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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FAIR TRADING AND OTHER JUSTICE LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

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FAIR TRADING AND OTHER JUSTICE LEGISLATION AMENDMENT BILL 2022

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HR Act).

OVERVIEW OF THE BILL

The purpose of the Fair Trading and Other Justice Legislation Amendment Bill 2022 (the Bill) is to provide improved consumer protection outcomes for the Canberra community.

The Bill is an omnibus bill which amends legislation in the Minister for Consumer Affairs' portfolio and Special Minister of State's portfolio.

The Bill makes amendments to the:

- *Agents Act 2003*
- *Agents Regulation 2003*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Race and Sports Bookmaking Act 2001*
- *Race and Sports Bookmaking Regulation 2001*
- *Retirement Villages Act 2012*
- *Retirement Villages Regulation 2013*

The Bill also makes consequential amendments to the:

- *ACT Civil and Administrative Tribunal Regulation 2009*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Fair Trading (Australian Consumer Law) Act 1992*
- *Legal Profession Act 2006*
- *Magistrates Court (Agents Infringement Notices) Regulation 2003*

SUMMARY OF AMENDMENTS

Agents Act 2003 and Agents Regulation 2003

This Bill establishes a new licensing framework for real estate agents in the ACT. The new framework divides agent licences into two categories, with a class 1 licence holder requiring higher educational qualifications, reflecting the fact that this class of agent is responsible for the day-to-day management of a property agent business. A class 1 licence will require the applicant to have attained a CPP51119 Diploma of

Property (Agency Management). A class 2 licence will require the attainment of a CPP41419 Certificate IV in Real Estate Practice.

Registered assistant agents will be required to complete ten units from the CPP41419 Certificate IV in Real Estate Practice and the permitted activities of this registration will be restricted. Assistant agents will be restricted from entering into agency agreements, withdrawing trust money, and conducting auctions. The amendments also introduce additional requirements for the attainment of a land auctioneering licence, which will be available to licensed agents, provided they complete additional auctioneer-specific training. The Bill also removes the unqualified salesperson registration pathway which previously permitted persons who have not completed any real estate agent training to be conditionally registered as a salesperson, provided they were enrolled in a specified training course. The amendments within the Bill ensure that agents have appropriate training for the activities they are permitted to undertake.

These changes have been implemented in response to a nationally agreed approach to improved training requirements for the real estate industry. Artibus Innovation were commissioned by the Australian Government to support the Industry Reference Committee for Property Services in their work to develop and review training packages such as the real estate training package. In 2019, Artibus Innovation released the National Real Estate Training Package (NRETP). The NRETP has been designed to eliminate ambiguity around qualification outcomes, clearly define skills, roles, and career progression, ensure qualifications reflect industry roles and future proof qualifications by considering technology, industry and social change.

To date, all other jurisdictions have incorporated the NRETP into their licensing framework. The reforms proposed in the Bill will amend the Territory's regulatory framework for the real estate industry to support the implementation of the NRETP, align the Territory's licensing and registration system with other jurisdictions and ensure all real estate industry professionals have the necessary skills and knowledge to provide high quality services to the Canberra community.

The Bill:

- divides agent licences into two classes, being class 1 and class 2 agent licences
- provides that licensees-in-charge of a real estate business must hold a class 1 agent licence
- renames salespersons as assistant agents to better reflect the qualifications and nature of the role under the NRETP
- introduces a specific licence for land auctioneers and makes it an offence for anyone not holding a land auctioneer's licence to conduct land auctions

- inserts new strict liability offences preventing assistant agents from authorising the withdrawal of trust money or entering into agency agreements
- inserts other new strict liability offences to support the appropriate enforcement of the new licence classes and to prevent individuals from pretending or carrying on business as if they held a particular kind of licence class that they do not
- removes the unqualified salesperson registration pathway to ensure that everyone in the real estate industry holds an appropriate minimum level of qualifications
- clarifies that the commissioner for fair trading has the power to grant exemptions from prescribed qualification requirements for applicants who hold an equivalent or substantially equivalent higher qualification
- provides for the training and qualification requirements for licensed agents and registered assistant agents to be determined by the commissioner for fair trading through a disallowable instrument. The training requirements will be updated in accordance with the NRETP. The use of a disallowable instrument will provide the flexibility needed to update or modify the licensing and registration requirements as necessary
- provides transitional provisions to allow existing agents to smoothly transition to the new licence categories and to provide a period of time in which to undertake any additional training required to sustain their licence class in the longer term; and
- creates a regulation-making power which allows for the creation of regulations in the event of any unforeseen issues arising in the implementation of the bill (see further below at clause 83, new part 22, section 238 for more details)

Gaming Machine Act 2004 and Gaming Machine Regulation 2004

This Bill amends the *Gaming Machine Act 2004* (GM Act) and *Gaming Machine Regulation 2004* (GM Regulation) to provide that only corporations and not individuals as natural persons are eligible to be an approved supplier of gaming machines. Approval as a supplier enables a person to sell, install or maintain gaming machines, peripheral equipment for gaming machines or systems designed for use with gaming machines. The Bill makes consequential amendments to provisions relating to gaming machine technicians, as requiring suppliers to be corporations means that suppliers can no longer be approved as technicians, which are natural persons.

The amendments give effect to how the industry operates in practice. No individual has been licensed as a sole-operator gaming machine supplier in the Territory in the

time the current Act has been in effect. Additionally, the complexity of manufacturing, selling or servicing machines or components to national standards makes it unlikely for an individual to operate in such a capacity.

Race and Sports Bookmaking Act 2001 and Race and Sports Bookmaking Regulation 2001

This Bill amends the *Race and Sports Bookmaking Act 2001 (RSB Act)* and the *Race and Sports Bookmaking Regulation 2001 (RSB Regulation)* to provide that only corporations and not individuals or syndicates may hold a sports bookmaking licence. As the only licensed sports bookmaker in the ACT is a corporate bookmaker, the amendments to remove individuals from the licensing provision gives effect to how the industry currently operates in the Territory.

Retirement Villages Act 2012 and Retirement Villages Regulation 2013

The Bill amends various provisions in the *Retirement Villages Act 2012* and *Retirement Villages Regulation 2013* to clarify uncertainties predominantly concerning meeting processes and procedures.

CONSULTATION ON THE PROPOSED APPROACH

The proposed amendments are the result of consultation with relevant stakeholders affected by the proposals, including ACT Government Directorates and external stakeholders.

Stakeholders that were consulted and whose input informed the development of the Bill include:

- ACT Bar Association
- ACT Law Society
- ACT Human Rights Commission
- ACT Courts and Tribunal
- ACT Gambling and Racing Commission
- All ACT Government Directorates
- All licensed agents and registered salespersons
- Gaming machine suppliers that hold ACT supplier approvals
- Retirement Living Committee of the ACT Property Council
- Retirement Villages Association, ACT
- Real Estate Institute of the ACT (REIACT)

- Tabcorp

Input and feedback from stakeholders have informed the amendments proposed in this Bill.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill engages the following rights under the HR Act:

- Section 22(1) – Right to be presumed innocent until proven guilty
- Section 27B – Right to work and other work-related rights

Rights Promoted

Amendments to the *Agents Act 2003* provide the commissioner for fair trading with the power to grant exemptions from the prescribed qualification requirements for agent licences or assistant agent registrations where an applicant has an equivalent or substantially equivalent higher qualification. This provision engages and promotes the right to work in section 27B of the HRA by removing barriers to work. This measure will ensure applicants who hold a relevant higher qualification, such as diploma or university degree, are able to enter the industry without having to re-train or complete a lower qualification.

Rights Limited

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 28 of the HR Act requires that any limitation on a human right be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate.

Proportionality can be understood and assessed as explained in *R v Oakes*. A party must show that:

[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”.

The Bill engages and may limit the right to work and the right to be presumed innocent until proven guilty. The ways in which the Bill does this are set out further below.

Agents Act 2003

Right to be presumed innocent until proven guilty

This Bill introduces several new strict liability offences which will support the effective operation of the new licence structure. These strict liability offences include:

- carrying on business as a land auctioneer or pretending to be a land auctioneer without being licensed to do so (new section 21)
- pretending to be a class 1 licensed agent of a particular kind without being licensed as such (new section 23B)
- pretending to be a class 2 licensed agent of a particular kind without being licensed as such (new section 23B)
- being responsible for the day-to-day management of a place of business of a licensed property agent if not licensed as a class 1 licensed property agent (new section 68A)
- operating a property agent place of business without a class 1 agent being in charge of the day-to-day management of the business (section 69)
- being a class 1 agent and being responsible for the day-to-day management of 2 or more places of business (section 70)
- signing an agency agreement when registered as an assistant property agent (new section 75A)
- being a registered assistant agent and withdrawing trust money (new section 107).

These new and amended strict liability offences are designed to support the effective operation of the new licensing framework as they target individuals engaging in behaviour which they are not licensed or registered to undertake. These offences address the significant consumer risk that arises with actions of unlicensed or inappropriately licensed individuals in the real estate sector.

1. Nature of the right and the limitation (s 28 (a) and (c))

Section 22 (1) of the HR Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The Bill amends existing strict liability offences and introduces new strict liability offences to support the effective operation of the new licensing framework for real estate agents. Strict liability offences engage and may limit the right to be presumed innocent until proven guilty as they impose guilt without the need to prove the person's fault.

2. Legitimate purpose (s 28 (b))

The intention of the strict liability offences introduced by this Bill is to ensure that activities which pose a high risk to consumers (such as authorising the withdrawal of trust money or entering into an agency agreement) are only undertaken by real estate industry professionals that have the necessary knowledge and skill to carry out their duties diligently and in accordance with legal requirements. The purpose of the specific penalties attributable to these offences is to provide an appropriate disincentive to individuals from undertaking the actions subject to the offence provisions.

Real estate agents and assistant agents are entrusted by both the Government and the community to undertake important work on their behalf. This work includes providing vital services for homebuyers, sellers, property investors, renters and unit plan owners' corporations and routinely undertaking high-risk activities including managing large amounts of client money provided in trust. The significant trust placed in the industry by the Government and community comes with a high level of responsibility that should be matched by the highest standards of ethical behaviour.

Further, Canberra is the most expensive capital city to rent in Australia¹ and has become the second most expensive city to purchase a house and is expected to continue to rise². Given the competitive and growing nature of the property market, it is increasingly important that the real estate industry is appropriately regulated and has the proper training to execute high risk activities.

3. Rational connection between the limitation and the purpose (s28(d))

As with many regulatory frameworks involving licensing and registration, the inclusion of a suite of strict liability offences is considered important in deterring non-compliance. This range of strict liability offences demonstrates the seriousness of a breach of trust by individuals purporting to hold certain qualifications or licences and registrations. They are also intended to provide enhanced consumer protection outcomes for persons interacting with the real estate sector.

¹ <https://www.corelogic.com.au/news/australias-rents-continue-climb-despite-affordability-constraints>

² <https://www.domain.com.au/research/house-price-report/december-2021/#canberra>

The limitations posed by the strict liability offences on the right to the presumption of innocence is rationally connected to the legitimate purpose as it provides a measure to enhance consumer protection outcomes for the community by ensuring real estate professionals are only able to undertake activities which align with their training and skills.

4. Proportionality (s28 (e))

The strict liability offences are necessary to deter individuals from engaging in activities which they do not have the correct training and qualifications for. There are no less restrictive means available to effectively achieve this purpose.

The strict liability offence at new section 68A provides that a licensee-in-charge of a real estate business must hold a class 1 property agent licence. The existing strict liability offences requiring a real estate business to nominate a licensee-in-charge for each business at sections 69 and 70 have been amended to incorporate the new classes and clarify that the licensee-in-charge must be a class 1 agent. The penalty for these offences has been lowered to 50 penalty units. The lowering of this penalty amount is consistent with the ACT Guide to Framing Offences that provides that the recommended maximum monetary penalty for a strict liability offence is 50 penalty units. New section 68A has been drafted to align with these offences with a maximum penalty of 50 penalty units. These penalties are considered proportionate as licensees-in-charge are responsible for the day-to-day management of real estate business and in ensuring all persons within their purview are acting in accordance with the law. If a licensee-in-charge does not have the appropriate training and experience, the business may not be adequately supervised, ultimately placing consumers at risk. Failure to appropriately manage a business may also negatively impact the ongoing professional development of junior agents and assistant agents within the business. This suite of offences will ensure that only class 1 agents who are required to hold a qualification, which includes specific training on the core skills required for managing a real estate business, are able to act as licensees-in-charge.

The penalty amounts for sections 21, 23B, 75A and 107A have been set at a maximum of 100 penalty units. While this penalty amount does not align with the prescribed maximum of 50 penalty units for strict liability offences in the ACT Guide to Framing Offences, it is considered proportionate within the context of the Territory's rising property market and frequent million-dollar property sales. The higher penalty amounts respond to the seriousness of a breach of trust by an individual pretending to hold a certain qualification, licence or qualification. Serious financial damage can result if a real estate professional is not appropriately trained to carry out their work and appropriate mechanisms for responding to breaches need to be available to ensure confidence in the industry and the Government. This is particularly important as the current property market means that individuals working in the real estate market interact with and hold on trust significant amounts of money for clients and have the opportunity to receive high value commissions for their work. Noting that an individual has the potential to receive significant financial benefit if

they undertake certain real estate agent activities, the prescription of 100 penalty units is necessary to meet the legitimate purpose of providing an appropriate financial deterrent to non-compliance and encourage all individuals wishing to work in the real estate industry to be appropriately trained and licensed. The higher penalty amounts for these offences signal to the industry and the community that a breach is serious and should not be dismissed as ‘the cost of doing business’. This penalty amount also aligns with maximum financial penalties for existing offences in the Act.³ More detailed analysis on proportionality of this penalty amount for each new strict liability offence is outlined in further detail below.

