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Australian Property Institute Valuers Limited (APIV) Insurance Standards (for the APIV Professional Standards Scheme)

Standard 1 - Application of the APIV Insurance Standards

1. All members of the APIV must maintain a PI Policy which at a minimum is compliant with the APIV Insurance Standards from the Date of Commencement of the Scheme and for the Duration of the Scheme.

Standard 2 - Scope of cover

2. The PI Policy must indemnify the member, against Occupational Liability relating to a cause of action founded on an act or omission occurring during the period when the Scheme was in force, but only in respect of Valuation of Real Property.

Standard 3 - Claims made cover

3. The PI Policy must provide indemnity for claims made during the relevant period of insurance or circumstances from which a claim arises which are notified during the relevant period of insurance.
4. Subject to the *Insurance Contracts Act 1984* (Cth) ("**the ICA**"), the member must ensure that notice is given to the insurer as soon as practicable and during the relevant period of insurance, of any claim or circumstance from which a claim may arise, or which arises during the relevant period of insurance.
5. Subject to the ICA, the member must disclose to the insurer prior to renewal of the PI Policy all claims or circumstances which may give rise to a claim.

Standard 4 - Minimum Sum Insured and Maximum Excess

6. The PI Policy must:
 - 6.1 cover the full amount of a member's Limited Liability for Valuation of Real Property;
 - 6.2 cover Defence Costs:
 - 6.2.1 where the PI Policy's limit of indemnity is cost inclusive the member must hold additional cover of at least \$500,000 or 5% of the member's Limited Liability (whichever is greater), above the member's Limited Liability; or
 - 6.2.2 where the PI Policy provides unlimited cost-in-addition cover, the minimum limit of indemnity must not be less than the member's Limited Liability; or
 - 6.2.3 where the PI Policy provides sub-limited costs-in-addition cover, the minimum limit of indemnity must not be less than the member's Limit of Liability and the minimum costs sub-limit must be \$500,000;
- provided that:
- 6.2.4 the above requirements as to Defence Costs do not apply where the member holds business assets of a net market value greater than the amount of additional cover. On request, the member must provide the APIV, in writing, with details of such assets, and during the relevant period of insurance, be able to satisfy the APIV that they could be made payable within 28 days of a request;

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- 6.3 provide at least one automatic reinstatement where the PI Policy limits the aggregate of Claims to the Limited Liability;
- 6.4 have an excess not greater than the Maximum Excess applicable to each and every Claim, where the Maximum Excess of a member is determined according to the following table:

Class	Description	Upper End Value	Monetary Ceiling	Defence Costs required	Maximum Excess
1	Category A Member	\$0.0 million to < \$3.0 million	\$1.0 million	Where costs inclusive , \$500,000 or 5% of PI Policy cover (whichever is greater). ¹ Or otherwise in accordance with clause 6.2 of the APIV Insurance Standards.	Not to exceed \$30,000
2	Category B Member	\$3.0 million to < \$5.0 million	\$2.0 million		Not to exceed \$60,000
3	Category C Member	\$5.0 million to < \$10.0 million	\$3.0 million		Not to exceed \$90,000
4	Category D Member	\$10.0 million to < \$15.0 million	\$4.0 million		Not to exceed \$120,000
5	Category E Member	\$15.0 million to < \$40.0 million	\$5.0 million		Not to exceed \$150,000
6	Category F Member	\$40.0 million >	\$10.0 million		Not to exceed \$250,000, <i>or in line with current insurance market practice. Evidence must be supplied by the member's insurance broker that \$250,000 could not be obtained.</i>

Note: 1. A member's Monetary Ceiling is determined by its Upper End Value. 2. Low Risk Valuations are excluded from consideration for the purpose of calculating the Upper End Value. A member which exclusively undertakes Low Risk Valuations (as defined in the Scheme) will have an Upper End Value of \$0.0 million

