



Australian Property Institute Valuers Ltd

Exemption policy

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Owner: APIV

Approved by: APIV Board of Directors

The Australian Property Institute [APIV Webpage](#)

Purpose of the document

The purpose of this document is to outline the nature of the APIV scheme, applicable membership, types of exemption and requirements that must be met for an exemption application to be approved.

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Definitions

- (a) **ADI Employee** - The individual is an employee of Authorised Deposit Taking Institution (ADI) and only provides valuation services for the ADIs internal risk/review purposes.
- (b) **API** means the Australian Property Institute Ltd ACN 608 309 128.
- (c) **APIV** Australian Property Institute Valuer Ltd
- (d) **APIV Insurance Standards** is the document that sets out the minimum professional indemnity insurance requirements of the APIV Scheme.
- (e) **APIV Scheme** means a Professional Standards Scheme administered by the Company pursuant to the Professional Standards Legislation for the benefit of Members.
- (f) **Board** means the body established pursuant to the Company's Constitution to manage the affairs of the Company unless the contrary intention appears.
- (g) **Exemption** – means an API member is exempt from participating in the APIV Scheme.

The APIV Board are also able to approve a departure from a specific Scheme requirement for a Scheme member.
- (h) **Government employee** - The API member works exclusively as an employee of the Commonwealth / State Government / Local Government and only provides valuations services for the Commonwealth / State Government / Local Government's internal purposes.
- (i) **Individual/Corporation who derives 100% of the income from Commonwealth/State Government contract** - who is an employee of the Commonwealth/State/Local Government and who only provides valuation services for the Commonwealth/State/Local Government's internal purposes
- (j) **Member** means a person who meets the eligibility criteria prescribed in the Constitution and has been admitted to the Company as a member.
- (k) **Membership Policy** means this document as amended from time to time.
- (l) **Non-Practising** - The individual retains and maintains their CPV, CPV (P&M) or RPV certification with the API but do not conduct any real property valuations or valuations of plant, machinery and equipment.
- (m) **Policy** means a policy made pursuant to the API's or the Company's Constitution and includes terms of reference and Board and Committee charters.
- (n) **PII Policy** means a professional indemnity insurance that provides coverage against legal costs and claims for damages from a third party that may arise from an act, omission or breach of duty in the course of a Member's professional duty or business.
- (o) **Plant & Machinery** - mean any valuation of any right, interest or benefit related to the ownership, possession or use of chattel(s), including plant, machinery, or equipment, expressed as an Assessed Value.
- (p) **Professional Standards Legislation** means the professional standards legislation that exists in every Australian jurisdiction and governs the operation of Professional Standards Schemes.
- (q) **Scheme – APIV Professional Standards Scheme**
- (r) **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, machinery and equipment) expressed as an Assessed Value.

1 - Nature of the APIV Scheme

The Australian Property Institute Valuers Ltd Professional Standards Scheme ('Scheme') is approved under the Professional Standards Act 2003 (Vic). The Scheme is recognised in all state and territories, under mutual recognition provisions in the respective professional standards legislation.

In the event that a successful claim is made against an APIV member, the Scheme will operate to 'cap' the member's liability to an amount outlined in the Scheme instrument. In order to obtain the benefit of the Scheme members must comply with certain requirements including in relation to notification and holding minimum levels of professional indemnity insurance.

Professional standards legislation requires the APIV to monitor and enforce compliance obligations under the Scheme, thereby contributing to improving the professional standards of members. The Scheme document can be found on the [APIV website](#).

2 - Who must join the Scheme?

The [API Membership Policy](#) states that API members who undertake valuations and hold one of the following certifications must join the APIV and participate in the Scheme, unless exempted by the APIV Board:

- a) Certified Practising Valuer,
- b) Certified Practising Valuer (Plant & Machinery), or
- c) Residential Property Valuer.

The Scheme operates on a 'one-in, all in' basis, hence firms and their 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 Scheme to gain the benefit of the Scheme.

