

EXPOSURE DRAFT



Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018

Financial Adviser Standards and Ethics Authority Ltd, the standards body for Part 7.6 of the *Corporations Act 2001*, makes the following determination.

Dated 2018

The common seal of Financial)
Adviser Standards and Ethics)
Authority Ltd, affixed by authority)
of its directors in the presence of:)

.....
Signature of director

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Signature of director

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Name of director (block letters)

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Name of director (block letters)

DRAFT ONLY—NOT FOR SIGNATURE

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1 Name

This instrument is the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.

2 Commencement

This instrument commences the day after it is registered.

3 Authority

This instrument is made under subparagraph 921U(2)(a)(iv) of the Act.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including **CPD year** (section 910A of the Act), **financial services licensee** (section 761A of the Act), **provisional relevant provider** (section 910A of the Act), **relevant provider** (section 910A of the Act) and **retail client** (sections 761G and 761GA of the Act).

(1) In this determination:

Act means the *Corporations Act 2001*.

CPD is short for continuous professional development.

CPD area: see paragraph 7(1)(a).

CPD plan has the meaning given by subsection 6(1).

CPD policy has the meaning given by subsection 5(1).

licensee means a financial services licensee.

qualifying CPD activity has the meaning given by subsection 7(1).

responsible licensee, for a relevant provider, means the financial services licensee who has authorised the provider to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

(2) A reference in this determination to a relevant provider's **CPD year** is a reference to:

- (a) if the relevant provider is a financial services licensee—the provider's CPD year; or
- (b) otherwise—the CPD year of the provider's responsible licensee.

5 CPD policies

- (1) Each responsible licensee of a relevant provider, and each licensee who is a relevant provider, must develop and adopt a policy (**CPD policy**) and may amend the policy at any time. The policy must be adopted before the start of the licensee's first CPD year.
- (2) A CPD policy, and an amendment of a CPD policy, must be in writing.

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Section 6

- (3) A licensee's CPD policy (including as amended) must do all the following:
- (a) specify the licensee's CPD year;
 - (b) set out the licensee's overall approach to its CPD obligations and the CPD obligations of relevant providers for whom it is responsible licensee;
 - (c) describe how the licensee will:
 - (i) if required by section 11—assess and approve CPD plans of relevant providers; and
 - (ii) monitor the implementation of CPD plans of relevant providers; and
 - (iii) assess and approve activities for the purposes of section 8, and attribute hours to them; and
 - (iv) ensure that the relevant providers for whom it is the responsible licensee meet the requirements of subsection 9(3); and
 - (v) check compliance with the CPD policy and with this determination by itself and the relevant providers for whom it is the responsible licensee; and
 - (vi) record and maintain evidence of completion of, and the outcomes of, qualifying CPD activities; and
 - (vii) ensure that records required by this determination are completed and maintained.

Note 1: For subparagraph (c)(iv), subsection 9(3) requires that at least 70% of the minimum CPD hours required (which is 28 hours) must be in CPD activities approved by the licensee.

Note 2: For relevant providers' CPD plans see section 6.

- (4) Each licensee must publish its CPD policy, including as amended, on its website, and must ensure that the policy is accessible by relevant providers for whom it is the responsible licensee.

6 Relevant providers' CPD plans

- (1) Each relevant provider must, before the start of each CPD year applicable to the provider, prepare a plan (a **CPD plan**), and may amend the plan at any time.
- (2) A CPD plan, and an amendment of a CPD plan, must be in writing.
- (3) A relevant provider's CPD plan (including as amended) must identify areas for improvement in the provider's competence, knowledge and skills and describe the qualifying CPD activities the provider will complete during the CPD year to achieve those improvements.
- (4) If the relevant provider has an employer who is a financial services licensee:
 - (a) the licensee must monitor the provider's implementation of the plan; and
 - (b) the provider must give the employer a copy of the plan, and any information relating to implementation, on request.

Note: See also section 11.

7 Qualifying CPD activities

- (1) An activity is a **qualifying CPD activity** if all the following requirements are satisfied:

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- (a) the activity is in one of the **CPD areas** in the table to this section (the areas are referred to by the names in column 3 of the table);
 - (b) the activity has sufficient intellectual or practical content;
 - (c) the activity primarily deals with matters related to the provision of financial product advice;
 - (d) the activity is led or conducted by 1 or more persons who are appropriate, and have sufficient standing, expertise, academic qualifications and practical experience;
 - (e) the activity is designed to enhance relevant providers' knowledge and skills in areas that are relevant to the provision of financial product advice.
- (2) Paragraph (1)(d) does not apply to an activity that consists of professional or technical reading.
- (3) If a CPD activity is in more than 1 CPD area, it is only to be counted as being in the CPD area to which it predominantly relates.

