

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy. Minister for Women's Economic Security

Corporations Act 2001

Corporations (Relevant Providers—Education and Training Standards) Determination 2021

Subsections 921B(6) and 921BB(1) of the *Corporations Act 2001* (the Act) provide that the Minister may, by legislative instrument, determine education and experience requirements for a person who:

- is, or is to be, a relevant provider; and
- provides, or is to provide, a tax (financial) advice service.

The purpose of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Instrument) is to support the amendments in the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (the Better Advice Act), which received Royal Assent on 28 October 2021. It does this by putting in place principles to guide the administration of the financial adviser exam by the Australian Securities and Investments Commission (ASIC) and setting education and training standards for the provision of tax (financial) advice services by relevant providers.

Public consultation on a draft Instrument took place between 29 September 2021 and 15 October 2021. During this time, Treasury held three roundtables with industry stakeholders and received 17 written submissions. As a result of public consultation, the following changes were made to the Instrument:

- Division 2 of Part 2 of the Instrument:
 - replacing the requirement for the financial adviser exam to cover the knowledge and skills required under the *Tax Agent Services Act 2009* (TAS Act) with the requirement to cover only Subdivision 50-AA of the TAS Act;
 - expanding the list of exceptional circumstances for which a person may apply to defer the exam to include a natural disaster and the imposition of a public health order;
- Division 6 of Part 3 of the Instrument:
 - including new transitional provisions which provide that a person who has previously completed a TPB-approved commercial law and/or tax law course is taken to have complied with their obligation to complete a commercial law and/or tax law course in Division 3 of Part 3 of the Instrument;
 - revising the commencement of the continuing professional development (CPD) requirements for financial advisers who provide tax (financial) advice services from the CPD year commencing on or after 1 January 2022 to the CPD year commencing on or after 1 January 2023, to allow advisers and

financial services licensees further time to put in place the necessary systems and processes to comply with this and the associated reporting requirements; and

- Part 2 of Schedule 3 of the Instrument - inserting a list of approved providers of tax law courses, other than registered higher education providers and registered training organisations, for the purposes of satisfying the requirement to complete a tax law course in section 3-70 of the Instrument.

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 commences on the later of, the day after the Instrument is registered on the Federal Register of Legislation and 1 January 2022, to align with the commencement of the Better Advice Act.

The Financial Services Royal Commission Final Report and the Independent Review of the Tax Practitioners Board Final Report have been certified as being informed by a process and analysis equivalent to a Regulation Impact Statement for the purposes of the Government decision to implement this reform. The Final Reports and Regulation Impact Statement certifications for these reports are available from the Department of Prime Minister and Cabinet website.

A statement of Compatibility with Human Rights is at Attachment B.

Details of the Corporations (Relevant Providers—Education and Training Standards) Determination 2021

Please note that for the purposes of this explanatory statement, the term ‘financial adviser’ is used instead of ‘relevant provider’. ‘Relevant provider’ is defined in section 910A of the *Corporations Act 2001* as an individual who is authorised to provide personal advice to retail clients, as the financial services licensee or on behalf of the licensee, in relation to relevant financial products. A relevant provider may be:

- a financial services licensee;
- an authorised representative of a financial services licensee; or
- an employee or director of a financial services licensee or a related body corporate of a licensee.

Section 1-1 – Name of the Instrument

This section provides that the name of the Instrument is the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Instrument).

Section 1-2 – Commencement

The Instrument commences on the later of:

- the day after the Instrument is registered on the Federal Register of Legislation; and
- 1 January 2022.

Section 1-3 – Authority

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

Section 1-4 – Definitions

In accordance with paragraph 13(1)(b) of the *Legislation Act 2003*, the following terms in the Instrument have the same meaning as in the Act, as in force from time to time:

- *retail client* has the meaning given by sections 761G and 761GA of the Act;
- *financial product advice* has the meaning given by section 766B of the Act;
- *Code of Ethics*, *CPD year*, *provisional relevant provider*, *relevant provider* and *tax (financial) advice service* have the meanings given by section 910A of the Act;
- *existing provider* has the meaning given by section 1546A of the Act;
- *taxation law* has the meaning given by the *Income Tax Assessment Act 1997*; and
- *the Act* means the *Corporations Act 2001*.

