

## **EXPLANATORY STATEMENT**

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

#### *Corporations Act 2001*

#### *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Amendment (2022 Measures No. 2) Determination 2022*

The Corporations Act (the Act) provides for the regulation of corporations, financial markets and products and services, including in relation to licensing, conduct, financial product advice and disclosure.

Part 7.6 of the Act sets out the licensing obligations for providers of financial services. Professional standards apply to financial advisers who provide personal advice on relevant financial products to retail clients. Section 921B sets out the education and training standards for a person who is, or is to be, a relevant provider (financial planners and advisers). There are four standards that relevant providers must meet (collectively known as the education and training standards).

Paragraph 921C(1)(b) of the Act prohibits ASIC from granting a financial services licence to a person who has not met the education and training standards. Subsection 921C(2) 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 have applied from 1 January 2019 (section 1546C).

The first education and training standard requires that a relevant provider has completed an approved bachelor or higher degree, or equivalent qualification or a foreign qualification 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 relevant providers.

The Act specifies matters that the Minister must be satisfied of before approving a degree or other qualification. To approve domestic bachelor or higher degrees or equivalent qualifications, the Minister must be satisfied that this is necessary or desirable to ensure relevant providers are adequately trained and competent to provide personal advice to retail clients (subsection 921B(7) of the Act).

This instrument updates the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021* (the Determination) to make the following amendments:

- Adding several courses as degrees approved by the Minister that satisfy the first professional standard. The Minister has assessed that approving each of these degrees is 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.

- Adding a new unit name to the list of units a relevant provider must have studied as part of the Graduate Diploma of Financial Planning or the Master of Financial Planning, as Kaplan Higher Education has changed the name of one of its units.
- Adding another qualification to the definition of advanced diploma of financial planning, to recognise the qualification held by some existing providers.
- Amending references to repealed sections in the Act.

Public consultation on this instrument was not undertaken as the instrument is minor and machinery in nature. However, where the instrument affects specific education providers, these providers have been consulted. Additionally, these providers will be notified once the Determination has been amended.

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

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. The instrument is subject to disallowance and sunseting in accordance with the ordinary arrangements.

The instrument commenced on the day after the instrument was registered on the Federal Register of Legislation.

The Office of Best Practice Regulation has been consulted (OPBR22-03482) and a Regulatory Impact Statement is not required. The instrument is unlikely to have more than a minor regulatory impact.

This instrument does not change any requirements for financial advisers. Instead, the instrument provides advisers with more options to meet the existing requirements. Therefore the instrument has no compliance costs for industry.

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Amendment (2022 Measures No. 2) Determination 2022**

Section 1 – Name of the Regulations

This section provides that the name of the Determination is the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Amendment (2022 Measures No. 2) Determination 2022* (the Amendment Determination).

Section 2 – Commencement

Schedule 1 to the Amendment Determination commences the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments to the Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021 (the Determination)

Schedule 1 makes amendments to the Determination in four main areas. These are:

- 1) adding new courses as approved degrees,
- 2) updating the name of a specific unit,
- 3) adding to the definition of advanced diploma of financial planning, and
- 4) amending references to repealed sections in the Act.

*Adding new courses*

The Determination sets out a list of degrees and qualifications that are approved by the Minister to satisfy the first professional standard. Some of these degrees have been adjusted by the providing university, and the Determination has been amended as a result.

Item 8 of the Amendment Determination adds two new courses offered by Griffith University to the list of approved degrees. Item 8 also adds a condition to these courses. The condition is that the relevant provider commenced the course on or after 1 January 2021, which is when the course was first offered.

All relevant providers must have completed an ethics unit of study. Paragraph (2)(a) of the Determination requires a relevant provider to complete an ethics bridging unit.

However, this can be disapplied if the relevant provider has completed an ethics unit of study in their degree.

