

Australian Capital Territory

Traders (Licensing) Regulation 2017

Subordinate law SL2017–21

made under the

Traders (Licensing) Act 2016

EXPLANATORY STATEMENT

Outline

The *Traders (Licensing) Act 2016* allows for a modern, streamlined licensing framework that provides flexibility to licensees, and is compatible with a digital licensing process to be developed for the issue, maintenance and transfer of fair trading licences. It consolidates and standardises licensing provisions under the *Sale of Motor Vehicles Act 1977*; *Fair Trading (Motor Vehicle Repair Industry) Act 2010*; *Second-hand Dealers Act 1906*; and *Pawnbrokers Act 1902* into a single licensing Act.

The *Sale of Motor Vehicles Act 1977*; *Fair Trading (Motor Vehicle Repair Industry) Act 2010*; *Second-hand Dealers Act 1906*; and *Pawnbrokers Act 1902* remain, minus the provisions related to licensing, and are referred to as Operational Acts in the *Traders (Licensing) Act 2016* and this Regulation. The Operational Acts are designed to regulate the day-to-day running of a business licensed under the *Traders (Licensing) Act 2016*.

The object of the regulation is to make regulations under the *Traders (Licensing) Act 2016* with respect to prescribing the following matters:

- licence eligibility requirements;
- information that must be considered by the Commissioner of Fair Trading when deciding on the suitability of an applicant;
- licence conditions relating to the provision by a licensee of certain new information; and
- the trader categories are able to be transferred.

The regulation is made under the *Traders (Licensing) Act 2016* including sections 17, 18, 20, 24, and 53 (the general regulation-making power).

There are no human rights implications associated with this regulation.

CLAUSE NOTES

PART 1 Preliminary

Clause 1 Name of regulation

This clause provides for the name of the regulation as the *Traders (Licensing) Regulation 2017*.

Clause 2 Commencement

The regulation will commence on the commencement of the *Traders (Licensing) Act 2016*.

Clause 3 Dictionary

This clause explains that the dictionary at the end of the regulation is part of the substantive provisions of the regulations.

Clause 4 Notes

This clause makes it clear that the notes in the regulation are explanatory only and do not form part of the substantive provisions of the regulation.

PART 2 Eligibility of entity

Clause 5 Eligibility requirement – Act, s17 (1)

This clause sets out eligibility requirements for licence applicants. This applies to individuals, partnerships, corporations and association. These are all defined as ‘entities’. In the case of corporations and partnerships, the requirements apply to each relevant person of the entity. ‘Relevant person’ is defined in the *Traders (Licensing) Act 2016*.

PART 3 Suitability of entity

Clause 6 Meaning of *insolvent* – pt 3

This clause provides the definition for the term ‘insolvent’ used in the regulation.

Clause 7 Suitability Information – Act, s 18 (a) (i)

This clause prescribes certain information that the Commissioner for Fair Trading must consider when determining an entity’s suitability for a Traders Licence. If this information is applicable to an entity, then this information must be provided on application. This clause also allows the Commissioner to enquire about and access

this information in relation to an entity for the purposes of considering their suitability to be issued a licence.

This clause largely replaces previous provisions in the Operational Acts dealing with disqualifying offences and eligibility criteria. The prescribed information must be considered when determining suitability, but is not by itself an automatic barrier to being granted a licence as has previously often been the case. This allows a flexible risk-based approach to determining suitability without undermining the power of the Commissioner to refuse a licence on appropriate grounds.

Clause 8 Suitability Information – entity in certain trader categories – Act, s 18 (a) (i)

This clause prescribes suitability information that must be provided by an entity in relation to applications for motor vehicle dealer and motor vehicle repairer trader categories. It is in addition to clause 7 for the trader categories specified. These relate to risk factors associated with the financial viability of the entity's proposed business operation. These trader categories have this greater level of scrutiny as car sales constitute a greater risk of serious financial loss to a consumer should the business fail or otherwise not be able to meet its financial obligations to its customers.

PART 4 Licence Conditions – Act, s 20 (1) (c)

Clause 9 Notification of certain new information

This clause makes it a condition of a licence that the licensee informs the Commissioner within ten business days of certain changes to the contact details or corporate structure of the licensed entity, or information relevant to the continued suitability of the entity to hold a licence. Failure to provide this information is taken to be a breach of a licence condition and is an offence under section 47 of the Act.

PART 5 Licensing and licence management

Clause 10 Transferable licences – Act, s 24 (1)

This clause lists the trader categories that may be transferred from a licensed entity to another entity after an application is made under section 24 of the Act and approved by the Commissioner under section 25 of the Act.

Clause 11 Notification of application in certain trader categories

This clause prescribes that public notice must be given within seven days of an entity making an application for a licence, or for a licence transfer, of a car market operator, motor vehicle dealer, or motor vehicle wholesaler licence. This

requirement is unchanged from the previous requirement under the *Sale of Motor Vehicles Act 1977* and seeks to ensure a level of community consultation regarding the suitability of the proposed licensee and of the proposed premises.

PART 6 Motor vehicle repairer licences

Clause 12 Definitions – pt 6

Clause 13 Motor vehicle repairer – equipment, materials and skill for carrying out work

Clause 14 Motor vehicle repairer – agreement for repairs

Clause 15 Motor vehicle repairer – additional repairs

Clause 16 Motor vehicle repairer – time to carry out work

Clause 17 Motor vehicle repairer – replaced parts

Clause 18 Motor vehicle repairer – information sheet

Clause 19 Motor vehicle repairer – warranties and guarantees

These clauses are brought over from the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*. They outline specific requirements of licences in the motor vehicle repair work category.