Part 2 – Education and training standards for relevant providers

The *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (the Better Advice Act) transfers the functions of the Financial Adviser Standards and Ethics Authority (FASEA) to the Minister responsible for administering the Act and to the Australian Securities and Investments Commission (ASIC). Under this arrangement, ASIC is responsible for administering the financial adviser exam, in accordance with the principles approved by the Minister.

In accordance with section 1684M of the Act, Divisions 1, 3 and 4 of Part 2 of the Instrument provide that the current instruments made by FASEA about approved degrees, work and training and continuing professional development (CPD) continue in force until they are repealed and remade by the Minister under subsection 921B(6) of the Act. These requirements are set out in the following instruments:

- Division 1 - *Corporations (Degrees, Qualifications and Courses Standards) Determination 2020*;
- Division 3 - *Corporations (Work and Training Professional Year Standard) Determination 2018*; and
- Division 4 - *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.

However, the FASEA instrument (the *Corporations (Relevant Providers Exams Standard) Determination 2019* (FASEA Exam Standard)), which sets out the standard for the financial adviser exam cannot rely on the savings provision in section 1684M of the Act, and consequently does not continue in force beyond 31 December 2021. The FASEA Exam Standard was made under a power for FASEA to ‘approve an exam’. The Better Advice Act clarified that the Minister’s power is to approve the principles underpinning the exam, rather than to approve each exam and all of the exam questions.

As a result of the change to the description of the Minister’s power, Division 2 of Part 2 of the Instrument replaces the FASEA Exam Standard. The Instrument has the same effect as the FASEA Exam Standard to ensure continuity in the delivery and standard of the exam for financial advisers. The differences between Division 2 of Part 2 of the Instrument and the FASEA Exam Standard are listed in the table below:

Principle	FASEA Exam Standard	This Instrument
Principle 1 - Relevant knowledge and skills	The exam must cover the following knowledge and skill areas: <ul style="list-style-type: none"> • regulatory and legal obligations; • ethical and professional reasoning and communication; and • financial advice construction. 	The only change is that the requirement for the exam to cover the <i>Tax Agent Services Act 2009</i> (TAS Act) is replaced with a requirement that the exam cover only the civil penalty provisions for the provision of tax (financial) advice services in Subdivision 50-AA of the TAS Act.
Principle 2 -	The exam must include a minimum of 70	No change

Principle	FASEA Exam Standard	This Instrument
Exam questions	questions, made up of at least 64 multiple choice questions and at least six written response questions.	
Principle 3 - Duration of exams	A person must have three and a half hours (210 minutes) to complete the exam, which includes at least 15 minutes reading time.	No change
Principle 4 - Marking or scoring of exams	Persons with appropriate expertise are responsible for approving the exam questions and determining the maximum number of marks that may be awarded for each question.	No change
Principle 5 - Eligibility to take the exam	A person can sit the exam if they are an existing provider or a provisional relevant provider (subject to meeting certain conditions), are registered to take the exam, and have paid the exam fee. A person must wait three months before attempting the exam again (if required).	The three-month waiting period before being able to sit the exam again (if required) has been removed.
Principle 5 - Method of taking the exam	Candidates may apply for alternative arrangements to sit the exam if they are unable to travel to an exam location or live in a remote area.	For flexibility, the exam is able to be taken in person, virtually or through alternative arrangements approved by ASIC.
Principle 5 - Consequences of misconduct	A person may be excluded from, or fail, an exam if they use non-permitted equipment or materials, engage in plagiarism or cheating, or do not comply with a direction.	No change
Principle 5 - Exam results	<p>A person will be notified whether they have passed or failed the exam. Exams will be marked to an overall credit grade (65-74 per cent).</p> <p>A person may pay a fee to have their written responses reviewed. One review is available per exam. There is no limit on the number of times a person may sit the exam.</p>	No change
Principle 5 - Deferral of exams	Once registered for an exam, a person may apply to defer taking the exam in exceptional circumstances such as for medical reasons, recent loss or bereavement, hardship or trauma etc. If a deferral application is granted, the person may take the exam at another date and time without having to pay another fee.	The list of exceptional circumstances has been expanded to also include circumstances where the person is impacted by a natural disaster or the imposition of a public health order.

Part 3 – Additional requirements for financial advisers who provide tax (financial) advice services

Part 3 of the Instrument supports the Better Advice Act to implement recommendation 7.1 of the Independent Review of the Tax Practitioners Board (TPB) by setting education and training requirements for financial advisers who provide, or are to provide, tax (financial) advice services.

