

EXPOSURE DRAFT



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Corporations (Relevant Providers—Education and Training Standards) Determination 2021

I, Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy, and Minister for Women’s Economic Security, being satisfied that doing so is necessary or desirable to ensure that relevant providers are adequately trained and competent to provide personal advice to retail clients in relation to relevant financial products or to provide tax (financial) advice services, make the following determination.

Dated

2021

Jane Hume **[DRAFT ONLY—NOT FOR SIGNATURE]**

Minister for Superannuation, Financial Services and the Digital Economy

Minister for Women’s Economic Security

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Preliminary **Part 1**

Section 1-1

Part 1—Preliminary

1-1 Name

This instrument is the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021*.

1-2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) 1 January 2022.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

1-3 Authority

This instrument is made under the *Corporations Act 2001*.

1-4 Definitions

Note: Paragraph 13(1)(b) of the *Legislation Act 2003* has the effect that expressions have the same meaning in this instrument as in the *Corporations Act 2001* as in force from time to time.

In this instrument:

Code of Ethics has the meaning given by section 910A of the Act.

CPD year has the meaning given by section 910A of the Act.

existing provider has the meaning given by section 1546A of the Act.

financial product advice has the meaning given by section 766B of the Act.

provisional relevant provider has the meaning given by section 910A of the Act.

relevant provider has the meaning given by section 910A of the Act.

retail client has the meaning given by sections 761G and 761GA of the Act.

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Part 1 Preliminary

Section 1-4

taxation law has the meaning given by the *Income Tax Assessment Act 1997*.

tax (financial) advice service has the meaning given by section 910A of the Act.

the Act means the *Corporations Act 2001*.

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Education and training standards for relevant providers **Part 2**

The first standard **Division 1**

Section 2-30

Part 2—Education and training standards for relevant providers

Division 1—The first standard

Note: See *Corporations (Degrees, Qualifications and Courses Standards) Determination 2018* for the currently approved bachelor or higher degree, or equivalent qualifications. The instrument, originally made by the Financial Adviser Standards and Ethics Authority Ltd, was saved by section 1684M of the Act and will continue in force until it is repealed and remade by the Minister).

Division 2—The second standard

2-30 Approved principles in relation to exams

Under subsection 921B(6) of the Act, each of the principles specified in a provision in this Division is an approved principle for the purposes of exams to be administered ASIC under subsection 921B(3) of the Act.

2-35 Principle 1: testing relevant knowledge and skills

- (1) This section specifies a principle relating to testing relevant knowledge and skills.
- (2) An exam must be designed to test whether the person taking the exam has the knowledge and skills covered in subsection (3) at a AQF level 7 as described in *Australian Qualifications Framework, 2nd edition* (January 2013) published by the Australian Qualifications Framework Council.

Note: On the day this instrument was registered, this publication was available at <https://www.aqf.edu.au/>.

- (3) For the purposes of subsection (2), an exam must cover each of the following knowledge and skills as they apply in relation to financial products:
 - (a) knowledge and skills needed to understand and conform to the requirements of each of the following:
 - (i) Chapter 7 of the Act;
 - (ii) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
 - (iii) the *Privacy Act 1988*;
 - (iv) the *Tax Agent Services Act 2009*;
 - (b) knowledge and skills needed to be able to apply ethical and professional reasoning, and to communicate effectively, including the ability to:
 - (i) identify the obligations imposed by the Code of Ethics and how to comply with them; and
 - (ii) articulate the importance of codes of ethics and codes of conduct, being guides of principles designed to help professionals conduct business honestly and with integrity, and the need for relevant providers to conform to the Code of Ethics in the context of professional standards; and

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Part 2 Education and training standards for relevant providers

Division 2 The second standard

Section 2-40

- (iii) apply ethical frameworks to solve dilemmas encountered as a relevant provider; and
 - (iv) identify the importance of, and demonstrate, the duty of a relevant provider to act with integrity and in the best interest of each of the provider's clients; and
 - (v) identify the need for due diligence and the need to maintain client files and records;
- (c) knowledge and skills needed to construct suitable financial product advice through an understanding of:
- (i) the environment in which financial product advice is sought by and given to new and existing clients; and
 - (ii) the need to prevent and avoid misconduct and inappropriate advice; and
 - (iii) population and community profiles of retail clients; and
 - (iv) consumer behaviour and decision-making; and
 - (v) the advice strategies suitable for different retail clients.

