



Australian Property Institute Valuers Limited  
ACN: 143 638 975

**AUSTRALIAN PROPERTY INSTITUTE VALUERS LTD  
PROFESSIONAL STANDARDS SCHEME AMENDMENT  
PUBLIC CONSULTATION  
DOCUMENT**

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# AUSTRALIAN PROPERTY INSTITUTE VALUERS LTD SCHEME AMENDMENT – PUBLIC CONSULTATION DOCUMENT

## A. Australian Property Institute Valuers Ltd ('APIV')

### **1. Who is the APIV and what are its objects?**

The Australian Property Institute Valuers Ltd ACN 143 638 975 ('APIV') is a wholly owned subsidiary of the Australian Property Institute Ltd ACN 608 309 128 ('API'), which has been established as a special purpose company for the purpose of administering the APIV Professional Standards Scheme ('**APIV Scheme**', also known as the APIV Limitation of Liability Scheme) for the real property valuation profession.

The API is the peak national body for property professionals with 8,000 members. The API is impartial, objective and independent and sets the highest standards of professional practice, education, ethics and professional conduct for property professionals nationally, which in turn has a wide and far-reaching positive impact on the Australian society.

The APIV is committed to implementing the high standards set by the API and using its best endeavours to ensure that the members of the APIV are compliant with the requirements of the API and the APIV Scheme, including the maintenance of a compliant professional indemnity insurance policy ('**PII policy**') in accordance with the APIV Scheme.

### **2. Who are the members of the APIV?**

The APIV membership base is comprised of 3800 corporate and individual members.<sup>1</sup>

The API has 8,000 individual members, about 3400 of whom are APIV members. All eligible members of the API must become APIV members and participate in the APIV Scheme, unless the APIV grants an exemption.<sup>2</sup>

An API member is eligible to become APIV members<sup>3</sup> if he or she:

1. ordinarily resides in a State or Territory in which the APIV Ltd Limitation of Liability Scheme is operational (i.e. anywhere in Australia, except Tasmania),
2. undertakes valuations of real property, and
3. has demonstrated that they hold the requisite qualifications and experience to competently conduct real property valuations by obtaining one of the following membership certifications:
  - Life Fellow (Certified Practising Valuer);
  - Fellow (Certified Practising Valuer);

<sup>1</sup> The membership figures discussed in this document is current as at 30 September 2018.

<sup>2</sup> See below 'What members will the Scheme not apply to?' for further information.

<sup>3</sup> See API Membership Policy, clause 39.1.

- Associate (Certified Practising Valuer); or
- Provisional (Certified Practising Valuer).

In addition to the individual members, the APIV has about 400 corporate members.

Corporate members are generally the employer firms of individual valuer members. This is necessary as it is generally the firms, rather than the individual members, who hold the PII policies and control the quality assurance practices.

## B. APIV Scheme

### 1. *What is the APIV Scheme?*

The APIV Scheme is a legal scheme approved under the *Professional Standards Act 1994* (NSW) and is regulated by the Professional Standards Councils ('PSC'). It is one of 17 Professional Standards Schemes currently operational in Australia.

The APIV Scheme binds the APIV to monitor and enforce members' compliance and professional obligations thereby contributing to the improvement of professional standards of its members.

Provided the participant satisfies the various compliance requirements, in the event of a claim, the Scheme enables APIV members to plead their Scheme membership as a defence to 'cap' their occupational liability arising from Valuation of Real Property<sup>4</sup> to the amount of the Monetary Ceiling<sup>5</sup> determined under the Scheme.

### 2. *What is the purpose of the current Scheme Amendment Application regarding Low Risk Valuations?*

The current APIV Scheme does not recognise the fact that the exposure of occupational liability is not always proportional to the assessed value of real property.

For example, valuation of a high value property for rating purpose will give rise to a high assessed value but the risk of claim attached to such work is virtually non-existent. This is because the actual value of a potential rating dispute will be limited to the proportion of the assessed value of the property that is alleged to be overstated or understated, as opposed to the full value of the entire property. Further, disputes directly against valuers do not generally arise with regard to rating valuations as there are adequate statutory regimes in place for aggrieved property owners.<sup>6</sup>

Under the current APIV Scheme, if an APIV member conducts a rating valuation of a real property and assesses its value as \$7 million, the minimum PII coverage required to be held by that member, and the liability cap on any real property valuation, as of the next PII policy

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<sup>4</sup> See below 'What types of work will the Scheme cover?' for further information.

