

# EXPOSURE DRAFT



## Corporations (Provisional Relevant Providers Professional Year 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

.....  
Name of director (block letters)

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Signature of director

.....  
Name of director (block letters)

**DRAFT ONLY—NOT FOR SIGNATURE**

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# EXPOSURE DRAFT



# EXPOSURE DRAFT

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## Contents

1	Name .....	1
2	Commencement .....	1
3	Authority .....	1
4	Definitions.....	1
5	Period of professional year .....	2
6	Outcomes and key competencies.....	2
7	Meeting the standard .....	3
8	Supervision requirements .....	3
9	Professional year plan .....	3
10	Work activities.....	4
11	Structured training.....	6
12	Progress through professional year.....	6
13	Record-keeping.....	8
14	Notifications .....	9



# EXPOSURE DRAFT

## 1 Name

This is the *Corporations (Provisional Relevant Providers Professional Year Standard) Determination 2018*.

## 2 Commencement

This determination commences the day after it is registered.

## 3 Authority

This determination is made under subparagraph 921U(2)(a)(iii) and subsection 921U(5) of the Act.

## 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) *Code of Ethics*: section 910A;
- (b) *financial services licensee*: section 761A of the Act;
- (c) *professional association*: see section 910A of the Act.
- (b) *provisional relevant provider*: section 910A of the Act;
- (c) *relevant provider*: section 910A of the Act;
- (d) *retail client*: sections 761G and 761GA of the Act;
- (e) *supervisor*: section 910A of the Act.

In this determination:

*Act* means the *Corporations Act 2001*.

*client*, in relation to a relevant provider, includes a retail client of the principal of the relevant provider.

*completion certificate* has the meaning given in paragraph 12(1)(b).

*ethical dilemma* has the meaning given in subsection 10(3).

*final completion certificate* has the meaning given in subsection 12(6).

*logbook* has the meaning given in subsection 13(1).

*professional year*, for a provisional relevant provider, means the period of work and training undertaken by the provider that meets the requirements of this determination.

Note: For the period see subsection 5(1), which covers both full-time and part-time work.

*professional year plan* has the meaning given in subsection 9(1).

*quarter* means:

- (a) a period of 3 months; or
- (b) for a provisional relevant provider who is undertaking the work on a part-time basis—a period equal to a quarter of the period of the professional year.

# EXPOSURE DRAFT

## Section 5

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*responsible licensee*, for a provisional 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.

*structured training* has the meaning given in subsection 11(1).

*work activities* has the meaning given in subsection 10(1).

### 5 Period of professional year

- (1) The period of a provisional relevant provider's professional year must be at least 1 year.
- (2) If a provisional relevant provider is undertaking the work on a part-time basis, the period must be increased to the extent necessary to ensure that the work activities and structured training can be completed.

### 6 Outcomes and key competencies

#### *Outcome of the professional year*

- (1) The outcomes to be achieved through the professional year of a provisional relevant provider are that, at the end of the year, the provider:
  - (a) is able to undertake all the activities specified in subsection (2); and
  - (b) has acquired and satisfactorily demonstrated all the key competencies specified in subsection (3); and
  - (c) has passed the exam approved by the *Corporations (Relevant Providers Exam Standard) Determination 2018*.

#### *Activities*

- (2) The activities are:
  - (a) to analyse, compare and apply underlying principles and theories from relevant areas of technical competence to complete work assignments and make decisions, and to do so efficiently; and
  - (b) to integrate technical competence and professional skills in managing and completing work assignments; and
  - (c) to understand and apply the Code of Ethics, including in relation to inappropriate personal advantage, and professional values and attitudes, to work assignments; and
  - (d) to present information and recommendations, and explain ideas, orally and in writing in a clear confident and professional manner likely to be understood by retail clients; and
  - (e) to make appropriate judgments on courses of action, drawing on professional values, ethics and attitudes; and
  - (f) with appropriate consultation, to assess, research and develop appropriate solutions for complex business or client problems and issues.

