

## **EXPOSURE DRAFT EXPLANATORY STATEMENT**

### **Issued by authority of Assistant Treasurer and Minister for Financial Services**

#### *Corporations Act 2001*

#### *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024*

Part 7.6 of the *Corporations Act* (the Act) sets out licensing obligations for relevant providers, that is, financial planners and financial advisers who provide personal advice to retail clients. Section 921B sets out four education and training standards for a person who is, or is to be, a relevant provider. These four education and training standards set out minimum requirements relating to: qualifications (the *first standard*); an exam (the *second standard*); an initial professional year of work and training (the *third standard*); and continuing professional development (the *fourth standard*).

Section 921C of the Act prohibits the Australian Securities and Investments Commission (ASIC) from granting a financial services licence to a person who has not met the education and training standards. Subsection 921C(2) 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.

Under the education and training standards for relevant providers outlined in the Act, the first standard – the *qualifications standard* in section 921B(2) – requires a person to complete an approved bachelor or higher degree, or equivalent qualification, or foreign qualification, that has been approved by the Minister. Paragraph 921B(6)(a) of the Act provides that the Minister responsible for administering the Act may, by legislative instrument, approve bachelor or higher degrees, or equivalent qualifications, for the purposes of subsection 921B(2). These approved degrees/qualifications are set out in the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021* (the Approved Qualifications Determination).

In addition to the four education and training standards for relevant providers outlined in section 921B of the Corporations Act, section 921BB empowers the Minister to determine additional requirements for relevant providers who provide tax (financial) advice service. The additional educational requirements for these *qualified tax relevant providers* relate to courses in commercial law and taxation law, as set out in Division 3 of Part 3 of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Education and Training Standards Determination).

Before approving degrees/qualifications for the purposes of subsection 921B(2), or additional education requirements for qualified tax relevant providers for the purposes of subsection 921BB(1), the Minister must be satisfied that doing so is necessary or desirable to ensure relevant providers are adequately trained and competent to provide personal advice to retail clients (subsections 921B(7) and 921BB(2) of the Act respectively). In addition, subsection 33(3) of the *Acts Interpretation Act 1901* provides a general authority

under which the Minister may repeal, rescind, revoke, amend, or vary the legislative instrument referred to in subsection 921B(6) of the Act.

The *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024* (the Amending Determination) amends:

- the Approved Qualifications Determination – to make consequential and other minor amendments following commencement of the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023*; and
- the Education and Training Standards Determination – to amend the transitional arrangements for qualified tax relevant providers, to fix an unintended outcome and ensure the transitional arrangements operate as intended.

The Minister has assessed that these amendments are necessary and desirable to ensure that relevant providers are adequately trained and competent to provide personal advice to retail clients in relation to relevant financial products.

The Amending Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Determination is subject to disallowance under section 42 of the *Legislation Act 2003*.

The Amending Determination is subject to sunseting under section 50 of the *Legislation Act 2003*.

The Amending Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

Details of the Amending Determination are set out in [Attachment A](#).

**Details of the Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024**

**Section 1 – Name**

This section provides that the name of the instrument is the *Corporations (Relevant Providers—Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024* (the Amending Determination).

**Section 2 – Commencement**

The Amending Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Amending Determination is made under the *Corporations Act 2001* (the Corporations Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Schedule 1—Approved degrees and qualifications**

Under the education and training standards for relevant providers outlined in section 921B of the Corporations Act, the first standard – the *qualification standard* – generally requires a person to complete a bachelor or higher degree, or equivalent qualification, approved by the Minister. These approved degrees/qualifications are set out in the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021* (the Approved Qualifications Determination).