<sup>5</sup> The words, Monetary Ceiling, 'liability cap' and 'cap' are used interchangeably in this document. See below 'How is the level of limited liability of participating Association members determined?' for further information.

<sup>6</sup> See, eg, *Valuation of Land Act 1916* (NSW), pt 4 div 1.

period will be \$3 million. This is the case even if the actual likelihood of any claim eventuating from rating valuations is extremely low and the risk of the claim exceeding \$1 million is virtually non-existent.

Accordingly, the APIV has lodged the current Scheme Amendment Application to distinguish Low Risk Valuations from higher risk Valuations of Real Property (e.g. valuations undertaken for mortgage purposes) and to ensure that the cap for claims arising from members' occupational liability is more commensurate to the actual risk attached to the work carried out by APIV members.

### **3. Who administers the Scheme?**

The APIV, in conjunction with the API, administers the APIV Scheme.

To ensure that members of the APIV continue to be recognised as Professional Standards Scheme members and benefit from the APIV Scheme, it is crucial for the APIV to fully discharge its duties under the Professional Standards Legislation to monitor and enforce members' compliance with their professional and ethical obligations, including Scheme-specific insurance obligations.

### **4. Has the APIV previously administered a Scheme? For how long?**

The APIV has extensive experience with Scheme administration gained over the past 8 years. The APIV has been administering the APIV Scheme since 1 September 2010.

### **5. In what States & Territories does the Scheme operate?**

The current APIV Scheme operates in all States and Territories of Australia.

### **6. What types of work will the Scheme cover?**

The APIV Scheme covers civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member acting in the performance of the member's occupation in the Valuation of Real Property.

Valuation of Real Property is defined in the APIV Insurance Standards as 'valuation of all the rights, interests, and benefits related to the ownership of real estate, including land, and all things that are a natural part of the land as well as any improvements to the land'.

APIV Scheme does not apply to any liability arising out of acts or omissions that are unrelated to the APIV member's occupation as a valuer or concern the following:

- the death of, or personal injury to a person;
- a breach of trust;
- fraud or dishonesty; and
- a liability which may be the subject of proceedings under:
  - Part 13 or 14 of the Real Property Act 1900 (NSW),

- Land Titles Act 1925 (ACT), part 16 (Civil rights and remedies),
- Part XII of the Transfer of Land Act 1893 (WA),
- section 110 of the Transfer of Land Act 1958 (VIC),
- Land Title Act 1994 (QLD), part 9, division 2, subdivision C, or
- Part 9, Division 2, Subdivision 3 of the Land Title Act (NT).

## **7. What are Low Risk Valuations?**

Under the Scheme Amendment Application, a Low Risk Valuation means any Valuation of Real Property undertaken:

- in the capacity as an **arbitrator**;
- for the purpose of making a **binding determination** acting as an expert pursuant to an agreement or deed where all relevant parties have agreed to indemnify, release or hold the valuer harmless in respect of any liability in connection with the valuation;
- for the purpose of the preparation and issue of **financial reports** by any entity in the general course of the entity's operations. It excludes special purpose financial reports prepared in respect of a specific transaction including any sale, merger, takeover or fundraising;
- for **rating and taxing** purposes;
- for **resumption** purposes;
- for the purpose of providing **expert evidence** in relation to a proceeding before a court or tribunal where the expert's primary duty is to the court or tribunal (excluding a Valuation of Real Property undertaken for resumption purposes); and
- for the purpose of advising on the insurable value or real property in connection with any proposed purchase of **insurance**.

## **8. When will the amended Scheme commence?**

The current APIV Scheme commenced on 1 September 2016.

If approved, the amendment relating to Low Risk Valuations will commence, in the respective States and Territories, two months after the date of its publication in the State or Territory's Government Gazette pursuant to the provisions of their respective professional standards legislation.

## **9. What class(es) of Association members will the Scheme be available to?**

The APIV Scheme is available to, and compulsory for, all API members who are practising valuers of real property in Australia and hold the membership certification of one of the following:

- Provisional Member (Residential Property Valuer);

- Associate (Certified Practising Valuer);
- Fellow (Certified Practising Valuer); or
- Life Fellow (Certified Practising Valuer).

#### **10. *What members will the Scheme not apply to?***

The APIV Scheme applies to all members of the APIV Limited, unless an exemption has been granted by the APIV.