This Instrument requires financial advisers who provide tax (financial) advice services to complete commercial law and tax law courses, unless one or more of the following exemptions or transitional provisions apply:

- from 1 January 2022 - financial advisers who were registered as tax (financial) advisers immediately before 1 January 2022 are exempt;
- from the date the person's registration as a tax (financial) adviser comes into force - financial advisers who applied to be registered as tax (financial) advisers before 1 January 2022 (and whose application is subsequently approved by the TPB) are exempt;
- between 1 January 2022 and 31 December 2025 - existing providers who are also financial advisers and who are not subject to the other exemptions will be temporarily exempt; and
- from 1 January 2022 - persons who have previously completed TPB-approved commercial law and/or tax law courses are exempt.

For more details on these operation of these transitional provisions and exemptions, see the description of sections 3-170 to 3-174 of the Instrument below.

From 1 January 2022, to provide tax (financial) advice services (as defined in section 90-15 of the TAS Act) for a fee or reward, a person or entity must:

- be a qualified tax relevant provider – if the person provides tax (financial) advice services as part of providing personal advice to retail clients in relation to relevant financial products;
- be a registered tax agent – if the person provides tax (financial) advice services other than personal advice to retail clients in relation to relevant financial products (e.g. the person only provides advice to wholesale clients or robo-advice);
- where a tax (financial) advice service is being provided on a person or entity's behalf by another person – the person providing the advice is a registered tax agent or a qualified tax relevant provider; or
- where a tax (financial) advice service is provided as a legal service – the person is not prohibited from providing that tax (financial) advice service.

Section 910A of the Act provides that a 'qualified tax relevant provider' is a financial adviser who has met each of the requirements in a determination made by the Minister for the provision of tax (financial) advice services under subsection 921BB(1) of the Act (if any).

Subsection 921BB(1) of the Act provides that the Minister may, by legislative instrument, determine any or all of the following requirements for a person who provides, or is to provide, a tax (financial) advice service:

- to complete one or more specified bachelor or higher degrees, qualifications, or courses;
- to undertake specified work and training; and
- to complete CPD during the CPD year of a financial services licensee.

Division 3 of Part 3 of the Instrument sets out the requirements to complete specified courses.

Division 5 of Part 3 of the Instrument sets out the CPD requirements for persons who provide, or are to provide, tax (financial) advice services.

Division 6 of Part 3 of the Instrument specifies transitional and application provisions for the additional education and training requirements for the provision of tax (financial) advice services in Divisions 3 and 5 of Part 3 of the Instrument.

Part 2 of Schedule 3 to the Instrument specifies the providers (CPA Australia and the Financial Planning Association of Australia), other than registered higher education providers and registered training organisations, that are also able to provide a tax law course for the purposes of section 3-70 of the Instrument.

Section 3-60 - Requirement to complete specified courses

Paragraph 921BB(1)(c) of the Act provides that the Minister may, by legislative instrument, determine the requirement to complete one or more specified courses for a person who provides, or is to provide, a tax (financial) advice service.

This section requires that, a person who provides, or is to provide, tax (financial) advice services must complete each of the courses specified in Division 3 of Part 3 of the Instrument.

Section 3-65 - Specified course: commercial law

This section requires a person who provides, or is to provide, tax (financial) advice services to complete a commercial law course.

The requirements for the commercial law course in this section are consistent with the requirements in the 2014 TPB guidelines for a course in commercial law approved by the TPB for tax (financial) advisers.

To satisfy this requirement, the commercial law course must be provided by a registered higher education provider or a registered training organisation and be designed to provide the person with knowledge and skills at not less than an AQF level 5, as described in the *Australian Qualifications Framework*, 2nd edition (January 2013). The AQF level 5 requires a person to:

- have a technical and theoretical knowledge in a specific area or a broad field of work and learning;
- have a broad range of cognitive, technical and communication skills to select and apply methods and technologies to analyse information to complete a range of activities, provide and transmit solutions to sometimes complex problems and transmit information and skills to others; and

- be able to apply knowledge and skills to demonstrate autonomy, judgement and defined responsibility in known or changing contexts and within broad but established parameters.

To achieve this level of knowledge and skills, the commercial law course must cover each of the following subject matters:

- Australian laws relating to contracts;
- Australian laws relating to organisational business structures and governance;
- Australian laws relating to torts (particularly the torts of negligence and negligent misstatement); and
- the *Competition and Consumer Act 2010*.

