

Australian Capital Territory

Agents Amendment Regulation 2022 (No 1)

Subordinate law SL2022–10

made under the

Agents Act 2003

EXPLANATORY STATEMENT

Overview

The Regulation amends the *Agents Regulation 2003* to provide that the *Agents Act 2003* (Agents Act) does not apply to Community Housing Canberra Incorporated (CHC) when carrying on business as a real estate agent, or a person employed by CHC who provides a real estate service, to the extent that business or service is provided when managing a community housing asset. In practice, this will conditionally exempt CHC from having to obtain a real estate agent licence for the purpose of managing community housing assets as a registered community housing provider. It will extend that exemption to any person who, as an employee of CHC, provides or offers to provide a real estate agent service when managing community housing assets. The exemption is limited as the requirement to remain appropriately licensed when providing commercial real estate services will remain.

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

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

Where community housing providers offer real estate services in the course of administering affordable housing programs that do not directly compete with commercial real estate services, the Government considers the NRSCH provides more

tailored consumer protection than the individual-focused licensing structure under the Agents Act.

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

While this exemption is different to the existing exemptions granted to Havelock Housing Association Incorporated and YWCA Canberra, it remains consistent with the treatment of community housing providers in other jurisdictions to the extent they are registered and subject to the NRSCH. For example, in NSW all registered community housing providers subject to the NRSCH under the *Community Housing Providers National Law (NSW)* are exempted from the *Property, Stock and Business Agents Act 2002 (NSW)* without qualification. While CHC's exemption is not without qualification, it will enable it to provide real estate agent services for the purpose of managing community housing assets and ensure its commercial business arm remains appropriately licenced under the Agents Act.

The Regulation also amends the *Agents Regulation 2003* to make clear that the commissioner for fair trading may make qualification and experience requirements, including declared timeframes for completion of continuing professional development activities following registration. This will allow registered assistant property agents to work while completing the necessary qualifications for registration. It also enables the commissioner for fair trading to accept a qualification that is higher than, equivalent to, or substantially equivalent to the additional qualification required following registration, as declared by the commissioner for fair trading.

Human Rights Implications

This Regulation engages but does not limit rights under the *Human Rights Act 2004*.

Exemption from the Agents Act will support CHC to sustainably manage community housing assets for lease by individuals and families in the ACT. The Regulation indirectly supports the right to protection of the family and children and the right to family and home under sections 11 and 12 of the Human Rights Act respectively.

The Regulation engages and supports the right to work in section 27B of the Human Rights Act by enabling the commissioner for fair trading to allow registered assistant property agents to work while completing the required qualification for registration and to accept a qualification higher than, equivalent to, or substantially equivalent to the additional qualification declared under new section 10AA of the Regulation. This measure ensures those who hold relevant higher qualifications can enter the industry without having to complete a further qualification if it is not necessary.

CLAUSE NOTES

Clause 1 – Name of regulation

This is a technical clause that establishes the name of the Regulation as the *Agents Amendment Regulation 2022 (No 1)*.

Clause 2 – Commencement

This is a formal provision specifying when the Regulation will commence. The Regulation will commence on 1 July 2022.

Clause 3 – Legislation amended

This Regulation amends the *Agents Regulation 2003*.

Clause 4 – Section 5C

5C Entities to which Act does not apply – Act, s 6 (1)

This clause substitutes existing Section 5C (the Act does not apply to Havelock Housing Association Incorporated and YWCA Canberra – Act, s 6 (1)) to also prescribe Community Housing Canberra Ltd (CHC) when carrying on business as a real estate agent in relation to managing community housing assets as a registered community housing provider and any person who, as an employee of CHC, provides or offers to provide a real estate agent service when managing community housing assets as an entity to which the Act does not apply.

The provision also inserts definitions of *community housing asset* and *registered community housing provider* by reference to the Community Housing Providers National Law (ACT), section 4 (1).

Clause 5 – Section 7A (1)

This clause substitutes existing section 7A (1) to clarify that the guidelines setting out the continuing professional development activities required to be undertaken by a licensed agent, as set by the commissioner for fair trading, may set a time period for completion of those activities.

Clause 6 – Section 10A (1)

This clause substitutes existing section 10A (1) to clarify that the guidelines setting out the continuing professional development activities required to be undertaken by a registered assistant property agent, as set by the commissioner for fair trading may set a time period for completion of those activities.

Clause 7 – New section 10AA

10AA Registration conditions – additional qualifications required after registration – Act, s 58 (1) (a)

This clause inserts new section 10AA to provide that under section 58 (1) (a) of the Agents Act, it is a condition of registration that a registered assistant property agent must complete additional qualifications, as declared by the commissioner for fair trading, after registration.

The Agents Act, section 50 allows the commissioner to declare the qualifications and experience necessary for registration or renewal of registration as an assistant property agent. The power does not extend to requiring a person to complete additional qualifications as a condition of registration or to complete these within a particular period of time.

From 1 July 2022, to be eligible for registration as an assistant property agent, it is intended that an applicant must have completed 5 core subjects within the Certificate IV in Real Estate Practice. To meet the National Real Estate Training Package requirements, an assistant property agent must then complete a further 5 elective units from the Certificate within 12 months of registration. The power provided to the Commissioner by proposed new section 10AA is required to facilitate this arrangement so that assistant property agents may work in the industry while they undertake the additional units.

New section 10AA will enable the instrument setting out eligibility for registration as an assistant property agent to be made under both the Act, section 50 and the Regulation, section 10AA so that it includes both pre- and post-registration qualification requirements for these professionals.

In line with section 49 (1A) introduced by the *Fair Trading and Other Justice Legislation Amendment Act 2022*, section 10AA (1) (b) will provide that a higher, equivalent, or substantially equivalent qualification may satisfy the additional qualification requirement.