
MEMBERSHIP APPLICATION INFORMATION FOR API MEMBERS

Important Notice

The information provided in this document regarding the Australian Property Institute Valuers Limited ('APIV') Professional Standards Scheme is only a **high level summary** of the operation of the APIV Scheme and is **intended** to be a **general guide only**.

The information is **not** intended to constitute legal/insurance/financial or professional advice and has been prepared **without** taking into account your personal objectives, financial situation or needs.

You should carefully consider the appropriateness of this information to your circumstances and seek independent advice from brokers/financial/legal advisers specific to your circumstances before making any decisions.

The APIV may review a Member or prospective Member's compliance with the Scheme at the time of processing a new application or annual Membership renewal or may audit such compliance at any time. Any such review or audit is carried out by the APIV as a purely administrative function in its capacity as the administrator of the **Scheme**. **It is not the APIV's role to advise the Member as to its compliance obligations and the APIV makes no representation or warranty** to Members as to whether or not they are compliant at any particular point of time. Ultimately, whether a Member has met all relevant compliance obligations under the Scheme, is a matter which **will be determined by a Court** in the context of the particular claim in respect of which the Member seeks to rely upon the Monetary Ceiling.

It is the Member's responsibility to determine the applicable compliance obligations and to ensure that they are compliant with these obligations.

API / APIV do not accept any responsibility for the consequences of any action taken or omitted to be taken by a person, whether a Member of the APIV Scheme or not, as a consequence of anything contained in or omitted from this document.

Scheme Membership Eligibility

1. If you are a Member of the API, do you need to join the Scheme?

Section 15 of the API Membership Policy provides that certain categories of API Members **must join** the Scheme, unless exempted by the APIV.

a. Eligibility Criteria – Individuals in General

Unless an exemption is granted by the APIV, an API Member **must** join the Scheme, if he or she:

1. ordinarily resides in a State or Territory in which the APIV Professional Standards Scheme is operational;
2. undertakes valuations of real property; and
3. holds one of the following Membership certifications:
 - Life Fellow (Certified Practising Valuer)
 - Fellow (Certified Practising Valuer)
 - Associate (Certified Practising Valuer)
 - Provisional (Residential Property Valuer)

b. API Members Who are Employees or Directors of a Company

If your firm is operated by a company or a partnership and you are an eligible employee/director of the company, **the company must join the Scheme as a Member in its own right in order for you to join the Scheme**. This is because the Scheme operates on an 'one-in, all-in' basis.

If you are an employee wishing to join the Scheme, please check with the relevant department (eg. Compliance, Legal or HR) within your company for them to:

- add you as an individual Scheme Member if the company is an existing Scheme Member; or

- join the company, you and any other eligible persons to the Scheme.

c. Eligible API Members Who are Sole Traders or in Partnership

If you operate a firm as a sole trader and you meet the eligibility criteria as an API Member, you must join the Scheme **and** ensure that all eligible employees/subcontractors/partners who are covered under the firm's professional indemnity insurance policy (**PI policy**) are also joined to the Scheme as Members in their own right.

This is because the Scheme operates on an 'one-in, all-in' basis. **Member firms must ensure that they adhere to this requirement pursuant to the APIV Insurance Standards.**

d. Eligibility Criteria – Companies (Standalone or in Partnership)

A company may join the Scheme if it:

- is an insured entity; and
- employs, contracts to, or is constituted by an API Member who meets the eligibility criteria.

As with sole trader practices, if a company becomes a Scheme Member, it must ensure that all eligible employees/subcontractors/partners who are covered under the firm's PI policy are also joined to the Scheme as Members in their own right.

Member firms must ensure that they adhere to this requirement pursuant to the APIV Insurance Standards.

e. Exemptions

To obtain an exemption from participation in the Scheme, an API Member must apply to the APIV. The APIV may grant exemptions (upon the applicant providing appropriate evidence), in the following categories:

- Non-Practising valuers;
- Authorised Deposit-Taking Institution (ADI) employees;
- Commonwealth/State Government employees;
- Individual/Corporation who derives 100% of their income from Commonwealth/State Government contracts engaged on a non-recourse basis;
- Where it is necessary or desirable (e.g. company will not become a Scheme Member, therefore making it impossible for an employee Member to join the Scheme).

If an exemption is granted under any of the above categories, the person will **not** be able to rely on the Scheme to limit their liability in the event a claim is brought against them.

f. What if you are an API Member who is eligible to join, but you do not want to join?

Your API Membership status may be affected as you would be in breach of Section 15 of the Membership Policy (formerly API By-Laws).

You will **not** be able to limit your liability under the Scheme.

2. Membership Fees

The current annual Membership Fees are as follows:

- Joining Fee – \$297.00 per person and per company; and
- Annual Renewal Fee – \$242.00 per person and per company.

