

RETROSPECTIVE VALUATIONS

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Guidance Papers

Objectives

The principal objective of a Guidance Paper (GP) and Resource Pack (if applicable) is to clarify professional and industry processes, best practices, and procedures and to discuss their use and implementation.

A GP is designed to be of assistance to Members and those who use Members' services. They serve as a guide and measure of acceptable professional practice and conduct of a Member.

The intention of a GP is to:

- a) provide information on the characteristics of different types of assets that are relevant to the advice;
- b) provide information on appropriate practices and their application;
- c) provide information that assists Members in exercising the judgements they are required to make in specific situations';
- d) convey elements of what is considered "competent professional practice" for Australian Property Institute (API) Members and "best practice" for Property Institute of New Zealand (PINZ) Members and New Zealand Institute of Valuers (NZIV) Members.

A GP is not intended to provide comprehensive training, instruction or prescriptive practices and procedures, or direct that a process, professional approach, or method should or should not be used in any specific instruction or situation.

Member Obligations

The Member is responsible for choosing the most appropriate approach in a matter based upon the task and instruction. It is a matter for each Member to decide the appropriate practice in any situation, and if they are unclear, seek professional advice from others, or contact the Institute(s). Members have the responsibility of deciding when it is appropriate to depart from the guidance and practices contained in a GP.

The Institute(s) do not warrant that anything contained in this or any GP is the definitive or final statement on any issue. Members must perform their own work pursuant to their own professional expertise and experience and if required, seek additional advice which might include legal advice.

Court or Tribunal Reliance

A court or tribunal may consider the contents of any relevant GP or other document relating to a recommended professional practice published by Institute(s) in deciding whether the member acted to a standard required by law.

Currency of Publication

Case law and relevant legislation may change over time and whilst the Institutes(s) consider this GP current at the time of publication, Members and those who use Members' services should have regard to legislative changes and new rulings and if necessary, seek further advice prior to having regard to this GP.

Departure or Non-Compliance

Where a Member considers that a circumstance exists that warrants the departure from or non-compliance with any of this GP, the Member's report (or other advice) must include a statement that outlines:

- a) the reasons for the departure or non-compliance with this GP; and
- b) any impact the Members departure or non-compliance may have on the content of the report.

Members are advised to seek legal and/or other advice before departing from practice recommended in a GP.

Enquiries

If any Member considers any information or advice in this GP to not be accurate or up to date, or wish to raise any issue for consideration arising from the contents of this GP, please refer this to

API contact: standards@api.org.au

PINZ/NZIV contact: standards@property.org.nz

1.0 Introduction

1.1 Scope of this Guidance Paper

This GP is to address circumstances whereby Institute Valuer Members (Valuers) are instructed to prepare a valuation as at an earlier date, and/or review a previously completed valuation. Valuers undertaking retrospective valuations must do so to the standard of professionalism and skill required and consistent with membership of the Institute(s) and in compliance with the law.

This GP applies to Valuers who undertake retrospective valuations. Retrospective valuations are commonly instructed by lenders when reviewing lending decisions or for court purposes to assist in resolving issues in proceedings. They may also be used for example for tax purposes, negotiations between parties and in estate matters.

This GP should be read in conjunction with IVS and any other relevant GPs, TIPs, Guidance Notes, and any other relevant publications from the Institute(s).

1.2 International Valuation Standards

International Valuation Standards (IVS) published by the International Valuation Standards Council (IVSC) are adopted by the Institute(s).

It is the Member's responsibility to comply with the IVS applicable at the date of valuation, keep informed of any changes and, apply them appropriately and consistently when providing valuations.

This GP is also intended to be consistent with the concepts and definitions contained in the IVS, however, there may be departures from the IVS to reflect Australian law and practice. This GP refers to and uses IVSC definitions to promote consistency.

2.0 Definitions

The definitions contained below and used in this GP are applicable to this GP and have been included to assist with the interpretation and understanding of certain stated terms used within this GP. Where a defined term is included in this GP it is identified as a capitalised term.

Member	A Member of the API, PINZ and/or NZIV.
Expert	A person who has ‘specialised knowledge’ in a field in which they demonstrate that by reason of specified training, study, or experience.
Expert Witness	A person who is qualified in their area of expertise and training, and possess specialised knowledge, who is retained by parties or by the Court to provide opinion on an aspect(s) of a case.
Expert Evidence	<p><i>‘The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience)’</i></p> <p>http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-expt [viewed 8/5/2019]</p>
Institute(s)	All references to Institute(s) mean, as the context requires, API, PINZ and /or NZIV.
Member	A Member of the API, PINZ and/or NZIV.
Valuation Review	The act or process and output, undertaken by a Valuation Reviewer, of considering and reporting on a valuation performed by another valuer, which may or may not require the Valuation Reviewer to provide their own opinion as to the valuation of the asset.
Valuation Reviewer	‘A “ <i>valuation reviewer</i> ” is a professional <i>valuer</i> engaged to review the work of another <i>valuer</i> . As part of a <i>valuation review</i> , that professional may perform certain <i>valuation</i> procedures and/or provide an opinion of <i>value</i> .’ (IVS)

3.0 Retrospective Valuation

A valuation completed where the date of valuation is in the past is a retrospective valuation. Depending on the circumstances, the valuation will be informed by information that was or could only have been known or available at the date of valuation but in some cases by information that became available subsequently.