The new offences in section 21 and 23B are intended to prevent individuals from carrying on land auctioneer business without being licensed to do so or from pretending to hold a type of licence class that they do not. These offences mean that real estate agents must hold a land auctioneer’s licence to conduct auctions for the sale of land. Similarly, stock and station agents that want to carry out auctions of rural land will also need to be licensed as a land auctioneer. Section 23B provides that it is an offence for a property agent to pretend to hold a class 1 or class 2 licence when they do not. As noted above, these sections provide a maximum penalty of 100 penalty units for breaches of these provisions. This penalty amount is considered proportionate given the significant responsibility and trust provided to agents by the community, the finality of sale by auction, and the serious consequences, including large financial losses, should an individual act in a capacity for which they are not licensed and as such fail to appropriately execute the required duties. It is also noted that an individual could obtain significant financial benefit from acting as a class 1 or class 2 licence-holder, noting the commissions resulting from the sale of residential or rural property. While a lower penalty unit was considered during policy development, it was determined that a lower penalty would not provide an appropriate disincentive to individuals acting outside their permitted licensed activities. As such, to meet the legitimate purpose of providing a disincentive to individuals from carrying on as if they were licensed when they were not, the penalties for these provisions have been set at 100 penalty units.

Assistant agents are required to undertake significantly less training than licensed agents. Consequently, the activities assistant agents are able to undertake are restricted by the amendments in the Bill. New section 75A makes it an offence for an assistant agent to enter into an agency agreement and carries a maximum penalty of 100 penalty units. This restriction acknowledges that agency agreements between real estate agency businesses and property owners require a high level of attention to detail and can have significant financial and legal consequences for property owners and the community if not executed appropriately. This measure intends to address these risks by preventing assistant agents from being able to bind agreements between a property owner and a real estate agency to lease or sell a

³ For offences relating to pretending to be a licensed agent see sections 18, 19 and 20, *Agents Act 2003*; for offences relating to trust money see section 107, *Agents Act 2003*.

property on the property owner's behalf but does not extend to activities and tasks that flow from the original agency agreement.

Section 107A provides that it is an offence for an assistant agent to withdraw trust money and is subject to a maximum penalty of 100 penalty units. Trust money is money held on behalf of another and the management of trust money is subject to strict legal requirements. Managing trust money is a central component of real estate businesses and, in the case of property transactions, the amount of money held can be millions of dollars. Trust accounting rules and regulations can be difficult to navigate and requires specialised knowledge. Assistant agents are not required to complete any trust accountant training and are consequently more likely to make an error when engaging with trust money. As such, there is significant consumer risk involved in the inappropriate handling of trust monies by unqualified real estate professionals. Noting the significant amounts of money that are held on trust by real estate businesses and assistant agents' lack of specialised training, the maximum penalty of 100 penalty units is considered proportionate and meets the legitimate purpose of providing a necessary deterrent to non-compliance.

Any breaches of the offence framework will also be managed in accordance with Access Canberra's tailored Fair Trading Compliance framework.⁴ The enforcement framework's three step 'engage, educate and enforce' compliance process provides a safeguard to ensure the limitation on rights is reasonable and proportionate. Under this process, engagement and building positive relationships with the industry underpins all compliance activity. Should a breach occur, conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own unique context. Access Canberra, where suitable, will take an educative approach to ensure the industry is aware of their legislative obligations and will consider alternative options for addressing the issue, including rectification. If enforcement action is necessary, the mechanism chosen will be dependent on the specific circumstances of the breach but may include verbal compliance advice, applying to the ACT Civil and Administrative Tribunal (ACAT) for an occupational disciplinary order to, among other things, suspend or cancel a licence or registration or criminal prosecution.

A range of corresponding infringement notices have been included in the Bill for sections 21 (1) (b) (i), 68A (1), 69 (1), 69 (2), 69 (3), 70 (1), 70 (2), 75A and 107A to ensure the strict liability offences are reasonable and justifiable. These infringement notices are an important component of establishing an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. The inclusion of infringement notices for these provisions is consistent with the existing approach to regulating the industry. Noting the serious consumer risk and consequences posed by an individual pretending to be a licensed land auctioneer, an infringement notice has not been provided for this provision. This

⁴ <https://www.accesscanberra.act.gov.au/s/article/about-access-canberra-tab-access-canberra-accountability-commitment>

approach is consistent with other existing offence provisions which relate to a person pretending to be a particular licensed agent.

The strict liability offences introduced or amended by this Bill are framed with clear criteria as to whether the offence has occurred. This means individuals can reasonably be aware they have an obligation under the law. Further, communication with the industry around the obligations of individuals operating in the industry has been undertaken and will remain a priority following the commencement of the Bill. Communications outlining the new restrictions on the activities assistant agents may undertake, the requirement for all licensees-in-charge of a real estate business to hold a class 1 licence and the introduction of a land auctioneers' licence were provided to all licensed agents and registered assistant agents in advance of this legislation to ensure all industry professionals had sufficient notice of the upcoming changes. These changes were also communicated by the REIACT to its membership, which represent a significant portion of the real estate sector. Further communications will be provided to the industry upon commencement to ensure they are well-informed of the new licensing requirements and restrictions. The clear framing of offences, as well as strong communication around the obligations of individuals operating in the industry are important safeguards on individual rights and ensure the proportionality of introducing strict liability offences.

Additionally, the defence of mistake of fact, which preserves the principle that a person is innocent until proven guilty, is available in response to the strict liability offences.

Right to work

1. Nature of the right and the limitation (s 28 (a) and (c))

The Bill amends the licensing framework for agents and assistant agents in the ACT by:

- dividing agent licences into class 1 and class 2
- requiring licensees-in-charge of a real estate business to hold a class 1 agent licence
- introducing a specific land auctioneering licence and making it an offence to conduct an auction without one
- removing the unqualified salesperson registration pathway
- restricting assistant agents from undertaking certain activities including entering into agency agreements and withdrawing trust monies
- providing transitional arrangements for existing licensees including the requirement to complete additional training to continue to hold a class 1 agent licence and conduct auctions

As a person may be precluded from working as a licensed agent or registered assistant agent or completing certain duties due to the abovementioned changes to the licensing framework, the right to work pursuant to section 27B (1) of the HRA is engaged and may be limited. The measures are nevertheless considered compatible with the right to work on applying the reasonable limit criteria in section 28 of the HRA.

2. Legitimate purpose (s 28 (b))

The purpose of the limitation is to reduce harm to consumers as a result of licensed agents or registered assistant agents not having the appropriately knowledge or training to carry out their duties.

The national review, referenced above, identified that the real estate sector has experienced significant market disruption due to the emergence of new technology and changes in traditional agent roles. The review also noted that the Commonwealth Government Department of Environment and Energy has advised that regulatory requirements around housing and commercial environment sustainability are becoming increasingly important. Additionally, the real estate industry also plays a significant economic role in Australia and the ACT's economy. As a result, it is vital that the Territory's real estate sector is appropriately equipped to meet the current and emerging skill demands.

As highlighted above, the Territory's property market is highly competitive and is continuing to grow. Buying and selling a house is one of the most significant investments a person can make, and consumers rely heavily on the expertise of real estate industry professionals to navigate the market and the sale process. Further, property investors rely on agents to ensure their asset is well managed and sustainable in the longer term. Renters and unit plan owners' corporations rely on agents for the appropriate management of their homes in accordance with the *Residential Tenancies Act 1997* and the *Unit Titles (Management) Act 2011* respectively. Likewise, stock and station agents provide valuable insights and guidance to consumers when buying or selling rural land or livestock in the Territory. It is a reasonable expectation by consumers that real estate professionals are only permitted to carry out activities that they have the appropriate training, knowledge and qualifications for. Noting the range of duties and responsibilities agents and assistant agents are entrusted with, including in respect to a person's home, enhancing consumer protections by changing the regulation of the real estate industry constitutes a pressing and substantial concern.

3. Rational connection between the limitation and the purpose (s 28 (d))

The measures are rationally connected to the objective of improving consumer safety, as the new licensing and training framework will assist in protecting members of the community from adverse outcomes associated with agents and assistant

agents who do not have appropriate training, experience and qualifications to carry out their duties professionally, ethically and in accordance with the law.

4. Proportionality (s 28 (e))

The limitations on the right to work are proportionate and achieve the legitimate purpose of increasing consumer protection by ensuring that real estate professionals are appropriately qualified to undertake their essential services, while not constituting an absolute ban on the ability to work in the real estate industry. Individuals are still able to work in the industry provided they meet certain conditions. The changes to the regulation of the industry proposed in the Bill are the least rights restrictive means available for preventing harms to the community due to inadequately trained agents and assistant agents.

A range of transitional measures have been included in the Bill to safeguard the proportionality of the limitation. All existing licensed agents who are not licensees-in-charge will be automatically transitioned to a class 2 agent licence and will not be required to complete additional training. Where an agent who is not currently a licensee-in-charge wishes to have a class 1 licence, they may elect to apply for a class 1 licence, provided they have 2 years previous experience as a licensed agent (noting they will need to meet the increased training requirement for existing class 1 agents in order to renew their licence). Likewise, all salespersons will also automatically receive an assistant agent registration. Assistant agents will only need to complete additional training if they wish to upgrade to a class 1 or class 2 agent licence.

The limitation on licensed agents' right to work due to the restriction that licensees-in-charge must hold a class 1 licence is considered necessary and proportionate. Licensees-in-charge undertake and oversee a range of duties and responsibilities including the collection of sensitive personal information, the management, purchase and sale of expensive property assets and administration and management of trust funds. Should these duties not be executed appropriately, consumers may be at significant risk. Consequently, it is necessary that these duties are only executed by licensed agents who have a higher level of training to minimise the risk of illegal or unethical behaviour occurring.

Transitional measures have also been included to minimise the impacts on existing licensees-in-charge. All existing licensees-in-charge (or those who have previously been a licensee in charge) will automatically receive a class 1 agent licence subject to a condition that they complete seven core units from the Diploma of Property (Agency Management) by 1 July 2024. This is the case even if the licensee-in-charge does not have 2 years previous work experience (which will be a prerequisite for being licensed as a class 1 agent after the scheme commences). The requirement to complete additional training as part of the transitional measure may also limit the right to work as it will impose a financial burden on a person to pay for a training course in order to continue to work as a licensee-in-charge. However, the

imposition of additional units on existing licensees is considered reasonable and proportionate as licensees-in-charge were previously not required to complete any specific management or accountability training. The prescribed units were also designed by Artibus Innovation following a national review and have been determined to constitute the core skills a licensee-in-charge must hold in order to manage a real estate business effectively. A two-year transition period to complete the required additional training has been included to further safeguard the proportionality of the limitation. It is noted that the financial impost of this requirement will be tempered by the ability to claim the training as a work related self-education expense.

Further, if a person fails to complete the prescribed training, their licence will not be automatically cancelled, rather they will be eligible for a class 2 licence. If their breach of a licensing condition requires compliance action, it will be managed through the existing occupational discipline process set out in division 3.4 of the Agents Act. This process requires the commissioner for fair trading to apply to the ACT Civil and Administrative Tribunal (ACAT) to seek an occupational discipline order to cancel or suspend the licence and allows a licensed agent to explain any extenuating circumstances which may have impacted their ability to comply.

Likewise, any limitation on the right to work due to the introduction of a specific land auctioneering licence is proportionate to the aim of reducing harm to consumers. This new licence category will mean that real estate agents will no longer be able to conduct auctions as part of their general real estate agent licence. Likewise, stock and station agents will no longer be able to conduct auctions of rural land as part of their general stock and station agent licence, however they will maintain the ability to conduct auctions for the sale of livestock. The new auctioneer licence ensures that only those who have demonstrated competency in auctioneering are able to conduct auctions in the ACT. Only allowing those who have completed the necessary training to conduct auctions is considered necessary as auctions inherently pose a greater risk to consumers given auction contracts are unconditional and not subject to a cooling off period. The imposition of targeted training will reduce the risk of auctions not being conducted in accordance with the law. Transitional arrangements at sections 232 and 233 have been provided for existing licensed real estate agents and stock and station agents to ensure they are able to continue to conduct auctions as part of their work for a period of 2 years. The renewal of their licence is conditional on completion of additional training which can be completed within the two-year period. Agents who do not wish to conduct auctions after the transition period are not required to complete this training and will be able to continue to work and undertake all other agent duties in accordance with their licence.

Transitional arrangements have been put in place to address the impact on the right to work on assistant agents as a result of the amendments to restrict their activities. The restriction on entering into agency agreements will not apply to existing registered assistant agents until 1 July 2023. This will allow existing assistant agents

the opportunity to upskill to an agent licence, should they wish to, while also ensuring there is minimal disruption to their work. Moreover, this restriction on entering into agency agreements only prevents an assistant agent from being able to bind an agreement between an agent or real estate agent and property owner to carry out certain services such as leasing or selling a property on a property owner's behalf. The restriction does not prevent an assistant agent from undertaking property management activities such as entering into tenancy agreements, completing inspection reports and other tasks that might flow from the original agency agreement. The restriction on withdrawing trust money has also been narrowly constructed to avoid inadvertently capturing common assistant agent activities such as receiving rent, bond or home purchase deposits and carrying out administrative duties. Consequently, while the restrictions on activities may preclude assistant agents from being able to complete some tasks, there is still significant work that can be undertaken within the remit of this registration.

Transitional arrangements at section 235 have been included for unqualified salespersons to ensure that those who are currently registered through this mechanism are not prevented from being able to work. This registration class had previously been used as a pathway registration to become a salesperson while the unqualified salesperson was undertaking the necessary training to be eligible. Unqualified salespersons who are registered prior to notification will be able to continue to work under their existing registration until 31 October 2023 to allow them sufficient time to complete the necessary training to be eligible for an assistant agent registration.

