

EXPOSURE DRAFT



Financial Adviser Standards and Ethics Authority Ltd

*Corporations (Provisional Relevant Providers Professional Year Standard)
Determination 2018*

Explanatory Statement

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Corporations (Provisional Relevant Providers Professional Year Standard) Determination 2018

Key information

1. This instrument sets requirements for work and training that person must undertake to meet the third of the education and training standards under section 921B of the *Corporations Act 2001*.
2. The person is called a **provisional relevant provider** while undertaking this work and training.¹ The person must spend at least 1 year undertaking this work and training (subsection 921B(4)).
3. **Date of effect:** the day after this instrument is registered in the Federal Register of Legislation (see section 2).

Glossary

4. Words and expression used in this statement are defined in the following table.

Expression	Meaning
<i>ASIC</i>	Australian Securities and Investments Commission.
<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>client</i>	a reference to a client, in relation to a relevant provider, includes a reference to the retail clients of the provider's responsible licensee.
<i>completion certificate</i>	a certificate that a provisional relevant provider's supervisor gives at the end of quarter 1, 2, 3 or 4. The provider's responsible licensee also gives the certificate at the end of quarter 4, on the completion of the professional year.
<i>education and training standards</i>	the standards set out in section 921B of the Act.
<i>ethical dilemma</i>	see subsection 10(3).
<i>final completion certificate</i>	the completion certificate given at the end of quarter 4, on the completion of the professional year.
<i>financial product advice</i>	defined in section 766B of the Act.
<i>financial services</i>	defined in Division 4 of Part 7.1 of the Act.

¹ Under the *Corporations (Provisional Relevant Planner—Expressions Standard) Determination 2018*, they may also use or assume "provisional financial planner" or "provisional financial adviser".

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Expression	Meaning
<i>financial services licensee</i> or <i>licensee</i>	a person that holds a financial services licence.
<i>logbook</i>	the record that provisional relevant providers must keep under subsection 13(1).
<i>professional year</i>	the period that a provisional relevant provider must spend undertaking supervised work activities and structured training as part of meeting the education and training standards set out in section 921B of the Act.
<i>professional year plan</i>	the plan that must be prepared and agreed under subsection 9(1).
<i>personal advice</i>	defined in subsection 766B(3) of the Act.
<i>provisional relevant provider</i>	defined in subsection 910A of the Act.
<i>quarter</i>	3 months or, for a provisional relevant provider who is undertaking the professional year on a part-time basis, a period equal to a quarter of the period of the professional year.
<i>relevant financial product</i>	defined in subsection 910A of the Act.
<i>relevant provider</i>	defined in subsection 910A of the Act.
<i>responsible licensee</i>	the licensee who has authorised the provisional 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.
<i>structured training</i>	training that meets the requirements of subsection 11(1).
<i>supervisor</i>	defined in subsection 921F(2) of the Act.
<i>work activities</i>	activities described in subsection 10(1).

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

Context

6. The 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).

7. 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

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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.

8. The third of the standards requires a person to have completed at least 1 year of work and training that meets requirements set by the Authority. Under subparagraph 921U(2)(a)(iii) of the Act, the Authority must, by legislative instrument, set requirements for this work and training.

9. Section 921F of the Act requires a provisional relevant provider to be supervised during his or her professional year, and requires that retail clients be informed about the status of the provisional relevant provider.

10. This determination specifies the requirements for the work and training a provisional relevant provider will undertake during the professional year.

Preliminary matters

11. Section 1 provides that the name of the instrument is the *Corporations (Provisional Relevant Providers Professional Year Standard) Determination 2018*.

12. Section 2 provides that the determination will commence on the day after it is registered in the Federal Register of Legislation.

13. Section 3 sets out the legislative authority for making the determination: subparagraph 921U(2)(a)(iii) and subsection 921U(5) of the Act.

14. Section 4 defines “the Act” as the *Corporations Act 2001* and refers readers to the definitions of a range of expressions in the Act. These, and other definitions relevant to the Determination, are in the Glossary at paragraph 4 above.