The Application Process

3. How do you become a Member of the APIV Scheme?

To join the APIV Scheme, you will need to:

1. Complete the Membership Application Form, including the details of the Upper End Value and
2. Provide a copy of the Certificate of Currency for the PI policy.
3. Provide a copy or extracts from the PI policy showing the following details in accordance with the APIV Insurance Standards:
 - i. largest excess amount payable;

- ii. whether defence costs are included as part of the limit of indemnity ('costs inclusive') or covered in addition to the limit of indemnity ('costs exclusive');
 - iii. retroactive date;
 - iv. whether or not the PI policy contains an automatic reinstatement;
 - v. whether or not the PI policy contains an automatic run-off cover provision for 7 or more years; and
 - vi. APIV endorsements/exclusions set out in Standard 7 of the APIV Insurance Standards.
4. Submit all documents to the APIV either by:
- i. e-mail to: apivadmin@api.org.au ; or
 - ii. post to:
Scheme Administrator
APIV Limited
10 Beach Street
Port Melbourne VIC 3207

Please note that your application cannot be finalised until all relevant information has been received from you and checked by the APIV in accordance with the Scheme requirements.

Operation of the Scheme

4. How does the Scheme work?

Please refer to the separate document titled 'Handout on Operation of the APIV Scheme' for further information.

Members Compliance Obligations

5. If you are a Member of the Scheme, what are your compliance obligations under it?

Members **are responsible** for determining the **compliance obligations** applicable to them and to ensure that they comply with all requirements of the professional standards legislation and the Scheme **for the duration of the Scheme**.

There are a number of compliance obligations under the professional standards legislation and the Scheme that all Members must satisfy. These obligations include, but are not limited to, the following:

a. Comply with the requirements of the professional standards legislation and the Scheme

To successfully plead the Scheme Membership as a defence to cap their occupational liability, Members must satisfy the Court of their compliance with the requirements of the professional standards legislation and the Scheme. This includes satisfying the Court that:

- they have the benefit of an insurance policy insuring the person against the occupational liability to which the cause of action relates;
- the amount payable under the policy is not less than the amount of the monetary ceiling specified in the Scheme (as applicable at the time the act or omission which gave rise to the claim occurred);
- the PI policy complies with the APIV Insurance Standards, unless exempt; and
- they have complied with their various obligations under the professional standards legislation and the Scheme.

b. Comply with the APIV Insurance Standards

The Scheme requires that Members' hold PI policies that comply with certain minimum standards which are set out in the APIV Insurance Standards (Appendix B to the Scheme), including that:

- the limit of liability must be the same or greater than the applicable Monetary Ceiling;
- where the limit of indemnity of the PI Policy is costs exclusive:
 - defence costs are covered 'in addition' to the limit of indemnity, and the limit of indemnity must meet the prescribed Monetary Ceiling amount (e.g. for a Category A Member, this is a limit of indemnity of \$1Million)

- where the limit of indemnity of the PI Policy is costs inclusive:
 - defence costs are covered ‘as part’ of the limit of indemnity, and the limit of indemnity must contain an additional \$500,000 above the prescribed Monetary Ceiling amount (e.g. for a Category A Member, this is a limit of indemnity of \$1.5Million); or
 - Members must declare that they have business assets of at least \$500,000 to cover defence costs;
- a minimum of 1 automatic reinstatement is included (or the aggregate limit of liability is double that of the Monetary Ceiling);
- the excess must be less than or equal to the applicable maximum excess;
- any retroactive date must cover the Member from at least the inception of the Member’s APIV Membership;
- if reasonably available on the market, the PI policy must provide for automatic runoff cover (unless exempted).

c. Disclose their limited liability to clients and prospective clients

The professional standards legislation prescribes the following disclosure statement for Scheme Members who are covered by a Professional Standards Scheme:

“Liability limited by a scheme approved under Professional Standards Legislation.”

In all jurisdictions where a person’s liability is limited under legislation, **all documents** (including electronic communications) that promote or advertise the person or the person’s occupation and are given (or caused to be given) by that person to a client or prospective client **must** contain a standard statement disclosing that the person’s liability is limited under the respective legislation. For example, the disclosure statement should appear on letters, invoices, emails and valuation reports. Further, if your firm operates in South Australia, the relevant legislation requires the disclosure statement to also appear on your firm’s website.

Non-disclosure is an offence under professional standards legislation and may result in significant penalties. Furthermore, under Victorian, Queensland and Northern Territory legislation, a participating Member will not be able to rely on their Scheme Membership to cap their liability if before or at the time at which the act or omission giving rise to the cause of action occurred, the Member did not disclose to the client that their liability was limited.

For further information on the disclosure requirements, please refer to Appendix D of the Scheme and both the API and PSC’s websites (detailed below).

d. Report certain matters to the APIV

Members are required to report to the APIV:

- all notifications, claims, settlements and complaints received by the Member throughout the year as necessary;
- immediately notify the APIV when a notification or claim approaches the Member’s Monetary Ceiling; and
- the cost and availability of insurance for the year.

e. Renew their APIV Membership annually

Members must renew their APIV Membership each year in the month in which they originally joined the Scheme.

