



## **Financial Adviser Standards and Ethics Authority Ltd**

*Corporations (Work and Training Professional Year Standard) Determination 2018*

### **Explanatory Statement**



## Key information

1. This instrument sets requirements for work and training to meet the third of the education and training standards under section 921B of the *Corporations Act 2001*.
2. 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.

<b>Expression</b>	<b>Meaning</b>
<b><i>ASIC</i></b>	Australian Securities and Investments Commission.
<b><i>Act</i></b>	the <i>Corporations Act 2001</i> .
<b><i>Authority</i></b>	Financial Adviser Standards and Ethics Authority Ltd, which is the standards body under section 921X of the Act.
<b><i>client</i></b>	a client, in relation to a relevant provider, includes a retail client of the principal of the relevant provider.
<b><i>completion certificate</i></b>	a certificate that a person's supervisor gives at the end of quarter 1, 2, 3 or 4.
<b><i>education and training standards</i></b>	the standards set out in section 921B of the Act.
<b><i>ethical dilemma</i></b>	see subsection 10(3).
<b><i>final completion certificate</i></b>	the completion certificate given at the end of quarter 4, on the completion of the professional year.
<b><i>financial services licensee</i> or <i>licensee</i></b>	a person that holds a financial services licence.
<b><i>logbook</i></b>	the record that must be kept under subsection 13(1).
<b><i>person</i></b>	an individual undertaking his or her professional year
<b><i>professional year</i></b>	the period that a person 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.
<b><i>professional year plan</i></b>	the plan that must be prepared and agreed under subsection 9(1).
<b><i>personal advice</i></b>	defined in subsection 766B(3) of the Act.

<b>Expression</b>	<b>Meaning</b>
<b><i>quarter</i></b>	3 months or, for a person who is undertaking the professional year on a part-time basis, a period equal to a quarter of the period of the professional year.
<b><i>relevant financial product</i></b>	defined in subsection 910A of the Act.
<b><i>relevant provider</i></b>	defined in subsection 910A of the Act.
<b><i>responsible licensee</i></b>	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.
<b><i>retail client</i></b>	defined in sections 761G and 761GA of the Act.
<b><i>structured training</i></b>	training that meets the requirements of subsection 11(1).
<b><i>supervisor</i></b>	defined in subsection 921F(2) of the Act.
<b><i>work activities</i></b>	activities described in subsection 10(1).

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

## Context

- The Act was amended in 2017 to raise education, training, and ethical standards of financial advisers.
- Section 921B of the Act sets 4 standards that a person who is, or is to be, a relevant provider must meet (*education and training standards*). Section 921C of the Act prohibits ASIC from granting a financial services licence to someone who has not met the education and training standards. It also prohibits licensees and authorised representatives of licensees from authorising others to give personal advice to retail clients in relation to relevant financial products unless they have met the education and training standards.
- The third of the standards requires completion of 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.
- Section 921F of the Act requires a person to be supervised during his or her professional year, and requires that retail clients be informed about the status of the person.
- The determination specifies the requirements for the work and training a person will undertake during the professional year.

## **Preliminary matters**

11. Section 1 provides that the name of the instrument is the Corporations (Work and Training (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 person 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).

## **Section 6: Outcomes and key competencies**

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

## **Section 7: Meeting the standard**

18. This section sets out when a person will be taken to have met the requirements of the determination (and so met the third education and training standard, in subsection 921B(4) of the Act).
19. A person is taken to have met these requirements only if the supervisor and the responsible licensee both give the person 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 a relevant provider is not 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 any period during which the supervisor was undertaking their professional year).
23. Subsection 8(2) imposes additional requirements on the person'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 person and the supervisor to enable the person to complete the professional year successfully.

## **Section 9: Professional year plan**

24. To ensure that a person's professional year is undertaken in a planned and structured way, this section requires the person, 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 person, the supervisor and the responsible licensee;
  - identification of any other relevant persons who will be involved in supervising the person (for example, for specialist areas);
  - the period of the professional year and each quarter;
  - the particular work and training outcomes to be achieved by the person during the professional year, and each quarter;
  - the resources and opportunities that the responsible licensee will make available;
  - a detailed account of the work activities and structured training the person will undertake in each quarter of the professional year; and
  - any other relevant arrangements for 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 the person, the supervisor and the responsible licensee to co-operate to ensure compliance with subsection 9(4).

## **Section 10: Work activities**

28. This section sets requirements for the work activities that a person must undertake during the professional year.
29. Subsection 10(2) requires that if the person completes all the work activities and the structured training, it can be reasonably expected that the person will have achieved the

outcomes and acquire the key competencies described in section 6. This is intended to ensure 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 subsection 10(1).
31. Work requirements are to be phased so that the person 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 person 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 persons 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 3<sup>rd</sup> and 4<sup>th</sup> quarters of the professional year, the person 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 in the person 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 person 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 person are informed in writing that the person 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 course determined in a legislative instrument under paragraph 1546B(1)(b) of the Act; or

- a course of study approved or provided by a professional association for the purpose of achieving professional designations or achieving 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 person sets 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 10, the determination requires a phased approach to the professional year activities. Generally speaking, section 12 requires that a person is not to progress from one quarter's activities to the next quarter's activities unless the person has actually completed the work activities and 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. Anyone 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 person satisfactorily identified and resolved the ethical dilemmas (see subsection 10(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 person cannot start quarter 3 work activities or structured training 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 education and 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 person pass the prescribed exam will still apply before the person 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 person has actually achieved the objectives and acquired the competencies set out in section 6; and
  - the responsible licensee must have conducted a file audit of at least 5 client files on which the person worked and must be satisfied, having regard to the work done by the person on those files, that the person can be relied on to comply with applicable legal and regulatory requirements in providing personal advice to retail clients in relation to relevant financial products.

### **Section 13: Record-keeping**

45. This section requires a person to keep a logbook of his or her work activities and structured training. It must also record the notifications to clients about the person's status required by subsection 10(5). This logbook will be essential to validate the person's successful completion of the professional year.
46. Under paragraph 13(2)(a), the supervisor must sign off on the logbook.
47. Under paragraph 13(2)(b), the supervisor must keep records of the reasons for being satisfied as required for the purposes of completion certificates.
48. Under subsection 13(3), the responsible licensee must keep records of the reasons for being satisfied as required for the purposes of issuing a completion certificate.
49. All records required to be made 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 person (under subsection 12(4)) and of the issue of a final completion certificate. These notifications are in addition to the requirements of section 922H of the Act.

### **Consultation**

51. The Authority undertook consultation from July to August 2018 on the work and training requirements, with 24 formal submissions received. The draft determination itself was also the subject of consultation, with 13 formal submissions received. The Authority conducted 5 forums with stakeholder groups. All feedback was given due consideration. The Authority concluded that the determination meets its requirements for the work and training standard.

## **Regulatory impact**

52. The Office of Best Practice Regulation has advised that no regulatory impact statement is required for the determination given the limited regulatory impact that it will have.
53. 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 \$165.1 million. 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**

54. This instrument 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*.