

# EXPOSURE DRAFT



## **Financial Adviser Standards and Ethics Authority Ltd**

*Corporations (Relevant Providers Continuing Professional Development Standard)  
Determination 2018*

### **Explanatory Statement**

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## Key information

1. This instrument sets requirements for continuing professional development (*CPD*) that relevant providers (financial planners and financial advisers) must undertake to meet the fourth of the education and training standards under section 921B of the *Corporations Act 2001* (see subsection 921B(5) of the Act).
2. ***Date of effect***: the day after this instrument is registered in the Federal Register of Legislation (see section 2).

## Glossary

3. Words and expressions used in this statement are defined in the following table.

Expression	Meaning
<i>Act</i>	the <i>Corporations Act 2001</i> .
<i>Authority</i>	Financial Adviser Standards and Ethics Authority Ltd, which is the standards body under section 921X of the Act.
<i>education and training standards</i>	the standards set out in section 921B of the Act.
<i>CPD</i>	short for “continuing professional development”.
<i>CPD area</i>	this is defined in paragraph 7(1)(a). The requirements for CPD are in some cases targeted to particular areas of skill and knowledge relevant to practice as a relevant provider.
<i>CPD plan</i>	every relevant planner must have a CPD plan for each CPD year, that meets the requirements of section 6.
<i>CPD policy</i>	every responsible licensee must have a CPD policy that meets the requirements of section 5.
<i>financial services licensee</i> or <i>licensee</i>	a person that holds a financial services licence.
<i>personal advice</i>	defined in subsection 766B(3) of the Act.
<i>qualifying CPD activity</i>	an activity that meets the criteria in section 7. Only qualifying CPD activities can count towards meeting relevant providers’ CPD obligations.
<i>relevant financial product</i>	defined in subsection 910A of the Act.
<i>relevant provider</i>	defined in subsection 910A of the Act.

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<b>Expression</b>	<b>Meaning</b>
<i>responsible licensee</i>	a licensee who has authorised a relevant provider to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.
<i>retail client</i>	defined in sections 761G and 761GA of the Act.

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4. References to numbered sections or other provisions are to those sections or other provisions of the determination, unless indicated otherwise.

## Context

5. The Corporations Act was amended in 2017 to provide for improved standards of education, training, ethical behaviour and professionalism for relevant providers (financial planners and financial advisers).
6. Section 921B of the Act sets 4 standards that relevant providers must meet (*education and training standards*). Section 921C of the Act prohibits ASIC from granting a financial services licence to a person who has not met the education and training standards. It also prohibits licensees and authorised representatives of licensees from authorising other persons to give personal advice to retail clients in relation to relevant financial products unless the other persons have met the education and training standards.
7. The fourth of the standards requires a person to meet CPD requirements set by the Authority. Under subparagraph 921U(2)(a)(iv) of the Act, the Authority must, by legislative instrument, set requirements for CPD.
8. This determination sets CPD requirements for relevant providers.

## Preliminary matters

9. Section 1 provides that the name of the instrument is the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.
10. Section 2 provides that the determination will commence on the day after it is registered in the Federal Register of Legislation.
11. Section 3 sets out the legislative authority for making the determination: subparagraph 921U(2)(a)(iv) of the Act.
12. Section 4 defines “the Act” as the *Corporations Act 2001* and refers readers to the definitions a range of expressions in the Act. These, and other definitions relevant to the determination, are in the Glossary at paragraph 3 above.

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## Section 5: CPD policies

13. Each responsible licensee, and each licensee that is a relevant provider, must have a CPD policy about how it meets its CPD obligations. The policy must be adopted before the start of the licensee's first CPD year but may be amended at any time. The policy and all amendments must be in writing.
14. Subsection 5(3) sets out requirements for the content of the CPD policy. Specifically, the policy must set out the licensee's overall approach to its CPD obligations and the CPD obligations of relevant providers for whom it is responsible licensee (paragraph 5(3)(b)).
15. The policy must also describe how the licensee will undertake specific actions that it will have to perform under the determination, for example, assessing and approving activities as qualifying CPD activities, monitoring its relevant providers' implementation of their CPD plans and record keeping (subparagraphs 5(3)(c)(i), (ii) and (vii)).
16. Subsection 5(4) requires a licensee to publish its CPD policy, and ensure that it is accessible by its relevant providers.

## Section 6: Relevant providers' CPD plans

17. Each relevant provider must have a CPD plan, in place before the start of each CPD year. CPD plans, and any amendments to CPD plans, must be in writing.
18. The focus of a relevant provider's CPD plan must be on the areas in which there is room for improvement in the provider's competence, knowledge and skills. The plan must describe the qualifying CPD activities the provider will complete during the CPD year to achieve those improvements.
19. Subsection 6(4) requires a relevant provider's employer who holds a financial services licence — and is therefore the responsible licensee of the relevant provider — to monitor the provider's implementation of his or her CPD plan. The provider must give the employer a copy of the plan and information relating to the provider's progress on the agreed plan, on request.