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

3 - Types of Exemptions available under the Scheme

Under the Scheme, there are two types of exemptions, namely:

- Exemption from participation in the Scheme – An API member holding this type of exemption is not required to join the Scheme and therefore does not have the benefit of the Scheme; and
- Exemption from meeting the requirements of Standard 12, clause 12.2 of the APIV Insurance Standards in relation to runoff cover – An APIV member holding this type of exemption will have the benefit of the Scheme.

Each of these types of exemptions and the applicable requirements to obtain such exemptions are set out at 4 and 5 below.

4 - Exemptions from participation in the Scheme

To obtain an exemption from participation in the Scheme, an application must be made to the APIV. The APIV may, in its absolute discretion, grant exemptions (upon the applicant providing appropriate evidence),

in the following categories:

- **Non-Practising** member
- **ADI Employee** - Member is an employee of an Authorised Deposit-Taking Institution ("ADI") and only provides valuation services for the ADI's internal risk/review purposes.
- **Government Employee** - 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.
- **100% non-recourse government contracts** - Member derives 100% of their income from a Commonwealth / State Government / Local Government ty contract which includes as a condition of engagement that the professional services are provided on a non-recourse basis.
- **Necessary and / or Desirable** - An Applicant is able to satisfy the APIV that it is necessary and / or desirable, for the Applicant to be exempted from participating in the Scheme.

4.1 - Discretion of the APIV to grant / reject Exemption Applications

The APIV Board can grant or refuse an application for exemption in its absolute discretion.

4.2 - Process to apply for Exemptions from participation in the APIV Scheme

Timing of Application

Applications must be submitted to the Scheme Administrator at least 30 days prior to a meeting of the APIV Board.

Failure to provide required information may delay the application process and/or may be declined to be considered until required information is submitted.

Application Process

Applicants who are seeking exemption from the Scheme must submit the required documentation as evidence to the Scheme Administrator (National Manager - Risk, Legal and Compliance) for a full review. Refer '4.3 Evidence required to support Exemption Applications' section below.

Delegations to approve Exemption Applications

1) Applications to the APIV for exemptions within the following categories may be approved or rejected by the Scheme Administrator or Compliance Manager:

- Non-practising valuers;
- Employees of an ADI or an entity which carries on State banking;
- Commonwealth/State/Local Government employees;

- Individual/Corporation who derives 100% of the income from Commonwealth/State Government contract.
- 2) Applications for an exemption within the following categories shall be reviewed by a Committee consisting of the Chief Executive Officer of the API and the Chairperson of the APIV Board as appointed from time to time (“the Exemptions Committee”). The Committee shall make a recommendation to the APIV Board regarding whether the application should be granted or rejected:
 - Where it is necessary and / or desirable for the Applicant to be exempted from the Scheme.
- 3) Applications for exemptions within the categories set out in paragraph 2 above will be submitted to the APIV Board with a recommendation from the Exemptions Committee as to whether the application should be granted or rejected.
- 4) All applications approved pursuant to the delegations process herein will be submitted to the APIV Board for ratification at the next Board Meeting occurring after the application is made.

4.3 - Evidence required to support Exemption Applications

The evidence submitted must substantiate and support an Exemption Application and should include:

Non-practising valuer

A non-practising member is required to provide a [Statutory Declaration](#) declaring that he/she is a non-practising valuer for the purpose of the APIV Scheme as he/she does not undertake any valuations of real property. (Wording to use *“I am a non-practising valuer for the purpose of the APIV Professional Standards Scheme and wish to apply for exemption from the requirement under the API Membership Policy to participate in the Scheme”*)

Employees of an ADI

An applicant who is an employee of an ADI/State banking entity and only provides valuation services for the ADI/State banking entity’s internal risk/review purposes must provide [written evidence](#) by way of a letter from the manager in charge of the division or work group to which the employee is assigned.

Commonwealth/State/Local Government employee

An applicant who is an employee of the Commonwealth/State/Local Government and who only provides valuation services for the Commonwealth/State/Local Government’s internal purposes must provide a Statutory Declaration to that effect or provide [written evidence](#) by way of a letter from the manager in charge of the division or work group to which the employee is assigned.

