

2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2023: FINANCIAL ADVISER PROFESSIONAL STANDARDS

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
Approved Qualifications Determination	<i>Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2021</i>
ASIC	Australian Securities and Investment Commission
Better Advice Act 2021	<i>Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021</i>
Corporations Act	<i>Corporations Act 2001</i>
Education and Training Standards Determination	<i>Corporations (Relevant Providers—Education and Training Standards) Determination 2021</i>
Professional Standards of Financial Advisers Act 2017	<i>Corporations Amendment (Professional Standards of Financial Advisers) Act 2017</i>
Tax Agent Services Act	<i>Tax Agent Services Act 2009</i>

Financial adviser professional standards

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Outline of chapter

- 1.1 Schedule # to the Bill amends the Corporations Act to deliver the Government’s election commitment to better recognise the experience of existing financial advisers as equivalent to tertiary study. The Bill also addresses technical limitations in the current framework, relevant to both new entrants into the financial advice industry and tax agents providing a tax (financial) advice service. These amendments maintain the high standards introduced in the Better Advice Act to improve the financial advice industry.

Context of amendments

- 1.2 The *Professional Standards of Financial Advisers Act 2017* introduced new education and training requirements to improve consumer outcomes and increase public confidence in the financial advice industry. However, practical implementation issues have arisen:
- existing financial advisers with extensive industry experience and a clean disciplinary record are leaving the industry;
 - potential new entrants are unable to meet the qualifications standard for technical reasons, despite meeting the substance of that requirement; and
 - the Better Advice Act 2021 introduced unnecessary duplication of qualification requirements to provide tax (financial) advice services, for some financial advisers who are also qualified tax agents.

- 1.3 This Schedule contains amendments to address these implementation issues, whilst maintaining the high standards introduced in the Better Advice Act 2021 to improve the financial advice industry.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
<p>Experienced financial advisers who have completed a minimum of 10 years full-time equivalent experience and have a clean disciplinary record, are <u>not</u> required to complete an approved degree, or complete one or more courses, determined by the Minister.</p> <p>They are still required to pass the exam and comply with continuing professional development requirements.</p>	<p>Existing financial advisers must complete an approved qualification (no more than eight prescribed units) by 1 January 2026 to meet the qualification standard.</p> <p>They must also pass the exam and comply with continuing professional development requirements.</p>
<p>The Minister may approve one or more ways of satisfying the conditions for an approved qualification.</p> <p>This provides greater flexibility to new entrants, recognising that there may be different study pathways available to satisfy the education and training standard.</p>	<p>New entrants to the financial advice profession must complete an approved qualification, including meeting all the conditions prescribed for that approved qualification, as determined by the Minister in the Approved Qualifications Determination.</p>
<p>New entrants with a domestic qualification may apply to the Minister for individual approval, where that person has completed an approved qualification, as determined by the Minister in the Approved Qualifications Determination, but not met all the conditions attached to that qualification.</p>	<p>No equivalent.</p>
<p>Financial advisers who are also registered tax agents are <u>not</u> required to meet the additional education requirements to be a qualified tax relevant provider.</p>	<p>Financial advisers who are also registered tax agents must meet the additional education requirements to be a qualified tax relevant provider.</p>

Detailed explanation of new law

Education and training standards for financial advisers

- 1.4 A ‘relevant provider’ is a person who is authorised to provide personal advice to retail clients about financial products in accordance with the requirements of Part 7.6 of the Corporations Act. In this explanatory memorandum, the term ‘financial adviser’ is used instead of ‘relevant provider’.
- 1.5 A financial adviser must meet the four ‘education and training standards’ outlined in section 921B of the Corporations Act:
- qualifications standard;
 - exam standard;
 - work and training standard; and
 - continuing professional development standard.
- 1.6 To meet the qualifications standard for financial advisers, a person is generally required to complete a bachelor or higher degree, or equivalent qualification, approved by the Minister in the Approved Qualifications Determination.