For new industry entrants who are starting out their real estate industry training, the new training package will mean they face additional training requirements to what they may have previously been required to undertake. However, Commonwealth training supports are available to assist new entrants with meeting the costs associated with entering the industry.⁵ This training assistance will help in reducing financial barriers to entering employment in the real estate industry.

Gaming Machine Act 2004 and Race and Sports Bookmaking Act 2001

Right to work

1. Nature of the right and the limitation (s 28 (a) and (c))

The right to work contained in section 27B of the HRA is engaged and may be limited by amendments to the *Gaming Machine Act 2004* and the *Race and Sports Bookmaking Act 2001* within the Bill. The amendments provide that only corporations, rather than individuals (as natural persons) may apply for a gaming machine supplier approval or a sports bookmaking licence within the ACT.

⁵ Details on traineeships are available at <https://www.avetars.act.gov.au/qualifications>

The extent of the limitation is that individuals within both the ACT and from other jurisdictions will not be permitted to apply for a gaming machine supplier approval or sports bookmaker licence to work in these occupations within the Territory.

2. Legitimate purpose and rational connection (s 28 (b) and (d))

The purpose of the limitation is to reduce harm to the public caused by gambling, particularly amongst individuals within the ACT who engage in sports betting and users of electronic gaming machines.

In relation to sports bookmaking, in 2020-21, 17% of clients of the ACT Gambling Support Service listed sports betting as the most problematic form of gambling for them. The legislation as currently drafted allows individuals (natural persons) to obtain a sports bookmaking licence. The amendments to restrict sports bookmaker licences to corporations is intended to limit the number of people who can apply for a licence in the future as a measure to help mitigate a risk of an increase in sports betting services over time. The amendments seek to maintain a public health approach to gambling harm prevention.

With regards to gaming machine suppliers, limiting supplier approvals to corporations is intended as a consumer protection measure noting that manufacturing, selling or servicing machines or components to national standards is highly complex. Given the technical nature of this occupation, the limitation on the right to work to corporations only, is intended to prevent a risk to gaming machine users if individuals are approved as suppliers within the ACT. Registration under the *Corporations Act 2001 (Cth)* as a company ensures that the entity is subject to additional regulatory checks. Under the Commonwealth Act, all companies must comply with various notification and reporting requirements under the Act.

Corporatising the sports bookmaking licence scheme and gaming machine supplier approvals will ensure that licensed entities are subject to a more robust and multi-faceted regulatory environment. The increased regulatory oversight including around financial probity, as well as any effect this may have on limiting future applications to those willing and able to operate in this more robust regulatory environment, will provide greater protections for consumers including those at risk of gambling harm.

3. Proportionality (s 28 (e))

This measure is the least rights-restrictive means available for preventing the harms to the users of sports betting services and electronic gaming machines. Limiting supplier approvals and sports bookmaking licences to corporations does not constitute a complete ban on the license or approval, rather it is a condition upon individuals holding a license that it be under the auspices of a company. This type of condition is reasonable as it is in place to serve a legitimate aim of protecting the public from gambling harm.

There are currently no individuals licensed as a gaming machine suppliers or sports bookmakers in the Territory. As such no individual will be immediately impacted or disadvantaged by the amendment.

Fair Trading and Other Justice Legislation Amendment Bill 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Fair Trading and Other Justice Legislation Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause states that the name of the Act is the *Fair Trading and Other Justice Legislation Amendment Act 2022*.

Clause 2 Commencement

This clause provides for the commencement of provisions in the Act.

The following provisions commence on the day after the Act's notification day:

- Section 3 which relates to the legislation amended by this Act.
- Section 110 which omits sections 8A and 8B of the *Agents Regulation 2003*.
- Part 4 which relates to the amendments to the *Gaming Machine Act 2004*.
- Part 5 which relates to the amendments to the *Gaming Machine Regulation 2004*.
- Part 6 which relates to the amendments to the *Race and Sports Bookmaking Act 2001*.
- Part 7 which relates to the amendments to the *Race and Sports Bookmaking Act 2001*.
- Part 8 which relates to the amendments to the *Retirement Villages Act 2012*.
- Part 9 which relates to the amendments to the *Retirement Villages Regulation 2013*.

All other provisions in the Act commence on 1 July 2022.

Clause 3 Legislation amended

This clause is a formal provision identifying that the Act amends the following legislation:

- *Agents Act 2003*
- *Agents Regulation 2003*
- *Gaming Machine Act 2004*
- *Gaming Machine Regulation 2004*
- *Race and Sports Bookmaking Act 2001*

- *Race and Sports Bookmaking Regulation 2001*
- *Retirement Villages Act 2012*
- *Retirement Villages Regulation 2013*

Part 2 Agents Act 2003

Clause 4 New section 7A

This clause inserts a new section 7A to provide that a *licensed property agent* is defined to mean a licensed business agent, a licensed real estate agent, or a licensed stock and station agent.

Clause 5 Carrying on business as a real estate agent Section 8 (2) (a)

This clause substitutes the current section 8 (2) (a) and is consequential new section 11 at clause 8, which creates the new licensing category of land auctioneer. The clause provides that a real estate agent may perform services as a real estate agent, including buying, selling (other than by auction), exchanging, leasing, assigning or otherwise disposing of land.

The intent of this amendment is to clarify the kinds of services a real estate agent may undertake and explains that selling land does not include sale by auction. Under the new real estate licensing framework introduced by this Bill, auctioning land now falls under the services provided by a land auctioneer and is not within the scope of services a real estate agent is licensed to provide.

Clause 6 New section 8 (2) (ca)

This clause inserts new section 8 (2) (ca) to provide that the types of services a real estate agent may perform include managing property under a lease.

The intent of this amendment is to clarify that managing property under a lease constitutes a real estate agent service and a real estate agent licence or assistant agent registration may conduct property management activities.

Clause 7 Carrying on business as a stock and station agent Section 9 (2)

This clause substitutes section 9 (2) to clarify the types of activities that constitute a service provided by a stock and station agent.

This clause amends section 9 (2) (a) and is consequential to the insertion of new section 11 at clause 8 which creates the new licensing category of land auctioneer. This amendment provides that a stock and station agent may perform services as a

stock and station agent which include buying, selling (other than by auction), exchanging, leasing, assigning or otherwise disposing of land. The intent of this provision is to clarify that under the new licensing framework introduced by the Bill, auctioning land now falls under services provided by a land auctioneer.

This clause also inserts section 9 (2) (e) to provide that the types of services a stock and station agent may perform include managing rural property under a lease. The intention of this amendment is to clarify that managing rural property under a lease constitutes a stock and station agent service and a licence or registration is required to undertake this activity.

Clause 8 New section 11

This clause inserts new section 11 which creates a new category of licensed service for the purposes of auctioning land. The clause provides that a person carries on a business as a land auctioneer if the person provides or offers to provide a land auctioneer service for a principal for reward. It indicates that a land auctioneer service includes acting as an auctioneer of land, which encompasses rural land. The section also allows for other land auctioneer services to be prescribed by regulation.

The intent of this clause is to support the creation of a separate licence class for land auctioneers at new section 21 inserted by clause 10 of the Bill. This new regulatory framework for auctioneers recognises that conducting auctions is a specialist high-risk activity which can have serious consequences such as significant financial loss if not conducted properly.

Clause 9 Section 16 and 17

This clause substitutes current sections 16 and 17 to clarify the intention of these sections.

New section 16 clarifies that division 3.1 does not apply to an administrator appointed under section 139. This clarifies the reference to an administrator by referring to the relevant section under which an administrator can be appointed.

This clause substitutes the existing meaning of *licensed* in section 17 to clarify that *licensed* in relation to an agent in division 3.1 does not include an agent whose licence is suspended.

Clause 10 New section 21

This clause inserts a new section 21. This section is a strict liability offence provision which makes it an offence for a person who is not a licensed land auctioneer to carry on business as a land auctioneer or to pretend to be a licensed land auctioneer. These offences carry a maximum penalty of 100 penalty units.

Subsections (2) and (4) provide transitional provisions. Subsection (2) disapplies the offence provision to class 1 and class 2 real estate agents and class 1 and class 2

stock and station agents. This is so that existing real estate agents or stock and stations agents (who are currently permitted to conduct auctions) can continue to conduct auctions during the transition period while they undertake the necessary additional training to hold a separate land auctioneer's licence as prescribed in new sections 232 and 233 at clause 82.

Subsection (4) provides that subsection (2) and subsection (4) expire on 30 June 2024, thereby providing for a two-year transition period. Once subsections (2) and (4) expire, the offence provision will apply to anyone who undertakes the prohibited conduct without holding a land auctioneer's licence.

This clause recognises that conducting auctions is a high-risk activity that can have serious consequences, such as significant financial loss, if not executed in accordance with the law. The intent of the amendment is to provide a regulatory mechanism to deter non-compliance and ensure all individuals conducting auctions in the ACT have the appropriate training, knowledge and experience to do so.

Clause 11 New sections 23A and 23B

This clause inserts new sections 23A and 23B into the Act.

New section 23A provides that a property agent licence may be a class 1 or class 2 licence. A note under this provision indicates that the qualifications and experience needed for each class of property agent licence are declared under section 25.

The intent of this amendment is to split existing real estate agent, business agent and stock and station agent licences into class 1 and class 2 licence groups. This division creates a hierarchy of licence classes to allow higher qualification requirements to be prescribed to class 1 agents via declaration in a disallowable instrument made under section 25 (clause 15). The implementation of the new licence classes will support improved compliance outcomes and better regulation of the industry as it will allow licensees-in-charge to be more easily differentiated from other licensed agents.

New section 23B creates new strict liability offence provisions to support the enforceability of the new licence classes. Section 23B (1) makes it an offence to pretend to be a class 1 agent of a particular kind when the individual does not hold a class 1 licence of that kind. Similarly, new section 23B (2) provides that it is an offence to pretend to be a class 2 licensed agent of a particular kind when the individual does not hold a class 2 licence of that kind. These provisions both provide a maximum penalty of 100 penalty units.

Section 23B (4) clarifies that a *class 1 licensed agent* of a particular kind means a class 1 licence to carry on business as one of the following agents: a business agent, a real estate agent or a stock and station agent.

Section 23B (4) also clarifies that a *class 2 licensed agent* of a particular kind means a class 2 licence to carry on business as one of the following agents: a business agent, a real estate agent or a stock and station agent.

Clause 12 Division 3.2 heading

This clause substitutes the current heading for Division 3.2 to create consistency in the wording of headings. The newly inserted heading reads: Division 3.2 Eligibility, qualifications and disqualification – agents.

Clause 13 Eligibility for licences Section 24 (1)

This clause substitutes section 24 (1) to clarify the eligibility criteria to be licensed as an agent. Section 24 (1) expands the existing eligibility criteria to provide that an individual is eligible to be licensed as an agent if, in addition to being an adult, not disqualified under a relevant section and having the qualifications required under section 25 for the relevant kind and class of licence, they also have the experience required for the relevant kind and class of agent licence.

The intention of this provision is to provide the legislative structure to allow both qualification and experience requirements to be prescribed to each kind of agent (real estate agent, stock and station and business) and each class of licence (1 or 2). This provision acknowledges the importance of practical experience in the performance of the duties involved for particular licence classes, for example a class one license holder who is a licensee-in-charge has significantly more responsibility than others and that both appropriate formal training and practical experience are both necessary to ensuring a person has the adequate skills to carry out their duties effectively.

This clause also inserts new subsection 24 (1A) which provides that the commissioner for fair trading has the discretion to decide that a higher qualification, equivalent qualification or substantially equivalent qualification meets the qualifications required under section 25 for each relevant kind and class of licence.

This provision intends to remove barriers to work by allowing applicants who hold a relevant higher qualification, such as a diploma or university degree, can enter the industry without having to retrain or complete a lower qualification.

Clause 14 Section 24 (2) and (3)

This clause inserts the words 'as an agent' after the word 'licensed' in section 24 (2) and (3) to clarify that a person in a partnership or a corporation is eligible to be licensed as *an agent* if the commissioner for fair trading is satisfied that the person in a partnership or a corporation meets certain criteria. The purpose of this amendment is to clarify who may be licensed as an agent.

Clause 15 Section 25

This clause substitutes the current section 25 (which provides that a regulation may prescribe the qualifications required for a licence) and provides that the commissioner for fair trading can declare, by disallowable instrument, the qualifications and experience required for a licence, or renewal of a licence, for an agent and each class of property agent licence.

The intention of this provision is to provide a mechanism for declaring the qualification and experience requirements for agents that supports the flexible modification and updating of these requirements while also maintaining an avenue for appropriate oversight and scrutiny by the Legislative Assembly.

The substituted provision also provides at subsection (3) that a declaration may apply, adopt or incorporate a law of another jurisdiction or instrument as in force from time to time. Related to this, subsection (4) notes that section 47 (5) or (6) of the *Legislation Act 2001* does not apply in relation to the law of another jurisdiction or instrument applied, adopted or incorporated under a declaration. Subsections 47 (5) and (6) indicate that where the law of another jurisdiction as in force from time to time is applied, the text of the law is taken to be a notifiable instrument.

Subsection (4) has been included to allow external material, such as Commonwealth training courses, to be incorporated by reference.

Subsection (5) refers to the *Legislation Act 2001*, section 47 (10) for a definition of *law of another jurisdiction*. Section 47 (10) defines *law of another jurisdiction* to mean:

- a) a Commonwealth Act or a disallowable legislative instrument under a Commonwealth Act; or
- b) a State Act, or any regulation or rule under a State Act; or
- c) a New Zealand or Norfolk Island Act, or any regulation or rule under a New Zealand or Norfolk Island Act; or
- d) a provision of a law mentioned in paragraphs (a) to (c).

The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. Similarly, the Legislation Act, s 47 (6) also provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. However, s 47 (5) and (6) may be displaced by the authorising law (the Act) or the incorporating instrument (see s 47 (7)).

