



Australian Property Institute Valuers Ltd

General Information regarding the Regulatory Context of the APIV Scheme.

Effective: 1st September 2021

Owner: APIV

The Australian Property Institute Valuers Ltd

Please note that the relevant legislation for Canberra is *Civil Law (Wrongs) Act 2002* (ACT), however, as each State and Territory has its own legislation with mostly uniform provisions, the governing legislation for limitation of liability schemes will be referred to in this email as ‘professional standards legislation’.

Please find below some general information regarding the regulatory context for the APIV Scheme.

We refer to the following attached documents prepared by our Regulator, the Professional Standards Councils (“PSC”):

- “A framework for Compliance”;
- “Professional Standards Improvement Program”;
- 2020 Professional Standards Improvement Report Template (the 2020 template issued by the PSC to all associations for the purposes of preparing the annual report).

These documents can be found at the link below:

<http://www.psc.gov.au/advice-for-scheme-associations/resource-centre>

As you may be aware, the APIV Scheme is registered in NSW pursuant to the *Professional Standards Act 1994 (NSW)*. It applies in all States and Territories except Tasmania pursuant to mutual recognition provisions.

Our Regulator, the Professional Standards Councils, has designed a framework for Compliance for occupational associations administering Limitation of Liability Schemes (copy **attached**). This framework sets out the Regulator’s requirements in relation to compliance with the professional standards legislation by an occupational association administering a Limitation of Liability Scheme.

APIV’s Key Obligations

The Scheme enables a complying member of the APIV to plead their respective monetary ceiling under the Scheme as defence to cap their occupational liability in the event that they are pursued in court.

The decision by the PSC to award a [Limitation of Liability Scheme](#) recognises the commitment an association has made to the improvement of professional standards and the protection of Australian consumers. To satisfy the requirements for limited liability under [professional standards legislation](#), an association administering a Limitation of Liability Scheme is required to meet a range of statutory obligations.

In essence, pursuant to the regulatory framework, the key obligations of the APIV are as follows:

1. Monitor compliance by members with Scheme requirements

The APIV is required to closely monitor members' compliance with the following:

- the requirement that members comply 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 ceiling of the liability limitation. Compliance with insurance and business assets are a key part of the Scheme. The APIV "must monitor members' compliance with this fundamental aspect of participating in a Scheme – for example, as part of annual membership renewal – and report to the Councils" [...]. This compliance strategy aims to ensure that all participants in a scheme are adequately covered for their capped liability.

The Compulsory Annual Compliance Self-Declaration, whereby members self- declare compliance with the Scheme requirements is designed to check compliance with these requirements by Scheme members at the time of membership renewal.

The APIV must audit a random sample of its members annually to check compliance. Further details regarding the APIV Compliance Audit are found below.

2. Monitor compliance by members with various other requirements under the professional standards legislation and the APIV Scheme, including but not limited to member's obligations to:

- renew their membership annually
- disclose to prospective and current clients their participation in the Scheme (for further details, please refer to 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)
- complete the Annual Compulsory Compliance Questionnaire
- respond to random Compliance Audits

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 take their own legal and/or insurance advice. Ultimately, only a Court can make a determination as to whether a Member has met these obligations.

3. Collect certain data from members and Report to PSC annually

Pursuant to the professional standards legislation, the APIV must collect data and report annually 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; 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;

- breaches of professional standards legislation or APIV Scheme requirements by members
 - APIV is compelled by the professional standards legislation to report all breaches of the members to the PSC, particularly breaches of the disclosure obligations.

The APIV collects this data from members through the Complaints/Claims and Notifications forms and the Compulsory Annual Compliance Questionnaire (declaration), which must be completed by each professional indemnity insurance policy holder upon 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.

It is noted that the PSC reports annually to Parliament based on the information provided by each association in the annual report, hence it is imperative that the data reported by members to the APIV and the data reported in turn by the APIV to the PSC is accurate and not misleading as it is an offence to mislead Parliament.

Compliance Audit

Information about the APIV Compliance Audit

The Professional Standards Councils ('PSC') govern all limited liability schemes of occupational associations, including the APIV Scheme, and require them, amongst other things, to audit a proportion of its members each year on compliance with the PSC's requirements.

Audit forms an essential part of the compliance framework mandated by the PSC. In short, the PSC require the APIV to audit members' compliance with the following aspects at minimum:

- Continuing occupational education;
- Insurance standards;

- Business assets;
- nature and level of notifications and claims;
- Disclosure of limited liability; and
- *Cover of Excellence*® logo is not being used.