Experienced financial advisers

- 1.7 Current transitional arrangements mean that existing financial advisers have until 1 January 2026 to meet the qualifications standard, while continuing to provide financial advice.
- 1.8 Schedule # to the Bill amends the Corporations Act to insert new transitional arrangements for experienced financial advisers with a clean disciplinary record.
- 1.9 These new transitional arrangements provide that financial advisers who meet the criteria for an ‘experienced provider’ are not required to undertake further study to meet the qualifications standard. If an individual does not meet the criteria for an ‘experienced provider’, they will need to undertake further study, as required under the existing transitional arrangements, to meet the qualifications standard by 1 January 2026.
- 1.10 An ‘experienced provider’ is an individual who:
- completed a minimum of 10 years fulltime equivalent experience as a financial adviser (need not be consecutive), during the period 1 January 2007 to 31 December 2021; and
 - had a clean disciplinary record as at 31 December 2021, that is:

- not been banned or disqualified under Division 8 of Part 7.6 of the Act; and
 - not given an undertaking under section 93AA or section 171E of the ASIC Act.
[Schedule #, item 3, section 1684 (definition of experienced provider) of Corporations Act]
- 1.11 If an experienced adviser wishes to rely on the new transitional arrangements for experienced providers, the financial adviser must make a self-declaration confirming that they have met all the criteria to be an experienced provider.
[Schedule #, item 7, subsections 1684AA(1) and (2) of Corporations Act]
- 1.12 If the financial adviser is an authorised representative of an Australian financial services licensee, they must provide their self-declaration to the licensee.
[Schedule #, item 7, subsection 1684AA(7) of Corporations Act]
- 1.13 A notice must then be lodged with ASIC within 30 business days of the financial adviser becoming a relevant provider (for example, if someone is not a current relevant provider), or within 30 business days after 1 January 2026 for existing relevant providers.
[Schedule #, item 7, subsections 1684AA(3) and (5) of Corporations Act]
- 1.14 The notice must include identifying details of the relevant provider, and a written statement to the effect that the person has met the education and training standard because they are an experienced provider. The written statement is to be provided by:
- the financial adviser, if they are an Australian financial services licensee; or
 - the Australian financial services licensee who authorised that financial adviser as their representative.
[Schedule #, item 7, subsection 1684AA(4) of Corporations Act]
- 1.15 Upon receipt of such a notice, ASIC must update the Register of Relevant Providers to reflect that the financial adviser has declared that they meet the criteria for an experienced provider.
[Schedule #, item 7, subsection 1684AA(8) of Corporations Act]
- 1.16 The notice requirements are consistent with the existing notification requirements applying to relevant providers. Consistent with existing obligations, Australian financial services licensees are held accountable for authorising an ‘experienced provider’ to provide financial advice as a representative of that licensee. The individual financial adviser is accountable for making a claim that they meet the ‘experienced provider’ criteria. Criminal and/or civil penalties apply if either or both the financial adviser or licensee give false or misleading information.

- 1.17 As with all financial advisers, an experienced provider also needs to meet the requirements of the exam standard. If a person fails to pass the exam by the cut-off date, they cannot provide financial advice.
- 1.18 Experienced providers must also comply with the ongoing requirements of the continuing professional development standard.

New entrants

- 1.19 The Approved Qualifications Determination lists qualifications approved by the Minister. These approved qualifications may be conditional on the person having commenced the course after a specified date and having completed specified ‘units of study’ as part of that course. Currently, to meet the qualifications standard, a person’s academic transcript must exactly match the legislative instrument, inclusive of any conditions.
- 1.20 Potential new entrants may have completed a qualification listed in the Approved Qualifications Determination, but their course transcript may not meet all the prescribed conditions for that approved qualification. This may occur for technical reasons, such as:
- administrative changes to courses, not yet reflected in the Approved Qualifications Determination;
 - a person commencing their studies earlier than the dates specified for their qualification in the Approved Qualifications Determination; or
 - completing a requisite unit with a different education provider, following the completion of a qualification.
- 1.21 This means that a potential new entrant may be prevented from becoming a financial adviser, even though they have undertaken relevant study and acquired the necessary skills and knowledge to enable them to be an effective financial adviser.
- 1.22 Schedule # to the Bill amends the Corporations Act to enable greater flexibility for a new entrant to demonstrate that they satisfy the conditions of an approved qualification. This is achieved by amending the Minister’s current power to approve qualifications through a determination. In addition to approving relevant qualifications and imposing conditions for each of those approved qualifications, the Minister may also provide flexibility to new entrants by approving one or more ways to satisfy the conditions.
[Schedule #, items 8 and 11, subsections 921B(2) and (6) of Corporations Act]
- 1.23 This flexibility enables the Minister to determine alternative ways for a potential new entrant to demonstrate that they have substantively met the conditions for an approved qualification, where this is not evident from that person’s course transcript. For example, the Minister may determine that a

person may satisfy condition(s) by providing written confirmation from their course provider that they have substantively met the conditions for the specified approved qualification.