2-40 Principle 2: exam questions

- (1) This section specifies a principle relating to the questions in an exam.
- (2) An exam must contain at least 70 questions, comprising:
 - (a) at least 64 multiple choice questions; and
 - (b) at least 6 written response questions requiring short answers or report writing.

2-45 Principle 3: duration of exams

- (1) This section specifies a principle relating to the duration of an exam.
- (2) A person taking an exam must have 3.5 hours to complete the exam, of which at least 15 minutes must be set aside as reading time.

2-50 Principle 4: marking or scoring of exams

- (1) This section specifies a principle relating to the marking or scoring of an exam.
- (2) An exam must show the maximum marks that may be awarded for each question.
- (3) The questions in an exam, and the maximum marks that may be awarded for each question, must be approved by persons with appropriate expertise, as determined by ASIC.

2-55 Principle 5: processes and procedures for the taking of exams

- (1) This section specifies principles relating to processes and procedures relating to the taking of exams.

Who may sit an exam?

- (2) A person may only take an exam if:

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Education and training standards for relevant providers **Part 2**

The second standard **Division 2**

Section 2-55

- (a) any of the following apply:
 - (i) the person is a provisional relevant provider who has met the education and training standard set out in subsection 921B(2) of the Act (the first standard);
 - (ii) the person is an existing provider; and
- (b) the person has applied to ASIC take the exam (in the manner and form approved by ASIC), and has been subsequently registered by ASIC to take the exam at a particular date and time; and
- (c) the person has paid ASIC the prescribed fee to take the exam; and
- (d) the person has not been excluded from taking the exam under subsection (9).

Note 1: For subparagraph (a)(i), the education and training standard set out in subsection 921B(2) of the Act is met if the person:

- (a) has completed an approved bachelors or higher degree, or an approved equivalent qualification (see Division 1); or
- (b) has completed an approved foreign qualification.

Note 2: The amount of the fee is prescribed in the *Corporations (Fees) Regulations 2001*.

Methods for taking an exam

- (3) An exam must be taken by one the following methods, as determined by ASIC for a person:
 - (a) by attending a location at which an exam is to be held (***an exam location***);
 - (b) by way of the internet or other technology that allows the person to take the exam without being physically present at an exam location;
 - (c) by way of alternate arrangements in accordance with subsection (13).
- (4) A person is *not* to be admitted to an exam location for an exam unless the person:
 - (a) meets the requirements of subsection (2), and has been advised by ASIC that the person is registered to attend the location to take the exam; or
 - (b) is staff member of ASIC; or
 - (c) is present because of alternate arrangements made by ASIC under subsection (13).
- (5) ASIC may impose identification requirements for persons to be admitted to an exam location.

Note: For example, requirements for photo ID may be imposed.

- (6) A person may only take an exam using the equipment and materials permitted by ASIC to be used, and ASIC may impose reasonable and appropriate restrictions on the person to ensure only permitted equipment and materials are used.

Conduct of the exam

- (7) A person taking an exam must not engage in any type of conduct that could be reasonably described as plagiarism, cheating, collusion, deception, impersonation, or another form of similar misconduct. An exam is to be properly supervised to prevent a person from engaging in such misconduct.

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Part 2 Education and training standards for relevant providers

Division 2 The second standard

Section 2-55

- (8) A person taking an exam must comply with an instruction or direction included in the exam document, or that is given by a staff member of ASIC in connection with the exam.

Note: An example of an instruction or direction included in the exam document is an instruction not to start to record answers to exam questions until after the reading time for the exam has ended.

Consequences of misconduct

- (9) If a person breaches subsection (6), (7) or (8), ASIC may do either or both of the following:
- (a) exclude the person from taking or continuing to take an exam;
 - (b) fail the person.