Consequently, should a law or instrument of another jurisdiction be incorporated under this provision, the Legislation Act, section 47 (5) and (6) are displaced here as these instruments are usually readily available.

**Clause 16 People disqualified from being licensed
Section 27 (1)**

This clause inserts the words ‘as an agent’ after the first mention of the word licensed in section 27 (1) to clarify that a person licensed as an agent will be disqualified from being licensed as an agent if they contravene this section. The purpose of this amendment is to clarify how a person may be licensed.

Clause 17 Section 27A (3) (e)

This clause omits the word ‘salesperson’ and substitutes it with ‘assistant real estate agent’ in 27A (3) (e) to reflect the change in licensing descriptions from salesperson to assistant real estate agent.

Clause 18 Division 3.3 heading

This clause substitutes the current division 3.3 heading to create consistency in heading formatting throughout the *Agents Act 2003*. The new Division 3.3 heading is: Licence procedures and details - agents

**Clause 19 Advertising intended licence applications
Section 28 (1)**

This clause inserts the words ‘as an agent’ after the first mention of the word ‘licence’ in section 28 (1). The purpose of this amendment is to clarify how a person may be licensed.

Clause 20 Section 28 (2)

This clause substitutes current section 28 (2) to provide that the public notice by a person who intends to apply for a licence must state the kind of licence the person intends to apply for, and include any other information prescribed by regulation. For a property agent licence, the notice must also state the class of licence the person intends to apply for.

The intent of this amendment is to reflect the changes made to the licence classifications at clause 11 under new sections 23A and 23B.

**Clause 21 Licence applications
New section 29 (1A)**

This clause inserts a new section 29 (1A) and is consequential to the amendments at clause 11, new sections 23A and 23B, which create two classes of property agent licence: class 1 and class 2.

**Clause 22 Decisions on licence applications
New section 33 (3A)**

This clause inserts a new section 33 (3A) and is consequential to the amendments at clause 11, new sections 23A and 23B which create two classes of property agent licence: class 1 and class 2.

Clause 23 Section 44

This clause substitutes current section 44 and clarifies that the meaning of the word *registered* in relation to an assistant property agent does not include an assistant property agent whose registration is suspended.

Clause 24 Section 45 heading

This clause substitutes current heading for section 45 to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: Assistant real estate agents must be registered.

Clause 25 Section 45 (1) (a)

This clause substitutes 'real estate salesperson' with 'assistant real estate agent' to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Clause 26 Section 45 (3)

This clause substitutes current section 45 (3) and clarifies that the section does not apply to a person who is otherwise licensed or registered to provide the service. The purpose of this amendment is to create consistency in language usage throughout the *Agents Act 2003* and to reflect that under the licensing framework, a person may be either licensed as an agent or registered as an assistant agent.

Clause 27 Section 46 heading

This clause substitutes the heading for current section 46 to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: Assistant stock and station agents must be registered.

Clause 28 Section 46 (1) (a)

This clause substitutes the words 'stock and station salesperson' with 'assistant stock and station agent' to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Clause 29 Section 46 (3)

This clause substitutes current section 46 (3) and clarifies that the offence provision does not apply to a person who is otherwise licensed or registered to provide the stock and station agent service.

The purpose of this amendment is to create consistency in language usage and to reflect that under the licensing framework a person may be either licensed as an agent or registered as an assistant agent.

Clause 30 Section 47 heading

This clause substitutes the current heading for section 47 to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: Assistant business agents must be registered.

Clause 31 Section 47 (1) (a)

This clause substitutes the words ‘business salesperson’ with ‘assistant business agent’ to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Clause 32 Section 47 (3)

This clause substitutes current section 46 (3) and clarifies that the offence provision does not apply to a person who is otherwise licensed or registered to provide the business agent service. The purpose of this amendment is to create consistency in language usage throughout the *Agents Act 2003* and to reflect that under the licensing framework a person may be either licensed as an agent or registered as an assistant agent.

Clause 33 Section 48

This clause substitutes current section 48 to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The substituted provision also changes the format of the provision to make it easier to read.

Clause 34 Division 4.2 heading

This clause substitutes the current division 4.2 heading to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: Division 4.2 Eligibility, qualifications and disqualification – assistant property agents.

Clause 35 Eligibility for registration

Section 49 (1)

This clause substitutes current section 49 (1) to clarify the eligibility criteria to be registered as an assistant property agent. Subsection 49 (1) expands the existing eligibility criteria to provide that an individual is eligible to be registered as an assistant property agent if the commissioner for fair trading is satisfied that the applicant is an adult, has the relevant qualifications and experience required under section 50 for the relevant kind of registration, and is not disqualified under a prescribed section.

The intention of this provision is to allow both qualification and experience requirements to be prescribed for registration as an assistant property agent. Experience requirements are not currently prescribed for assistant agents and are not anticipated to be prescribed at this time, however the inclusion of experience requirements at subsection 49 (1) (c) is intended to future proof this provision.

This clause also inserts new subsection 24 (1A) which provides the commissioner for fair trading with the discretion to decide that a higher qualification, equivalent qualification, or substantially equivalent qualification meets the qualifications prescribed under section 50. The intention of this provision is to remove barriers to work for appropriately trained individuals by allowing applicants who hold a higher relevant qualification, such as diploma or university degree, the ability to enter the industry without having to retrain or complete a lower qualification.

Clause 36 Section 50

This clause substitutes current section 50 and provides that the commissioner for fair trading can declare, by disallowable instrument, the qualifications and experience required for registration, or renewal of registration, as an assistant agent.

The intention of this provision is to provide a mechanism for declaring the qualification and experience requirements for assistant agents that supports the flexible modification and updating of these requirements while also maintaining an avenue for appropriate oversight and scrutiny by the Legislative Assembly.

The substituted provision also provides at subsection (3) that a declaration may apply, adopt or incorporate a law of another jurisdiction or instrument as in force from time to time. Related to this, subsection (4) notes that section 47 (5) or (6) of the *Legislation Act 2001* does not apply in relation to the law of another jurisdiction or instrument applied, adopted or incorporated under a declaration. Subsections 47 (5) and (6) indicate that where the law of another jurisdiction, as in force from time to time, is applied, the text of the law is taken to be a notifiable instrument.

Subsection (5) refers the reader to the *Legislation Act 2001*, section 47 (10) for a definition of *law of another jurisdiction*. Section 47 (10) defines *law of another jurisdiction* to mean

- (a) a Commonwealth Act or a disallowable legislative instrument under a Commonwealth Act; or
- (b) a State Act, or any regulation or rule under a State Act; or
- (c) a New Zealand or Norfolk Island Act, or any regulation or rule under a New Zealand or Norfolk Island Act; or
- (d) a provision of a law mentioned in paragraphs (a) to (c).

The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. Similarly, the Legislation Act, s 47 (6) also provides that an incorporated document, and any amendment or replacement of such a document, are taken to be notifiable instruments. However, the Legislation Act, s 47 (5) and (6) may be displaced by the authorising law (the Act) or the incorporating instrument (see s 47 (7)).

Consequently, should a law or instrument of another jurisdiction be incorporated under this provision, the Legislation Act, 47 sections (5) and (6) are displaced here as these instruments are usually readily available.

**Clause 37 People disqualified from being registered
Section 51 (1)**

This clause inserts the words ‘as an assistant property agent’ after the first mention of the word ‘registered’ in current section 51 (1) to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The amendment also clarifies how a person may be registered.

Clause 38 Section 51 (1) (a) and (b)

This clause substitutes the words ‘a real estate salesperson’ with ‘an assistant real estate agent’ in current section 51 (1) (a) and (b) to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Clause 39 Section 51A heading

This clause substitutes the current heading for section 51A to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: 51A Suitability – assistant real estate agents.

Clause 40 Section 51A (2)

This clause substitutes the words ‘a real estate salesperson’ with ‘an assistant real estate agent’ in current section 51A (2) to reflect the change in occupational

descriptions under the new licensing framework from real estate salespeople to assistant real estate agent.

Clause 41 Section 51A (3) (d)

This clause substitutes current section 51A (3) (d) to reflect the change in occupational descriptions under the new licensing framework from real estate salespeople to assistant real estate agent.

Clause 42 Section 51A (3) (e)

This clause substitutes the words ‘salesperson’ with ‘assistant real estate agent’ in current section 51A (3) (e) to reflect the change in occupational descriptions under the new licensing framework from real estate salespeople to assistant real estate agent.

Clause 43 Division 4.3 heading

This clause substitutes the current heading for division 4.3 to reflect the change in occupational descriptions under the new licensing framework. The new heading reads: Division 4.3 Registration procedures and details – assistant property agents.

**Clause 44 Advertising intended registration applications
Section 52 (1)**

This clause inserts ‘as an assistant property agent’ after the first mention of the word ‘registration’ in current section 52 (1) to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The amendment also clarifies how a person may be registered.

Clause 45 Section 52 (2)

Current section 52 (1) requires a person who intends to apply for a registration to give public notice of the person’s intention to apply for registration. Subsection (2) indicates the information the notice must include.

This clause substitutes current section 52 (2) and provides that the notice must state the kind of registration the person intends to apply for and it must also include any other information prescribed by regulation.

The intent of this amendment is to reflect the changes made to the licence classifications at clause 11 under new sections 23A and 23B.

**Clause 46 Registration applications
New section 53 (1A)**

This clause inserts a new section 53 (1A) to require that an application for registration must be in writing and state the kind of registration that is being applied for. This amendment also clarifies that there are different kinds of registration, being

registration as an assistant real estate agent, an assistant agent stock and station agent or an assistant business agent, available under the licensing framework.

Clause 47 Section 64

This clause substitutes current section 64 to reflect the change in occupational descriptions by providing that for the purposes of division 4.4, *registered assistant property agent* means a registered assistant property agent or a former registered assistant property agent.

Clause 48 Sections 65 (1) (c) and (f) and 67 (1)

This clause replaces references to ‘salesperson’s’ with ‘assistant property agent’s’ to reflect the change in occupational descriptions under the new licensing framework from salespeople to assistant agent.

Clause 49 New sections 69 and 70

Section 68A

This clause inserts new section 68A to provide that a person commits an offence under this Act if they are acting as a licensee-in-charge but do not hold a class 1 property agent licence. This offence is a strict liability offence and has a maximum penalty of 50 penalty units.

The provision is intended to work in tandem with new sections 69 and 70 to provide a suite of offences that ensure only class 1 agents who have the appropriate training and experience manage a real estate business.

New subsection (3) provides that a licensed property agent may be exempted from this provision under section 71. This subsection is intended to support business continuity of real estate businesses and provide a mechanism for businesses to continue to operate without a class 1 agent in exceptional circumstances.

Sections 69 and 70

This clause also substitutes current sections 69 and 70 to reflect the change in licence class categories and provide the circumstances in which a class 1 or class 2 licensed property agent is considered to have committed an offence.

New section 69 provides that it is a strict liability offence if a licensed property agent (class 1, class 2 or corporation) does not employ a class 1 agent to be responsible for the day-to-day management of a business. A breach of this provision is a strict liability offence carrying a maximum penalty of 50 penalty units.

New section 70 provides that a class 1 licensed property agent commits an offence if they are responsible for the day-to-day management of 2 or more places of business. A breach of this provision is a strict liability offence carrying a maximum penalty of 50 penalty units.

This clause also updates the language in sections 69 and 70 to only refer to 'property agents' to clarify that they do not apply to employment agents.

This clause intends to work in partnership with new sections 69 to provide a supporting range of offences that ensure that all real estate businesses are supervised by a class 1 agent.

This clause lowers the penalty amounts for these offences from 100 penalty units to 50 penalty units and removes imprisonment as a penalty. The intention of this amendment is to ensure offence amounts are proportionate and appropriate when considered from a human rights perspective.

Clause 50 Section 71 heading

This clause substitutes current section 71 heading to reflect the change in licence description. The new heading reads: Class 1 licensed property agent to be in charge of business – exemptions.

Clause 51 Section 71 (1)

This clause substitutes current section 71 (1) and is consequential to the insertion of new section 68A and the modification of existing sections 69 and 70 at clause 49. This provision clarifies that the commissioner may exempt a licensed property agent from sections 68A, 69 and 70.

The intention of this provision is to protect business continuity for the real estate industry and allow for exemptions to sections 68A, 69 and 70 to be provided where necessary in exceptional circumstances.

Clause 52 Division 5.3 heading, except note

This clause substitutes current division 5.3 heading to better reflect the application of the division as it applies to assistant property agents. The new heading reads: Offences – assistant property agents.

Clause 53 Section 75 heading

This clause substitutes the current heading for section 75 to reflect the change in licence description. The new heading reads: Licensed property agent may only employ licensed property agent or registered assistant property agent.

Clause 54 Section 75 (1)

This clause omits section 75 (1) as it is redundant.

Clause 55 New section 75A

This clause inserts new section 75A to provide that is a strict liability offence for an assistant agent to sign an agency agreement. The maximum penalty for this offence is 100 penalty units.

Section 75A (2) provides that this offence does not apply to an individual taken to be a registered assistant property agent under section 234. Pursuant to section 75A (4), section 75 (2) expires on 30 June 2023. This provision ensures that individuals with existing registrations can continue to enter into agency agreements until 30 June 2023 while undertaking additional training to be eligible for an agent licence to ensure there is minimal disruption to their work.

The restriction on an assistant agent's activities recognises that those holding this registration class are required to undertake significantly less training than licensed agents and as a result, should not be undertaking some of the more complex real estate activities that carry significant risks to consumers. As such, this restriction will ensure that high risk real estate activities are only completed by individuals who have the appropriate skills and training to do so ethically, professionally and in accordance with the law.

The provisions do not preclude an assistant property agent from being able to conduct activities such as entering into tenancy agreements, completing inspections and other similar tasks that might flow from the original agency agreement.

Clause 56 Division 5.4 heading

This clause substitutes current division 5.4 heading to reflect the change in licence description. The new heading reads: Conflicts of interest – real estate and stock and station agents.