To satisfy the requirements, the course must also be designed to provide assurance that the person has attained the specified knowledge and skills at the required AQF level. Objective assessment is a key requirement for the course. Applicants must demonstrate their knowledge and skills in the relevant course or components of the course by some means of independent and objective assessment. Such assessment should be rigorous and represent a genuine test of relevant knowledge and skills and be subject to verification to ensure the relevant applicant has undertaken the assessment tasks in question. This could be achieved through the inclusion of one or more assessment practices, including (but not limited to):

- tests and examinations (oral and written);
- problem based assignments;
- essays and reports; and
- computer-based assessment tasks.

The requirement to complete a commercial law course applies subject to the transitional provisions in Division 6 of Part 3 of the Instrument. The transitional provisions provide that in certain cases a person may be exempt from completing a commercial law course, for example, where a person was registered as a tax (financial) adviser immediately before 1 January 2022. For more information on the transitional provisions and exemptions, see the description of sections 3-170 to 3-173 of the Instrument below.

Section 3-70 - Specified course: taxation law

This section requires a person who provides, or is to provide, tax (financial) advice services to complete a course in Australian taxation law (tax law course).

The requirements for the tax law course in this section are consistent with the requirements in the 2014 TPB Guidelines for a course in taxation law approved by the TPB for tax (financial) advisers.

The tax law course must be provided by a registered higher education provider, a registered training organisation or a provider listed in Part 2 of Schedule 3 to the Instrument and be designed to provide the person with knowledge and skills at not less than an AQF level 5. To satisfy this requirement, the tax law course must cover each of the subject matters listed in subsection 3-70(2) of the Instrument, including (but not limited to) income and deductions; the application of Australian income tax

law to different types of entities; capital gains and losses; superannuation; investments; taxation offences; and the goods and services tax (GST).

As is the case with the commercial law course, the tax law course must also be designed to provide assurance that the person has attained the specified knowledge and skills at the required AQF level, which could be achieved through the inclusion of one or more independent, objective and rigorous assessment practices, such as tests, exams or essays.

The requirement to complete a tax law course applies subject to the transitional provisions in Division 6 of Part 3 of the Instrument, which provide that in some circumstances a person may be exempt from complying with this requirement (see the description of sections 3-170, 3-171, 3-172 and 3-174 of the Instrument below).

Section 3-120 - Requirement for CPD

Paragraph 921BB(1)(e) of the Act provides that the Minister may, by legislative instrument, determine the requirement to undertake CPD during the CPD year of a financial services licensee, or any other period determined by the Minister, for a person who provides tax (financial) advice services.

Section 910A of the Act provides that a financial services licensee's CPD year is the 12- month period beginning on the day of the year included in the most recent notice given by the licensee to ASIC under section 922HA of the Act. In accordance with this definition, a licensee's CPD year can start at any time during the calendar year.

The CPD requirements in the Instrument are separate to, and in addition to, the CPD requirements that all financial advisers (except provisional financial advisers) are currently required to undertake. The existing CPD requirements for financial advisers are set out in the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*, which was made by FASEA. In accordance with section 1684M of the Act, the FASEA Determination continues in force until it is repealed and remade by the Minister under subsection 921B(6) of the Act (see the note in Division 4 of Part 2 of the Instrument).

To complement the changes made by the Better Advice Act, this Instrument imposes CPD requirements for financial advisers who provide tax (financial) advice services, to replace the CPD requirements that applied to registered tax (financial) advisers under the TAS Act.

In accordance with the exemption in subsection 921BC(2) of the Act, the requirement to undertake CPD in this Instrument does not apply to provisional financial advisers, who are undertaking work and training under subsection 921B(4) of the Act.

Section 3-125 - Additional requirements for tax-specific CPD

This section provides that a financial adviser who provides, or is to provide, a tax (financial) advice service, must complete CPD activities in order to maintain and extend their knowledge and skills in Australian commercial and taxation law, as relevant to providing a tax (financial) advice service.