The new courses offered by Griffith University include ethics study throughout their units. As such, Item 8 also provides that the requirement in paragraph 6(2)(a) of the Determination does not apply. Relatedly, Item 4 of the Amendment Determination adds these courses to Note 1 in section 6, which lists the courses that paragraph 6(2)(a) does not apply to.

Item 9 of the Amendment Determination adds several new courses offered by Swinburne University to the list of approved degrees. Item 9 also adds a condition to these courses. The condition is that the relevant provider commenced the course on or after 1 February 2021, which is when the course was first offered.

The new courses offered by Swinburne University include ethics study throughout their units. As such, Item 9 also provides that the requirement in paragraph 6(2)(a) of the Determination does not apply. Relatedly, Item 5 of the Amendment Determination adds these courses to Note 1 in section 6, which lists the courses that paragraph 6(2)(a) does not apply to.

#### *Updating a unit name*

Column 4 of the table in Schedule 1 to the Determination lists other conditions the relevant provider must satisfy as part of their degree. Most of these conditions relate to specific units the relevant provider must complete within the course.

Kaplan Higher Education Pty Limited changed the name of one of its units from 4 February 2022. Items 10 and 11 of the Amendment Determination add the new name to the list of units mentioned in column 4 at table items 85 and 88A.

#### *Definition of Advanced Diploma of Financial Planning*

The education and training standard applied from 1 January 2019. Financial advisers who were qualified prior to this date were classified as ‘existing providers’. Existing providers must meet different rules under the education and training standard. These rules are listed in sections 7 and 8 of the Determination. The type of qualification held by an existing provider determines how many additional units of study they must complete by the end of the transitional period (1 January 2026). Holding an advanced diploma of financial planning means they have to do less additional units.

Section 5 of the Determination sets out the definition of ‘advanced diploma of financial planning’. Item 2 of the Amendment Determination updates the definition to include the 8-unit Certificate in Financial Markets offered by the Financial Services Institute of Australasia. This Certificate was only offered between 1982 and 1990. From 1991 the Financial Services Institute of Australasia started offering this course as a Diploma (which is already listed in section 5).

#### *Repealed sections of the Act*

The Determination was made under sections 921U and 1546B of the Act. Both these sections have since been repealed by the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021*. This repeal took effect from 1 January 2022, when the standards body was wound up. The ability to make and

amend the Determination now rests with the Minister under sections 921B and 1684E of the Act.

Item 1 of the Amendment Determination removes the out-of-date references to sections 921U and 1546B of the Act in the Authority section.

Items 3 and 6 of the Amendment Determination clarify that the power to specify degrees comes from subsection 921B(6) of the Act.

Item 7 of the Amendment Determination removes the out-of-date reference to section 1546B of the Act, and replaces it with the correct reference to section 1684E of the Act.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Amendment (2022 Measures No. 2) Determination 2022***

This Legislative Instrument is 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*.

**Overview of the Legislative Instrument**

Part 7.6 of the *Corporations Act 2001* sets out the licensing obligations for providers of financial services. Professional standards apply to financial advisers who provide personal advice on relevant financial products to retail clients. Section 921B sets out the education and training standards for a person who is, or is to be, a relevant provider (financial planners and advisers). There are four standards that relevant providers must meet (collectively known as the education and training standards).

The first education and training standard requires that a relevant provider has completed an approved bachelor or higher degree, or equivalent qualification or a foreign qualification 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 relevant providers.

This instrument updates the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021* to make the following amendments:

- Adding several courses as degrees approved by the Minister that satisfy the first professional standard. The Minister has assessed that approving each of these degrees is 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.
- Adding a new unit name to the list of units a relevant provider must have studied as part of the Graduate Diploma of Financial Planning or the Master of Financial Planning, as Kaplan Higher Education has changed the name of one of its units.
- Adding another qualification to the definition of advanced diploma of financial planning, to recognise the qualification held by some existing providers.
- Amending references to repealed sections in the Act.

This instrument does not change any requirements for financial advisers. Instead, the instrument provides advisers with more options to meet the existing requirements.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.