

## GENERAL INFORMATION ABOUT THE OPERATION OF THE APIV SCHEME

### 1. What is the nature of the APIV Scheme and how does it operate?

The Australian Property Institute Valuers Ltd Professional Standards Scheme ('Scheme', also known as APIV Limitation of Liability Scheme) is a legal instrument approved under the *Professional Standards Act 1994* (NSW), which commenced on 1 September 2016. The Scheme is recognised in all jurisdictions, under mutual recognition provisions in the respective professional standards legislation.

Provided that the participant satisfies the requirements, the Scheme enables APIV members to plead their Scheme membership as a defence which 'caps' their occupational liability to the amount of their monetary ceiling under the Scheme in the unfortunate event that they are pursued in court.

The Scheme requires APIV to monitor and enforce compliance obligations, thereby contributing to improvement of professional standards of its members. The Scheme document can be found on the API's website: <http://www.apiv.org.au>.

### 2. Who must join the Scheme?

The API Membership Policy provides that API members who are practising valuers and hold one of the the following designations must join the APIV and participate in the Scheme, unless exempted by the APIV Board:

- Provisional Member (Residential Property Valuer);
- Associate (Certified Practising Valuer);
- Fellow (Certified Practising Valuer); or
- Life Fellow (Certified Practising Valuer).

The Scheme operates on a 'one-in, all in' basis, hence the firms and employees/sub-contractors who are eligible for APIV membership and are covered under the valuation firm's professional indemnity insurance (PII) policy, must join the APIV to gain the full benefit of the Scheme.

### 2. What does the Scheme cover?

The Scheme applies all types of 'valuation of real property'. 'Valuation of real property' is defined in the APIV Insurance Standards as '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.'

### 3. What does it not cover?

The Scheme does not apply to any liability arising out of actions or omissions that are unrelated to the APIV member's occupation as valuer or concern including, the death of, or personal injury to a person, a breach of trust, fraud or dishonesty, and liability which may be the subject of proceedings relating to the transfer, lease or purchase of Crown land made under the relevant State or Territory legislation.

### 4. How does the current Scheme determine the monetary ceiling for a member?

A member's membership category sets out the applicable monetary ceiling and maximum excess allowed under the Scheme. Membership Category for each member 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') as follows:

Class	Member Category	Upper End Value	Monetary Ceiling ('Liability Cap')	Maximum Excess Level for Member Category	Minimum PII Coverage <sup>1</sup>
1	Category A	\$0 – Less than \$3 million	\$1 million	\$30,000	\$1 million
2	Category B	\$3 million – Less than \$5 million	\$2 million	\$60,000	\$2 million
3	Category C	\$5 million – Less than \$10 million	\$3 million	\$90,000	\$3 million
4	Category D	\$10 million – Less than \$15 million	\$4 million	\$120,000	\$4 million
5	Category E	\$15 million – Less than \$40 million	\$5 million	\$150,000	\$5 million
6	Category F	\$40 million and over	\$10 million	\$250,000, or in line with current insurance market practice, provided evidence is supplied by member's broker that a lower excess could not be obtained	\$10 million

<sup>1</sup> If the limit of indemnity under the PII policy is inclusive of defence costs, then either:

- additional \$500,000 must be added to the minimum PII coverage; or
- the member must hold business assets of a net market value that is greater than \$500,000 pursuant to clause 6.2.

### 5. What is the Low Risk Valuation Scheme Amendment about?

The Scheme does not presently recognise that the exposure of occupational liability is not always proportional to the assessed value of real property. Accordingly, the APIV has lodged the current Scheme Amendment Application to distinguish Low Risk Valuations ('LRV') from higher risk valuations of real property (eg. 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. The LRV Scheme Amendment Application was approved

by the regulatory body of the Scheme, the Professional Standards Councils ('PSC'), and is currently awaiting the Minister's approval and subsequent gazettal in all jurisdictions.

#### **6. What will be the liability cap arrangement under the amended Scheme?**

There will be two liability caps under the proposed Scheme amendment:

- Proposed cap of \$1M for all work categorised as LRV, supported by 14 years' worth of claims data held by APIV
- For all other (non-LRV) work, a cap based on the highest valuation of real property, irrespective of the valuation purpose

#### **7. List of LRV Categories**

Any valuation of real property undertaken:

- in the capacity as an arbitrator;
- for the purpose of making a binding determination (eg. rental determination, marital dispute) as an expert and where 'hold harmless agreement' has been entered by parties;
- for financial reporting purposes (excl. special purpose financial reports prepared in respect of a specific transaction such as any sale, takeover or initial public offering);
- for rating and taxing 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 owed to the court or tribunal (excluding resumption);
- on instructions from resumption purposes; and
- for the purpose of advising on the insurable value of real property in connection with any proposed purchase of insurance.

#### **8. What does this mean in terms of PII compliance under Scheme?**

- Members conducting LRV work only
  - Can cap any claims arising from their work to \$1M, as opposed to \$5M+, provided the LRV work is undertaken after the amendment becomes effective.
  - Minimum PII coverage required by the Scheme will be \$1M (or \$1.5M depending on how your policy is structured), as opposed to \$5M+.
- Members conducting LRV and non-LRV work
  - Can cap any claims arising from LRV work to \$1M, provided the LRV work is undertaken after the amendment becomes effective.
  - Other work will have a cap level based on the highest valuation for the relevant period. Minimum PII coverage required by the Scheme will be the higher amount of the two caps.

#### **9. Compliance obligations of APIV members**

Members are responsible to determine their compliance obligations and to ensure that they comply with all relevant legal and Scheme requirements.

For a member to successfully plead their Scheme membership as defence to cap their occupational liability they must satisfy the Court that:

- they have the benefit of an Scheme **compliant** insurance policy insuring the person against the occupational liability to which the cause of action relates; and
- the amount payable under the policy is not less than the amount of the monetary ceiling specified in the Scheme.

#### **10. Other compliance obligations of members**

There are other compliance obligations that Scheme members must meet, including the obligation to:

- disclose to prospective and current clients their participation in the Scheme (Appendix D to the Scheme);
- comply with the Supervision Guidelines set out in Appendix C to the Scheme;
- report certain matters to the APIV (such as notifications, claims and settlements, compliance with CPD requirements);
- their APIV membership renewal in a timely manner, including the annual Compulsory Compliance Questionnaire; and
- to respond to random audits by APIV.

#### **11. APIV's obligations to monitor members' compliance with the various obligations**

The APIV must discharge its own compliance obligations to the PSC, by checking the compliance of members through the annual membership renewal process and random audits.

#### **12. Consequences of non-compliance by members**

Failure by members to comply with the Scheme requirements could result in the member not being able to successfully plead the cap to limit their liability. Failure to comply with the disclosure obligations is an offence under the Act.

#### **13. Further Information**

For further information on the Scheme, please check out <http://www.api.org.au>, or contact Anna Shin, General Manager Compliance and Risk, on 03 9644 7505 or via email at [apivadmin@api.org.au](mailto:apivadmin@api.org.au). Further member resources, including a detailed Q&A document, will be made available to members in due course.