7. The Monetary Ceiling and Maximum Excess apply to a PI Policy arranged for a 12 month period.
8. The member must at all times during the currency of the PI Policy be able to satisfy the APIV, upon request, that the member has sufficient liquid assets to pay at least the excess under their PI Policy (for one Claim) within 28 days of a request for payment. In the case of a category F member, in addition maintaining sufficient liquid assets, as detailed above, the member also must report annually to the APIV and consent to an audit of such assets by the APIV and disclosure of such results to the Professional Standards Council.
9. Pursuant to section 24 of the Act, the Scheme confers on the APIV a discretionary authority to specify, on application by a member to whom the Scheme applies, in relation to that person a higher Monetary Ceiling (maximum amount of liability) not exceeding \$20 million, in relation to the person either in all cases or in any specified case or class or case. The Maximum Excess for any such member should be a maximum of up to 2.5% of the Monetary Ceiling, or in line with current insurance market practice (evidence must be supplied by the member's insurance broker as to current insurance market practice).

¹ Unless the member holds business assets of a net market value greater than the amount of additional cover. See clause 6.2.

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Standard 5 - Indemnity for past, present and future partners and employees

10. The PI Policy must indemnify any past, present or future partners or employees of the member.
11. The member must ensure that that all past, present or future partners and employees are also members of the APIV.

Standard 6 - Sub-contractors of the member

12. The member must ensure that all sub-contractors of the member are:
 - 12.1 also members of the APIV; and
 - 12.2 have a PI Policy which at a minimum complies with the APIV Insurance Standards.

Standard 7 - Endorsements and Exclusions

13. The PI Policy should, if reasonably available on the insurance market include endorsements and exclusions to the following effect:

13.1 General Endorsement - Market Movement Clause

The PI Policy will not indemnify the member in respect of any Claim relating to a Valuation of Real Property unless such valuation includes a statement to the following effect:

"This valuation is current at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period of time (including as a result of general market movements or factors specific to the particular property). Liability for losses arising from such subsequent changes in value is excluded as is liability where the valuation is relied upon more than 90 days after the date of the valuation".

13.2 General Endorsement - Prudent Lenders

The PI Policy will not indemnify the member in respect of any Claim relating to Valuation of Real Property:

- 13.2.1 For or on behalf of any person or entity lending money by way of loan or involved in the making of any loan; or
- 13.2.2 For which responsibility is accepted to any person or entity lending money by way of a loan or involved in the making of any loan;

unless either:

- a) the person or entity making such loan is an authorised deposit taking institution within the meaning of the *Banking Act 1959* (including but not limited to any bank, building society or credit union); or
- b) The valuation includes a statement to the following effect:

"This valuation is prepared on the assumption that the lender as referred to in the valuation report (and no other), may rely on the valuation for mortgage finance purposes and the lender has complied with its own lending guidelines as well as prudent finance

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industry lending practices, and has considered all prudent aspects of credit risks for any potential borrower, including the borrower's ability to service and repay any mortgage loan. Further, the valuation is prepared on the assumption that any such lender is providing mortgage financing at a conservative and prudent loan to value ratio. This clause (Prudent Lenders Clause) only applies if the lender is not a lender regulated by the Banking Act of 1959."

13.3 General Endorsement - Assigned Valuations

The PI Policy will not indemnify the member in respect of any Claim relating to any:

- 13.3.1 Assignment of a valuation ('the initial valuation');
- 13.3.2 Confirmation of the initial valuation;
- 13.3.3 Reissue of the initial valuation; or
- 13.3.4 Other act which has the effect of assuming or of extending responsibility to any person other than the person to whom the initial valuation was addressed ('other act') unless:
 - a) The initial valuation was dated within 3 months of the request for the assignment, confirmation, reissue or other act; and
 - b) Such assignment, confirmation, reissue or other act is provided together with a clear written statement that the valuer has not re-inspected the property nor undertaken further investigation or analysis as to any changes since the initial valuation and accepts no responsibility for reliance upon the initial valuation other than as a valuation of the property as at the date of the initial valuation.

However, the above exclusion does not apply to a revaluation where the Insured has re-inspected the property and undertaken further investigation and analysis of relevant property specific and market changes consistent with usual valuation practice for undertaking revaluations and/or update valuations having regard to the type of property being valued.