Marking and results

- (10) A person who has taken an exam is to be notified only that they have either passed or failed the exam, which is to be marked to an overall credit grade (a range of between 65% and 74%, with the final passing mark for a particular exam, being determined by ASIC, as informed by persons with appropriate expertise).

Review of results

- (11) A person who has failed an exam is to be allowed to apply to ASIC for a review of the marking of the person's answers to the written response style questions in the exam. ASIC must:
- (a) make reasonably available, information about how and by when an application for review may be made; and
 - (b) provide for the review to be conducted once the prescribed fee has been paid by the person; and
 - (c) provide for the results of the review to be communicated to the person; and
 - (d) action only 1 application for review by the person in relation to the exam.

Note: The amount of the fee is prescribed in the *Corporations (Fees) Regulations 2001*.

Deferral of exams for exceptional circumstances

- (12) ASIC must make arrangements to give effect to all of the following:
- (a) that a person be able to apply to ASIC (in the manner and form approved by ASIC) to defer taking an exam at the particular date and time registered by ASIC, if due to exceptional circumstances beyond the person's control, the person is unable to take the exam at that particular date and time;
 - (b) establish and maintain reasonable systems and processes for making and dealing with those applications; and
 - (c) that, if an application is granted, the person be registered to take the exam at another date and time without having to pay another fee.

Note 1: Exceptional circumstances beyond the person's control under paragraph (a) may include acute illness, recent loss or bereavement, hardship or trauma (including being the victim of crime or severe disruption to domestic life), unforeseen call-up for service (including military service, court appearance, jury service or emergency service), an unexpected equipment failure or malfunction during the exam.

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Education and training standards for relevant providers **Part 2**

The third standard **Division 3**

Section 2-55

Note 2: Reasonable processes under paragraph (b) may include requirements for medical or other certificates, or other evidence, to be provided.

Alternative arrangements

- (13) If ASIC is satisfied that it is reasonable and appropriate in the circumstances to do so, ASIC may make alternate arrangements as to the methods for a person to take an exam. A person requesting alternate arrangements must do so by way of an application to ASIC (in the manner and form ASIC approves). ASIC must ensure that reasonable and appropriate provision is made for persons with special needs.

Note For example, reasonable and appropriate provisions made may include adjustable desks, ensuring that computer screens have larger fonts, higher contrasting colours and reader assistance (for persons with visual impairments) and support to ensure that staff members can communicate effectively with a person with a hearing impairment.

Division 3—The third standard

Note: See *Corporations (Work and Training Professional Year Standard) Determination 2018* for the currently set requirements for work and training. The instrument, originally made by the Financial Adviser Standards and Ethics Authority Ltd, was saved by section 1684M of the Act and will continue in force until it is repealed and remade by the Minister).

Division 4—The fourth standard

Note: See *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* for the currently set requirements for continuing professional development. The instrument, originally made by the Financial Adviser Standards and Ethics Authority Ltd, was saved by section 1684M of the Act and will continue in force until it is repealed and remade by the Minister).

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Part 3 Additional requirements for relevant providers who provide tax (financial) advice services

Division 3 Requirements to complete specified courses

Section 3-60

Part 3—Additional requirements for relevant providers who provide tax (financial) advice services

Division 3—Requirements to complete specified courses

3-60 Requirement to complete specified courses

Under subsection 921BB(1) of the Act, each requirement to have completed a specified course set out in a provision in this Division is determined as a requirement for a person who provides, or is to provide, a tax (financial) advice service.

3-65 Specified course: commercial law

- (1) This section specifies a requirement to have completed a course relating to commercial law (*commercial law course*).
- (2) The commercial law course must be one that covers each of the following knowledge and skills:
 - (a) knowledge and skills needed to understand and conform to the fundamental requirements of Australian laws relating to contracts;
 - (b) knowledge and skills needed to understand and conform to the fundamental requirements of the Australian laws relating to organisational structures in which businesses are operated;
 - (c) knowledge and skills needed to understand and conform to the requirements of Australian laws relating to torts, particularly the torts of negligence and negligence misstatement;
 - (d) knowledge and skills needed to understand and conform to the requirements of the *Competition and Consumer Act 2010*.