The APIV may, in its absolute discretion, grant an exemption (upon the applicant providing appropriate evidence) to an eligible member of the API, if the applicant is:

- a non-practising valuer – A non-practising valuer, for the purpose of the APIV Scheme, is a member who does not undertake valuations of real property and does not receive any fee, retainer or income from valuations of real property;
- a valuer employed by an Authorised Deposit-taking Institution [within the meaning of the *Banking Act 1959* (Cth)] or an entity which carries on State banking (within the meaning of s 51(xiii) of the Australian Constitution) and who only provides valuation services for the bank's internal purposes;
- a valuer who is an employee of Commonwealth/State/ Local Government and who only provides valuation services for the Commonwealth/State/Local Government's internal purposes;
- an employee/director of a firm that derives 100% of its income from Commonwealth/State/Local Government contracts on a non-recourse basis; and
- able to satisfy the APIV that it is necessary and/or desirable, for the applicant to be exempted from participating in the Scheme.

### **C. Operation of the APIV Scheme**

#### **1. *How is the level of limited liability ('Monetary Ceiling') of participating Association members determined?***

##### What is a Monetary Ceiling?

The Monetary Ceiling is the maximum amount for which a Member can be held liable for (i.e. the cap) where a Court determines that the Member is compliant with all relevant obligations.

It also represents the minimum amount of PII cover (plus \$500,000 or 5% of Monetary Ceiling to account for potential defence costs, if the limit of indemnity is cost-inclusive) that a member must hold to be compliant with the Scheme requirements.

For avoidance of doubt, if an APIV member undertakes both Low Risk Valuation and other types of Valuation of Real Property, the minimum amount of PII cover that the member must hold is the higher of the two Monetary Ceilings.

### Current Scheme

Under the current APIV Scheme the relevant Monetary Ceiling is determined by the Membership Category of each APIV member.

The Membership Category for each APIV member firm is determined by reference to the member's highest single valuation amount in the 12 months prior to the inception/renewal of their policy ('Upper End Value'), irrespective of the purpose of the valuation (i.e. whether it is for the purposes of mortgage, insurance, asset valuations, etc).

The Membership Categories and the respective Monetary Ceilings are set out in the table below:

Class	Description	Upper End Value	Monetary Ceiling
1	Category A Member	\$0.0 million to < \$3.0 million	\$1.0 million
2	Category B Member	\$3.0 million to < \$5.0 million	\$2.0 million
3	Category C Member	\$5.0 million to < \$10.0 million	\$3.0 million
4	Category D Member	\$10.0 million to < \$15.0 million	\$4.0 million
5	Category E Member	\$15.0 million to < \$40.0 million	\$5.0 million
6	Category F Member	\$40.0 million or over	\$10.0 million

The Monetary Ceiling of an employee or director of an APIV member firm in respect of a claim is inherited from, and is identical to, the Monetary Ceiling of the firm.

### Low Risk Valuation Scheme Amendment

If the Low Risk Valuation Scheme Amendment is approved, any claim arising from a Low Risk Valuation will be subject to a Monetary Ceiling of \$1 million, irrespective of the assessed value of the property.

The Monetary Ceiling of an employee or director of an APIV member firm in respect of a claim is inherited from, and is identical to, the Monetary Ceiling of the firm.

For avoidance of doubt, a member

### **2. How will consumers know if an API or APIV member is covered by the APIV Scheme?**

Consumers will know that a person or firm is an APIV member and covered by the APIV Scheme in one or more of the following ways:

- The APIV will continue to respond to public enquiries regarding the membership status of APIV members.
- All APIV Scheme participants are required by law and the APIV to use the prescribed statement – i.e. '*Liability limited by a scheme approved under Professional Standards Legislation*' – to disclose their limited liability on all correspondence promoting their business. They will also need to disclose their limited liability on their website if they operate part or all of their business in South Australia.

- The APIV is presently developing a brand logo, which will make it easier for consumers to identify APIV Scheme participants
- The API and APIV are presently working on a new member system with a view to building APIV member search functions that are accessible by the public.

### **3. How long will the Scheme operate for?**

The APIV's current Scheme is in operation for a period of five years, which commenced on 1 September 2016 and will expire on 31 August 2021.