Individual/Corporation who derives 100% of its income from Commonwealth/State/Local Government contract(s)

An Applicant who falls within this category must provide a [Statutory Declaration](#) using the wording *“I derive 100% of my income from government contracts engaged on a non-recourse basis. On this basis I wish to apply for exemption from the requirement under the API Membership Policy to participate in the Scheme”* and supply **evidence** that 100% of their income is derived from Government contract(s) upon condition of engagement on a

non-recourse basis. Evidence such as quarterly BAS statements and written acknowledgement from their clients (Commonwealth/State & Territory Governments) that their engagement is on a non-recourse basis must be provided.

Please note – all Statutory Declarations must be signed by an authorised person in your state or Territory.

Where necessary and / or desirable for the applicant to be exempted from the Scheme

An Applicant who falls within this category must:

1. provide a completed Exemption Application;
2. provide evidence of exceptional circumstances that warrant the granting of an exemption to the Applicant as set out in the Guidelines;
3. provide any further information the APIV may request to be able to substantiate exceptional circumstances.

Note: The APIV may set out Guidelines from time to time as to what circumstances amount to circumstances where it is necessary or desirable for an exemption to be granted.

4.4 - Consequences of being granted an exemption from participation in 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 if a claim is brought against them.

4.5 - Duration of Exemptions

Unless otherwise approved by the Board, all exemptions are granted on a twelve (12) months basis and members need to reapply each year.

Exemptions granted to an individual valuer are only valid while the applicant remains employed by or contracted to the employer or principal stated in the Exemption Application. In the event that the valuer changes employers or commences to undertake work as a contractor to a new/additional firm:

1. the exemption would not apply in respect of work undertaken on behalf of any other firm.
2. the applicant should apply for a new exemption in respect of the new employer or new/additional principal.

4.6 - Change in circumstances during the Exemption period

Applicants whose circumstances change during the exemption period must immediately advise the APIV of such change in circumstances. A change in circumstances may result in the revocation of the exemption.

4.7 - Consequences of failure of eligible members to join the Scheme or obtain an exemption

If a person is eligible to join the APIV Scheme, but does not do so, that person's API membership status may be affected as they would be in breach of section 2 of the Membership Policy (formerly API By Laws).

Breaches will be dealt with via the API / APIV complaints process pursuant to the API Complaints Policy.

5 - Exemption from requirements of Standard 14, Clause 14 of the APIV Insurance Standards relating to Runoff cover

5.1 - What is Runoff insurance and why is it important?

Professional indemnity policies are invariably 'claims made' policies. That means that coverage is provided only for claims made during the policy period. A 'claims made' policy does not provide cover for claims made before the commencement of the policy period or after the expiry of the policy period (even in a situation where the event giving rise to the claim occurred during the policy period).

However, where an insured becomes aware, during the policy period of facts which might give rise to a claim and notifies the insurer as soon as reasonably practicable (and prior to the expiry of the policy period) of such facts, Section 20(4) of the *Insurance Contracts Act 1984 (Cth)* will provide the insured with rights under the policy as if the claim had been made during the policy period.

When a valuation practice ceases to conduct that business, there could be a significant time lag between when a valuation is completed and when a claim is made. As professional indemnity cover is "claims made", cover needs to be in place at the time the claim is made (or at the time which the insured first becomes aware of facts which might give rise to a claim and notifies those facts to the insurer), which could be several years after a valuation has been undertaken.

Hence, it is important for valuation practices which cease conducting business to have runoff cover for a period of not less than seven (7) years from the last valuation of real property performed by the member.

5.2 - Why take out Runoff insurance for a period not less than seven (7) years from the last valuation of real property performed by the member?

Generally, the Statute of Limitations provides that a person cannot be sued:

1. In contract after the expiration of 6 years from the date of breach (usually when the negligent advice was delivered to the client);
2. In tort or under legislation after the expiration of 6 years from the date of loss (usually in a mortgage situation when the bank becomes aware that recovery of the amount lent will not be possible).

As such, at least in tort and under relevant legislation (eg, misleading or deceptive conduct claims) loss may take a number of years to be crystallised with the time limitation taking effect a further 6 years thereafter. This is why it is important for firms to comply with the requirement to obtain runoff cover when a corporate entity conducting a valuation practice ceases to conduct that business.