Section 5: Period of professional year

15. This section sets out the period of a professional year. The minimum is 1 year (see subsection 921B(4) of the Act). For a provisional relevant provider undertaking a professional year on a part-time basis, the period of the professional year, and of each quarter, is extended accordingly.

16. The minimum number of hours of work activities and structured training are the same, whether the professional year is being undertaken on a full-time or part-time basis (see paragraphs 34 and 38).

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Section 6: Outcomes and key competencies

17. This section sets out the outcomes that a provisional relevant provider is expected to achieve, and the key competencies that a provisional relevant provider is expected to acquire and satisfactorily demonstrate, during the professional year.

Section 7: Meeting the standard

18. This section sets out when a provisional relevant provider will be taken to have met the requirements of this determination (and so met the third education and training standard, in subsection 921B(4) of the Act).

19. A provisional relevant provider is taken to have met these requirements only if the supervisor and the responsible licensee both give the provider a final completion certificate. Requirements for completion certificates generally, and final completion certificates, are set out in section 12.

20. Subsection 7(2) makes it clear that only provisional relevant providers are required to undertake a professional year.

Section 8: Supervision requirements

21. This section imposes 2 requirements about supervision, which is an essential aspect of the professional year. Subsection 921F(3) of the Act requires a supervisor to ensure that appropriate supervision is provided.

22. The supervisor must have at least 2 years experience as a relevant provider (not counting his or her own professional year).

23. Subsection 8(2) imposes additional requirements on the provisional relevant provider's responsible licensee. It also will have a separate duty to ensure that appropriate supervision is provided. In addition, it must make appropriate resources and opportunities available to the provisional relevant provider and the supervisor to enable the provider to complete the professional year successfully.

Section 9: Professional year plan

24. To ensure that a provisional relevant provider's professional year is undertaken in a planned and structured way, this section requires the provider, the supervisor and the responsible licensee to develop and agree a professional year plan.

25. Subsection 9(2) sets out a number of minimum requirements for the plan, including:

- identification of the provisional relevant provider, the supervisor and the responsible licensee;

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- identification of any other relevant providers who will be involved in supervising the provisional relevant provider (for example, for specialist areas);
- the period of the professional year and the quarters;
- the resources and opportunities that the responsible licensee will make available; and
- a detailed account of the work activities and structured training the provisional relevant provider will undertake in each quarter of the professional year.

26. Subsection 9(4) requires the professional year to be undertaken in accordance with the professional year plan.

27. Subsection 9(5) requires all three parties to co-operate to ensure that the professional year plan is implemented properly.

Section 10: Work activities

28. This section sets requirements for the work activities that a provisional relevant provider must undertake during the professional year.

29. Subsection 10(2) is an overall requirement for the provisional relevant provider's work activities. They must be such that, if the provider completes all the activities and the structured training, it can be reasonably expected that the provider will have achieved the outcomes and acquired the key competencies described in section 6. This ensures that the work program for the professional year will be directed at achieving the objectives of the standard in the Act.

Quarterly progression

30. Work activities are structured into 4 quarters, described in paragraph 15 above.

31. Work requirements are to be phased so that the provisional relevant provider will be increasingly exposed to direct contact with retail clients and take on an increasing share of responsibility for the work. A phased approach allows the supervisor and the responsible licensee to ensure that the provisional relevant provider builds on work done during the professional year in an orderly way.

32. Section 12 deals with progress through the professional year.

Ethical dilemmas

33. A key part of the work program during a professional year will be ensuring that provisional relevant providers have an adequate and appropriate appreciation of the ethical dimensions of their work and are able to identify and handle ethical issues appropriately. Subsection 10(3) provides that, for each of the 3rd and 4th quarters of the professional year, the provisional relevant provider must identify and resolve at least 2 problems (called *ethical dilemmas*) relevant to practice of a relevant provider. The objective of this exercise is to build

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in the provider a knowledge and understanding of the Code of Ethics and the ability to resolve ethical issues as they arise.

Minimum number of hours

34. Subsection 10(4) specifies the minimum number of hours of work activity that the provisional relevant provider must undertake during their professional year: 1500 hours. This requirement applies whether the professional year is being undertaken on a full-time or part-time basis.