Clause 57 Section 77 heading

This clause substitutes the current section 77 heading to reflect the change in licence description. The new heading reads: Licensed real estate and stock and station agents must not act for buyer and seller of land.

Clause 58 Section 77 (1)

This clause substitutes current section 77 (1) to clarify that section 77 applies to licensed real estate or licensed stock and station agents.

Clause 59 Section 85 heading

This clause substitutes the current section 85 heading to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: Assistant property agents must disclose certain information.

Clause 60 Section 85 (1)

This clause substitutes everything before current paragraph (a) to update the wording to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant property agent.

Clause 61 Section 85 (3)

This clause substitutes everything before current paragraph (a) to update the wording to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant property agent.

Clause 62 Section 87 heading

This clause substitutes the current section 87 heading to reflect the change in occupation descriptions under the new licensing framework from salesperson to assistant agent. The new heading reads: Assistant property agents must not obtain beneficial interest in land.

Clause 63 Section 87 (1)

This clause replaces reference to ‘a salesperson’ in section 87 (1) with ‘an assistant property agent’ to reflect the change in licence description from salesperson to assistant property agent.

Clause 64 Section 87 (2)

This clause replaces reference to ‘a salesperson’ in section 87 (2) with ‘an assistant property agent’ to reflect the change in licence description from salesperson to assistant property agent.

Clause 65 Sections 88 (2) (b) and 89 (1)

This clause replaces references to ‘salesperson’s’ in sections 88 (2) (b) and 89 (1) with ‘assistant property agent’s’ to reflect the change in licence description from salesperson to assistant property agent.

Clause 66 Proposed contracts for sale of residential property Section 89A (2)

This clause replaces reference to ‘a salesperson’ in section 89A (2) with ‘an assistant property agent’ to reflect the change in licence description from salesperson to assistant property agent.

Clause 67 Division 5.9 heading

This clause substitutes current division 5.9 heading to clarify its application to agents and assistant property agents. The heading now reads: Other offences – agents and assistant property agents.

**Clause 68 Lending registration certificate
Section 98 (1), (2) and (4)**

This clause substitutes ‘salesperson’s’ with ‘assistant property agent’s’ in subsections (1), (2) and (4) to reflect the change in licence description from salesperson to assistant agent.

Clause 69 Part 7 heading

This clause substitutes current Part 7 heading to clarify its application to licensed property agents. The heading now reads: Trust accounts – licensed property agents.

Clause 70 New section 101

This clause inserts into division 7.1 new section 101 which defines the meaning of *licensed property agent* as it applies to part 7.

**Clause 71 Meaning of *licensed agent* – divs 7.2 and 7.3
Section 104A**

This clause is consequential to the amendment in clause 70 and omits section 104A.

Section 72 New section 107A

This clause inserts new section 107A and provides that assistant property agents must not withdraw trust money. This amendment creates a strict liability offence where an assistant property agent withdraws money from a trust account. A maximum penalty of 100 penalty units applies to this offence.

While it is common for the management of trust accounts in a real estate business to be subject to internal financial control processes that limit who is permitted to withdraw money from a trust account, the intention of this clause is to clarify that it is an offence for an assistant agent to withdraw trust money. This clause recognises that trust account management can be complex and that assistant agents are not required to complete any specific trust account management training and consequently may not have the necessary expertise to execute these activities in accordance with the law. The higher penalty amount acknowledges that there are significant financial consequences for consumers should trust money be managed inappropriately.

This clause has been narrowly drafted to ensure that assistant agents are able to receive rent and conduct other property management activities while also providing an important consumer protection in relation to the withdrawal of trust funds where fraud may occur.

Clause 73 Section 108 and section 111 headings

This clause substitutes current section 108 heading for consistency of language. The heading now reads: Licensed property agents to notify of overdrawn trust accounts.

This clause also substitutes current section 111 heading for consistency of language. The heading now reads: Quarterly statements by licensed property agents.

**Clause 74 Payment of unclaimed money to public trustee and guardian
Section 124 (3) and (4)**

This clause inserts 'property' after 'licensed' to clarify that this provision only applies to property agents (real estate, stock and station and business) and not employment agents.

Clause 75 Division 8.2 heading

This clause substitutes the current division 8.2 heading to clarify its application to licensed property agents. The heading now reads: Freezing accounts – licensed property agents.

Clause 76 Section 131

This clause substitutes current section 131 to provide a new definition section for division 8.2. The revised section 131 substitutes 'agent' with 'licensed property agent' and includes provision for former licensed property agents and the personal representatives of licensed property agents.

Clause 77 Part 10 heading

This clause substitutes the current Part 10 heading to clarify its application to licensed property agents. The heading now reads: Consumer compensation fund – licensed property agents.

Clause 78 Section 147 and 148

This clause substitutes current section 147 to provide a new definition section for division 10.2. Substituted section 147 retains the current 'claimant' definition and substitutes 'agent' with the term 'licensed property agent' to provide that the definition includes former licenced property agents.

This clause also substitutes current section 148 to incorporate the new term 'licensed property agent' to clarify that division 10.2 applies only in relation to anything that happened while the relevant individual was licensed as a property agent.

**Clause 79 Register information
Section 161 (g)**

This clause substitutes current subsection (g) and is consequential to clause 50 which updates the heading for section 71.

Clause 80 False and misleading statements
Section 169 (1) (g) and (h)

This clause substitutes current subsections (1) (g) and (h) to reflect amendments to headings for section 71 and Part 7. New subsection 169 (1) (g) is consequential to clause 50 which amends the heading for section 71. New subsection (1) (h) is consequential to clause 69 which amends the heading for Part 7.

Clause 81 Rules of conduct
Section 171 (1)

This clause substitutes current section 171 (1) to replace the words 'or registered salespeople' with ', licensed land auctioneers or registered assistant property agents'. The intention of this provision is to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent and introduction of a separate land auctioneer licence.

Clause 82 New section 171 (2A)

This clause inserts section 171 (2A) to provide that a licensed land auctioneer must not contravene a rule of conduct applying to the auctioneer. The intention of this provision is to reflect the introduction of a separate land auctioneer licence under the new licensing framework.

Clause 83 New part 22

This clause inserts new part 22 'Transitional – Fair Trading and Other Justice Legislation Amendment Act 2022'. The intention of this clause is to provide clear transitional measures that minimise the impacts of the new licensing framework on existing licensed agents and registered salespersons.

Section 228 Definitions - pt 22

This section sets out the definitions for this part.

Additional class 1 training is defined for this part to mean the following VET course units of competency:

- (a) CPPREP5001 (Manage compliance in the property industry);
- (b) CPPREP5002 (Establish and monitor property industry trust account management practices);
- (c) CPPREP5003 (Manage ethical practice in the property industry);
- (d) CPPREP5004 (Manage a safe workplace in the property industry);
- (e) CPPREP5005 (Manage teams in the property industry);
- (f) CPPREP5006 (Manage operational finances in the property industry);
- (g) CPPREP5007 (Develop a strategic business plan in the property industry).

Commencement day is defined as the day the Amendment Act, part 2 commences.

Completes additional class 1 training is defined to mean if a registered training organisation issues the relevant individual with a statement of attainment or qualification confirming that the person has satisfied the requirements of the additional class 1 training.

Licensed property agent is defined to include a person who holds a licence to carry on business as a business agent, real estate agent or stock and station agent.

Owners corporation managing agent is defined in reference to section 109A (3).

Registered training organisation is defined per the *National Vocational Education and Training Regulator Act 2011* (Cwth), section 3.

Statement of attainment is defined to mean a VET statement of attainment under the *National Vocational Education and Training Regulator Act 2011* (Cwth), section 3.

Unqualified real estate salesperson is defined to mean a person to whom section 49 (1) (a) and (c) as in force immediately before commencement day applied and who did not have the qualifications prescribed under section 50 as in force immediately before the commencement day.

VET course is defined as per the *National Vocational Education and Training Regulator Act 2011* (Cwth), section 3.

Section 229 Licensed agents

This section provides transitional arrangements for existing licensed agents. On commencement day, existing licensed real estate, stock and station and business agents will be automatically transitioned to a corresponding class 2 licence.

Automatic transition to a class 2 agent licence is subject to section 231 which provides eligible agents with the option to elect to transition to a class 1 agent licence.

Section 230 Licensed agents in charge

This section provides transitional arrangements for licensed agents in charge. On commencement day, licensees-in-charge of a real estate business will be automatically transitioned to the corresponding type of class 1 agent licence.

This licence is subject to an automatic condition that the licence holder must complete additional class 1 training before 1 July 2024. This condition ensures that all class 1 agents have the necessary skills and training to manage a real estate business professionally, ethically and in accordance with the law.

This measure has been drafted to automatically transition all current licensees-in-charge, regardless of whether they have two years' experience as a licensed agent,

to a class 1 licence. The intention of this provision is to support business continuity of real estate businesses and ensure impacted individuals may continue to fulfil the duties of their position while they undertake the required training.

Section 231 Experienced property agents who elect to become class 1 licensed property agent

This section provides transitional arrangements for experienced licensed agents who have two years' experience as a licensed agent the option to elect to transition to a class 1 agent licence instead of a class 2 agent licence.

This licence is subject to an automatic condition that the licence holder must complete additional class 1 training before 1 July 2024. This condition ensures that all class 1 agents have the necessary skills and training to manage a real estate business professionally, ethically and in accordance with the law.

Eligible experienced agents must notify the commissioner for fair trading of their election to receive a class 1 licence by 1 July 2023.

Section 232 Conditional real estate agent licences – acting as auctioneer of land

This section provides transitional arrangements to allow existing licensed real estate agents to continue to conduct auctions until 1 July 2024.

Under this measure, those who hold a conditional real estate agent licence to act as an auctioneer of land will be taken to be a licensed land auctioneer. If a licensed agent is taken to be a land auctioneer their licence is subject to the condition that the person must complete additional auctioneer training before 1 July 2024. The licence is subject to a condition that the person continue to only act as auctioneer of land.

The intention of this arrangement is to ensure the auctioning of land in the Territory is not disrupted and provide licensed agents sufficient time to complete auctioneering specific training.

Section 233 Conditional stock and station agent licences – acting as auctioneer of rural land

This section provides transitional arrangements to allow existing licensed stock and station agents to continue to conduct auctions of rural land until 1 July 2024.

Under this measure, those who hold a conditional stock and station agent licence to act as an auctioneer of rural land, will be taken to be a licensed land auctioneer. If a licensed agent is taken to be a land auctioneer their licence is subject to the condition that the person must complete additional auctioneer training before 1 July 2024. The licence is subject to a condition that the person continue to only act as auctioneer of rural land.

The intention of this arrangement is to ensure the auctioning of land in the Territory is not disrupted while also providing licensed agents sufficient time to complete auctioneering specific training.

Section 234 Registered salespeople

This section provides transitional arrangements for registered salespersons. On commencement day, registered salesperson will be automatically transitioned to an assistant agent registration.

This measure reflects the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Section 235 Unqualified real estate salespeople

This section provides transitional arrangements for unqualified real estate salespeople. On commencement day, unqualified real estate salespeople will be able to continue to act under their current registration until 31 October 2023.

The intention of this measure is to provide unqualified real estate salespeople sufficient time to complete the necessary competency units to meet the requirements for registration as an assistant agent.

Section 236 Owners corporation managing agents – licensed agent in charge

This section provides transitional arrangements for owners corporation managing agents who hold a conditional agents licence and are responsible for the day-to-day management of a owners corporation management business. On commencement day, owners corporation managing agents who are the licensed agent in charge will be automatically transitioned to a class 1 real estate agent licence.

This licence is subject to the condition that the licence holder may only act as an owners corporation managing agent and the completion of the additional class 1 training before 1 July 2024.

The intention of this arrangement is to ensure all individuals working as a licensed agent in charge of a real estate business have the necessary skills to manage a real estate business professionally, ethically and in accordance with the law.

Section 237 Owners corporation managing agents

This section provides transitional arrangements for owners corporation managing agents. On commencement day, owners corporation managing agents will be automatically transitioned to a class 2 real estate agent licence which will be subject to the condition that the licence holder only act as an owners corporation managing agent.

Section 238 Transitional regulations

Section 238 enables the Executive to make regulations dealing with transitional matters. This section contains two different regulation-making powers.

Section 238 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 238 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 22 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 238 (3) gives a regulation under section 237 (2) full effect according to its terms. A provision of part 22 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other Territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. This section is not expressed, and does intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Any modification by regulation of part 22 of the Act has no ongoing effect after the expiry of that part.

The intention of this section is to provide an additional mechanism to support the real estate industry during the transition to the new licensing framework.

Section 239 Expiry – pt 22

Section 239 provides that part 22 expires on 30 June 2025.

Clause 84 Reviewable decisions Schedule 1, item 5

This clause substitutes an incorrect reference to section 36 (3) with the correct section 36 (2) (b).

Clause 85 Schedule 1, items 11 to 15

This clause substitutes items 10A to 15 into schedule 1 (Reviewable decisions) to reflect the implementation of the new framework which creates agent licence classes.

Clause 86 Dictionary, definition of *account* etc

This clause inserts a new definition of *account* in the Act. *Account*, for the purposes of division 8.2 (Freezing accounts – licensed property agents) is defined as per new section 131, which defines account for a licensed property agent to mean a trust

account or any other account in which the licensed property agent has an interest, including an account that is not a trust account but in which trust money is held.

This clause also inserts a new definition for *agent* in the Act. *Agent* is defined as a person who carries on business as either a business agent, land auctioneer, an employment agent, a real estate agent, a stock and station agent. The intention of this clause is to incorporate the new land auctioneer licence category into the definition.

This clause provides that for division 3.4 (Occupational discipline – licensed agents) *agent* is defined as per section 40, which defines agent as a licensed agent or a former licensed agent.