Section 6 of the Approved Qualifications Determination provides that:

- the degrees/qualifications listed in the table at Schedule 1 to that instrument are approved by the Minister (subsection 6(1)); and
- all approved degrees/qualifications are subject to the general condition that the person must complete an ethics bridging unit, unless the table item for that approved degree/qualification (at Schedule 1 to that instrument) states that this condition does not apply to that approved degree/qualification (i.e. because ethics is covered as part of that approved degree/qualification) (paragraph 6(2)(a)); and
- each approved degree/qualification is subject to any other conditions specified in the table item for that approved degree/qualification (at Schedule 1 to that instrument) (paragraph 6(2)(b)).

Schedule 1 to the Amending Determination makes consequential and other minor amendments to section 6 of the Approved Qualifications Determination, following commencement of the *Treasury Laws Amendment (2023 Measures No. 3) Act 2023* (the Amendment Act).

### Consequential amendments

The Amendment Act amended the qualifications standard in section 921B of the Corporations Act, to enable greater flexibility for a new entrant to demonstrate that they satisfy the conditions of an approved degree/qualification. These conditions – outlined in the table at Schedule 1 to the Approved Qualifications Determination – generally relate to:

- timing – i.e. the person must have commenced the approved degree/qualification after a specified time or between two specified times; and
- specified units of study which the person must have completed.

This information would ordinarily be evident from the person's academic transcript for the approved degree/qualification. However, this is not always the case.

**Item 5** inserts new subsection (2A) in section 6 of the Approved Qualifications Determination to provide that a person may satisfy the conditions for an approved degree/qualification in the following ways:

- via academic transcript(s) issued by the provider of the approved degree/qualification, which demonstrates that the person has met each of the approved conditions for that approved degree/qualification; and/or
- via statement(s) issued by the provider of the approved degree/qualification, confirming that the person has met each of the approved conditions for that approved degree/qualification.

**Items 1 and 2** update the references in subsections 6(1) and 6(2), to refer to the relevant provisions in the Corporations Act (as amended by the Amendment Act). **Item 2** also updates the language in subsection 6(2), consistent with the language used in subsection 6(1).

### Other minor amendments

**Item 3** amends paragraph 6(2)(a) to refer to *person* instead of *relevant provider*. This is consistent with the language used throughout section 921B of the Corporations Act. The more general term *person* is more appropriate in this context, as these provisions (in both the Corporations Act and the Approved Qualifications Determination) apply to both *relevant providers* and *a person who is to be a relevant provider* (see subsection 921B(1) of the Corporations Act).

**Item 4** removes Note 1 in subsection 6(2). This note lists all the approved degrees/qualifications which do not require the person to also complete an ethics bridging unit (i.e. because ethics is covered as part of that approved degree/qualification). This note has no legal effect – in order to switch off the general condition requiring an ethics bridging unit, the individual approved degree/qualification must specify this *in the relevant table item at Schedule 1 to that instrument* (see paragraph 6(2)(a)). For the approved

degrees/qualifications currently listed in Note 1, the general condition requiring an ethics bridging unit is already switched off (as required) in the relevant table item at Schedule 1 to that instrument. Removing this note has no effect on the operation of that instrument.

### **Schedule 2—Amendments to the transitional arrangements for relevant providers who provide tax (financial) advice services**

In addition to the four education and training standards for relevant providers outlined in section 921B of the Corporations Act, section 921BB empowers the Minister to determine additional requirements for relevant providers who provide tax (financial) advice services. These additional requirements relate to courses in commercial law and taxation law, as set out in Division 3 of Part 3 of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Education and Training Standards Determination). This reflects the new regime, a single registration and disciplinary system under the Corporations Act for financial advisers who provide tax (financial) advice services and the removal of duplicate regulation, which commenced 1 January 2022. The new regime was implemented through the *Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Act 2021* (the Better Advice Act). Division 6 of Part 3 outlines transitional arrangements which are intended to provide a smooth transition to the new regime for persons who were relevant providers under the old regime.

