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Financial Adviser Standards and Ethics Authority Ltd

*Corporations (Relevant Providers Degrees, Qualifications and Courses Standard)
Determination 2018*

Explanatory Statement

Key information

1. This instrument approves a number of bachelor and higher degrees, and equivalent qualifications, for the purposes of the first education and training standard that relevant providers (financial planners and advisers) must meet under subparagraph 921B(2)(a) of the *Corporations Act 2001*.
2. **Date of effect:** the day after this instrument is registered in the Federal Register of Legislation (see section 2 of the determination).

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 declared to be the standards body under section 921X.
<i>existing provider</i>	defined in section 1546A of the Act, as modified by <i>ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894</i> section 10.
<i>new entrant</i>	a person who is not a financial services licensee or registered with ASIC in connection with providing personal advice to retail clients in relation to relevant financial products and does not meet the definition of existing provider.
<i>degree</i>	a qualification awarded by a higher education provider accredited by Tertiary Education Quality Standards Authority at Australian Qualification Framework (AQF) level of Bachelor (AQF7), Graduate Diploma (AQF8) or Masters (AQF9).
<i>relevant field of study</i>	a degree or qualification is in a relevant field of study if it includes at least 8 courses on one or more of the following: <ul style="list-style-type: none"> • financial planning; • investments; • accounting; • banking; • business law or commercial law (as approved by the Tax Practitioners Board); • economics; • estate law; • finance;

Expression	Meaning
	<ul style="list-style-type: none">• finance law;• taxation law (as approved by the Tax Practitioners Board).
relevant financial product	defined section 910A of the Act.
relevant provider	defined section 910A of the Act.

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 sets 4 standards that relevant providers must meet (*education and training standards*). Section 921C(1)(b) 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. These prohibitions apply from 1 January 2019 (section 1546C).

7. The first of the standards requires the relevant provider to have completed a bachelor or higher degree, or an equivalent qualification.¹ Under subsection 921U(2)(a)(i) of the Act, the Authority must, by legislative instrument, approve bachelor or higher degrees, or equivalent qualifications for this purpose.

8. The determination specifies the bachelor and higher degrees, and equivalent qualifications, for the purposes of the first standard.

The determination in detail

Preliminary matters

9. Section 1 provides that the name of the instrument is the *Corporations (Relevant Providers Degrees and Qualifications) Determination 2018*.

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

¹ Section 921V allows for foreign qualification, specified by the Authority, to be regarded as meeting the first standard. This determination does not deal with foreign qualifications.

11. Section 3 sets out the legislative authority for making the determination: subparagraph 921U(2)(a)(i) of the Act.

12. Section 4 defines “the Act” as the *Corporations Act 2001* and refers readers to the definitions of **Code of Ethics** and **relevant provider** in the Act. Other definitions relevant to this statement are in the Glossary at paragraph 3 above.

Section 5 and Schedule 1—Approvals of courses and qualifications

13. Schedule 1 lists a range of degrees and other qualifications that are approved by section 5. The list is arranged according to:

- bachelor degrees (Part 1) and post-graduate degrees and equivalent qualifications (Part 2); and
- within each Part, the higher education provider offering the degrees and qualifications.

14. The list also describes the relevant providers to whom the approval of a degree or qualification relates, and any conditions applicable to the approval. In most cases, the condition is that the relevant provider, has completed specified courses as part of the degree or qualification program.

15. As the Authority has not yet made a Code of Ethics, a condition is included (subsection 5(2) of the determination) in respect of all approved degrees and qualifications that the relevant provider complete a course on the Code (an **ethics course**) that will be specified in a determination under paragraph 1546B(1)(b). This will be done by an amendment to this determination, when the Code of Ethics is made. This condition will apply unless the degree or qualification includes such a course.

Other provisions for existing providers

16. An existing provider and a new entrant may obtain (or have already obtained) a degree or qualification approved under this determination and will so satisfy the first education and training standard.

17. However, section 1546B(1)(b) of the Act also makes special provision for existing providers. Under that section:

- the Authority has the power to determine that specified courses will give the provider qualifications equivalent to the first education and training standard; and
- an existing provider who completes these courses will be taken to have met the first education and training standard.

18. The Authority is currently assessing courses for the purposes of section 1546B and will amend this determination to specify these courses in due course.

19. In brief, the Authority has established several pathways for existing providers, depending on whether the existing provider:

- has no degree or equivalent qualification;
- has a degree or equivalent qualification, but not in a relevant field of study; or

- has a degree or qualification in a relevant field of study; or
- has an approved degree or qualification (under section 5 of this determination) (these providers will only need to complete the ethics course discussed at paragraph 15 above).

20. The Authority's current proposal is that the amendment to this determination that will specify courses as giving existing providers qualifications equivalent to the first education and training standard will include detailed provision for:

- specified bridging courses at AQF8 level; and
- specified graduate diplomas at AQF8 level (or similar courses); and
- appropriate recognition of relevant providers' prior learning and qualifications.

21. The Authority's website www.fasea.gov.au contains the FPS002 Program and Provider Accreditation Policy providing information on the criteria and process that the Authority is using for assessing the suitability of courses and making these determinations.

Consultation

22. The Authority undertook consultation from March to June 2018 on the first of the education standards, with 150 formal submissions received. The draft determination itself was also the subject of consultation, with 92 formal submissions received. The Authority conducted 5 forums with stakeholder groups. All feedback was given due consideration. The Authority concluded that the provisions of the determination identify appropriate degree and other courses for the purposes of the first of the education standards.

Regulatory impact

23. The Office of Best Practice Regulation has confirmed that no Regulatory Impact Statement is needed for the determination.

24. The compliance costs associated with the 2017 amendments to the Act raising education, training and ethical standards of financial advisers was estimated in the Explanatory Memorandum for the Bill for the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* at approximately \$165.1m. It is not practicable to make a meaningful estimate of the value of the benefits to consumers of improved standards in the industry.

Statement of compatibility with human rights

25. The determination may engage the right to freely choose and accept work under Article 6(1) of the International Convention on Economic, Social and Cultural Rights. However, it is part of a series of legislated requirements for financial planners and financial advisers designed to ensure that consumers get better service standards and to instil overall confidence in the industry. On that basis, the instrument is assessed to be compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.