

Australian Capital Territory

Agents (Transitional Provisions) Regulation 2022

Subordinate law SL2022–9

made under the

Agents Act 2003

EXPLANATORY STATEMENT

Overview of the Regulation

The *Fair Trading and Other Justice Amendment Act 2022* (the Fair Trading Amendment Act), which introduces substantial changes to the licensing framework maintained under the *Agents Act 2003* (the Agents Act), is due to commence on 1 July 2022.

The *Agents (Transitional Provisions) Regulation 2022* introduces transitional provisions to support the implementation of the Fair Trading Amendment Act.

The introduction of an auctioneer licence

The Fair Trading Amendment Act inserts a new class of licence: a land auctioneer licence. From 1 July 2022, any person who wishes to conduct auctions in the ACT is required to hold this licence.

This new class of licence recognises that inherently, conducting a sale by auction will pose greater risks to consumers. A sale by auction is often unconditional and will not attract a cooling-off period. This licence, and the qualification and training requirements it attracts, will ensure that auctioneers have obtained qualifications to equip them with the knowledge and skill to perform their duties lawfully.

However, to ensure that the industry is afforded an appropriate period of time to comply with this new licensing requirement, these Regulations allows registered real estate salespersons and registered stock and station salespersons (due to be renamed as “assistant agents” under the new licensing framework) to continue to conduct auctions until 1 July 2023.

This exemption is consistent with that provided to licensed real estate agents and licensed stock and station agents in new section 21 (2).

Recognition of qualifications

The new regulatory regime provides prescribed qualification and training requirements for agents licensed prior to the Fair Trading Amendment Act's commencement date, who will either automatically transition, or elect to transition to a class 1 licence.

The ACT Government introduced prescribed qualifications and training requirements in recognition of the community's reasonable expectation that real estate professionals are only able to carry out activities for which they have appropriate training, knowledge and qualifications. Reflecting the substantial responsibility held by class 1 licence holders, the prescribed training and qualifications requirements are intended to equip real estate professionals in high-risk areas of the industry, such as compliance, trust management and ethics.

This Regulation removes barriers for highly skilled and qualified applicants, by empowering the Commissioner for Fair Trading to grant exemptions from prescribed qualification requirements if the license holder has obtained a higher, equivalent or substantially equivalent qualification.

This is consistent with the Commissioner for Fair Trading's power to grant an exemption for new entrants to the real estate industry if they have obtained higher equivalent or substantially equivalent qualifications to those prescribed for new licence holders.

Human Rights Implications

This Regulation does not limit rights under the *Human Rights Act 2004* (the Human Rights Act).

The Regulation supports the right to work in section 27B of the Human Rights Act by empowering the Commissioner for Fair Trading to decide that a higher, equivalent, or substantially equivalent qualification satisfies the additional training requirements under section 230 (3) or section 231 (3). This measure ensures licensed agents who hold relevant higher qualifications can continue to work in the industry without having to complete further training if they have already obtained suitable qualifications.

This Regulation also supports the right to work by allowing registered real estate and stock and station salespersons to continue conducting auctions until 1 July 2023. The Fair Trading Amendment Act introduced substantial changes to the licensing and compliance frameworks for this industry and by allowing registered salespersons an appropriate period of transition, disruptions to both work and income will be reduced.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Agents (Transitional Provisions) Regulation 2022*.

Clause 2 Commencement

This is a technical provision specifying the commencement of the regulation. The regulation commences on the commencement of the *Fair Trading and Other Justice Legislation Amendment Act 2022* (the Fair Trading Amendment Act), part 2.

This clause also includes a note which explains that the naming and commencement provisions automatically commence on the notification day. This note also refers the reader to the *Legislation Act 2001 (ACT)*, s 75 (1) for more detail about automatic commencement.

Clause 3 Offence against Act, s 21 (1) (b) (i) – exception for registered real estate, stock and station salespeople

The Fair Trading Amendment Act inserted a new licence for land auctioneers.

Under new section 21, a person commits an offence if they conduct an auction, or otherwise represent themselves to be an auctioneer if they do not hold an appropriate licence. This offence is due to commence on 1 July 2022 (the commencement of the Fair Trading Amendment Act, part 2).

Currently, there is no transitional agreement to allow a registered real estate salesperson or stock and station salesperson to continue to conduct auctions after 1 July 2022.

Clause 3 inserts a new transitional provision to allow a registered real estate salesperson, or a registered stock and station salesperson to continue to conduct auctions until 30 June 2023 (inclusive), to allow an appropriate period of time for affected persons to obtain the required qualifications and licences to conduct auctions under the new licensing framework.

This amending regulation is intended to be a temporary measure, to provide the industry with immediate clarity and certainty during a period of substantial legislative change.

This clause also defines *commencement day* and *pre-amendment Act* for the purposes of the section.

Commencement day means the day the Fair Trading Amendment Act, part 2 commences.

Pre-amendment Act means the Agents Act, as in force immediately before the commencement day.

Clause 4 Class 1 licensed property agents – equivalent additional class 1 training

Under new section 230 of the Agents Act (introduced by the enactment of the Fair Trading Amendment Act), an agent who is licensed before the commencement day and was at any time responsible for the day-to-day management of a relevant place of business, is taken to be a class 1 licensed agent. However, a class 1 licence granted under this section is automatically subject to the condition that the agent completes additional class 1 training before 1 July 2024.

Under new section 231 of the Agents Act (also introduced by the enactment of the Fair Trading Amendment Act), an agent who is licensed before the commencement day and has at least two years experience as an agent, may elect to be transitioned to a class 1 licence. However, a class 1 licence granted under this section is automatically subject to the condition that the agent completes additional class 1 training before 1 July 2024.

Clause 4 empowers the Commissioner for Fair Trading to decide that an agent's higher, equivalent or substantially equivalent qualification, including one obtained prior to the commencement of the new regulatory scheme, satisfies the requirement to complete additional class 1 training under sections 230 and 231.

The intent of this regulation is to ensure that licensed agents who have undertaken suitable formal study and training are not required to unnecessarily retrain.

This clause also defines *commencement day*, referring the reader to clause 3 above.

Clause 5 Expiry

Clause 5 provides for the expiry of this regulation. The regulation expires on 30 June 2023.