Schedule 2 amends these transitional arrangements to fix an unintended outcome and ensure they operate as intended. As currently drafted, the transitional arrangements in sections 3-170 to 3-172 only apply if the person was a relevant provider *immediately before the new regime commenced on 1 January 2022*. However, this means that if a person was temporarily not a relevant provider at that time, they would not benefit from the transitional arrangements. This includes advisers who may have been on leave – such as maternity/paternity leave or long service leave – or who may have been temporarily in-between licensees. This has unintentionally restricted the provision of tax (financial) advice services.

**Items 1 to 4** amend sections 3-170 to 3-172 of the Education and Training Standards Determination to remove the requirement that a person must have been a relevant provider *immediately before the new regime commenced on 1 January 2022* in order to access those transitional arrangements. Relevant providers must still meet any other eligibility requirements specified in those sections in order to access the transitional arrangements.

The amendments are consistent with the intended outcomes in the Better Advice Act. The transitional provisions in the Better Advice Act apply to *relevant providers* but they do not require such persons to be relevant providers *immediately before 1 January 2022*. Similarly, if the person was a relevant provider *immediately before the new regime commenced on 1 January 2022* should not be a relevant criterion to access transitional arrangements for the education requirements.

#### **Relevant providers who were registered as a tax (financial) adviser under the old regime**

Section 3-170 of the Education and Training Standards Determination switches off the obligation to meet the additional study requirements outlined in Division 3 for relevant providers who were already registered as a tax (financial) adviser under the old regime. This means they are not required to undertake further study in order to continue providing tax (financial) advice following commencement of the new regime on 1 January 2022. This

transitional provision reflects that those advisers would have already completed relevant commercial law and taxation law studies in order to be registered under the old regime.

**Item 1** amends this transitional provision so that it applies to any relevant provider who was registered as a tax (financial) adviser immediately before the new regime commenced on 1 January 2022, *irrespective of whether they were also a relevant provider at that same point in time*. **Item 1** also amends the heading to better reflect who the provision applies to.

Relevant providers who had a pending application for registration as a tax (financial) adviser under the old regime

Section 3-171 of the Education and Training Standards Determination switches off the obligation to meet the additional study requirements outlined in Division 3 for relevant providers who had applied for registration as a tax (financial) adviser under the old regime, if their application was then granted after the new regime commenced on 1 January 2022. This provision reflects that those advisers would have already completed relevant commercial law and taxation law studies in order to meet the registration requirements under the old regime.

**Item 2** amends this transitional provision so that it applies to any relevant provider whose application for registration as a tax (financial) adviser was pending immediately before the new regime commenced on 1 January 2022 and granted after that date, *irrespective of whether they were also a relevant provider immediately before 1 January 2022*.

Existing providers who become tax (financial) advisers on or after 1 January 2022

The transitional arrangements for existing providers outlined in the Corporations Act include temporarily switching off their obligation to meet the qualification standard under the new regime (section 1684A of the Corporations Act). This means existing providers can continue to provide financial advice to retail clients during a transition period – until 31 December 2025 – while they undertake any additional study required to meet the new qualifications standard in section 921B of the Corporations Act. If an existing provider has not met the qualifications standard by the end of the transition period, they will no longer be able to provide financial advice to retail clients.

Similarly, section 3-172 of the Education and Training Standards Determination temporarily switches off the obligation to meet the additional study requirements outlined in Division 3 for existing providers who are not subject to the transitional arrangements under sections 3-170 and 3-171. This means existing providers can also provide tax (financial) advice to retail clients during a transition period – again, until 31 December 2025 – while they undertake any additional study required to meet the additional education requirements under section 921BB of the Corporations Act. If an existing provider has not completed the additional education requirements by the end of the transition period, they will no longer be able to provide tax (financial) advice to retail clients.

**Item 4** amends this transitional provision in the Education and Training Standards Determination so that it applies to any relevant provider who is an existing provider (as defined by section 1546A of the Corporations Act), *irrespective of whether they were also a relevant provider immediately before 1 January 2022*. **Item 3** amends the heading to better reflect who the provision applies to.