At renewal, Members must:

- complete the Annual Compulsory Compliance Questionnaire (Declaration);
- provide the Certificate of Currency for their current PI policy;
- provide a copy of or extracts of their PI policy showing compliance with the APIV Insurance standards, where necessary;
- provide their highest single valuation completed in the previous policy period (the 12 months immediately preceding the commencement of the current PI Policy period);

- complete the Complaints/Claims and Notifications form, where necessary;
- confirm that all employees/contractors employed by the firm continue to be APIV Members in accordance with Section 15 of the API Membership Policy (if applicable); and
- prepare remittance for their renewal invoice.

f. Comply with the Supervision Guidelines set out in Appendix C to the Scheme

All Members of the API and APIV must comply with the Supervision Guidelines. The Supervision Guidelines set out requirements designed to remedy the risk factors that could flow if under-experienced and/or contract valuers provide valuation reports without adequate training and supervision from more experienced Members.

The Supervision Guidelines outline the circumstances in which valuation reports must be reviewed and co-signed by more experienced Members. The Guidelines also stipulate that a Member must not accept instructions in relation to a valuation where the Member does not have competence in the geographical area or the type of valuation being undertaken.

g. Comply with the continuing occupational education requirements and valuation standards of the API

All Members of the APIV must comply with the continuing occupation education requirements of the API. This includes:

- compliance with the Continuing Professional Development rules and requirements of the API;
- completing the Risk Management Module every three (3) years if you are a Member of the API;
- compliance with the Code of Ethics of API; and
- compliance with the valuation standards of the API.

h. Participation in the Annual Compliance Audit, when required

The PSC requires occupational associations, including the APIV, to audit a proportion of self-declaring Members (APIV Members declare their compliance annually at renewal through the Annual Compulsory Compliance Questionnaire) each year on compliance with the PSC's requirements.

The APIV audits a minimum of 10% of self-declaring Members who are selected using a random sampling technique each year. Selected auditees **must** co-operate with the APIV and provide the requested information and documents to demonstrate their compliance with the professional standards legislation and the Scheme.

At a minimum, the APIV will audit Members' compliance with the following, as required by the PSC:

- professional indemnity insurance standards;
- continuing occupational education;
- sufficiency of business assets;
- disclosure of limited liability; and
- notifications, claims and complaints.

Obligations of the APIV

6. How does the APIV monitor compliance with the Scheme?

To satisfy the requirements of professional standards legislation, the APIV, as the administrator of the Scheme, is required to meet a range of statutory obligations. Pursuant to the regulatory framework, the key obligations of the APIV are as follows:

a. Review and Monitor compliance by Members with the Scheme and other requirements

The APIV is required to closely monitor Members' compliance with the Scheme and professional standards legislation, this includes monitoring compliance with:

- the APIV Insurance Standards, including the requirement that their professional indemnity insurance covers the full amount of their limited liability for valuations of real property;

- the requirement that Members have sufficient business assets or insurance cover to reconcile compensation which may be awarded relevant to the Monetary Ceiling of the liability limitation; and
- the Member obligations listed above.

It should be noted that the APIV's role in checking or auditing compliance of Members is an administrative function carried out for the sole purpose of administering the Scheme. It is not the APIV's role to advise the Member as to its compliance obligations and the APIV does not make any representation or warranty to Members as to whether or not they are compliant at any particular point of time. The obligation remains at all times on the Member to ensure that they are and remain compliant with the requirements of the professional standards legislation and the APIV Scheme. Members should obtain their own legal and/or insurance advice. Ultimately, **only a Court can make a determination as to whether a Member has met these obligations.**

b. Collect certain data from Members and Report to PSC annually

Pursuant to the professional standards legislation, the APIV must collect data and report to the PSC on:

- notifications/claims received by Members, including:
 - the source of the data (i.e. from Members, from insurance industry, etc.);
 - the number and the dollar amount of the claims;
 - the types of claims, causes of claims and demographic information;
 - the settlement amount and defence costs paid, if applicable; and
 - identification of trends and conclusions that may be drawn from the claims data.
- complaints and discipline of Members, including:
 - an analysis of the trends in complaints and
 - the relationship between claims, complaints and continuing education of Members.
- cost and availability of insurance for the current year;
- all notifications/claims at or approaching the Member's respective Monetary Ceiling;
- outcome of the annual compliance audit; and
- all breaches of professional standards legislation or APIV Scheme requirements by Members.

The APIV collects this data from Members through the Compulsory Annual Compliance Questionnaire (Declaration) and the Complaints/Claims and Notifications form which must be completed by each PI policy holder as part of the annual renewal of their APIV Membership.

This information is collected by the APIV from Members principally to provide **aggregated and unidentifiable data** to the PSC. Where appropriate, this information may also be used to identify key risk areas for the purpose of providing educational material to Members and to generally improve the standard of APIV's Member services.

Resources

7. Where can I find further information on the Scheme?

The Scheme document, the APIV Insurance Standards, the other appendices to the Scheme and further resources can be found on the API's website (<http://www.api.org.au/>) under the 'Resources' section of the 'Limitation of Liability Scheme' tab.

Further information on Professional Standards Schemes generally and compliance obligations is also available on the PSC's website at www.psc.gov.au.

If you have any questions or require further information, please contact us either at apivadmin@api.org.au or on (03) 9644 7505.