This clause inserts a new definition of *agents licence* in the Act. *Agents licence* is defined as either a business agents licence, a land auctioneers licence, an employment agents licence, a real estate agents licence or a stock and station agents licence.

The intention of this clause is to incorporate the new land auctioneer licence category into the definition.

Clause 87 Dictionary, new definition of *assistant property agent*

This clause inserts a new definition of *assistant property agent* in the Act. Assistant property agent is defined as a person who, as an employee, provides a business agent service, or a real estate agent service, or a stock and station agent service. This definition reflects the change in occupation descriptions under the new licensing framework from salesperson to assistant agent.

Clause 88 Dictionary, definition of *carries on business as*

This clause inserts a new definition of *carries on business as* in the Act. *Carries on business as* is defined as per different sections of the Act depending on the type of agent licence.

For a business agent, defined in section 10, a person carries on business as a business agent if the person provides, or offers to provide, a business agent service for a principal for reward.

For an employment agent, defined in section 12, a person carries on business as an employment agent if the person provides, or offers to provide, an employment agent service for a principal for reward.

For a land auctioneer, defined as per section 11, a person carries on business as a land auctioneer if the person provides, or offers to provide, a land auctioneer service for a principal.

For a real estate agent, defined in section 8, a person carries on business as a real estate agent if the person provides, or offers to provide, a real estate agent service for a principal for reward.

For a stock and station agent, defined in section 9, a person carries on business as a stock and station agent if the person provides, or offers to provide, a stock and station agent service for a principal for reward.

Clause 89 Dictionary, new definitions

This clause inserts new definitions for new terms relevant to the implementation of the new framework which creates agent licence classes.

Class 1 licensed business agent means a person who holds a class 1 licence as a business agent.

Class 1 licensed property agent means either a class 1 licensed business agent, or a class 1 licensed real estate agent, or a class 1 stock and station agent.

Class 1 licensed real estate agent means a person who holds a class 1 licence as a real estate agent.

Class 1 stock and station agent means a person who holds a class 1 licence as a stock and station agent.

Class 2 licensed business agent means a person who holds a class 2 licence as a business agent.

Class 2 licensed property agent means either a class 2 licensed business agent, or a class 2 licensed real estate agent, or a class 2 licensed stock and station agent.

Class 2 licensed real estate agent means a person who holds a class 2 licence as a real estate agent.

Class 2 licensed stock and station agent means a person who holds a class 2 licence as a stock and station agent.

Clause 90 Dictionary, definition of *details*

This clause substitutes '(Trust accounts)' with '(Trust Accounts – licensed property agents)' within the definition of *details* and is consequential to the amendment of the title to Part 7 at clause 69.

Clause 91 Dictionary, definition of *grounds for occupational discipline*, paragraph (b)

This clause substitutes in part (b) 'for a registered salesperson – see section 65' with 'for a registered assistant property agent- see section 65' to reflect the occupational descriptions under the new licensing framework.

Clause 92 Dictionary, new definitions

This clause inserts new definitions for land auctioneer and land auctioneer service. *Land auctioneer* is defined as a person who carries on business as a land auctioneer. *Land auctioneer service* is defined as per section 11 (2) - as acting as an auctioneer of land, including rural land, or any other service prescribed by regulation for the section. The intention of this clause is to appropriately incorporate the new land auctioneer licence class into the Act.

Clause 93 Dictionary, definitions of *licensed agent and licensed business agent*

This clause inserts a new definition for licensed agent and licensed business agent in the Act. *Licensed agent* is defined as an agent who holds a licence and includes a land auctioneer who holds a licence. A *licensed business agent* is defined as a class 1 licensed business agent or a class 2 licensed business agent.

Clause 94 Dictionary, new definitions

This clause inserts new definitions for licensed land auctioneer and licensed property agent.

Licensed land auctioneer is defined as a person who holds a licence as a land auctioneer.

A *licensed property agent* is defined differently depending on the relevant section of the Act.

For the Act generally, a licensed property agent is defined as per section 7A, meaning a licensed business agent or licensed real estate agent or licensed stock and station agent.

For part 7 (Trust accounts – licensed property agents), licensed property agents are defined as per section 101, meaning any person who is no longer a licensed property agent but holds trust money received while licensed, or the personal representative of a licensed property agent who died while holding trust money, if the representative holds the trust money, or the liquidator of a corporation that went into liquidation while being a licensed property agent and holding trust money, if the corporation holds the trust money.

For division 8.2 (Freezing accounts – licensed property agents), licensed property agents are defined as per section 131, meaning a former licensed property agent or the personal representative of a licensed property agent.

For Division 10.2 (Claims against compensation fund), licensed property agents are defined as per section 147, including a former licensed property agent.

Clause 95 Dictionary, definition of *licensed real estate agent etc*

This clause inserts new definitions of *licensed real estate agent* and *licensed stock and station agent*.

Licensed real estate agent is defined as a class 1 licensed real estate agent or a class 2 licensed real estate agent. *Licensed stock and station agent* is defined as a class 1 licensed stock and station agent or a class 2 licensed stock and station agent.

This clause also provides that *registered* in relation to an assistant property agent for division 4.1 is defined as per to section 44.

Clause 96 Dictionary, new definitions

This clause inserts new definitions of *registered assistant property agent*, *registered assistant business agent*, *registered assistant real estate agent* and *registered assistant stock and station agent*.

A *registered assistant business agent* is defined as a person registered under section 57 as an assistant business agent.

A *registered assistant property agent* for the Act generally means a registered assistant business agent, a registered assistant real estate agent or a registered assistant stock and station agent.

For the purposes of division 4.4 (Occupational discipline – registered assistant property agents), a *registered assistant property agent* is defined as per section 64, meaning a registered assistant property agent or a former registered assistant property agent.

A *registered assistant real estate agent* is defined as a person registered under section 57 as an assistant real estate agent.

A *registered assistant stock and station agent* is defined as a person registered under section 57 as an assistant stock and station agent.

Clause 97 Dictionary

This clause omits the definitions of *registered business salesperson*, *registered real estate salesperson*, *registered salesperson*, *registered stock and station salesperson* and *salesperson* to reflect the change in occupational descriptions under the new licensing framework.

Clause 98 Dictionary, definition of *stock and station agent service*

This clause inserts a new definition of stock and station agent service. Stock and station agent service is defined as per section 9 (2).

Clause 99 Dictionary, definition of *stop direction*

This clause omits '(Freezing accounts)' and substitutes this with '(Freezing accounts – licensed property agents)' to reflect the change in heading at clause 75.

Clause 100 Further amendments, mentions of *salespeople*

This clause replaces 'salespeople' with 'assistant property agents' under different provisions to reflect the change in occupational descriptions under the new licensing framework. The relevant provisions where 'salespeople' is replaced with 'assistant property agents' are;

- part 4 heading
- division 4.1 heading
- section 61 (4)
- division 4.4 heading
- sections 65, 66 and 67 headings
- part 5 headings
- section 178 (2) (d)

Clause 101 Further amendments, mentions of *salesperson*

This clause replaces 'salesperson' with 'assistant property agent' under different provisions to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant property agent. The relevant provisions where 'salesperson' is replaced with 'assistant property agent' are;

- section 51 (1) (d) and (j)
- section 58 (3) (a)
- section 60 (1)
- section 61 (1) and (3)
- section 62 (2)
- section 63
- section 65 and 66
- section 67 (2)
- section 72 (1) (b)
- section 82, definition of *obtains a beneficial interest*
- section 87 (1) (a) and (c), (2) (a) (i) and (b)
- section 88 (2)
- section 89 (1)
- section 89A (2) and (3) and examples
- section 89B
- section 98
- section 171(3)
- schedule 1, items 8 to 10

Clause 102 Further amendments, mentions of *licensed*

This clause inserts the word 'property' after 'licensed' in the following provisions:

- section 71 (3)
- section 72 heading

- section 72 (1) (1st mention)
- section 72 (3)
- section 75 (2) (1st mention)
- section 100
- section 102 (1) (a) (1st mention)
- section 102 (2)
- sections 105 to 108
- section 111
- section 113
- sections 115 to 122
- section 124 (3) and (4)
- section 149 (1)
- section 150 (1) and (3)
- section 153 (a)
- section 155 (3)
- section 159

Part 3 Agents Regulation 2003

Clause 103 Act, s 28, s 29 (1) and s 45 do not apply in relation to owners corporation managing agent – Act, s 6 (l) Section 5D (1)

This clause updates the language in this section to clarify that sections 28 and 29 (1) do not apply to a person applying for a real estate agents licence that is subject to the condition that the person act only as an owners corporation managing agent.

Clause 104 Section 5D (2)

This clause substitutes current section 5D (2) to replace references to 'real estate salespeople' with 'assistant real estate agents' to reflect the change in occupational descriptions under the new licensing framework.

Clause 105 Section 5D (2) (b)

This clause inserts new subsection (2) (b) to clarify that section 45 does not apply to a person employed by a licensed real estate agent if the real estate agent's licence is subject to the condition that the person act only as an owners corporation managing agent.

Clause 106 Sections 6 and 7

This clause omits sections 6 and 7 and is consequential to clause 15 that provides that the qualification and experience requirements required for licensing as an agent may be declared by the commissioner for fair trading in a disallowable instrument. A

disallowable instrument will be prepared for commencement immediately following the commencement of the Bill.

Existing section 7 provides that the underpinning knowledge for a unit of competency in a property training package mentioned in the section must be based on ACT law. This requirement will be contained in the disallowable instrument determined by the commissioner for fair trading in accordance with new sections section 25 and 50 of the Agents Act.

Clause 107 Section 7A heading

This clause substitutes the heading for current section 7A to clarify that this section relates to professional development. The new heading reads: Licence conditions – professional development – Act, s 34 (1) (a).

Clause 108 Section 7A (1)

This clause substitutes 'licensee' with 'licensed agent' to clarify that this provision is referring to a licensed agent.

Clause 109 Section 7A (2)

This clause substitutes 'licensees' with 'licensed agents' to clarify that this provision is referring to licensed agents.

Clause 110 Sections 8A and 8B

This clause omits section 8A which currently permits individuals who have started but not completed the necessary qualifications for salesperson registration to enter the industry without having completed core training. The intention of removing this provision is to enhance consumer protections by ensuring that only individuals who have completed the minimum prescribed training are able to undertake real estate agent services.

Transitional arrangements for unqualified salespersons have been included at new section 234 to the Agents Act to ensure that those who are currently registered through this mechanism are not prevented from being able to work.

This clause also omits section 8B which allows an unqualified real estate salesperson to be registered in circumstances where the individual is employed by a licensed real estate corporation that provides commercial services to its parent company. This provision was originally inserted in 2006 following the expiry of transitional provisions included as part of the introduction of the Agents Regulation in 2003 to permit a review of the impacts of the Agents Act on commercial property transactions. No individuals have been registered using this pathway. This clause removes section 8B as there is no operational need to retain it.

Clause 111 Qualifications for registration as salesperson – Act, s 50 Section 9

This clause omits sections 9 and is consequential to clause 36 that provides that the qualification and experience requirements required for registration as an assistant agent may be declared by the commissioner for fair trading in a disallowable instrument.

Clause 112 Section 10 and 10A headings

This clause substitutes the heading for current section 10 to specify the relevant section in the Act. The new heading reads: Information to be included in advertisement of intention to apply for registration – Act, s 52 (2) (b).

This clause also substitutes the heading for current section 10A to clarify that it relates to professional development. The new heading reads: Registration conditions – professional development - Act, s 58 (1) (a).

Clause 113 Part 4 heading

This clause substitutes the heading for Part 4 to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: Conduct of licensed agents and registered assistant property agents.

Clause 114 Section 13

This clause substitutes existing section 13 and is consequential to clause 51 which provides that the commissioner for fair trading may grant exemptions from sections 68A, 69 and 70.

This clause inserts new section 13 (1) which provides the matters the commissioner for fair trading must consider when deciding whether to exempt a person from section 68A of the Act or amend or revoke an exemption.

This clause inserts new sections 13 (2) and (3) to provide the matters the commissioner for fair trading must consider when deciding to grant exemptions from section 69 and 70. The matters prescribed remain unchanged from those set out in current sections (1) and (2), however the language has been updated to reflect the new licensing framework.

The intention of this provision is to protect business continuity for the real estate industry and allow for exemptions to sections 68A, 69 and 70 to be provided where necessary in exceptional circumstances.

Clause 115 Part 6

This clause substitutes existing Part 6 to update the language to better reflect the change in occupational descriptions under the new licensing framework.

This clause also amends section 18 to provide that a licensed land auctioneer who advertises an auction must include the auctioneer's name and licence number in the advertisement.

Clause 116 Schedules 1 and 2

This clause omits Schedules 1 and 2 and is consequential to clauses 15 and 36. Current schedules 1 and 2 set out the specific units of competency for licensing as an agent and registration as a salesperson. Pursuant to clauses 15 and 36, this information will now be contained in a disallowable instrument making these provisions obsolete.

Clause 117 Schedule 8, section 8.1

The clause substitutes the current section 8.1 to replace references to 'salesperson' with 'assistant property agent' to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent.

Clause 118 Schedule 8, part 8.2 heading

This clause substitutes the heading for Part 8.2 to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: General rules applying to all licensed agents and registered assistant property agents.

Clause 119 Knowledge of Act and other laws Schedule 8, section 8.2

This clause updates the language in this provision to reflect the introduction of the new licence framework which includes different licence classes and different registration and licence kinds.

Clause 120 Schedule 8, section 8.2

This clause substitutes 'his or her' with 'their' to implement gender neutral language.

Clause 121 To act in accordance with client authority Schedule 8, section 8.9

This clause substitutes 'himself or herself' with 'themselves' to implement gender neutral language.