- 1.24 There may be other situations where a person has completed a domestic qualification equivalent to those listed in the Approved Qualifications Determination, but is unable to satisfy the prescribed conditions of an approved qualification. These potential new entrants are currently prevented from entering the profession, as there is no alternative avenue for them to meet the qualifications standard for financial advisers.
- 1.25 Schedule # to the Bill amends the Corporations Act to allow a new entrant *with equivalent domestic qualifications* to apply to the Minister for approval of their qualification.
- 1.26 A person is eligible to apply to the Minister for approval of an equivalent domestic qualification if:
- the person has completed one or more qualification(s) listed in the Minister's Determination under paragraph 921B(6)(a); and
 - the person has not met all the requirements of an approved degree/qualification.

[Schedule #, item 14, section 921GA of Corporations Act]

- 1.27 The list of qualifications approved by the Minister in the legislative instrument remains the primary avenue for prospective financial advisers to meet the qualifications standard. For new entrants who have studied in Australia, the new option to seek individual approval is similarly restricted to those qualifications already approved by the Minister in the legislative instrument. This ensures the high entry standards for the profession are upheld, whilst ensuring that new entrants who have genuinely studied equivalent qualifications are not unnecessarily prevented from becoming financial advisers for a technical reason.

Example 1.1

Lucy completes a Bachelor's degree listed in the Approved Qualifications Standard with a Higher Education Provider. After graduation Lucy realises that she does not satisfy the education requirements to be a financial adviser as she has not completed the prescribed unit in business law. Lucy enrolls in a business law unit with another Higher Education Provider.

Lucy then applies to the Minister for approval that she has completed an approved degree, on the basis of her Bachelor's degree and the additional unit she completed separately. The Minister is satisfied that the units are equivalent, meaning Lucy has completed all the necessary units of study to become a financial adviser. The Minister approves her application.

Lucy applies to ASIC to sit the financial adviser's exam. As Lucy has completed the equivalent of an approved degree, ASIC approves her application to sit the exam.

- 1.28 The Minister has the power to approve individual applications for equivalent domestic qualifications, if satisfied that the applicant's qualification is equivalent to one in the Approved Qualifications Determination. The Minister must either approve or refuse to approve applications for equivalent domestic qualifications.
[Schedule #, item 14, subsections 921GA(3) and (4) of Corporations Act]
- 1.29 The Ministerial power to approve or refuse equivalent domestic qualifications can be delegated to an officer of the Department under section 1345A of the Act.
- 1.30 A decision by the Minister (or their delegate) to approve or refuse an application is subject to merits review under section 1317B of the Act.

Financial advisers who are also registered tax agents

- 1.31 A financial adviser must be a 'qualified tax relevant provider' in order to provide tax (financial) advice services. To do so, they must meet the additional education requirements determined by the Minister in the Education and Training Standards Determination (section 921BB of the Corporations Act). These additional requirements ensure that financial advisers have the necessary understanding of commercial and tax law to enable them to provide financial advice on tax-related matters.
- 1.32 A person who is registered as a financial adviser under the Corporations Act may also be registered as a tax agent under the Tax Agent Services Act. To be a registered tax agent, they must meet the qualifications and experience requirements in the Tax Agent Services Act.
- 1.33 Schedule # to the Bill amends the Corporations Act to provide that financial advisers who are registered tax agents are also qualified tax relevant providers. This removes the duplication of education requirements, enabling those financial advisers to provide tax (financial) advice without needing to undertake additional study.
[Schedule #, item 20, section 910A (definition of qualified tax relevant provider) of Corporations Act]

Commencement, application, and transitional provisions

- 1.34 The amendments commence on the day after Royal Assent.

- 1.35 Transitional provisions provide for the approval of domestic qualifications and the continued application of the Approved Qualifications Determination.