#### *Key competencies*

- (3) The key competencies are:

- (a) ***technical competence***: technical proficiency to ensure that advice strategies are appropriate to the objectives, financial situations and needs of different classes of retail clients;
  - (b) ***client care and practice***: the ability to act as a client-centric practitioner in advising both new and existing clients;
  - (c) ***regulatory compliance and consumer protection***: a satisfactory understanding of applicable legal obligations and how to comply with them; and
  - (d) ***professionalism and ethics***: the ability to act as an ethical professional.
- (4) Subsection (3) does not limit subsection (2).

## 7 Meeting the standard

- (1) A provisional relevant provider is taken to have met the requirements of this determination if the supervisor and the responsible licensee give the provider a final completion certificate in accordance with this determination.
- (2) To avoid doubt, a relevant provider who is not a provisional relevant provider is not required to meet the requirements of this determination.

Note: For example, a relevant provider who is absent from the industry for a period does not, on his or her return, become a provisional relevant provider. The provider may need to comply with additional requirements under the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.

## 8 Supervision requirements

### *Supervisor requirements*

- (1) The supervisor of a provisional relevant provider must have at least 2 years experience working as a relevant provider (not counting any period during which the supervisor was a provisional relevant provider).

Note: This subsection is additional to subsection 921F(2) of the Act.

### *Responsible licensee requirements*

- (2) The responsible licensee for a provisional relevant provider must:
  - (a) ensure that appropriate supervision is provided to the provider; and
  - (b) make appropriate resources and opportunities available to the provider and the supervisor of the provider to enable the provider to meet the requirements of this determination.

Note: This subsection is additional to subsection 921F(3) of the Act.

## 9 Professional year plan

- (1) A provisional relevant provider, the supervisor and the responsible licensee must develop and agree a plan for the provider's professional year (a ***professional year plan***), and may agree to vary such a plan.
- (2) A professional year plan (including as varied) must:

# EXPOSURE DRAFT

## Section 10

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- (a) identify the provisional relevant provider, the supervisor and the responsible licensee;
  - (b) identify any other relevant provider who will be involved in the supervision of the provider, including in respect of areas of specialist expertise;
  - (c) identify the period of the professional year and of each quarter of the professional year;
  - (d) identify the particular work and training outcomes to be achieved by the provider during the professional year and during each quarter of the professional year;
  - (e) describe the resources and opportunities that the responsible licensee will make available in accordance with paragraph 8(2)(b);
  - (f) for each quarter of the professional year, describe in detail the work activities and the structured training that the provider will undertake; and
  - (g) set out any other arrangements for the professional year.
- (3) A professional year plan, and any variation of a professional year plan, must be in writing.
- (4) A provisional relevant provider's professional year must be undertaken in accordance with the provider's professional year plan.
- (5) The provisional relevant provider, the supervisor and the responsible licensee must cooperate to ensure, and the supervisor and the responsible licensee must each take reasonable steps to facilitate, compliance with subsection (4).

### 10 Work activities

- (1) In each quarter of a provisional relevant provider's professional year, the provider must undertake the activities (*work activities*) specified in the following table for the quarter.

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Professional year work structure		
Item	During this quarter of the professional year ...	the provisional relevant provider must undertake ...
1	quarter 1 <i>(client observations and supporting supervisor or other relevant provider)</i>	all the following work activities, under the direct supervision of the supervisor or other relevant providers nominated by the supervisor: <ol style="list-style-type: none"><li>(a) shadow the supervisor or other relevant providers nominated by the supervisor in meetings with a range of clients;</li><li>(b) complete post-meeting documentation as required and undertake follow up actions;</li><li>(c) discuss with the supervisor appropriate advice strategies suitable to the clients' objectives, financial situations and needs;</li><li>(d) actively participate in administration and "back office" activities.</li></ol>