Note: Business organisational structures referred to in paragraph (b) includes sole traders, partnerships, corporations and trusts.

- (3) The commercial law course must be designed to provide a person with, as well as assurances that the person then has, the knowledge and skills covered in subsection (2) at not less than an AQF level 5 as described in *Australian Qualifications Framework, 2nd edition* (January 2013) published by the Australian Qualifications Framework Council.

Note: On the day this instrument was registered, this publication was available at <https://www.aqf.edu.au/>.

- (4) The commercial law course must be provided by a registered higher education provider (within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011*) or a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

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3-70 Specified course: taxation law

- (1) This section specifies a requirement to have completed a course relating to Australian taxation law (*tax law course*).
- (2) The tax law course must be one that covers each of the following knowledge and skills:
 - (a) knowledge and skills needed to understand and conform to the requirements of Australian income tax law relating to the following core concepts:
 - (i) assessable income, including ordinary income and statutory income;
 - (ii) deductions, including general deductions and specific deductions;
 - (iii) tax offsets;
 - (iv) residence;
 - (v) source;
 - (vi) capital allowances;
 - (b) knowledge and skills needed to understand and conform to the requirements of the income tax law relating to its application to each of the following types of entity:
 - (i) an individual;
 - (ii) a partnership;
 - (iii) a company;
 - (iv) a trust;
 - (c) knowledge and skills needed to understand and conform to the requirements of the income tax law and fringe benefits tax law relating to their application to employee remuneration, including non-cash benefits, employment termination payments and employee share schemes;
 - (d) knowledge and skills needed to understand and conform to the requirements of the income tax law relating to capital gains and losses;
 - (e) knowledge and skills needed to understand and conform to the requirements of the income tax law relating to superannuation, including the application of the law to contributions, earnings and benefits;
 - (f) knowledge and skills needed to understand and conform to the requirements of the income tax law relating to the application of the law to investments;
 - (g) knowledge and skills needed to understand and conform to the requirements of the income tax law relating to anti-avoidance, and taxation offences and penalties, including the promoter penalty rules;
 - (h) knowledge and skills needed to have a basic awareness of the following:
 - (i) the goods and services tax law;
 - (ii) the Commissioner of Taxation's administration of the taxation laws.

Note 1: The relevant Acts providing for Australia's income tax include the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997*.

Note 2: The relevant Acts providing for Australia's fringe benefits tax includes the *Fringe Benefits Tax Assessment Act 1986*.

Note 3: The relevant Acts providing for Australia's goods and services tax includes the *A New Tax System (Goods and Services Tax) Act 1999*.

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Part 3 Additional requirements for relevant providers who provide tax (financial) advice services

Division 3 Requirements to complete specified courses

Section 3-70

- (3) The tax law course must be designed to provide a person taking the course with, as well as assurances that the person then has, the knowledge and skills covered in subsection (2) at not less than an AQF level 5 as described in *Australian Qualifications Framework*, 2nd edition (January 2013) published by the Australian Qualifications Framework Council.

Note: On the day this instrument was registered, this publication was available at <https://www.aqf.edu.au/>.

- (4) The tax law course must be provided by a registered higher education provider (within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011*) or a registered training organisation (within the meaning of the *National Vocational Education and Training Regulator Act 2011*).

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Additional requirements for relevant providers who provide tax (financial) advice services **Part 3**
Requirements for continuing professional development **Division 5**

Section 3-120

Division 5—Requirements for continuing professional development

3-120 Requirement for continuing professional development

Under subsection 921BB(1) of the Act, each requirement for continuing professional development in relation to the CPD year of a financial services licensee set out in a provision in this Division, is determined as a requirement for a person who provides, or is to provide, a tax (financial) advice service.