Clause 122 Agency agreements must comply with regulation Schedule 8, new section 8.19 (2)

This clause inserts new subsection 8.19 (2) into Schedule 8 and is consequential to clause 55 which provides new section 75A that outlines that an assistant agent must not enter into an agency agreement. This clause clarifies that as this section relates

to agency agreements, the definition of ‘agent’ in section 8.19 does not include a registered assistant property agent.

Clause 123 Schedule 8, part 8.3 heading

This clause substitutes the heading for current part 8.3 to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: Rules specific to licensed real estate agents and registered assistant real estate agents.

Clause 124 Schedule 8, part 8.4 heading

This clause substitutes the heading for current part 8.4 to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: Rules specific to licensed stock and station agents and registered assistant stock and station agents.

**Clause 125 Cooperation about records, access and transfer
Schedule 8, section 8.53 (1)**

This clause substitutes ‘and agent’ with ‘an agent’ to fix a typographical error.

Clause 126 Schedule 8, part 8.5 heading

This clause substitutes current part 8.5 heading to reflect the change in occupational description under the new licensing framework from salesperson to assistant agent. The new heading reads: Rules specific to licensed business agents and registered assistant business agents.

**Clause 127 Confirmation of specific instructions
Schedule 8, new section 8.60 (3)**

This clause inserts new subsection 8.60 (3) and is consequential to clause 55 which inserts new section 75A which provides that an assistant agent must not enter into an agency agreement. This clause clarifies that as this section relates to agency agreements to act for the seller of a business, the definition of ‘agent’ in section 8.60 does not include a registered assistant property agent.

Clause 128 Dictionary, note 3

The Dictionary of the Agents Regulation at note 3 indicates that terms used in the regulation have the same meaning that they have in the *Agents Act 2003* (see Legislation Act, s 148). It then provides a list of terms that are defined in the Agents Act.

This clause omits ‘agency agreement’ and ‘owners corporation managing agent’ from this list of terms. New definitions for the Regulation are inserted at clause 130 and 133.

Clause 129 Dictionary, note 3

This clause inserts a new list of terms that are defined in the Agents Act as a result of the amendments introduced in the Bill. These include:

- class 1 licensed property agent
- land auctioneer
- licensed agent
- licensed business agent
- licensed real estate agent
- licensed stock and station agent
- registered assistant business agent
- registered assistant real estate agent
- registered assistant stock and station agent

This note ensures that readers are aware the listed terms have a defined meaning for the purposes of the Agents Act and the Agents Regulation.

Clause 130 Dictionary, new definition of *agency agreement*

This clause inserts a new definition for *agency agreement* in the dictionary of the Agents Regulation which refers the reader to section 100 (1) (a) of the Agents Act for the definition. Section 100 (1) (a) defines an *agency agreement* as services carried out under a written agreement signed by the principal and the agent.

Clause 131 Dictionary, definitions of *ANTA* and *approved*

This clause omits the definitions of ANTA and approved from the dictionary as these terms are no longer used.

Clause 132 Dictionary, definition of *business*, paragraph (b)

This clause substitutes subparagraph (b) in the definition of *business*. The new subparagraph provides that for schedule 8, part 8.5 (Rules specific to licensed business agents and registered assistant business agents) – see schedule 8, section 8.57.

This substitution updates the language to reflect the change in occupational descriptions from salesperson to registered assistant business agents and from business agents to licensed business agents.

Clause 133 Dictionary, new definitions

This clause inserts new definitions for *owners corporation managing agent* and *registered assistant property agent* into the Dictionary for the Agents Regulation.

The definition of *owners corporation managing agent* is defined at section 109A (3) of the Agents Act. Section 109A (3) provides that *owners corporation managing*

agent means a person appointed as manager of an owners corporation for a units plan under the *Unit Titles (Management) Act 2011*.

Registered assistant property agent is defined:

- a) for this Regulation generally - as per the Dictionary in the Agents Act; and
- b) for schedule 8 (Rules of conduct) – as per section 8.1 of schedule 8.

The Dictionary of the Agents Act defines *registered assistant property agent*

- (a) for this Act generally, means —
 - (i) a registered assistant business agent; or
 - (ii) a registered assistant real estate agent; or
 - (iii) a registered assistant stock and station agent; and
- (b) for division 4.4 (Occupational discipline—registered assistant property agents) — see section 64.

Section 8.1 of schedule 8 indicates *registered assistant property agent* includes a property manager.

Clause 134 Dictionary

This clause omits the definitions of

- *registered salesperson*
- *registered training organisation*
- *statement of attainment*
- *unqualified real estate salesperson*

These terms are no longer required after the amendments made to the Agents Act and Agents Regulation.

Part 4 Gaming Machine Act 2004

Clause 135 Eligibility of individuals Section 6 (2) (d) (iii) and (iv)

This clause omits ‘approved suppliers’ from section 6, to give effect to the policy change that only a corporation and not a natural person can receive approval as a supplier.

Clause 136 Section 7

This clause amends section 7 to outline the disqualifying grounds for a corporation to align with how section 6 has been drafted.

**Clause 137 Computer cabinet access register
Section 71 (2)**

This clause substitutes section 71 (2) to give effect to the corporatisation of supplier approvals by providing that only an approved technician or other person authorised in writing by the ACT Gambling and Racing Commission, as natural persons, can open or replace the computer cabinet of a gaming machine.

Clause 138 Section 72

This clause inserts a new section into the GM Act to provide that it is an offence to supply a gaming machine, peripheral equipment for a gaming machines, or a system designed for use with a gaming machine to another person without approval as a supplier. The maximum penalty is 100 penalty units. The penalty aligns with other offence provisions in the statute book that penalise a person undertaking an occupation without the appropriate approval.

This clause also amends section 72 to provide that only corporations may apply and be approved as a supplier to supply, install or maintain a gaming machine, peripheral equipment for a gaming machine or a system designed for use with a gaming machine. The term 'supply' has been used instead of 'sell' for accuracy.

**Clause 139 Giving copy of certificate about approved supplier
Section 73 (1)**

This clause amends section 73 (1) to provide that an approved supplier is a corporation not a natural person.

Clause 140 Section 73 (3)

This clause makes a minor and technical amendment to section 73 (3) to add a missing 'the' before 'supplier'.

**Clause 141 Cancellation etc of supplier's approval
Section 73A (1)**

This clause adds 'approved' before 'supplier', for clarity and to bring the subsection into line with current drafting practice.

**Clause 142 Application for approval as a technician
Section 74 (1) and notes**

This clause inserts 'approved' before 'suppliers' and updates the subsection in line with current drafting practice, including removing the notes.

Clause 143 Section 74 (2) (b)

This clause removes section 74 (2) (b) as the amendments to corporatise approved suppliers means that suppliers can no longer be approved as technicians, which are natural persons.

Clause 144 Section 74 (2) (d)

This clause amends section 74 (2) (d) to provide that the application for approval as a technician must be accompanied by one rather than four recent passport-size photographs of the applicant, to align with how the application process works in practice.

Clause 145 Approval of technicians Section 75 (1)

This clause is a minor and technical amendment which inserts ‘approved’ before ‘suppliers’ for clarity.

Clause 146 Section 75 (1) (c)

This is a technical amendment to clarify that a technician, as a natural person, can no longer be an approved supplier.

Clause 147 Section 75 (4)

This clause substitutes ‘a supplier’ with ‘an approved supplier’ for clarity.

Clause 148 Section 75 (5)

This clause removes section 75 (5) as a technician, as a natural person, can no longer be an approved supplier.

Clause 149 Section 78

This clause updates section 78 to use the correct term ‘approved supplier’ and brings the section into line with current drafting practice, including removing the existing notes.

Clause 150 Cancellation etc of technician’s approval Section 79 (1) (a)

This clause inserts ‘approved’ before ‘supplier’ for clarity.

Clause 151 Section 79 (1) (b)

This is a technical amendment to clarify that a technician, as a natural person, can no longer be an approved supplier.

Clause 152 Section 79 (6), definition of *approved supplier*

This clause removes references to ‘person’ to clarify that an approved supplier is a corporation not a natural person.

**Clause 153 Giving copy of certificate about approved technician or identity card
Section 81 (1)**

This clause removes the references to a ‘person’, to clarify that an approved supplier is a corporation not a natural person.

Clause 154 Section 81 (2) and (3)

This clause removes the references to a ‘person’, to clarify that an approved supplier is a corporation not a natural person.

Clause 155 Section 82

This clause simplifies section 82 noting that all approved technicians will be employees of an approved supplier.

**Clause 156 Renewal of technician’s approval
Section 84 (1) and note**

This clause amends section 84 (1) to remove gendered language and bring the section into line with current drafting practice.

**Clause 157 Approval for repossession - application
Section 107 (1)**

This clause inserts ‘approved’ before ‘supplier’ for clarity.

**Clause 158 Conditions on approval to repossess gaming machine
Section 109 (1)**

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

**Clause 159 Repossessed gaming machines – amendment of authorisation
schedule
Section 109A (1)**

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

Clause 160 Section 109A (2)

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

**Clause 161 Contravention of repossession approval conditions
Section 110 (1)**

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

Clause 162 Section 110 (2)

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

Clause 163 Section 121

This clause amends section 121 to provide that only technicians and not approved suppliers, can install gaming machines as a result of the amendments to corporatise supplier approvals. The clause also amends section 121 to provide that installation includes the installation of a gaming machine, peripheral equipment for a gaming machine or a system designed for use with a gaming machine.

**Clause 164 Operation to be subject to correct percentage payout
Section 125 (1) (a)**

This clause removes the reference to ‘approved supplier’ as the amendments to corporatise approved suppliers means that suppliers can no longer be approved as technicians.

Clause 165 Section 127

This clause removes references to ‘person’ to give effect to the policy decision that an approved supplier can no longer be a natural person.

Clause 166 Section 128

This clause substitutes section 128 to provide that only technicians and not approved suppliers, can maintain gaming machines as a result of the amendments to corporatise supplier approvals. The clause provides that maintaining a gaming machine includes maintenance of a gaming machine, peripheral equipment for a gaming machine or a system designed for use with a gaming machine.

**Clause 167 Interference with gaming machines
Section 129 (5)**

This clause amends section 129 (5) to remove references to ‘approved supplier’ as the amendments to corporatise supplier approvals means that suppliers can no longer be approved as technicians and therefore cannot interfere with gaming machines. The clause also provides that someone other than a technician or authorised officer may maintain gaming machines provided they are authorised in writing by the ACT Gambling and Racing Commission.

Clause 168 Opening computer cabinets
Section 130 (1) (b)

This clause amends section 130 (1) (b) to remove references to ‘approved suppliers’ as the amendments to corporatise supplier approvals means that suppliers can no longer be approved as technicians. The clause also provides that someone other than a technician or authorised officer may open computer cabinets provided they are authorised in writing by the ACT Gambling and Racing Commission.

Clause 169 Reviewable decisions
Schedule 1, items 22 to 24, column 4

This clause makes a minor amendment to insert ‘approved’ before ‘supplier’ for clarity.

Clause 170 Schedule 1, items 27 to 29, column 4

This clause makes a minor amendment to insert ‘approved’ before ‘technician’ for clarity.

Clause 171 Dictionary, definition of *approved supplier*

This clause makes a minor amendment to remove references to ‘person’ in the definition to give effect to the policy decision that an approved supplier can no longer be a natural person.

Part 5 Gaming Machine Regulation 2004

Clause 172 CMS Access
Section 26 (2) (a)

This clause amends section 26 (2) (a) to remove the reference to ‘approved supplier’ as a result of amendments to section 72 (clause 138) where the supplier is no longer a natural person therefore, they cannot access the centralised monitoring system of a gaming machine.

Clause 173 Link equipment in single-user approvals
Section 51 (2) and (3)

This clause amends section 51 (2) to provide that an approved supplier is not an authorised person to repair link equipment, as suppliers are not natural persons and therefore cannot be approved as technicians. The clause provides that someone else authorised in writing is an authorised person to undertake the repairs. The clause also notes that the licensee must, as soon as practicable, take reasonable steps to repair the equipment.

**Clause 174 Link equipment
Section 61 (2)**

This clause amends section 61 (2) to align with amendments made to section 51 (2) to provide that an approved supplier is not an authorised person to repair link equipment as suppliers can no longer be approved as technicians.

Clause 175 Section 61 (4)

This clause omits section 61 (4) as it is no longer required as a result of amendments made to section 61 (2) (clause 174).

Clause 176 Dictionary, note 3

This clause omits the definition of approved supplier from the dictionary, note 3 as the amendments at clauses 173 to 175 mean that the term is no longer used in the regulation.

Part 6 Race and Sports Bookmaking Act 2001

**Clause 177 Offences against Act – application of Criminal Code etc
Section 4A, note 1**

This clause amends section 4A, note 1 to provide that the Criminal Code, ch 2 applies to the offence of engaging in sports bookmaking without a licence.

Clause 178 Section 19

This clause removes references to syndicates in section 19 of the RSB Act to give effect to a policy decision that syndicates, and natural persons cannot hold a sports bookmaking licence.

**Clause 179 Maximum number of sports bookmaking licences etc
Section 24 (1)**

This clause removes references to syndicates and individuals in section 24 to give effect to the policy decision that only corporations may hold a sports bookmaking licence.

Clause 180 Section 25

This clause removes references to individuals and syndicates in section 25 to provide that only a corporation may apply to the ACT Gambling and Racing Commission for a sports bookmaking licence. The clause amends section 25 to provide that the application must state the name and business of the corporation, be approved by each director, and can include anything else prescribed by regulation to align with section 80 of the RSB Act, and the requirements in the Regulations.

**Clause 181 Issue or refusal of sports bookmaking licence
Section 26 (1) and (2)**

This clause removes references to syndicates and individuals in section 26 to give effect to the policy decision that only corporations may hold a sports bookmaking licence.

Clause 182 Section 26 (3)

This clause makes a minor technical amendment to replace 'influential shareholder in relation to a corporation' with 'influential shareholder of a corporation' to be consistent with the definition of influential shareholder in the dictionary.