5.3 - What does the Scheme require?

Standard 14, Clause 14 of the APIV Insurance Standards provide as follows:

'Unless not reasonably available, the Professional Indemnity Insurance 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 this requirement from the APIV immediately.'**

Clause 14 requires an APIV member to hold a current professional indemnity insurance policy containing an automatic right of runoff cover for 7 years, should that member cease to carry on the valuation business during the policy period.

That requirement applies to all members at all times – regardless of whether the member has already ceased to trade. It continues to apply in the case where a valuation business has been transferred to another entity.

5.4 - Process to apply for a Runoff Exemption

If a member is unable to obtain a runoff professional indemnity insurance policy that is compliant with the APIV Insurance Standards for a period of 7 years, or is not able to do so on reasonable terms, they must complete the Exemption Application Form and enclose the following in their application:

- where the application is made on the basis that a policy containing automatic runoff cover for a period of not less than 7 years is not available:
 - a letter from the member's/practice's insurance broker stating that such cover has been sought by it and is not available; and
 - supporting documentation including any insurance proposals/submissions and responses from insurers.
- where the application is made on the basis that a policy containing automatic runoff cover for a period of not less than 7 years is not available at a reasonable premium:
 - a letter from the member's/practice's insurance broker stating that such cover has been sought by it and the terms on which it is available;
 - a letter from a principal of the practice stating that the premium in respect of such cover is not reasonably affordable to the practice having regard to the financial position of the entity/practice including supporting profit/loss information;
 - a copy of any quote obtained in respect of a policy
 - containing automatic runoff cover for a period of not less than 7 years; and
 - a copy of any quote obtained in respect of a policy not containing automatic runoff for a period of not less than 7 years.

5.5 - Discretion of the APIV to grant / reject Exemption Applications

The APIV can grant or refuse an application for exemption in its absolute discretion.

5.6 - General Exemption to be granted in certain circumstances

Where the APIV has formed the view that automatic runoff cover for a period of not less than 7 years is not available at all in the insurance market or is only available on terms which would not be reasonable to members generally, the APIV may issue a general exemption from the requirements of Standard 8, Clause 14 (**General Exemption**).

The APIV may impose conditions upon such General Exemption at its discretion. Any conditions imposed on runoff exemption will be further communicated to members at that time.

Members are reminded to carefully read all member alerts and news from the APIV/APIV for further details.

Effect of General Exemption

A General Exemption shall operate as if an individual exemption had been granted to each and every member of the APIV.

In the event that the APIV has issued a General Exemption, there is no need for any member to make an individual application for an exemption from the requirements of Standard 8, Clause 14 provided that the member complies with all conditions placed on the operation of the General Exemption (if any).

What happens if a member is unable to comply with any condition of a General Exemption

Where a member is unable to comply with any condition of a General Exemption, then the member should apply to the APIV for an individual exemption from the requirements of Standard 8, Clause 14 because the General Exemption will not apply to the member.

Duration of Exemption

A General Exemption shall remain valid for a period of 12 months from the date of issue (unless revoked earlier by the APIV).

APIV may issue a further General Exemption

The APIV may issue a further General Exemption to operate concurrently with any existing General Exemption.

5.7 - Consequences of failure to obtain a Runoff Exemption

Member's APIV and API membership may be affected

If a member is required to obtain an applicable exemption but fails to do so, that member will be in breach of the Scheme requirements.

The member's APIV membership will therefore be subject to termination and their API membership may also be adversely affected.

Member may not be able to plead the cap

Further, if a member (to whom a General Exemption does not apply or who does not comply with any conditions of a General Exemption) fails to obtain an exemption, that member will be in breach of Scheme requirements and their ability to successfully plead the cap to limit their liability in a future claim will be adversely affected.

6 - APIV may change Exemption Categories from time to time

The APIV Board may change the Exemption Categories from time to time.

7 - APIV may set out Guidelines

The APIV may set out Guidelines from time to time as to what evidence is required from an Applicant to substantiate an application for an exemption under any Exemption Category.

8 - Effective Date

This Exemption Policy supersedes previous versions and is effective from 1 September 2021.