



Australian Property Institute Valuers Limited
ACN: 143 638 975

**AUSTRALIAN PROPERTY INSTITUTE VALUERS LTD
PROFESSIONAL STANDARDS SCHEME 2021-2026
PUBLIC CONSULTATION
DOCUMENT**

AUSTRALIAN PROPERTY INSTITUTE VALUERS LTD SCHEME PUBLIC CONSULTATION DOCUMENT

Purpose

The purpose of this Public Consultation Document is for the Professional Standards Councils (Councils) to seek comments and submissions from the public in considering an application for a professional standards scheme. Gathering comments and submissions from consumers provides the Councils with valuable insights into how consumers view and understand the proposed scheme.

This is a mandatory consideration for the Councils under section 9 of the *Professional Standards Act 2003 (Vic)*, in that the Councils is required as part of a process to give public notice explaining the nature and significance of the scheme. This document supports that purpose.

Professional Standards Legislation is Australian state-based legislation. Its objects (generally across all jurisdictions) are:

- To protect the consumers of services provided by professionals and other occupations
- To facilitate the improvement of occupational standards for professionals and other occupations
- To enable the creation and approval of schemes that limit the liability of persons to whom a scheme applies.

Public notification of a scheme does not necessarily mean the proposed scheme will be approved by the Councils and authorised by the relevant Attorneys General or Minister.

The Australian Property Institute Valuers Limited (APIV) has submitted an application to the Councils to approve a professional standards scheme. The Councils is the body responsible for approving schemes under the Professional Standards Legislation.

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For a scheme to be approved under Professional Standards Legislation, the occupational association proposing the scheme must demonstrate a high commitment to professional

standards and consumer protection, implement comprehensive risk management strategies and set professional indemnity insurance standards for scheme participants.

The APIV application is being considered by the Councils and is now available for public submissions and comments.

How can I make a comment or submission?

Comments and submissions must be made in writing to the Chief Executive Officer, Professional Standards Councils, within 28 days of public notification. Comments and submissions in the form of a letter to the Professional Standards Councils are preferred.

The Professional Standards Councils is located at Level 2, St James Centre, 111 Elizabeth Street, Sydney, NSW, 2000.

Website: www.psc.gov.au

Email: pscinfo@psc.gov.au

Telephone: 1300 555 772 / (02) 8315 0800.

Comments and submissions received will be public, unless confidentiality is specifically requested, and will be subject to the *Privacy and Data Protection Act 2014 (Vic)*.

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 6,716 members.¹ 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

¹ The membership figures discussed in this document is current as at 1 August 2020.

indemnity insurance ('PII') policy in accordance with the APIV Scheme.

2. Who are the members of the APIV?

The APIV membership base is comprised of 3640 members,² which is comprised of 3142 individual valuation professionals and 498 member firms that employ them.

All eligible members of the API must become APIV members and participate in the APIV Scheme, unless the APIV grants an exemption.³

APIV Scheme

1. What is the APIV Scheme?

The APIV Scheme is a legal scheme approved under the *Professional Standards Act 2003* (Vic) and is regulated by the Professional Standards Councils ('PSC'). It is one of 16 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 a person who was a Participating Member⁴ at the time of the subject act or omission to 'cap' their Occupational Liability arising from their Occupational Services⁵ to the amount of the Monetary Ceiling⁶ determined under the Scheme.

2. Who administers the APIV 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.

² The membership figures discussed in this document is current as at 1 August 2020.

³ See below 'What members will the Scheme not apply to?' for further information.

⁴ "Participating Member" is defined in Clause 5.1 of the APIV Scheme Instrument as a Member to whom the Scheme applies pursuant to clause 2.1 and who has not been granted an exemption pursuant to clause 2.3. See below "What class(es) of Association members will the Scheme be available to" for further information on Scheme membership eligibility.

⁵ See below 'What types of work will the Scheme cover?' for further information.

⁶ 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.

3. Has the APIV previously administered a scheme? For how long?

The APIV has extensive experience with Scheme administration gained over the past 10+ years. The APIV has been administering the APIV Scheme since 1 September 2010. This APIV Scheme will be the third Scheme administered by the APIV.

4. In what States & Territories does the APIV Scheme operate?

The APIV Scheme will operate in all States and Territories of Australia.

5. What types of work will the APIV Scheme cover?

The APIV Scheme covers civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a person who was a Participating Member acting in the performance of the APIV member's Occupation.

Occupation is defined in the APIV Scheme Instrument as 'the occupation carried out by Participating Members by application of the qualifications, training, skills, practices, disciplines, specialisations, standards, guidelines and experience of Certified Practising Valuers, Certified Practising Valuers (Plant & Machinery) and/or Residential Property Valuers'.⁷

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 16 of *Land Titles Act 1925* (ACT),
 - Part 13 or 14 of *Real Property Act 1900* (NSW),
 - Part 9, Division 2, Subdivision 3 of the *Land Title Act* (NT),
 - Part 9, Division 2, Subdivision C of *Land Title Act 1994* (QLD),
 - Part 18 of *Real Property Act 1886* (SA),
 - Part XI, Division 2 of *Land Titles Act 1980* (Tas),
 - Section 110 of *Transfer of Land Act 1958* (VIC), or
 - Part XII of *Transfer of Land Act 1893* (WA).