Clause 183 Section 26 (4)

This clause is a consequential amendment as a result of amendments to section 26 (2) (clause 181) which provide that only corporations may hold a sports bookmaking licence.

Clause 184 Section 26 (5)

This clause makes a minor amendment to reflect the policy decision that only corporations may hold a sports bookmaking licence. Therefore, oral representations to the ACT Gambling and Racing Commission are to be made by an authorised representative for the sports bookmaker.

**Clause 185 Conditions of sports bookmaking licence
Section 27 (2)**

This clause makes a minor technical amendment to simplify the language in section 27 (2) as sports bookmaker is defined in the dictionary.

**Clause 186 Sports bookmaking licence – entry of particulars in register
Section 28**

This clause is a minor technical amendment where the term 'person' is substituted with 'corporation' to make the provision consistent with the wording in sections 25 and 26.

**Clause 187 Surrender of sports bookmaking licence
Section 31 (1)**

This clause is a minor technical amendment to simplify the language in section 31 (1) as sports bookmaker is defined in the dictionary.

Clause 188 Sections 32 and 33

This clause omits sections 32 and 33 to give effect to the policy decision that syndicates can no longer hold sports bookmaking licences.

**Clause 189 Effect of cancellation, surrender or suspension of sports bookmaking licence on agent licence
Section 40 (1) and (2)**

This clause is a minor technical amendment to simplify the language in section 40 (1) and (2) as sports bookmaker is defined in the dictionary.

Clause 190 Section 40 (3) (b)

This clause is a minor technical amendment to simplify the language in section 40 (3) (b) as sports bookmaker is defined in the dictionary.

Clause 191 Section 45 heading

This clause removes references to syndicates in the heading of section 45 to give effect to the policy decision that syndicates can no longer hold sports bookmaking licences.

Clause 192 Section 45 (1) (b)

This clause removes references to syndicates to give effect to the policy decision that syndicates can no longer hold sports bookmaking licences.

**Clause 193 How disputes about bets may be resolved
Section 55 (1)**

This clause makes a minor technical amendment to remove the term 'the bookmaker' which is no longer used in the section as a result of amendments made to section 55 (2) (clause 194).

Clause 194 Section 55 (2)

This clause clarifies that subsection (2) now only applies to race bookmakers as a result of amendments to corporatise sports bookmaker licences (as only an individual 'dies').

**Clause 195 Mandatory cancellation of licence
Section 68 (5) and note**

This clause removes references to individuals and syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences.

**Clause 196 Discretionary penalties
Section 69 (4) and note**

This clause amends section 69 (4) to remove the reference to syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences.

Clause 197 Section 69 (6)

This clause removes references to syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences.

**Clause 198 Unsigned licences – race bookmakers and race bookmaker’s agents
Section 74**

This clause is a minor technical amendment to remove gendered language and bring the section into line with current drafting practice.

Clause 199 Section 80 heading

This clause is a minor technical amendment to simplify the language in the heading of section 80 as sports bookmaker is defined in the dictionary.

Clause 200 Section 80 (1) (a) to (c)

This clause removes references to syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences.

Clause 201 Section 80 (3)

This clause removes references to syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences.

Clause 202 Section 80 (5) to (7)

This clause removes references to syndicates to give effect to the corporatisation of sports bookmaking licences and simplifies the provision by defining suitability authorisation to avoid repetition.

**Clause 203 Evidence of licences
Section 85 (1) (b)**

This clause removes references to syndicates to give effect to the policy decision that only corporations can hold sports bookmaking licences. The term ‘influential person’ has been amended to ‘influential shareholder’ as it is used throughout the RSB Act and is defined in the dictionary.

**Clause 204 Application of this Act if licence is held by syndicate
Section 86**

This clause omits section 86 to give effect to the policy decision that syndicates can no longer hold sports bookmaking licences.

**Clause 205 Meaning of *suitability requirements and security guarantee*
Section 92 (1) (i)**

This clause is a minor technical amendment to simplify the language as sports bookmaker is defined in the dictionary.

Clause 206 Section 92 (2) and (3)

This clause omits references to syndicates to give effect to the policy decision that syndicates can no longer hold sports bookmaking licences. The clause also simplifies the language in the provision as sports bookmakers and sports bookmaker's agents are defined in the dictionary (as a result of the amendment at clause 212).

**Clause 207 Internally reviewable decisions
Schedule 1, item 32, column 2**

This clause is a minor technical amendment to correct a drafting error.

Clause 208 Dictionary, note 2

This clause is a minor and technical amendment to note that the definition of 'person' as defined in the *Legislation Act 2001* applies.

Clause 209 Dictionary, definition of licensee and person

This clause is a minor and technical amendment to omit the definition of licensee within the RSB Act, as licence is defined in the RSB Act and forms 'other parts of speech with corresponding meanings' pursuant to section 157 of the *Legislation Act 2001*.

Clause 210 Dictionary, definition of *security guarantee*, paragraph (b)

This clause is a minor amendment to give effect to the policy decision that only corporations can hold sports bookmaking licences.

Clause 211 Dictionary, definition of *sports bookmaker*

This clause is a minor amendment to give effect to the policy decision that only corporations can hold sports bookmaking licences.

Clause 212 Dictionary, new definition of *sports bookmaker's agent*

This clause inserts a new definition of sports bookmaker's agent to update the language in the RSB Act.

Part 7 Race and Sports Bookmaking Regulation 2001

Clause 213 Section 3

This clause amends section 3 of the RSB Regulation to provide separate requirements for race bookmaking licences and sports bookmaking licences, giving effect to the policy decision that only corporations can hold sports bookmaking licences, but natural persons can hold race bookmaking licences.

Clause 214 Corresponding laws – Act, s 92 (1) (d) Section 7 (b)

This clause is a minor and technical amendment to update the name of the corresponding act in New South Wales.

Clause 215 Section 7 (j)

This clause is a minor and technical amendment to update the name of the corresponding act in the Northern Territory.

Part 8 Retirement Villages Act 2012

Clause 216 Annual management meeting – chair Section 109 (2), except note

This clause is consequential to the amendment to section 113 (4) of the *Retirement Villages Act 2012*. Section 113 (4) requires the operator (or their representative) who is attending a residents' meeting to leave the meeting during any vote that is taken by the residents at the meeting (see further below).

This clause substitutes the current section 109 (2) and clarifies that in an annual management meeting chaired by an operator or representative of the operator, they must leave any part of the meeting that falls under section 113 (4). It also provides that for the part of the meeting that the operator is absent, the meeting must be chaired by a resident agreed to by the residents at the meeting.

Clause 217 Meetings of residents New section 112 (1A)

This clause inserts a new section 112 (1A) and is consequential to the amendment to section 113 (4) of the Retirement Villages Act. It provides that a meeting of residents of a retirement village (other than an annual management meeting) must be chaired by a resident agreed to by the residents at the meeting.

**Clause 218 Attendance at meetings of residents
section 113 (4)**

This clause substitutes the current provision and provides that an operator or a representative of the operator may attend a meeting of residents with consent of the residents or attend a management meeting of the village but must not be present whilst any vote is taken and can return to the meeting after the vote.

The intent of the clause is to remove any ambiguity in the section and clarify when the operator of a retirement village or their representative may be present at a residents meeting.

**Clause 219 Certain limitations on proxies
Section 117 (1)**

This clause removes a mistaken reference to ‘the appointor’ in section 117 of the Act.

**Clause 220 Method of voting
Schedule 1, section 1.3 (1)**

This clause omits ‘including’ and substitutes it with ‘other than’.

The intent of this amendment is to ensure the section is consistent with the operation of Schedule 1 which makes clear that if a measure requires a special resolution, it requires a ballot to be taken.

The amendment clarifies the method for voting and provides a vote in relation to a measure or action *other than* a measure or action that requires a special resolution may be taken by a show of hands or a written ballot.

**Clause 221 Result of vote
Schedule 1, section 1.4 (2)**

Section 1.4 sets out who is required to report to the operator on decisions taken at a residents’ meeting. The amendment in this clause is consequential to the amendment to Schedule 1, section 1.3 (1) which clarifies that for votes other than special resolutions, the vote may be taken by either a show of hands or a written ballot. This clause omits subsection (1) and substitutes it with subsection (1) (b). This substitution clarifies that a regulation may make provision in relation to the election of a representative or residents mentioned at subsection 1 (b).

Clause 222 Schedule 1, section 1.5

This clause is consequential to the amendment to Schedule 1, section 1.3 (1) (clause 220). This clause substitutes the current section 1.5 and provides that a vote in relation to a measure or action that requires a special resolution must be taken by means of a written ballot conducted in the way prescribed by regulation.

The intent of this amendment is to clarify a written ballot must be conducted when a vote in relation to a special resolution is required.

Clause 223 How special resolution is carried

Schedule 1, section 1.6

This clause inserts the word 'written' before the word 'ballot' in Schedule 1, section 1.6. This amendment clarifies that ballots in relation to special resolutions must be written ballots.

Part 9 Retirement Villages Regulation 2013

Clause 224 Appointment of proxies – Act, s 116 (2) Section 23

This clause omits 'chairperson' and replaces it with 'chair'. This wording updates the language used in the regulation to bring it in line with modern usage and creates consistency with the Act.

Clause 225 Part 11

This clause substitutes Part 11 to clarify written ballot requirements.

New section 59 retains existing section 59 (1) to provide that a written ballot must be conducted in accordance with schedule 4, part 4.2.

The clause inserts existing schedule 4, section 4.2 as new section 60 to further clarify written ballot requirements. This clause addresses a drafting error which incorrectly located this provision in schedule 4, section 4.2.

New section 60 clarifies that the requirements of part 4.2 and part 4.3 must be met for a written ballot for a special resolution.

The intention of this clause is to clarify written ballot requirements.

Clause 226 Schedule 4, section 4.2

This clause substitutes schedule 4, section 4.2 to clarify when part 4.2 applies. The intention of this provision is to improve clarity of written ballot requirements.

Clause 227 Election of returning officer

Schedule 4, section 4.3 (1) and (2)

This clause substitutes schedule 4, section 4.3 (1) and (2) with new subsection (1) and is consequential to clause 226.

This clause retains existing subsection (2) as new subsection (1) to provide that the residents of retirement village must elect a returning officer for a written ballot by a show of hands at a meeting of residents.

Clause 228 Conduct of written ballot

Schedule 4, section 4.4 (1) and (2)

This clause substitutes section 4.4 subsections (1) and (2) with a new subsection (1) and is consequential to clause 226. This clause retains existing subsection (2) as new subsection (1) to provide that the returning officer for a written ballot must prepare enough ballot papers so that a ballot paper can be given to each qualified voter.

Clause 229 Schedule 4, part 4.3 heading

This clause substitutes a new heading: Part 4.3 Additional requirements for special resolution. This new heading clarifies that decisions made by special resolution have additional requirements to those required for other decisions.

Clause 230 Special resolution – notice

Schedule 4, section 4.8 (1)

This clause deletes the words ‘an action or measure’ and replaces them with ‘a measure or action’. The purpose of this substitution is to create consistent phrasing throughout the Act and Regulation.

Schedule 1 Consequential amendments

Part 1.1 ACT Civil and Administrative Tribunal Regulation 2009

[1.1] Section 9 (1) (a) and (b)

This clause substitutes ‘salespeople’ with ‘assistant property agents’ to reflect the change in occupational descriptions under the new licensing framework in the Agents Act from salesperson to assistant agent.

[1.2] Section 9 (1) (e)

This clause substitutes ‘salesperson’ with ‘assistant property agent’ to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

[1.3] Section 9 (4), definition of *registered salesperson*

This clause substitutes the definition of ‘registered salesperson’ with ‘registered assistant property agent’ to reflect the change in occupational descriptions under the new licensing framework from salesperson to assistant agent.

Part 1.2 Civil Law (Sale of Residential Property) Act 2003

[1.4] Dictionary, definition of *agent*, paragraph (b)

This clause substitutes 'real estate salesperson' with 'an assistant real estate agent' to reflect the change in occupational descriptions under the new licensing framework in the Agents Act from salesperson to assistant agent.

Part 1.3 Fair Trading (Australian Consumer Law) Act 1992

[1.5] Section 44 (1) (d)

This clause substitutes 'licensed agent' with 'licensed property agent' and references the new 'Trust accounts – licensed property agents' provision to reflect the change in occupational descriptions under the new licensing framework in the Agents Act from 'licensed agent' to 'licensed property agent'.

[1.6] Section 44 (5), new definition of *licensed property agent*

This clause inserts a new definition of *licensed property agent* to reflect the change in occupational descriptions under the new licensing framework in the Agents Act to incorporate the collective term for real estate, stock and station and business agents being property agents.

Part 1.4 Legal Profession Act 2006

[1.7] Section 16 (4) (b)

This clause substitutes 'salesperson' with 'assistant property agent' to reflect the change in occupational descriptions under the new licensing framework in the Agents Act from salesperson to assistant agent.

Part 1.5 Magistrates Court (Agents Infringement Notices) Regulation 2003

[1.8] Schedule 1, new item 3A

This clause inserts an infringement notice penalty for the offence outlined in new section 21 of the Agents Act, which creates an offence for a person who is not a licensed land auctioneer to carry on business as a land auctioneer or pretend to be a licensed land auctioneer.

[1.9] Schedule 1, items 5 to 8

This clause substitutes item 5 to 8 to provide the infringement notice penalties for the offences in new sections 68A, 69 and 70.

[1.10] Schedule 1, new item 10A

This clause inserts an infringement notice penalty for the offence outlined in new section 75A (1) of the Agents Act, which creates an offence if an assistant agent signs an agency agreement.

[1.11] Schedule 1, new item 14A

This clause inserts an infringement notice penalty for the offence outlined in new section 107A (1) of the Agents Act, which creates an offence if an assistant agent withdraws trust money.