3-125 Additional requirements for tax-specific CPD

- (1) A relevant provider who provides, or is to provide a tax (financial) advice service, must complete continuing professional development activities, in accordance with this section, to maintain and extend their knowledge and skills relating to Australian commercial and taxation law, as is relevant to providing a tax (financial) advice service.
- (2) These additional requirements for continuing professional development activities relating to taxation supplement the education and training standards for relevant providers relating to continuing professional development as determined by the Minister in the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.
- (3) The requirements in the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* are to be supplemented by applying the Determination as if all the following changes had been incorporated into the Determination:

(a) repeal item 1 in the table in section 7 of the Determination and substitute:

1	The activity is designed to enhance participants' technical proficiency (other than in relation to Australian commercial and taxation laws) and ability to develop and provide advice strategies that are appropriate to the objectives, financial situations and needs of different classes of retail clients.	Technical competence (general)
1A	The activity is designed to enhance participants' technical proficiency relating to Australia's commercial and taxation laws and ability to develop and provide advice strategies that are appropriate to the objectives, financial situations and needs of different classes of retail clients.	Technical competence (tax-specific)

(b) repeal paragraph 9(2)(a) of the Determination and substitute:

“(a) a minimum of 5 hours in the CPD area of technical competence (general); and

(aa) a minimum of 5 hours in the CPD area of technical competence (tax-specific); and”.

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Part 3 Additional requirements for relevant providers who provide tax (financial) advice services

Division 6 Application and transitional arrangements in relation to additional requirements for relevant providers who provide tax (financial) advice services

Section 3-170

Division 6—Application and transitional arrangements in relation to additional requirements for relevant providers who provide tax (financial) advice services

Subdivision C—Application and transitional arrangements in relation to requirements to complete specified courses

3-170 Transitional—registered tax (financial) advisers who are relevant providers on 31 December 2021

The requirements in Division 3 of Part 3 of this instrument do not apply to a person if:

- (a) the person was a relevant provider immediately before 1 January 2022; and
- (b) the person was a registered tax (financial) adviser under subsection 20-5(1) of the *Tax Agent Services Act 2009* as in force immediately before 1 January 2022.

3-171 Transitional—relevant providers awaiting registration as tax (financial) advisers on 31 December 2021

- (1) The requirements in Division 3 of Part 3 of this instrument do not apply to a person, from the start of the day specified in subsection (2), if:
 - (a) the person was a relevant provider immediately before 1 January 2022; and
 - (b) before 1 January 2022, the person made an application under section 20-20 of the *Tax Agent Services Act 2009* (as in force immediately before 1 January 2022) for registration as a registered tax (financial) adviser; and
 - (c) immediately before 1 January 2022, the application had not been finally determined; and
 - (d) after 1 January 2022, the application is granted.

Note: See item 140 in Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* for transitional rules in relation to pending applications for registration of registered tax (financial) advisers on 1 January 2022.

- (2) For the purposes of subsection (1), the specified day is the day that a person's registration as a registered tax (financial) adviser commences.

3-172 Transitional—other relevant providers on 31 December 2021

- (1) The requirements in Division 3 of Part 3 of this instrument do not apply to a person for the period specified by subsection (2) if:
 - (a) the person was a relevant provider immediately before 1 January 2022; and
 - (b) the person is an existing provider (within the meaning of section 1546A of the Act); and
 - (c) the person is not covered by section 3-170 or 3-171.
- (2) For the purposes of subsection (1), the period specified is the period, for a person, from 1 January 2022 to the earliest of the following times:

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Additional requirements for relevant providers who provide tax (financial) advice services **Part 3**
Application and transitional arrangements in relation to additional requirements for relevant providers
who provide tax (financial) advice services **Division 6**

Section 3-200

- (a) if the person has *not* met the education and training standard in subsection 921B(3) of the Act on the exam cut-off day (within the meaning of section 1684 of the Act) for the person, and the person is a relevant provider on that day—the exam cut-off day for the person; and
- (b) otherwise—31 December 2025.

Subdivision E—Application and transitional arrangements in relation to continuing professional development

3-200 Application—Additional requirements for tax-specific CPD

Division 5 of Part 3 of this instrument applies in relation to CPD years that begin on or after 1 January 2022.