**Template 2.1.1 – Draft Scheme instrument template**

*Name of Act under which instrument is prepared*

THE [NAME OF OCCUPATIONAL ASSOCIATION] PROFESSIONAL STANDARDS SCHEME

PREAMBLE

1. The [name of occupational association][acronym of occupational association] is an occupational association for the purposes of the [*name of Act under which instrument is prepared*] (the Act).
2. The Scheme is prepared by the [acronym of occupational association] for the purposes of limiting occupational liability to the extent to which such liability may be limited under the Act.
3. The Scheme applies to [describe class or classes of members of the association to whom the Scheme applies].
4. The Scheme will have force in [jurisdiction in which the Scheme is made and, if relevant, the other jurisdictions in which the Scheme will apply under the provisions for mutual recognition contained in the Act]. [If the Scheme is multijurisdictional, add: To the extent that the Scheme applies to limit liability in the other jurisdictions, it is subject to the Professional Standards Legislation of those jurisdictions.]
5. The [acronym of occupational association] has furnished the Council with a detailed list of the risk management strategies to be implemented in respect of its members, and the means by which those strategies are to be implemented.
6. [Where the Scheme limits liability by reference to insurance arrangements, add:]The [acronym of occupational association] has furnished the Council with details of its insurance standards and professional indemnity insurance claims monitoring process. The [acronym of occupational association] will not amend these insurance standards while the Scheme is in force without prior approval of the Council.
7. [Where the Scheme limits liability by reference to insurance arrangements, add:]The [acronym of occupational association] has advised its members to whom the Scheme applies that they must have the benefit of a professional indemnity policy that complies with the association’s insurance standards and that they remain liable for the amount of any difference between the amount payable to a plaintiff under the policy and the monetary ceiling specified in the Scheme.
8. The [acronym of occupational association] has furnished the Council with details of its complaints system and discipline system.
9. The [acronym of occupational association] and its members to whom the Scheme applies have undertaken to comply with all reporting obligations associated with the Scheme, in furtherance of the statutory objects of improvement of the occupational standards of its members, and protection of the consumers of such members’ services.
10. The [acronym of occupational association] has undertaken to remit all fees payable under [the professional standards regulations for the jurisdiction in which the Scheme is made] to the Council as and when these become due.
11. The Scheme is intended to commence on [insert date] and remain in force for [specify number of years’ duration, being five or less] years from its commencement unless, prior to that time, it is revoked, its operation ceases, or it is extended.
12. Sections 12GNA(2) of the *Australian Securities and Investments Commission Act 2001* (Cth), 137(2) of the *Competition and Consumer Act 2010* (Cth), and 1044B(2) of the *Corporations Act 2001* (Cth) provide for limited liability where a Professional Standards Scheme is prescribed in the relevant regulation. The Scheme does not apply to limit any liability under a Commonwealth law unless it has been prescribed under regulations by the Commonwealth.

**THE [NAME OF OCCUPATIONAL ASSOCIATION] PROFESSIONAL STANDARDS SCHEME**

1. **Occupational association**
   1. The [name of occupational association] Professional Standards Scheme (the Scheme) is a Scheme under the [*Name of Act under which the instrument is prepared*] (the Act) prepared by the [name of occupational association][acronym of occupational association] whose business address is: [insert business address].
2. **Persons to whom the Scheme applies**
   1. The Scheme applies to all members of the [acronym of occupational association]] who are [state whether it is *all* members or a class, or classes, of members].
   2. [Where the Scheme makes provision for exemption, add:] A person referred to in clause 2.1 may, on application, be exempted from participation in the Scheme by the [acronym of occupational association] with effect from the date specified by the [acronym of occupational association].

**3 Jurisdiction**

3.1 The Scheme applies in [jurisdiction in which the Scheme is made].

3.2 [Only include this provision if relevant] In addition to [jurisdiction listed in [3.1]], the Scheme is intended to operate in [insert the other jurisdictions in which the Scheme will apply under the provisions for mutual recognition contained in the Act] in accordance with the Professional Standards Legislation of those states and territories and subject to the requirements of that legislation (“the corresponding laws”), so that references to a provision of the Act, the application of the Scheme to a liability, the limit of a liability under the Act, or what constitutes occupational liability, are intended to pick up the relevant provisions of the corresponding laws, applied mutatis mutandis, to the extent that is necessary for the application of the Scheme in any of those jurisdictions.