The CPD requirements in the Instrument are to apply as if the table in section 7 of the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* were repealed and replaced with the following table:

Item	Column 2	Column 3
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	Content of CPD activity	CPD area
1	The activity is designed to enhance participants' technical proficiency and ability to develop and provide advice strategies that are appropriate to the objectives, financial situations and needs of different classes of retail clients, but is not in an area referred to in item 6 of this table.	Technical competence
2	The activity is designed to enhance participants' ability to act as a client-centric practitioner in advising retail clients, but is not in an area referred to in item 6 of this table.	Client care and practice
3	The activity is designed to enhance participants' understanding of applicable legal obligations and how to comply with them, but is not in an area referred to in item 6 of this table.	Regulatory compliance and consumer protection
4	The activity is designed to enhance participants' capacity to act as an ethical professional, but is not in an area referred to in item 6 of this table.	Professionalism and ethics
5	The activity is designed to maintain and extend participants' professional capabilities, knowledge and skills, including keeping up to date with regulatory, technical and other relevant developments, but is not in an area referred to in another item of this table.	General
6	The activity is designed to maintain, extend or enhance a participants' professional or technical capabilities, knowledge and skills, including keeping up to date with regulatory, technical and other developments, relevant to providing tax (financial) advice services.	Tax (financial) advice

This section amends the table in section 7 of the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* to take into account the inclusion of new item 6 into the table, which sets out the CPD requirements for the provision of tax (financial) advice services. The changes to the table mean that CPD activities relevant to the provision of tax (financial) advice services cannot also count towards the CPD requirement in one of the other items in the table.

The CPD requirements in the Instrument also apply as if the qualifying CPD activities in subsection 9(2) of the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* were repealed and replaced with:

- a) a minimum of 5 hours in the CPD area of technical competence; and
- b) a minimum of 5 hours in the CPD area of client care and practice; and
- c) a minimum of 5 hours in the CPD area of regulatory compliance and consumer protection; and
- d) a minimum of 9 hours in the CPD area of professionalism and ethics; and
- e) a minimum of 5 hours in the CPD area of tax (financial) advice – this requirement applies in relation to the CPD year that commences on or after 1 January 2023.

The remaining hours of CPD separate to those specified above (within the minimum of 40 hours required) may be satisfied by completing any of the qualifying CPD activities.

Example 1

Patrick, a financial adviser, completes 40 hours of CPD during his licensee's CPD year (which is between 1 July 2023 and 30 June 2024), including the minimum number of hours of each of the specified CPD areas (technical competence; client care and practice; regulatory compliance and consumer protection; and professionalism and ethics).

In addition to this, Patrick completes 16 hours of CPD relevant to the provision of tax (financial) advice services this CPD year. While Patrick is only required to complete a minimum of five hours of CPD in this area, he undertakes more CPD relevant to provision of tax (financial) advice services this year because he has only recently started providing tax (financial) advice services and wants to build up his knowledge in this area.

Patrick has complied with his CPD obligations under Division 5 of Part 3 of the Instrument and the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018*.

Section 3-170 – Transitional provision for registered tax (financial) advisers who are financial advisers on 31 December 2021

This section provides that a financial adviser who was also a registered tax (financial) adviser immediately before 1 January 2022 is permanently exempt from the requirement to complete commercial law and tax law courses, as required by Division 3 of Part 3 of the Instrument.

This is because a person who is registered as a tax (financial) adviser under the TAS Act before 1 January 2022 is taken to have satisfied the education requirements for the provision of tax (financial) advice services.

Example 2

John, a financial adviser, was also registered as a tax (financial) adviser immediately before 1 January 2022. From 1 January 2022, John is taken to have met the requirements to be a qualified tax relevant provider and may continue to provide tax (financial) advice services.

Section 3-171 – Transitional provision for financial advisers awaiting registration as tax (financial) advisers on 31 December 2021

This section provides that a person who meets all of the following requirements may provide tax (financial) advice services if:

- immediately before 1 January 2022 – the person:
 - is a financial adviser (i.e. the person meets the definition of relevant provider in section 910A of the Act); and
 - has applied to be registered as a tax (financial) adviser under subsection 20-20(1) of the TAS Act;
 - the application had not been decided; and
- after 1 January 2022 - that application for registration as a tax (financial) adviser is granted and that registration comes into force.

A person who satisfies all of these requirements is permitted to provide tax (financial) advice services and is exempt from the requirement to complete the specified courses in Division 3 of Part 3 of the Instrument from the day their registration as a tax (financial) adviser comes into force. A person's registration comes into force on the day specified in the notice given to the person under subsection 20-30(1) of the Act.

However, between 1 January 2022 and the day the person's registration as a tax (financial) adviser comes into force, the person may not provide tax (financial) advice

services unless the person has completed the specified courses in Division 3 of Part 3 of the Instrument.