4.0 Scope of Works / Key Principle when Instructing Valuers.

The purpose, basis and premise of value should be disclosed. Where the purpose is Expert Evidence or Valuation Review (or where legal principle dictates), the instructions provided should direct the Valuer on whether there are constraints on the information. As far as possible, sufficient information should be provided to the Valuer to describe the property as at the date of valuation.

4.1 Nature of Instructions

The Valuer should obtain instructions in writing that comply with *IVS 101 Scope of Work – Section 20.3*.

Valuers undertaking retrospective valuations for litigation purposes should also refer to other relevant papers published or adopted by the Institute(s) such as *ANZPGP 203 Acting as an Expert Witness*.

4.2 Instructions from a Lender

A lender or a lender's representative may instruct a Valuer to prepare a retrospective valuation either on their own behalf or on behalf of a mortgage insurer. In these cases, the purpose of the valuation must be advised.

The completion of a retrospective valuation may assist the lender in reviewing an earlier valuation relied upon for lending purposes and so the purpose will be to assess the accuracy and content of a previous valuation. In these instances, Valuers should ensure there is clarity about how the report will be used and whether the Valuer is only to consider details that could have been known at the date of valuation.

4.3 Instructions for Litigation Purposes

A Valuer may be instructed as an Expert Witness to assist a Court. In this instance, the Expert Witness' paramount and overriding duty is to the Court. In all Courts there are guidelines in relation to Expert Evidence and Expert Witnesses that need to be followed.

A Valuer may be requested to complete different valuations. In some cases, to provide a retrospective valuation assessing value as at the date of an original valuation, the date of an insured event, under a contract or other causes. Alternatively, they could be asked to complete a Valuation Review (refer 7.0 below)

At all times when acting for the Court, the Expert Witness has an overriding obligation to the Court to provide their view independently, impartially, and in a way that will assist the Court to achieve a just resolution of issues in proceedings.

Valuers undertaking retrospective valuations for litigation purposes should also refer to other relevant papers published or adopted by the Institute(s).

4.4 Instructions for Other Purposes

There are a multitude of reasons for seeking a valuation for a date in the past. This could include for example contract disputes, insurance claims, estate matters, professional complaint investigations, taxation matters including capital gains tax, stamp duty purposes, tax consolidation, unit entitlement allocations and family law.

The Valuer has a duty to accept only instructions that they have the professional skill and experience to complete in accordance with a duty of care and standards as required by law.

4.5 A Valuer Accepting Instructions

A Valuer must operate within the limits of their qualifications and experience and must only accept instructions in a field of practice in which they possess sufficient knowledge and skill. If a Valuer is not able to meet this standard, they must decline the instruction.

Where possible it is recommended the Valuer is appropriately certified by the respective Institute(s) at the time of the retrospective valuation date and registered in those states where registration (or similar) by a regulatory/licensing body is required.

Prior to accepting an instruction, a Valuer should ensure there is no conflict of interest. Refer API Code of Ethics, API Rules of Professional Conduct, PINZ Rules of Conduct or NZIV Code of Ethics.

5.0 Inspection Requirements

5.1 Real Property

The property should be fully inspected internally and externally, where possible. Detail regarding the condition and presentation of the property at the date of valuation should be sought. This could include property databases with historical photographs, various property websites, local agents, other parties including owners and occupiers, aerial view maps over time, town planning and other council resources. The valuation report should reference all information relied upon.

5.2 Plant and Equipment, and Personal Property

Plant, machinery, equipment, and personal property should be inspected where possible. Detail regarding the condition and presentation of the property at the date of valuation should be sought. However, as plant and machinery assets are portable, inspections may be problematic in retrospective valuations.

Plant, machinery, equipment, and personal property may no longer exist or if they do, may be in a substantially different condition than they were at the date of the retrospective valuation; and sometimes assets may have been destroyed, damaged, stolen or in the possession of another (unfriendly) party.

Historical evidence, observations and notes regarding the asset's condition and use as at the date of the retrospective valuation should be sought by the Valuer undertaking the valuation. This could include client data with or without photographs, local distributors or service companies, other parties including landlords and/or tenants etc. The Member should endeavour to verify the information relied upon.

5.3 Generally

In cases where a physical inspection is not practical or possible, Valuers should refer to the API Rules of Professional Conduct, PINZ Rules of Conduct or NZIV Code of Ethics and proceed accordingly. Valuers should seek disclosure of all relevant information about the property at the date of valuation and supplement and/or verify the information by completing their own research. The source of information and any assumptions made should be made clear in the report.

The Valuer should disclose the level of inspection undertaken and state the effect of not having conducted an inspection or complete inspection has on the valuation provided. Where necessary, the Valuer's report must detail the assumptions made in relation to the condition, construction, or any other aspects of the property not inspected. The Member should reserve the right to review their valuation if new information of a material significance subsequently comes to light.