## **D. Benefits of the APIV Scheme**

### **1. How will consumers benefit from the APIV Scheme and the Low Risk Valuation Amendment?**

#### APIV Scheme generally

There are various ways in which consumers benefit from the APIV Scheme, including but not limited to the following:

- (a) The approval of the APIV Scheme by the PSC is a recognition that the APIV Scheme participants are members of a distinguished profession and evidences the commitment of the API and APIV to high professional standards. When consumers deal with APIV Scheme participants, they can be assured that they are dealing with competent and independently assured professionals who are operating to the highest professional and ethical standards.
- (b) PII protects both the professional service providers and the consumers. The APIV Scheme ensures that all APIV Scheme participants are sufficiently insured – i.e. insured for at least the amount of the respective Monetary Ceiling – to meet most of the claims arising from Valuation of Real Property. The Monetary Ceilings under the APIV Scheme are determined in accordance with the claims data provided by members, supported by independent actuarial analysis and approved by the PSC.
- (c) The Monetary Ceilings set by the APIV Scheme has standardised the amount of insurance that APIV members are required to obtain. This provides predictability for insurers and assists in smoothing out insurance premiums and strengthen insurance availability over the years. A stable and viable PII market for a profession is a critical element of consumer protection under the Professional Standards Legislation it provides consumers with a means of guaranteed compensation.
- (d) Membership of the APIV Scheme is open to firms that are operated by, or hires, eligible API members. As the APIV membership is comprised of both corporate and individual members, the APIV has the power to work with the firms to ensure that proper risk management strategies are set in place to ensure the employees' compliance with the professional and ethical standards and requirements set by the API, and APIV's requirements under the Professional Standards Legislation.

### Low Risk Valuation

The proposed amendments will have the following consumer benefits:

- (a) by increasing competition in the within the market for Low Risk Valuations:
  - (i) the cost of those services can be expected to decrease;
  - (ii) the quality of those services can be expected to increase due to the entrance of APIV members currently not participating in that market.
- (b) by capping the liability of APIV members who carry out high value/low risk services at \$1 million, the amendments can be expected to reduce the insurance costs attributable to such work by reason of lower rating of revenue from Low Risk Valuations subject to such cap.
- (c) by removing an anomaly which currently requires many valuation firms to hold PII at levels above those reasonably required to protect consumers, the amendments can be expected to reduce insurance costs of valuation companies. Such savings are likely to:
  - (i) increase the quality of valuation services – by reducing cost pressures which can impact on the accuracy of valuations (for example, by increasing the job load of valuers);
  - (ii) reduce the cost of valuation services – due to such savings being passed on to consumers through lower valuation fees.
- (d) all of the above leading to a more stable and viable PII market for the profession, which will enhance consumer protection.

### **2. How does the Scheme enhance the professional standards of your members?**

The API and APIV are committed to the highest ethical and professional standards of the APIV members by monitoring and enforcing various compliance obligations on the APIV members, including but not limited to:

- (a) API's robust membership entry requirements;
- (b) API's professional and ethical standards;
- (c) rigorous continuing professional development requirements, including the mandatory risk management module;
- (d) minimum insurance standards set out under the APIV Scheme;
- (e) APIV's Supervision Guidelines;
- (f) obligation on APIV members to provide all complaints and claims data to the APIV, which are then analysed and incorporated into the API/APIV's risk management strategies to further enhance the ethical and professional standards of the APIV members; and
- (g) effective and thorough compliance audit and complaints/disciplinary processes.

### ***3. How does limiting participant liability help consumers?***

As explained above at D(1), the Monetary Ceilings set by the APIV Scheme strengthens the PII market, thereby enhancing consumer protection.

### ***4. Is the Scheme a PII scheme?***

The APIV Scheme is not an insurance scheme. The APIV Scheme operates separately to and in addition to a member's PII policy. It acts to 'cap' the amount of damages that can be awarded against a participating member in respect of their occupational liability provided the member complies with their respective obligations.

In short, a member's PII policy pays for the claim while the APIV Scheme caps the amount of damages that are payable under the PII policy.

### ***5. Where can one find further information regarding the APIV Scheme?***

Further information of the APIV Scheme can be obtained from the following:

- the APIV Team at [apivadmin@api.org.au](mailto:apivadmin@api.org.au) or on (03) 9644 7505;
- the APIV's web page at [www.api.org.au](http://www.api.org.au); and
- the PSC's website at [www.psc.gov.au](http://www.psc.gov.au).