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# EXPOSURE DRAFT

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<b>Professional year work structure</b>		
<b>Item</b>	<b>During this quarter of the professional year ...</b>	<b>the provisional relevant provider must undertake ...</b>
2	quarter 2 <i>(supervised client engagement and advice preparation)</i>	all the following work activities, under the direct supervision of the supervisor or other relevant providers nominated by the supervisor: (a) prepare for client meetings; (b) conduct meetings with clients; (c) prepare draft documentation for clients, including: (i) advice strategies; and (ii) statements of advice; each suitable to the clients' objectives, financial situations and needs; (d) complete relevant administration and "back office" activities.
3	each of quarters 3 and 4 <i>(indirect supervision of client engagement and advice preparation)</i>	(a) all the following work activities, under the limited or indirect supervision by the supervisor or other relevant providers nominated by the supervisor: (i) model strategies and research products to determine suitability to clients' objectives, financial situations and needs; (ii) determine and prepare appropriate client documentation (such as statements of advice); (iii) complete relevant administration and "back office" activities; and (b) satisfactorily identify and resolve ethical dilemmas in accordance with subsection (3).

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Note: See section 12 for progress through the professional year.

- (2) The work activities must be such that, if the provider completes all the work activities and structured training in the provider's professional year plan, it can be reasonably expected that the provider will have achieved the outcomes, and acquired the key competencies, set out in section 6.

### *Ethical dilemmas*

- (3) In each of quarters 3 and 4 of a provisional relevant provider's professional year, the provider must demonstrate:
- (a) a knowledge and understanding of the Code of Ethics; and
  - (b) an ability to resolve ethical issues in an appropriate way;
- by identifying and resolving at least 2 dilemmas (*ethical dilemmas*) relevant to practice as a relevant provider.

# EXPOSURE DRAFT

## Section 11

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### *Minimum number of hours*

- (4) A provisional relevant provider must complete at least 1,500 hours of work activities in accordance with this section during the provider's professional year.

### *Notification*

- (5) The responsible licensee of a provisional relevant provider must ensure that, before the provider has any direct or indirect interaction with a retail client, the client is informed, in writing:
- (a) that the provider is undertaking supervised work and training; and
  - (b) of the name and contact details of the provider's supervisor.

## 11 Structured training

- (1) A provisional relevant provider must undertake, during the professional year, training (***structured training***) of at least one of the following kinds:
- (a) training provided by or facilitated by the provider's supervisor or licensee relevant to practice as a relevant provider;
  - (b) a course determined in a legislative instrument for the purposes of paragraph 1546B(1)(b) of the Act;
  - (c) a course of study approved or provided by a professional association for the purposes of:
    - (i) achieving a professional designation; or
    - (ii) achieving expertise or accreditation in a particular area of financial advice or a particular kind of financial product.

Note 1: For paragraph (1)(b) see the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2018*.

Note 2: For subparagraph (1)(c)(ii), an example of a particular area of financial advice is advice relevant to self-managed superannuation funds.

- (2) Structured training must be conducted as a separate activity from work activities.

### *Minimum number of hours*

- (3) A provisional relevant provider must complete at least 100 hours of structured training activities in accordance with this section during the provider's professional year.

## 12 Progress through professional year

### *Requirements for starting a quarter*

- (1) A provisional relevant provider must not undertake work activities or structured training for a particular quarter (except quarter 1) of a professional year unless, for each prior quarter:
- (a) the provider has completed the work activities and the structured training; and
  - (b) the supervisor of the provider has given a certificate as set out in subsection (3) (a ***completion certificate***).

# EXPOSURE DRAFT

## *Exam*

- (2) A provisional relevant provider must not start to undertake work activities or structured training for quarter 3 of the provider's professional year unless the provider has passed the exam approved by the *Corporations (Relevant Providers Exam Standard) Determination 2018*.

Note 1: Work activities in quarter 3 are subject to limited or indirect supervision.

Note 2: A provisional relevant provider must be authorised by the responsible licensee before the provider is able to provide financial product advice to retail clients.

## *Completion certificates*

- (3) Subject to subsections (4) and (6), if, at the end of a quarter of a provisional relevant provider's professional year, the provider's supervisor is satisfied that:
- (a) the provider has completed and maintained his or her logbook for the quarter; and
  - (b) the provider has satisfactorily completed all the work activities and structured training set out in the professional year plan for the quarter; and
  - (c) for quarter 3 or 4—the provider has satisfactorily identified and resolved ethical dilemmas as required by subsection 9(3); and
  - (d) for quarter 4—the provider has achieved the outcomes, and acquired the key competencies, set out in section 6;

the supervisor must give a written certificate to that effect.