Occupational associations are required to report annually to the PSC on the outcome of the annual audit. This report is usually done in an aggregated/de-identified manner.

The objectives of the Audit Framework are as follows:

- To protect and promote the integrity of the Scheme.
- To discharge the APIV's legal obligations as the Scheme administrator.
- To facilitate a consistent, methodical and effective administration of the Audit Framework.
- To improve the compliance of auditees and members in general with the Scheme's regulatory requirements.
- To identify any common issues, improvement opportunities and or trends for reporting and members' educational purposes.
- Through reporting to the auditees and the PSC, to ensure that the APIV's regulatory activities remain open and transparent.

In addition, the APIV may also check the following aspects as part of the Quality Standards and the continual improvement cycle:

- Complaints systems and procedures;
- Extent of risk management framework; and
- Conflict of interest policies and procedures.

Outcomes of Compliance Audit will feed into the Continual Improvement of Quality Standards and Compliance and may be utilised in any of the following ways:

- to increase each auditee's awareness and understanding of the importance of Quality Standards and Compliance;
- as de-identified case studies for members' educational purposes;
- as regular health checkpoints for the Scheme and an opportunity to identify and address common issues/concerns raised; and
- to identify and address any gaps between Quality Standards and Compliance through process improvement.

On a quarterly basis, the overall outcomes of the Compliance Audit in that quarter will be reviewed by the National Compliance Manager to identify any common issues/concerns and decide a course of action to ensure that those issues/concerns are raised and clarified with all affected members – for example, hold a focus session or send a member alert on a particular issue or concern.

Compliance Audit Requirements

Clause 3.6 (commencing on page 10 of the “Framework for Compliance”) sets out at high level, the minimum requirements for the annual Compliance Audit:

- the APIV must audit a portion of the Scheme members who declare their compliance annually;
- the method for checking members’ compliance is a random sampling technique that is statistically representative;
- unless compliance behaviours vary widely, 10% of the self –declaring members need to be selected randomly for auditing.

You will note that pages 16 and 17 of the 2016 Professional Standard Improvement Program template sets out requirements of the PSC in respect of the matters that need to be addressed by the APIV in its annual report to the Regulator.

As discussed, the APIV has adopted a formal Compliance Audit Framework which is applied to all members.

Each year, the APIV audits a minimum of 10% of members who have declared their compliance in that year. The sample is selected on a random basis, however, once a member firm has participated in the Compliance Audit process in a given year, that member firm is removed from the audit pool for the next two consecutive years.

Confidentiality of the information provided to APIV

In the past, some auditees have requested the APIV to enter into a Confidentiality Agreement with them with respect to the audit matters. We regret to advise that the APIV is unable to sign such confidentiality agreements. However, hopefully the additional information relating to the regulatory context of the APIV Compliance Audit set out in this document will provide you, and the firm, with further comfort that any information received as part of the audit will be treated with utmost confidentiality and respect.

The APIV absolutely values your privacy and the confidence of the information supplied to the APIV and in no way, shape or form is such information discussed with an outside party without your prior written consent, unless such disclosure is compelled by law.

In terms of the Compliance Audit, the APIV as the administrator of the APIV Limitation of Liability Scheme is compelled by the Professional Standards Councils (‘PSC’) to conduct an annual audit of the members’ compliance pursuant to professional standards legislation [eg. Section 40 of *Professional Standards Act 2003* (Vic)].

The APIV is also compelled by the PSC to provide aggregated and de-identified data relating to numerous aspects of Scheme administration in the form of an annual report to the PSC [eg. Section 39 of *Professional Standards Act 2003* (Vic)]. One of the matters, on which the APIV must report to the PSC, is Compliance Audit findings.

The PSC then collate the information and data provided by the various Scheme Administrators (eg. APIV, Law Societies and Chartered Accountants) in an annual report submitted to the Parliament. The 2015-2016 Annual Report by the PSC to the Parliament can be found here – <http://www.psc.gov.au/sites/default/files/PSC%20Annual%20Report%202016%20WEB.pdf>.

As the Compliance Audit is mandated by our regulator pursuant to legislation, the APIV is unable to sign a confidentiality agreement.

Storage and Security of Information Provided to APIV

We also further note that no other members of the API will have access to the information that you provide to us. It will solely be the APIV Team – Sheila Kushe (General Manager – Standards & Compliance), Tony Gillett (Compliance Manager) and the APIV Compliance & Administration Officer/s – who will be vetting the documents that you provide to us and any information provided to the broader API staff will strictly be provided on a need-to-know basis.

In terms of electronic records, the API has a strict privacy policy within the organisation and part of the employee handbook.