6.0 Report Content

The level of reporting will be agreed with the client and detailed in the terms of engagement and scope of works. As a minimum, the report should comply with *IVS 103 Reporting*.

Detail regarding the condition and presentation of the property at the date of valuation should be included in the report along with any assumptions in this regard. Sources of information relied upon should be cited.

When the Valuer is aware that there may have been change to the property since the retrospective valuation date, known details should be included within their report.

A single point valuation must be given. It is then acceptable to also give a range of values based on special assumptions made where there is an inability to inspect fully, or where there is a lack of reliable data on the condition or other aspects pertaining to the property as at the retrospective valuation date.

Valuers should comply with the Institutes instructions or guidelines applicable to the property being valued and include qualifications and disclaimers appropriate to the instruction and report.

7.0 Valuation Review

The Valuer, undertaking a Valuation Review, should receive the following as part of their instructions:

- a) A copy of the instructions provided to the original valuer.
- b) A copy of any other documents provided to the original valuer at the time.
- c) For Court purposes, a copy of the Expert Witness, or Expert Evidence, or opinion evidence guidelines, or similar applicable document for the relevant Court.
- d) A copy of the original valuation report (except for professional complaint check valuation purposes where only selected part of a report or a redacted version of a report might be provided)
- e) Any other applicable documents.
- f) A limitation to exclude any information that could not have reasonably been known or could not have been known to the valuer when the original valuation was completed.

8.0 Supporting Evidence

8.1 Real Property

Sales and/or rental evidence prior to the retrospective valuation date should primarily be used.

Sales and/or rental evidence after the date of valuation should be treated with extreme care. The starting position is that such evidence is irrelevant because a hypothetical purchaser and seller would not have been aware of that sale at the date of valuation. However, when there is a scarcity of evidence prior to the date of valuation, Valuers can have regard to other market evidence but need to explain how that evidence indicates what would have been in the contemplation of hypothetical purchasers and sellers at the earlier valuation date.

This is a difficult process and care needs to be taken in analysing evidence past the retrospective date. At page 97, of *Land Valuation and Compensation in Australia (3rd Ed.)*, Rost and Collins quotes the 1943 High Court case of *Daandine Pastoral Co v Commissioner of Land Tax (1943)* where the Court observed in relation to a retrospective valuation for revenue purposes:

"Subsequent sales are just as admissible in evidence as prior sales provided that in all circumstances they are comparable. If between the material date and the date of the subsequent sale, supervening events occur which alter the conditions previously existing, the subsequent sales would not be comparable and would be useless."

This case should not be regarded as a precedent across all retrospective valuations and does not set out a broad statement of principle as to how Valuers should analyse evidence post the valuation date for retrospective valuations. In some revenue cases, it might be appropriate, but in other areas, such as business valuation, it is rare to have regard to sales evidence post the valuation date.

Most certainly, in a case relating to negligence against a Valuer, evidence post the date of valuation is irrelevant because a Valuer cannot be judged on evidence they could not have known at the time.

Valuers may wish to seek legal or tax advice to clarify appropriate practice.

8.1 Plant and Machinery

Sales evidence should be obtained where possible, whilst cognisant of the limitations for plant and machinery. There are several historical databases that provide a record of sales data however these are generally limited to more common types of mobile plant, motor vehicles, machinery and equipment.

Research may comprise.

- a) Using comparable sales that are contemporaneous with the valuation date.
- b) Completing a regression analysis using comparable sales that are contemporaneous with the valuation date. Where such contemporaneous comparable sales are lacking it may be appropriate to use comparable sales pre and/or post the valuation date, to establish where the market may have been at the date of valuation.
- c) Establishing a current value and deflating using Australian Bureau of Statistics (ABS) or other relevant cost indices.
- d) Using the cost approach based on established historical cost from suppliers.
- e) Using the cost approach by deflating current cost to historical cost to arrive at a starting base.

If a Member can demonstrate that the market has remained static over the relevant period, the use of comparable sales that are not contemporaneous with the valuation date may provide an acceptable method for inferring a value at the valuation date. Likewise, it may be acceptable to use comparable sales pre and/or post the valuation date to demonstrate the direction and volatility of the market at the valuation date to infer a value at the valuation date.

In cases where there is an insurance claim, certain contract disputes and other litigation, the object of the retrospective valuation is to determine the value of the asset at a given date. In these instances, where the sole purpose of the retrospective valuation is to determine the value at a given date, post valuation date data that contributes to determining the value at the retrospective valuation date is acceptable (in certain circumstances) e.g. a Valuer Member could show that the market for the asset is static over a period, and a graph may demonstrate the direction of the market and its volatility in relation to the retrospective valuation date.

9.0 Effective Date

This GP is applicable from 1 July 2021. Earlier adoption is permitted and encouraged.

This GP replaces *ANZVTIP 1 Retrospective Valuations* which was in effect from 1 January 2020 and was withdrawn 30 June 2021.