Notifications to retail clients

35. Subsection 10(5) requires the responsible licensee to ensure that the retail clients who deal with a provisional relevant provider are informed in writing that the provider is undertaking supervised work and training and of the name and contact details of the supervisor. This is in addition to the requirements of subsection 921F(6) of the Act.

Section 11: Structured training

36. This section sets out requirements for the structured training component of the professional year. Training can be:

- training provided by or facilitated by the licensee or supervisor; or
- a bridging course required to satisfy the first of the education training standards—these are determined by the Authority under paragraph 1546E(1)(B) of the Act in another legislative instrument; or
- a course of study approved or provided by a professional association in the context of achieving professional designations or expertise or accreditation in particular specialist areas.

37. Subsection 11(2) requires structured training to be conducted separately from work activities. It is important that the provisional relevant provider set aside time from ordinary work activities to undertake the structured training, even if the structured training is provided as a short course or other lectures or presentations in the workplace.

38. Subsection 11(3) requires at least 100 hours of structured training activities to be undertaken during the professional year. This requirement applies whether the professional year is being undertaken on a full-time or part-time basis.

Section 12: Progress through professional year

General requirements

39. As described above in relation to section 9, the determination requires a phased approach to the professional year activities. Generally speaking, section 12 requires that a provisional relevant provider is not to progress from one quarter's activities to the next quarter's activities unless the provider has actually completed the work activities and

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structured training planned for that quarter and his or her supervisor has given a completion certificate, certifying satisfactory completion of the work for that quarter.

40. Subsection 12(3) sets out requirements for completion certificates. A person giving a completion certificate must certify satisfactory completion of all the work activities and structured training for the relevant period. If the completion certificate relates to quarter 3 or 4, it must also state that the provisional relevant provider satisfactorily identified and resolved the ethical dilemmas (see subsection 9(3)).

41. Section 12(5) sets out general criteria to be taken into account when considering whether to give a completion certificate.

Exam

42. Subsection 12(2) provides that a provisional relevant provider cannot start quarter 3 activities unless he or she has passed the exam which will be approved under the *Corporations (Relevant Providers Exam Standard) Determination 2018*. Passing that exam is one of the educational training standards specified in section 921B of the act.

Accelerated progression

43. Subsection 12(4) provides accelerated progression through a professional year in a limited number of circumstances. Accelerated progression is only available in quarter 1 or 2. The requirement that the provisional relevant provider pass the prescribed exam will still apply before the provider can start quarter 3 activities.

Requirements for final completion certificates

44. Subsections 12(6), (7) and (8) impose additional requirements for a final completion certificate. In particular:

- the certificate must also include a certification by both the supervisor and the responsible licensee that the provider has actually achieved the objectives and acquired the competencies set out in section 4; and
- the responsible licensee must have conducted a file audit of at least 5 files on which the provisional relevant provider worked and must be satisfied, having regard to the outcome of that audit, that the provisional relevant provider can be relied on to comply with applicable legal and regulatory requirements in relation to the provision of financial product advice or financial services.

Section 13: Record-keeping

45. This section requires a provisional relevant provider to keep a logbook of his or her work activities and structured training. It must also record the notifications to clients about the provisional relevant provider's status required by subsection 10(5). This logbook will be essential to validate the provider's successful completion of the professional year.

46. Under paragraph 13(2)(a), the supervisor must sign off on the logbook.

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47. Under paragraph 13(2)(b), the supervisor must keep records of his or her assessments of the provisional relevant provider's work and progress, including the reasons for those assessments.

48. Under subsection 13(3), the responsible licensee must keep records of the reasons underlying the completion certificates that it must give so that a provisional relevant provider completes the professional year.

49. All record must be kept for 7 years (subsection 13(4)).

Section 14: Notifications

50. This section requires ASIC to be notified of any accelerated progression of a provisional relevant provider (under subsection 9(3)) and of the issue of a final completion certificate. These notifications are in addition to the requirements of section 922H of the Act.

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