⁷ APIV Scheme Instrument, Clause 5.1.

6. When will the APIV Scheme commence?

The Scheme will commence on 1 September 2021, subject to approval by the PSC and the approval process under the mutual recognition provisions of the professional standards legislation.

7. What class(es) of APIV members will the APIV Scheme be available to?

The APIV Scheme applies to:

- all Participating Members who are natural persons and who hold the API certification of Certified Practising Valuer, Certified Practising Valuer (Plant & Machinery) or Residential Property Valuer.
- all Participating Members who are corporations.

The APIV Scheme also applies to all persons who were Participating Members at the time of any act or omission giving rise to Occupational Liability.

8. What members will the APIV Scheme not apply to?

The APIV Scheme applies to all Participating Members of the APIV.

There are directors of the APIV who are voting members of the APIV, however, the APIV Scheme is not available to them unless they meet the eligibility criteria for, and become, Participating Members.

Operation of the APIV Scheme

1. How is the level of limited liability ('Monetary Ceiling') of APIV 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.

What are the Monetary Ceiling under the APIV Scheme?

The method of limiting liability will be by way of insurance policy.

The method for limiting liability is calculated by reference to four categories of occupational activities as follows:

Category	Description	Definition
Category 1 Services	Real Property Valuation Services	<p>means the Valuation of Real Property but excluding any Low Risk Valuation Services.</p> <p>where:</p> <p>“Valuation of Real Property” means any 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 (but excluding plant and machinery) expressed as an Assessed Value.</p>
Category 2 Services	Low Risk Valuation Services	<p>means any:</p> <p>(a) Valuation of Real Property undertaken in the capacity as an arbitrator;</p> <p>(b) Valuation of Real Property undertaken for the purpose of asset means testing;</p> <p>(c) Expert Determination*;</p> <p>(d) Expert Evidence Valuation*;</p> <p>(e) Financial Reporting Valuation*;</p> <p>(f) Government Valuation*;</p>
		<p>(g) Insurance Valuation*;</p> <p>(h) assessment of any unit entitlement in respect of any subdivision, strata title, company title (or similar) property;</p> <p>(i) Valuation of Real Property undertaken for the purpose of determining a rate, tax, duty or levy that applies in respect of the property including but not limited to any council rates, Good & Services Tax or stamp duty; or</p> <p>(j) Valuation of Real Property undertaken for Resumption purposes.</p> <p>* These terms are each defined in the Scheme Instrument</p>
Category 3 Services	Plant & Machinery Valuation Services	<p>means any valuation of any right, interest or benefit related to the ownership, possession or use of plant, machinery or equipment expressed as an Assessed Value.</p>
Category 4 Services	Other Occupational Services	<p>means any Occupational Services other than any:</p> <p>(a) Real Property Valuation Services;</p> <p>(b) Low Risk Valuation Services</p> <p>(b) Plant & Machinery Valuation Services.</p>

The Monetary Ceiling in respect of the *Category 1 Services (Real Property Valuation Services)* is determined by application of a formula to each valuation as follows:

Category	Assessed Value ("AV")	Monetary Ceiling
Category 1 Services Real Property Valuation Services	\$0 to \$3,500,000	\$1,000,000 (fixed)
	\$3,500,001 to \$7,500,000	AV x 33%
	\$7,500,001 to \$100,000,000	\$2,000,000 + (AV x 7.5%)
	\$100,000,001 or greater	\$10,000,000 (fixed)

The Monetary Ceiling in relation to each of Category 2, Category 3 and Category 4 is fixed at \$1,000,000.

Category	Category Description	Monetary Ceiling
Category 2 Services	Low Risk Valuations	\$1,000,000 (fixed)
Category 3 Services	Plant & Machinery Valuations	\$1,000,000 (fixed)
Category 4 Services	Other Occupational Services	\$1,000,000 (fixed)

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 recording system with a view to building APIV member search functions that are accessible by the public.

3. How long will the Scheme operate for?

Subject to the approval and mutual recognition provisions under the professional standards legislation, the Scheme will be in operation for a period of five years, which will commence 1 September 2021 and will expire on 31 August 2026.

Benefits of the APIV Scheme

1. How will consumers benefit from the APIV Scheme?

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.

2. How does the APIV Scheme enhance the professional standards of APIV 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 APIV Scheme a PII scheme?

The APIV Scheme is not a PII scheme. Similarly, a PII policy does not limit a person's liability in the way the APIV Scheme does.

The APIV Scheme and a Participating Member's PII policy operate separately to and in addition to each other.

The APIV Scheme acts to 'cap' the amount of damages that can be awarded against a person who was a Participating Member at the time of the act or omission that gave rise to the claim in question.

In order to invoke the 'capping' under the APIV Scheme and to ensure that the damages are paid, that person must have the benefit of a PII policy that is compliant with the requirements of the insurance standards set by the APIV and approved by the PSC, which accompanies the APIV Scheme Instrument.

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, provided that person can prove their compliance with the APIV Scheme requirements.

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 or on (03) 9644 7500;
- the APIV's web page at www.api.org.au; and
- the PSC's website at www.psc.gov.au.