

## **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 (2023 Measures No. 1) Determination 2023*

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 second standard – the *exam standard* in section 921B(3) – requires a person to pass an exam administered by ASIC in accordance with the principles approved by the Minister. Paragraph 921B(6)(b) of the Act provides that the Minister responsible for administering the Act may, by legislative instrument, approve principles for the purposes of subsection 921B(3). Before approving the exam principles, 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 (subsection 921B(7) of the Act). 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 exam principles approved by the Minister are set out in Division 2 of Part 2 of the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the current Determination). The approved exam principles cover five areas:

- Principle 1: testing relevant knowledge and skills;
- Principle 2: exam questions;
- Principle 3: duration of exams;
- Principle 4: marking or scoring of exams; and
- Principle 5: processes and procedures for the taking of exams.

The *Corporations (Relevant Providers—Education and Training Standards) Amendment (2023 Measures No. 1) Determination 2023* (the Amending Determination) amends the exam principles in the Determination to improve efficiency of, and timely access to, the exam by:

- amending Principle 2 so that the exam comprises only multiple choice questions; and
- amending Principle 5 so that eligibility to sit the exam is not contingent on the person having already met the qualifications standard *before sitting the exam* (or being an existing provider).

Exams based on multiple choice questions create efficiencies by enabling computer marking to replace manual marking. This reduces the cost of administering exams and improves response times for exam candidates to receive their results.

The current exam eligibility criteria which restricts access to the exam based on the person having already met the qualifications standard is causing unnecessary delays for new entrants seeking to enter the profession. Removing this restriction provides flexibility for candidates to sit the exam at an appropriate time. For example, potential new entrants could sit the exam while they are completing their studies. This also improves timely access to the exam by reducing bottlenecks and potential delays associated with conducting eligibility assessments for each exam candidate prior to each exam.

All relevant providers are still required to meet the qualifications standard (i.e. the *first standard*) in addition to meeting the exam standard (i.e. the *second standard*) in order to provide personal advice to retail clients.

The Amending Determination also repeals a redundant instrument, the *Corporations (Relevant Providers Exams Standard) Determination 2019* (2019 Exam Determination). The exam principles previously approved in the 2019 Exam Determination have been superseded by the exam principles approved in the current Determination.

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 (2023 Measures No. 1) Determination 2023**

**Section 1 – Name**

This section provides that the name of the instrument is the *Corporations (Relevant Providers—Education and Training Standards) Amendment (2023 Measures No. 1) Determination 2023* (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 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—Amendments to the exam Principles**

Schedule 1 amends the exam principles in the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021* (the Determination).

**Exam Principle 2: exam questions**

**Items 2 and 3** of Schedule 1 amend exam Principle 2 (at section 2-40 of the Determination), which relates to the questions in an exam. Currently, exam Principle 2 requires the exam to contain at least 70 questions, comprising at least 64 multiple choice questions and at least six written response questions. **Items 2 and 3** amend exam Principle 2 to remove the requirement for the exam to include written response questions. That is, the exam must still contain at least 70 questions, all of which must be multiple choice questions. The exam must still test all relevant knowledge and skills as required under exam Principle 1. In its role administering the exam, ASIC will determine the number of exam questions (i.e. 70 or more) it considers necessary and appropriate to test all relevant knowledge and skills in accordance with exam Principle 1.

This change will streamline and reduce costs for delivery of the exam. Removing the written response questions removes the manual marking process, as the multiple choice questions are computer marked. This means candidates can receive their exam results quicker.

**Item 8** makes a consequential amendment to subsection 2-55(11) of exam Principle 5, which outlines the process for reviewing a person's exam results. This only applies to reviewing answers to written response style questions. As the exam now only comprises

multiple choice questions, subsection 2-55(11) is now redundant. **Item 8** of Schedule 1 removes subsection 2-55(11), including the associated note.

#### Exam Principle 5: processes and procedures for taking the exam

**Items 4 to 7** of Schedule 1 amend exam Principle 5 (at section 2-55 of the Determination), which relates to processes and procedures for taking the exam. Subsection 2-55(2) outlines the eligibility requirements for taking the exam. Currently, exam Principle 5 restricts access to the exam to only provisional relevant providers who have met the qualifications standard (i.e. they have already completed an approved degree) and existing providers. **Items 4 to 7** amend exam Principle 5 to remove this restriction, including the associated note.

A person must still meet the other eligibility requirements outlined in subsection 2-55(2) of exam Principle 5 in order to take the exam. That is, they must have:

- applied to ASIC take the exam (in the manner and form approved by ASIC), and been subsequently enrolled by ASIC to take the exam at a particular date and time;
- paid ASIC the prescribed fee to take the exam; and
- *not* been excluded from taking the exam under subsection (9) of Principle 5 (relating to misconduct).

Removing this eligibility requirement for the exam provides flexibility and ensures candidates have timely access to the exam. This change does not affect the high education and training standards for professional advisers. A person is still required to meet the qualifications standard in order to provide personal financial advice to retail clients. Licensees are still required to meet their existing obligation to ensure their advisers are adequately trained and competent, including that their advisers meet the qualifications standard.

**Item 1** makes a consequential amendment to remove the definition of *provisional relevant provider* from section 1-4 of the Determination, as this definition is now redundant.

#### Schedule 2—Repeal of redundant instrument

**Item 1** of Schedule 2 repeals the *Corporations (Relevant Providers Exams Standard) Determination 2019* (2019 Exam Determination). Prior to 2021, the exam principles were outlined in the 2019 Exam Determination as a stand-alone instrument. In 2021, the exam principles were updated and co-located with other education and training standards in the *Corporations (Relevant Providers—Education and Training Standards) Determination 2021*. Item 7 repeals the redundant 2019 Exam Determination.