**4 Limitation of liability**

4.1 This Scheme only affects the liability for damages arising from a single cause of action to the extent to which the liability results in damages exceeding [specify amount below which liability cannot be limited by the Scheme, in any case no less than $500,000].

4.2 [Where the Scheme limits liability by reference to insurance arrangements, add:] If a person who is, or was, at the time of the act or omission giving rise to occupational liability, a person to whom the Scheme applies, or applied, and against whom a proceeding relating to occupational liability is brought, is able to satisfy the court that such person has the benefit of an insurance policy:

1. of a kind which complies with the standards determined by the [acronym of occupational association],
2. insuring such person against the occupational liability to which the cause of action relates, and
3. under which the amount payable in respect of that occupational liability is not less than the applicable monetary ceilingspecified in clause 4.3 of this Scheme,

then that person is not liable in damages in relation to that cause of action above the monetary ceilingspecified in clause 4.3 of this Scheme.

4.3 The monetary ceilingis $ [insert amount, or insert table if more than one monetary ceiling applies to specific classes of members].

4.4 Clause 4.2 does not limit the amount of damages to which a person to whom the Scheme applies is liable if the amount is less than the amount specified for the purpose in this Scheme in relation to a person to whom the Scheme applies.

4.5 This Scheme limits the occupational liability in respect of a cause of action founded on an act or omission occurring during the period when the Scheme was in force of any person to whom the Scheme applied at the time the act or omission occurred.

4.6 Notwithstanding anything to the contrary contained in this Scheme if, in particular circumstances giving rise to occupational liability, the liability of any person who is subject to this Scheme is capped both by this Scheme and also by any other Scheme under Professional Standards Legislation (whether of this jurisdiction or under the law of any other Australian state or territory) and, if the amount of such caps should differ, then the cap on the liability of such person arising from such circumstances which is higher shall be the applicable cap.

**5** [Where the Scheme makes provision for higher discretionary limits, add the following section] **Conferral of discretionary authority**

5.1 The [acronym of occupational association] has discretionary authority, on application by a person referred to in clause 2.1, to specify in relation to that person a higher maximum amount of liability than would otherwise apply under the Scheme, in all cases or in any specified case or class of case.

**6 Commencement and Duration**

6.1 The Scheme will commence [following subclauses to be modified if Scheme is not multijurisdictional, as appropriate]:

6.1.1 in New South Wales, the Northern Territory, Tasmania, Western Australia, Victoria, and Queensland, on [date month year]; and

6.1.2 in the Australian Capital Territory and in South Australia, on this same date, or such other later date, provided the date is specified in the relevant Minister’s notice in relation to the Scheme; or

6.1.3 in all other cases, subject to the statutory provisions of each applicable jurisdiction.

6.2 The Scheme will be in force in all applicable jurisdictions for [specify number of years’ duration, being five or less] years from the date of its commencement in [jurisdiction in which the Scheme was made]

6.2 Clause 5.2 is subject to the provisions of each jurisdiction in relation to the revocation, extension, or cessation of a Scheme.

**7 Definitions**

7.1 Relevant definitions for the purpose of this Scheme are as follows:

[Include if applicable] “corresponding laws” means [include legislation for each jurisdiction in which the Scheme applies, other than the jurisdiction where the Scheme was made] the *Professional Standards Act 1994* (NSW) *Professional Standards Act 2003* (Vic), the *Professional Standards Act 2004* (Qld), the *Professional Standards Act 2004* (SA), the *Professional Standards Act 1997* (WA), the *Professional Standards Act 2005* (Tas), the *Professional Standards Act* (NT), and the *Civil Law (Wrongs) Act 2002* (ACT)

“court” has the same meaning as it has in the Act

“damages” has the same meaning as it has in the Act

“occupational Liability” has the same meaning as it has in the Act

“person” means an individual or a body corporate