Provided that this exclusion shall not apply to any assignment, confirmation, reissue or other act completed prior to the inception of this policy.

13.4 General Endorsement - Kerbside Valuations

The Policy will not indemnify the member for any Claim directly or indirectly related to, based upon or attributable to or in consequence of any kerbside valuation or restricted valuation, unless conducted in strict compliance with API guidelines.

13.5 General Endorsement - Solicitor Loans

The PI Policy will not indemnify the member in respect of any Claim relating to any Valuation of Real Property:

- 13.5.1 For or on behalf of a Solicitor Lender or any person lending money through a Solicitor Lender; or

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- 13.5.2 For which responsibility is accepted to any Solicitor Lender or any person lending money through a Solicitor Lender.

"Solicitor Lender" means any solicitor involved in arranging, controlling, managing, broking or otherwise inducing the lending of money on mortgage security (including but not limited to any solicitor controlled or managed mortgage fund) but shall not include any mortgage fund registered as a Managed Investment Scheme.

13.6 General Endorsement - Managed Investment Schemes

The PI Policy will not indemnify the member in respect of any Claim relating to Valuation of Real Property in connection with any Managed Investment Scheme (within the meaning of the Corporations Law) which:

- 13.6.1 has as its prime or substantial purpose, the provision of tax benefits to investors; or
- 13.6.2 is involved in any form of direct or indirect investment in primary production (including property used for primary production).

Standard 8 - Maintenance of Adequate Insurance

14. A PI Policy ('First Policy') shall not be cancelled or not renewed unless the member arranges a replacement PI Policy ('Second Policy') and ensures that there is continuity of cover between the First Policy and the Second Policy.
15. Unless not reasonably available, the PI Policy must provide runoff cover which complies with the APIV Insurance Standards, for a period of not less than seven (7) years from the last Valuation of Real Property performed by the member, and this clause will continue to bind a former member after they cease to be a member. In the event runoff cover is not available, the member must seek an exemption from the APIV, with a reasonable time.
16. The member must maintain retrospective coverage either where the member was:
- 16.1 a member prior to the Date of Commencement, the Date of Commencement; or
- 16.2 not a member prior to the Date of Commencement, the date at which they first became a member.
17. The PI Policy must be maintained with an Authorised Insurer.

Standard 9 - Exemptions from participation in the Scheme

18. A member may apply to the APIV for an exemption from participation in the Scheme in circumstances where the:
- 18.1 Member works solely as an employee of the Commonwealth / State Government / Local Government and only provides valuation services for the Commonwealth / State Government / Local Government's internal purposes.
- 18.2 Member derives 100% of their income from a Commonwealth / State Government / Local Government type contract upon condition of engagement on a non-recourse basis.

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- 18.3 Member is an employee of an Authorised Deposit-Taking Institution ("ADI") and only provides valuation services for the ADI's internal risk/review purposes
- 18.4 Member is non-practising.
- 18.5 Member is able to satisfy the APIV that it is necessary and / or desirable, for the member to be exempted from the Scheme.
19. Members granted an exemption in any of the categories in clause 18 above, will not have the benefit of limited liability under the Scheme.
20. A member may apply to the APIV for an exemption from compliance with the requirement for runoff cover as set out in clause 15 above.
21. The APIV can grant or refuse an application for exemption in its absolute discretion.

Standard 10 - Miscellaneous

22. A member must notify the APIV, in writing:
- 22.1 prior to the member's PI Policy expiring, when a PI Policy compliant with the APIV Insurance Standards is not available to the member for a reasonable premium (where the proposed premium is more than 50% higher than the previous year's premium) or on reasonable terms.
23. A member may rely on advice from a broker or agent of an insurer that the PI Policy complies with the APIV Insurance Standards.

Definitions

24. Relevant definitions for the purposes of the APIV Insurance Standards are as follows

"API" means the Australian Property Institute.

"APIV" means the Australian Property Institute Valuers Limited.

"APIV Insurance Standards" mean the insurance standards approved by the APIV from time to time.