Item	Column 2	Column 3
	Content of CPD activity	CPD area
1	The activity is designed to enhance participants' technical proficiency 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
2	The activity is designed to enhance participants' ability to act as a client-centric practitioner in advising retail clients.	Client care and practice
3	The activity is designed to enhance participants' understanding of applicable legal obligations and how to comply with them.	Regulatory compliance and consumer protection
4	The activity is designed to enhance participants' capacity to act as an ethical professional.	Professionalism and ethics
5	The activity is designed to maintain and extend participants' professional capabilities, knowledge and skills, including keeping up to date with regulatory, technical and other relevant developments, but is not in an area referred to in another item of this table.	General

8 Approval of CPD activities by responsible licensees

- (1) A responsible licensee must approve, as qualifying CPD activities, at least as many activities as will enable the relevant providers for whom it is responsible licensee to comply with subsection 9(3).
- Note: Subsection 9(3) requires that at least 70% of the minimum number of CPD hours spent by relevant providers (which is 28 hours) must be spent on qualifying CPD activities approved by the responsible licensee.
- (2) A responsible licensee must not approve an activity for the purposes of subsection (1) unless satisfied that the activity is a qualifying CPD activity.
- (3) The maximum number of hours that can be counted for a qualifying CPD activity approved by a responsible licensee is the number specified in the approval.

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Section 9

9 Requirements for CPD

Number of hours for each CPD year

- (1) Subject to this section, the minimum number of hours of qualifying CPD activities that a relevant provider must complete during a CPD year is 40.

Note: Provisional relevant providers do not have to meet CPD requirements.

- (2) The qualifying CPD activities must include:
 - (a) a minimum of 5 hours in the area of technical competence; and
 - (b) a minimum of 5 hours in the area of client care and practice; and
 - (c) a minimum of 5 hours in the area of regulatory compliance and consumer protection; and
 - (d) a minimum of 9 hours in the area of professionalism and ethics.

- (3) If the relevant provider has a responsible licensee, at least 70% of the minimum number of hours referred to in subsection (1) must be spent on qualifying CPD activities approved by the licensee.

Note 1: This means that at least 28 hours will have to be spent on approved activities.

- (4) In any CPD year, no more than 4 hours of an activity that consists of professional or technical reading may be counted towards a relevant provider's compliance with this determination.
- (5) For the purposes of this section, a relevant provider who leads or conducts a qualifying CPD activity may count, for the purposes of this section, the number of hours spent in leading or conducting the activity.

Subsection 1546E(5) of the Act

- (6) If a CPD year is affected by section 1546E(5) of the Act, subsection (1), (2) (3) and (4) of this section apply, in relation to the CPD year, as if each of the minimum number of hours specified in, or worked out in accordance with, those provisions were increased in proportion to the increase in the period of the CPD year as determined in accordance with subsection 1546E(5) of the Act.

Note: Subsection 1546E(5) of the Act 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.

10 Other requirements on employers and responsible licensees

- (1) Each of the employer of, and the responsible licensee for, a relevant provider must make appropriate resources and opportunities available to the provider to enable the provider to meet the requirements of this determination.
- (2) A responsible licensee for a relevant provider must:
 - (a) monitor the implementation of the provider's CPD plans; and
 - (b) check compliance with the licensee's CPD policy and with this determination by itself and the relevant providers for whom it is the responsible licensee.

11 Career breaks

- (1) This section applies if a relevant provider has not been practising as a relevant provider for a continuous period of 2 years or more.
- (2) The provider must not resume practice as an employee of a financial services licensee unless the licensee has approved the provider's CPD plan for the first CPD year after the provider resumes practice.
- (3) The provider must not resume practice as an authorised representative of a licensee (other than a licensee who is the provider's employer) unless the licensee has approved the provider's CPD plan for the first CPD year after the provider resumes practice.
- (4) An employer or licensee must not approve a CPD plan under this section unless satisfied that it is appropriate to address gaps in the relevant provider's competence, knowledge and skills arising from the provider's absence from practice.

12 Record-keeping

- (1) A relevant provider must make and maintain complete and accurate records of:
 - (a) the qualifying CPD activities the provider undertakes; and
 - (b) when they are undertaken; and
 - (c) the number of hours spent on each activity; and
 - (d) evidence of completion of the activity and the outcomes of the activity; and
 - (e) the progress of implementation of the provider's CPD plan.
- (2) A relevant provider must provide a copy of the records to its responsible licensee on request.
- (3) A person required under this section to make a record must keep the record for at least 7 years after the date it was made.