Note: For quarter 4, see subsections (6), (7) and (8).

## *Accelerated progression*

- (4) A completion certificate for quarter 1 or 2 may be given before the end of the quarter if the supervisor is satisfied that:
- (a) the provider has achieved the outcomes set out in the professional year plan for the quarter; and
  - (b) the provider is capable of satisfactorily completing the work activities and structured training for the next quarter.

A completion certificate given under this subsection must expressly state that it is so given.

Note 1: This subsection does not affect the requirements of subsection (2).

Note 2: A provisional relevant provider must be authorised by the responsible licensee before the provider is able to provide financial product advice to retail clients (quarter 3).

## *General assessment criteria*

- (5) The following criteria must be applied in assessing whether to give a provisional relevant provider a completion certificate for a quarter:
- (a) whether the provider has completed and maintained his or her logbook for the quarter;
  - (b) the number of hours of work activities the provider has undertaken, in accordance with the professional year plan, up to the end of the quarter;
  - (c) the number of hours of structured training the provider has undertaken, in accordance with the professional year plan, up to the end of the quarter;

# EXPOSURE DRAFT

## Section 13

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- (d) the extent to which the provider has achieved the particular work and training outcomes set out in the professional year plan for the quarter;
- (e) the extent to which the provider is capable of satisfactorily completing the work and structured training for the next quarter;
- (f) for quarter 3 or 4—whether the provider’s identification and resolution of the ethical dilemmas as required by subsection 9(3) demonstrate the ability to identify ethical issues and resolve them appropriately;
- (g) whether the provider has achieved satisfactory progress against the requirements of his or her professional year plan, including satisfactorily addressing areas for further development.

### *Restrictions on giving final completion certificates*

- (6) A completion certificate for quarter 4 of a provisional relevant provider’s professional year (***final completion certificate***) must not be given unless the provider has, during the professional year:
  - (a) completed at least 1,500 hours of work activities; and
  - (b) completed at least 100 hours of structured training;in accordance with the professional year plan and has passed the exam approved by the *Corporations (Relevant Providers Exam Standard) Determination 2018*.
- (7) A final completion certificate for a provisional relevant provider is not valid unless the provider’s responsible licensee also gives the certificate.
- (8) The responsible licensee must not give a final completion certificate unless:
  - (a) the licensee is satisfied of the matters set out in subsection (3); and
  - (b) the licensee:
    - (i) has conducted an audit of at least 5 client files on which the provider worked during the professional year; and
    - (ii) is satisfied, having regard to the work done by the provider on those files, that the provider can be relied on to comply with applicable legal and regulatory requirements in relation to the provision of financial product advice and financial services.

## 13 Record-keeping

- (1) A provisional relevant provider must complete and maintain accurate records (a ***logbook***) of:
  - (a) the hours spent on work activities and structured training during his or her professional year; and
  - (b) details of the work activities and structured training undertaken, including when they were undertaken; and
  - (c) each notification under subsection 10(5).
- (2) The supervisor of a provisional relevant provider must:
  - (a) if satisfied that the provider’s logbook is complete and accurate—confirm in writing the contents of the logbook; and
  - (b) make and maintain complete and accurate records of the supervisor’s assessments of:

- (i) the work activities undertaken by the provider during a quarter of the provider's professional year; and
  - (ii) the matters referred to in subsections 12(3), (4) and (5);  
and the reasons for those assessments.
- (3) The responsible licensee for a provisional relevant provider must make complete and accurate records of the reasons for being satisfied as required for the purposes of completion certificate.
- (4) 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.

## 14 Notifications

In addition to the requirements of section 922H of the Act, it is a requirement that a notice be lodged under that section, in accordance with section 922L of the Act, when:

- (a) a certificate under subsection 12(4) is given in respect of a provisional financial provider; and
- (b) a final completion certificate is given in respect of a provisional financial provider.