"Authorised Insurer" means an insurer duly permitted, under the *Insurance Act 1973* to conduct insurance business in Australia or falls within an exemption for direct offshore foreign insurers under the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007*.

"Category A Member" means a person who is a member of the APIV to whom the Scheme applies and who is:

- a) a sole trader whose Upper End Value is less than \$3 million;
- b) an individual or corporation who is a member of a partnership whose Upper End Value is less than \$3 million; or
- c) a corporation whose Upper End Value is less than \$3 million;

"Category B Member" means a person who is a member of the APIV to whom the Scheme applies and who is:

- a) a sole trader whose Upper End Value is \$3 million or more but less than \$5 million;

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- b) an individual or corporation who is a member of a partnership whose Upper End Value is \$3 million or more but less than \$5 million; or
- c) a corporation whose Upper End Value is \$3 million or more but less than \$5 million;

"Category C Member" means a person who is a member of the APIV to whom the Scheme applies and who is:

- a) a sole trader whose Upper End Value is \$5 million or more but less than \$10 million;
- b) an individual or corporation who is a member of a partnership whose Upper End Value is \$5 million or more but less than \$10 million; or
- c) a corporation whose Upper End Value is \$5 million or more but less than \$10 million.

"Category D Member" means a person who is a member of the APIV to whom the Scheme applies and who is:

- a) a sole trader whose Upper End Value is \$10 million or more but less than \$15 million;
- b) an individual or corporation who is a member of a partnership whose Upper End Value is \$10 million or more but less than \$15 million; or
- c) a corporation whose Upper End Value is \$10 million or more but less than \$15 million.

"Category E Member" means a person who is a member of the APIV to whom the Scheme applies and who is:

- a) a sole trader whose Upper End Value is \$15 million or more but less than \$40 million;
- b) an individual or corporation who is a member of a partnership whose Upper End Value is \$15 million or more but less than \$40 million; or
- c) a corporation whose Upper End Value is \$15 million or more but less than \$40 million.

"Category F Member" means a person who is a member of the APIV to whom the scheme applies and who is:

- a) a sole trader whose Upper End Value is \$40 million or greater;
- b) an individual or corporation who is a member of a partnership whose Upper End Value is \$40 million or greater; or
- c) a corporation whose Upper End Value is \$40 million or more.

"Claim" means the receipt by the member of a claim for compensation made by a third party against the member relating to an Occupational Liability, and must take the form of:

- (a) a writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter claim, or third party or similar party notice; or
- (b) any other form of written or verbal notice.

"Date of Commencement" means the date of commencement of the APIV Scheme.

"Defence Costs" means the costs incurred by an insurer, or the reasonable costs incurred by a member with the insurer's consent, in the investigation, defence, reporting or negotiation for settlement of any Claim, and does not include the costs of the third party that is claiming against the member.

"Duration" means 5 years from the date of commencement.

"most recent 12 month period" means the 12 months prior to the date and time of inception of the member's PI Policy.

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"**Limited Liability**" means the amount of the limitation of liability provided for in clause 3.3 of the Scheme. It is equal to the Monetary Ceiling applicable to the relevant member².

"**Maximum Excess**" means the excess outlined in the table at Paragraph 6.4.

"**Monetary Ceiling**" means the applicable monetary ceiling specified in clause 3.3 of the Scheme (as noted in the fourth column in the table at Paragraph 6.4).

"**Occupational Liability**" means 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.

"**PI Policy**" means a policy of professional indemnity insurance that provides cover for the member in compliance with APIV Insurance Standards.

"**Regulations**" means the **Professional Standards Regulation 2014 (NSW)**.

"**Scheme**" means a scheme for limiting the Occupational Liability of members.

"**the Act**" means the *Professional Standards Act 1994* (NSW).

"**Upper End Value**" means the highest Valuation of Real Property (excluding any Low Risk Valuation) performed by the relevant member in the most recent 12 month period.

"**Valuation of Real Property**" means valuation of any right, interest or benefit related to the ownership, occupation or use of real property including land and all things that are a natural part of the land as well as any improvements to the land.

² Refer Clause 3.2 of the Scheme