Example 3

Paula is a financial adviser who applied to be registered as a tax (financial) adviser on 11 December 2021:

- Between 1 January 2022 and the date her tax (financial) adviser registration comes into force (if it comes into force) - Paula must not provide tax (financial) services unless she has completed commercial law and tax law courses.
- From the day Paula's registration as a tax (financial) adviser comes into force (if it comes into force) - Paula may provide tax (financial) advice services as a qualified tax relevant provider without being required to complete commercial law and tax law courses.
- If Paula's application to be registered as a tax (financial) adviser is refused (i.e. her registration as a tax (financial) adviser never comes into force) - from 1 January 2022 Paula must have completed commercial law and tax law courses before she is able to provide tax (financial) advice services.

Section 3-172 – Transitional provision for other financial advisers on 31 December 2021

This section provides that a person may provide tax (financial) advice services until 31 December 2025 without completing the specified courses in Division 3 of Part 3 of the Instrument – if the person is:

- a financial adviser immediately before 1 January 2022;
- an existing provider, in accordance with the definition of 'existing provider' in section 1546A of the Act; and
- not already subject to the transitional provisions in section 3-170 or 3-171 in Division 6 of Part 3 of the Instrument.

A person who satisfies these requirements may provide tax (financial) advice services between 1 January 2022 and 31 December 2025 without being required to complete commercial law and tax law courses.

To continue providing tax (financial) advice services on and after 1 January 2026, a person covered by this transition provision must have met the requirements in Division 3 of Part 3 of the Instrument by completing commercial law and tax law courses. From 1 January 2026, the provision of tax (financial) advice services for a fee or reward without having completed these courses (or alternatively being registered as a tax agent) is a contravention of the civil penalty provision in section 50-17 of the TAS Act.

However, this transitional provision ends early (before 31 December 2025) if:

- the person is an existing provider; and
- the person is authorised as a financial adviser on the exam cut-off day; and
- the person does not pass the financial adviser exam by the relevant exam cut-off day for that person.

Section 1684 of the Act provides that the exam cut-off day for an existing provider is either 1 January 2022, or the day prescribed in regulations (if any). The regulations prescribe that the exam cut-off day is 1 October 2022 for a person who has sat the exam at least twice before 1 January 2022.

Example 4

Steven is an existing provider and has unsuccessfully sat the exam twice before 1 January 2022. In accordance with regulations made under section 1684B of the Act, Steven's exam cut-off day is 30 September 2022.

- Scenario 1 - Steven passes the financial adviser exam before 30 September 2022 – Steven can continue to provide tax (financial) advice services until 31 December 2025 without completing commercial law and tax law courses.
- Scenario 2 - Steven does not pass the exam by 30 September 2022. From 1 October 2022, Steven must not provide tax (financial) advice services until he has met one of the following requirements (or contravene a civil penalty provision):
 - o be registered as a tax agent under the TAS Act – under this option, Steven may not provide personal advice to retail clients in relation to relevant financial products; or
 - o meet the requirements to be a qualified tax relevant provider – which involves:
 - being authorised again as a financial adviser by meeting all of the applicable education and training standards in section 921B of the Corporations Act (including passing the exam); and
 - completing commercial law and tax law courses that meet the requirements.

On the other hand, an existing provider who is not authorised as a financial adviser on their exam cut-off day has until 31 December 2025 to complete the commercial law and tax law courses. However, the existing provider may not provide tax (financial) advice services until he or she has passed the exam and been authorised again to provide financial advice.

Example 5

Mark is an existing provider (who was not a registered tax (financial) adviser immediately before 1 January 2022) who unsuccessfully sat the exam only once before 1 January 2022. Under section 1684B of the Act, Mark's exam cut-off day is 1 January 2022.

- If Mark is authorised as a financial adviser at the start of 1 January 2022 (his exam cut-off day), Mark must comply with all of the following requirements before he is able to provide tax (financial) advice services for a fee or reward:
 - o be authorised again as a financial adviser by meeting all of the applicable education and training standards in section 921B of the Corporations Act, which could include completing an approved degree or equivalent qualification, completing a professional year and passing the exam; and
 - o completing commercial law and tax law courses that meet the requirements.
- If Mark is not authorised as a financial adviser at the start of 1 January 2022, he must:
 - o pass the exam and be authorised again as a financial adviser before he can provide tax (financial) advice services; and
 - o before 1 January 2026 - complete an approved qualification in accordance with section 1684A of the Act and commercial law and tax law courses.

