

Valuers Scheme

This scheme commenced on 26 July 2007 and ceases on 25 July 2012.

AUSTRALIAN VALUERS INSTITUTE (NSW) SCHEME *Professional Standards Act 1994 of New South Wales*

Preamble

- a. The Australian Valuers Institute Co-op Ltd (the AVI) is an occupational association.
- b. The AVI applied to the Professional Standards Council, constituted under the *Professional Standards Act 1994* of New South Wales (the *Act*), for approval of a scheme under the *Act*.
- c. The scheme is prepared by the AVI for the purposes of limiting occupational liability to the extent to which such liability may be limited under the *Act*.
- d. The scheme is to apply to members of the AVI who hold or have held during the period of the scheme is in force a Practising Certificate issued by the AVI and who are otherwise not exempted from the scheme.
- e. The AVI 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.
- f. The scheme is intended to remain in force for five (5) years from its commencement unless prior to that time it is revoked, its operation ceases or it is extended pursuant to s32 of the *Act*.

AUSTRALIAN VALUERS INSTITUTE SCHEME¹

1. Occupational association

- 1.1. The Australian Valuers Institute (NSW) Scheme (the scheme) is a scheme under the *Professional Standards Act 1994* of New South Wales (the *Act*) prepared by the Australian Valuers Institute Co-op Ltd (the AVI) whose business address is 3-9 Terminus Street Castle Hill NSW.

2. Persons to Whom the scheme Applies²

- 2.1. The scheme applies to all members of AVI who have been issued with a current practising certificate by the AVI.
- 2.2. The 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 liability³.

¹ Words in the scheme have the same meaning in the scheme as their meaning in the *Act*. Some words are defined in section 4 of the *Act*. Section 5 of the *Act* provides that the *Act* does not apply to certain liability specified in the *Act*. The scheme adopts the provisions of the *Act*, and sections 17 to 33 of the *Act* apply in relation to the content and effect of the scheme. It is intended that the provisions of the scheme have the same meaning and effect as the provisions of the *Act*.

² 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 and 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.

- 2.3. The AVI may, on application by a person, exempt the person from the scheme provided that the scheme does not apply to the person by operation of sections 18, 19 or 20 of the *Act*.

3. Limitation of liability

- 3.1. The scheme only affects the liability for damages⁴ arising from a single cause of action to the extent to which the liability results in damages exceeding \$500,000.
- 3.2. A person to whom the scheme applies and against whom a proceeding relating to occupational liability is brought is not liable in damages in relation to the cause of action above the amount of the monetary ceiling specified in clause 3.3 of the scheme if the person is able to satisfy the court that
- (a) the person has the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates, and
 - (b) the amount payable under the policy in respect of that occupational liability is not less than the amount of the monetary ceiling specified in clause 3.3 of the scheme in relation to the class of person and the kind of work to which the cause of action relates.
- 3.3. The monetary ceiling (maximum amount of liability) required for the purposes of limitation of liability under the scheme at the time at which the act or omission giving rise to the cause of action occurred is to be determined according to the following:
- 3.3.1. \$500,000 in relation to the valuation of established residential property and vacant residential property in post subdivision form and
 - 3.3.2. \$1 million in all other cases or
 - 3.3.3. Notwithstanding clauses 3.3.1 and 3.3.2, such other amount not exceeding \$10 million as may be specified by the AVI under clause 4.1.
- 3.4. 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 amount

- 4.1. Pursuant to s24 of the *Act* this Scheme confers on the AVI a discretionary authority to specify, on application by a person to whom the scheme applies, in relation to that person a monetary ceiling (maximum amount of liability) not exceeding \$10 million, in relation to the person either in all cases or in any specified case or class of case.

5. Duration

- 5.1. This Scheme will commence on 26 July 2007 and will be in force for a period of five years from the date of commencement.

³ Occupational liability is defined in section 4(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'. Section 5(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. 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).

⁴ Damages as defined in section 4 of the *Act* means (a) damages awarded in respect of a claim or counter-claim or 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.