge.

3.2 Members shall conduct themselves in a manner and demeanour which is neither detrimental to their profession nor likely to lessen the confidence of clients or the public in the Institute or the profession.

3.3 Members shall act promptly and efficiently in the servicing of the client's instructions.

3.4 Members shall, in the case of unavoidable delay, communicate to the client the progress being made in respect of the instructions issued to the Member.

3.5 Consistent with the duty of a Member to preserve the confidentiality of a client's affairs, a Member shall not accept a retainer to act for another person in any action or proceedings against, or in conflict with, the interests of the client.

Rule 4: Advertising

4.1 Any advertisement by a Member must not reflect adversely on the professional integrity of the Institute or its Members.

4.2 Members shall not include exaggerated or false claims in any advertisement.

Rule 5: Reference to the Institute

5.1 No Member or Members shall:

(a) purport to represent the views of the Institute unless expressly authorised to do so

(b) publicise the Institute or its Members generally in terminology which has not either already appeared in an advertisement published by the Institute or received the approval of the Institute.

Rule 6: Inducements for the Introduction of Clients

6.1 No Member shall invite instructions for work except in accordance with these Rules.

6.2 No Member shall 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, or accept instructions from any person where there is reason to believe that undue pressure or influence may have been exerted by a third party in expectation of receiving a reward for the introduction.

Rule 7: Departure Provisions

7.1 Where a Member considers circumstances exist that warrant departure from or non-compliance with any rule herein, the member's report shall include a statement that outlines the reasons for the departure or non-compliance and any impact on the content of the report.

Morton, Sue (SEN)

From: Brothers & Newton [bandn@eisa.net.au]
Sent: Friday, 8 June 2001 3:52 PM
To: super.sen@aph.gov.au
Subject: Submission from Australian Property Institute Tasmania



pgw0706b.doc

8 June 2001

File Ref: pgw0806a

The Committee Secretary
Senate Select Committee on Superannuation and Financial Services
Parliament House
CANBERRA ACT 2600

Attention: Ms Sue Morton

Dear Madam,

Attached is a copy of the Australian Property Institute (Tasmanian Division) submission to the Senate Select Committee.

An original signed copy has been forwarded in the mail to the above address.

Yours faithfully,

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Australian Property Institute (Tas Division)

Phone: (03) 6224 2343
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Address: C/- 25 Davey Street
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2.1 Where a conflict of interest arises or could arise a Member shall promptly disclose the relevant facts to the client and where appropriate:

- (a) advise the client to obtain independent professional advice;
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7.1 Where a Member considers circumstances exist that warrant departure from or non-compliance with any rule herein, the member's report shall include a statement that outlines the reasons for the departure or non-compliance and any impact on the content of the report.