Section 3-173 - Transitional—commercial law courses completed before 1 January 2022

This section provides that a person is taken to have satisfied the requirement to complete a commercial law course if the person successfully completed a commercial law course before 1 January 2022 that was approved by the TPB under paragraphs 301(b), 302(b) or 303(a) of Part 3 of Schedule 2 to the *Tax Agent Services Regulations 2009* (TAS Regulations) (as in force immediately before 1 January 2022).

This prevents duplication for persons who have previously completed a TPB-approved course in commercial law required for registration as a tax (financial)

adviser. To determine whether a person has previously completed a TPB-approved course in commercial law, the person should refer to the TPB's Register of TPB-approved courses in commercial law for tax (financial) advisers, which is available from the TPB's website at: <https://www.tpb.gov.au/qas/search> (as at 31 December 2021).

Example 6

In March 2023, Danny, a financial adviser, decides to start providing tax (financial) advice services. In 1988, Danny completed a commercial law course at the Canberra College of Advanced Education (now the University of Canberra), which is a TPB-approved commercial law course and therefore satisfies the requirement in section 3-173 of the Instrument.

To provide tax (financial) advice services, Danny is only required to complete a tax law course that meets the requirements in section 3-70 of the Instrument.

Section 3-174 - Transitional—tax law courses completed before 1 January 2022

This section provides that a person is taken to have complied with the requirement to complete a tax law course (in section 3-70 of the Instrument) if the person has successfully completed a tax law course before 1 January 2022 that was approved by the TPB under any of paragraphs 301(c), 302(c) or 303(b) of Part 3 of Schedule 2 to the TAS Regulations (as in force immediately before 1 January 2022).

The Register of TPB-approved tax law courses for tax (financial) advisers is also available on the TPB's website (as at 31 December 2021).

Section 3-200 - Application—Additional requirements for tax-specific CPD

This section provides that the CPD requirements for the provision of tax (financial) advice services in Division 5 of Part 3 of the Instrument commence for the financial services licensee's CPD year that begins on or after 1 January 2023. The later commencement is intended to provide an opportunity for advisers and their financial services licensees to put in place the necessary systems and processes to comply with the new CPD, and associated reporting requirements.

For example, if a financial adviser's financial services licensee's CPD year begins on 1 July 2023, the adviser must complete the new CPD requirements in Division 5 of Part 5 of the Instrument by 30 June 2024 (and during every subsequent 12 month period). This ensures that, in the first year, all financial advisers have the full 12-months to complete the new CPD requirements, regardless of when their licensee's CPD year begins.

Schedule 3 – Specified approved providers

Section 3-70 of the Instrument provides that a person who provides, or is to provide, tax (financial) advice services must complete a tax law course, which must be provided by a registered higher education provider, a registered training organisation or a provider listed in Part 2 of Schedule 3 to the Instrument

Part 2 of Schedule 3 to the Instrument lists CPA Australia and the Financial Planning Association of Australia.

This means that a person who completes a tax law course that meet the requirements in section 3-70 of the Instrument, and which is provided by either CPA Australia or the Financial Planning Association of Australia, is taken to have complied with the requirement in section 3-70 of the Instrument.

Statement of Compatibility with Human Rights

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

Corporations (Relevant Providers—Education and Training Standards) Determination 2021

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

The purpose of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Instrument) is to support the amendments in the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (the Better Advice Act), which received Royal Assent on 28 October 2021. It does this by putting in place principles to guide the administration of the financial adviser exam by the Australian Securities and Investments Commission (ASIC) and setting education and training standards for the provision of tax (financial) advice services by relevant providers.

Human rights implications

This Legislative Instrument may engage the right to work under Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that everyone must be able to freely accept or choose their work and not to be unfairly deprived of work. The right to work also requires that state parties provide a system of protection guaranteeing access to employment. This right must be made available in a non-discriminatory manner pursuant to article 2(1) of the ICESCR.

This Legislative Instrument provides that an individual may not work as a financial adviser unless they meet the education and training standards prescribed by the Minister. Additional competency requirements may also apply for persons who intend to provide tax (financial) advice services. In this way, this Instrument restricts individuals from working as financial advisers unless they comply with these requirements. However, the restrictions are justified as they create a minimum competency standard for the provision of financial advice, which is intended to improve the quality of advice given to consumers and instil public confidence in the industry.

This Legislative Instrument is compatible with human rights.