## Section 7: Qualifying CPD activities

20. This section sets out the criteria for an activity to be a **qualifying CPD activity**. Only qualifying CPD activities count towards meeting a relevant provider's CPD requirements.
21. The table to this section describes the various CPD areas and the content of activities in each of those areas that can be counted towards meeting CPD requirements. There are 4 areas: *technical competence, client care and practice, regulatory compliance and consumer protection* and *professionalism and ethics*.
22. There is also a "general" CPD area, to cover activities designed to maintain and extend professional capacities, knowledge and skills not otherwise covered in a particular CPD area.

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23. To be a qualifying CPD activity in a particular CPD area, an activity must meet the criteria set out in column 2 of the table. In each case, the activity must be designed to enhance participants' skills and abilities in the particular area.

24. Subsection 7(1) sets out a range of criteria, additional to those in the table, that apply to all qualifying CPD activities. These criteria include:

- a requirement of sufficient intellectual or practical content; and
- a requirement that the activity be conducted or led by appropriate persons who have sufficient standing, expertise, academic qualifications and practical experience. (This requirement does not apply to activity that is professional or technical reading.)

These criteria ensure that the content and presentation of qualifying CPD activities will achieve the overall objectives of the CPD requirements.

## **Section 8: Approval of CPD activities by responsible licensees**

25. A responsible licensee will have a level of responsibility for the CPD activities of relevant providers for whom it is a responsible licensee.

26. Under subsection 9(3), a relevant provider who has a responsible licensee must complete at least 70% of the minimum number of CPD hours in qualifying CPD activities that are approved by the responsible licensee. Section 8 requires a responsible licensee to approve sufficient activities to enable its responsible providers to meet this requirement.

27. However, subsection 8(2) ensures that only activities that meet the criteria in section 9 for qualifying CPD activities can be so approved.

28. When approving an activity as a qualifying CPD activity, the responsible licensee will have to determine (under subsection 8(3)) the number of hours that can be counted for completing the activity.

## **Section 9: Requirements for CPD**

29. This section sets out the CPD requirements that each relevant provider must satisfy in a CPD year.

30. Subsection 9(1) specifies 40 hours as the minimum number of hours of qualifying CPD activities that a relevant provider must complete. Subsection 9(2) requires that, of the 40 hours, a minimum number of hours must be spent in the areas of technical competence, client care and practice, regulatory compliance and consumer protection and professionalism and ethics. This applies to all relevant providers.

31. Subsection 9(3) applies to relevant providers who have responsible licensees. As noted in paragraph 26 above, at least 70% of the minimum number of hours must be spent on

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qualifying CPD activities approved by the responsible licensee. This means that at least 28 hours will need to be spent on approved activities.

32. Subsection 9(4) sets a minimum for CPD activity that consists of professional or technical reading. Only 4 hours may be counted.

33. Subsection 9(5) provides for relevant providers who themselves lead or conduct qualifying CPD activities. They may count the number of hours spent in leading or conducting the activity towards meeting their CPD requirements.

34. Subsection 9(6) deals with CPD years that are affected by subsection 1546E(5) of the Act. That subsection applies where a licensee's first CPD year starts after 1 January 2019 and, before its first CPD year started, the licensee was a licensee, or authorised a relevant provider to provide personal advice to retail clients, on its behalf, in relation to relevant financial products. The subsection effectively extends the period of the first CPD year to cover the additional period between 1 January 2019 and the actual start of the CPD year. Subsection 9(6) provides that the minimum hours set out, or worked out in accordance with, the earlier provisions of section 9 are extended proportionately.

## **Section 10: Other requirements on employers and responsible licensees**

35. Subsection 10(1) requires the employer of, and the responsible licensee for, a relevant provider to make appropriate resources and opportunities available so that the provider can meet the requirements of the determination.

36. Subsection 10(2) requires each responsible licensee monitor the implementation of its relevant provider's CPD plans check compliance with its CPD policy and with this determination by itself and the relevant providers for whom it is the responsible licensee. The licensee's CPD policy must set out how it will do this (see paragraph 5(3)(c)).

## **Section 11: Career breaks**

37. This section deals with relevant providers who have not been practising as a relevant provider for a continuous period of 2 years or more. On their return to practice, their CPD plans for the first CPD year after they return must be approved by their responsible licensee (if they have one) or employer who is a licensee (if they are employed).

38. Subsection 11(4) requires that the employer or licensee must be satisfied that the CPD plan to be approved will appropriately address gaps in the relevant provider's competence, knowledge and skills arising from the provider's absence from practice.

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## **Section 12: Record-keeping**

39. This section requires relevant providers to complete and maintain a number of records relevant to CPD activities and to make them available to the responsible licensee on request. All record must be kept for 7 years (subsection 12(3)).

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