

Australian Capital Territory

Agents Amendment Regulation 2019 (No 1)

Subordinate law SL2019–5

made under the

Agents Act 2003, s 178 (Regulation-making power)

EXPLANATORY STATEMENT

Overview

The Regulation amends the *Agents Regulation 2003* to provide that the *Agents Act 2003* (Agents Act) does not apply to YWCA Canberra (YWCA) or a person employed by YWCA who provides a real estate service. In practice, this will exempt YWCA from having to obtain a real estate agents licence for the purpose of managing private rental properties which will be offered to women at risk of chronic homelessness at the affordable housing rate (less than 75% of market rent).

As registered community housing providers in the ACT, YWCA is subject to the National Regulatory System for Community Housing (NRSCH) under the *Community Housing Providers National Law (ACT) Act 2013*. The seven performance outcomes with which community housing providers must comply include being fair, transparent and responsive in delivering assistance to tenants and residents, maintaining high standards of probity in relation to its business, ensuring good governance, and working in partnership with community organisations.

The ACT Human Services Registrar accepts complaints about a community housing provider's non-compliance and takes a risk-based approach to monitoring providers' ongoing compliance with the NRSCH. By contrast, the Agents Act mandates individual standards of integrity and competence in the provision of commercial real estate services, which includes where agents work for commission as opposed to providing a not-for-profit community service.

Where community housing providers offer real estate services in the course of administering affordable housing programs that do not directly compete with commercial real estate services, the Government considers the NRSCH provides more tailored consumer protection than the individual-focused licensing structure under the Agents Act.

Exempting community housing providers such as the YWCA from the Agents Act permits those providers to collect the management fees necessary to cover the administration costs of their housing programs, which makes these programs sustainable to deliver.

This exemption is consistent with the existing exemption granted to Havelock Housing Association Incorporated and treatment of community housing providers in other jurisdictions. For example, in NSW all registered community housing providers subject to the NRSCH under the *Community Housing Providers National Law (NSW)* are exempted from the *Property, Stock and Business Agents Act 2002 (NSW)* without qualification.

Human Rights Implications

This Regulation does not engage or limit rights under the *Human Rights Act 2004*. Exemption from the Agents Act will support YWCA Canberra to sustainably manage private rental properties for lease by people at risk of chronic homelessness, including in particular women with children and older women. The Regulation indirectly supports the right to protection of the family and children and the right to family and home under sections 11 and 12 of the Human Rights Act respectively.

Detail

Clause 1 – Name of regulation

This is a technical clause that establishes the name of the Regulation as the *Agents Amendment Regulation 2019 (No 1)*.

Clause 2 – Commencement

This is a formal provision specifying when the Regulation will commence. The Regulation will commence on the day after its notification day.

Clause 3 – Legislation amended

This Regulation amends the *Agents Regulation 2003*.

Clause 4 – Section 5C

This clause substitutes existing Section 5C (Act does not apply to Havelock Housing Association Inc – Act, s6(1)) to also prescribe YWCA Canberra and any person who, as an employee of YWCA Canberra, provides a real estate agent service as an entity to which the Act does not apply.

It also amends the title of the clause to read, ‘Act does not apply to certain housing providers – Act, s 6(1)’ and includes the Australian Business Numbers of both Havelock Housing Association Inc and YWCA Canberra to enable greater certainty in identifying the legal entity and employees that are exempted from the Act.