

# Agents Amendment Regulation 2024 (No 1)

## Subordinate law SL2024–33

made under the

*Agents Act 2003*

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Agents Amendment Regulation 2024 (No 1)* (**the Regulation**) as made by the Executive. It has been prepared to assist the reader of the regulation. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the Regulation. It is not, and is not meant to be, a comprehensive description of the Regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW

The Regulation amends the *Agents Regulation 2003* (the **Agents Regulation**) to provide that the *Agents Act 2003* (**Agents Act**) does not apply to community housing providers (**CHPs**), and their employees, registered with the National Regulatory System for Community Housing (**NRSCH**), when they are providing or offering to provide a tenancy management service.

In practice, this will exempt registered CHPs and their employees from having to obtain a real estate agents licence.

The *Community Housing Providers National Law (ACT) Act 2013* requires registered CHPs to comply with the NRSCH National Regulatory Code. The National Regulatory Code sets out seven performance requirements which CHPs must meet in providing community housing, including:

1. determining and managing eligibility, allocation, and termination of housing assistance
2. determining and managing rents
3. setting and meeting relevant housing service standards,

4. supporting tenant and resident engagement
5. facilitating access to support for social housing applicants and tenants with complex needs
6. managing and addressing complaints and appeals relating to the provision of housing services
7. maintaining satisfaction with the overall quality of housing services.

The ACT Human Services Registrar is responsible for the regulatory oversight of CHPs, including regular, scheduled compliance assessments, through which CHPs are required to demonstrate their ongoing capacity to meet these performance indicators. Where necessary, the Registrar can provide guidance to providers on the actions they need to take to improve their performance and ensure they are complying with their obligations.

The Registrar can also accept complaints about a community housing provider's non-compliance.

The NRSCH framework is a robust regulatory regime that is tailored to the specific needs, risks and circumstances of the community housing sector. The ability for those dealing with CHPs to make complaints to the Registrar, coupled with the Registrar's ongoing proactive monitoring and enforcement activity, ensures there is protection for clients and consumers.

The Agents Act mandates individual standards of integrity and competence in the provision of commercial real estate services. However, the Government considers that where a community housing provider is providing services related to the management of a tenancy, the NRSCH provides a more tailored, appropriate and proportionate approach to consumer protection than the licensing structure in the Agents Act.

Creating a standing exemption from the Agents Act for all registered CHPs permits these providers to deliver their programs with lower administration burden, increasing their sustainability. This approach is consistent with the approach taken in NSW, where all registered community housing providers subject to the NRSCH under the Community Housing Providers National Law (NSW) are exempted from the Property, Stock and Business Agents Act 2002 (NSW) without qualification.

## **HUMAN RIGHTS IMPLICATIONS**

This Regulation does not engage or limit rights under the Human Rights Act 2004. Exemption from the Agents Act will support registered CHPs to sustainably manage private rental properties for lease by people with very low, low, and moderate incomes. 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 by supporting CHPs to provide affordable housing effectively and efficiently.

## **REGULATORY IMPACT STATEMENT**

A regulatory impact statement is not required as the regulation does not impose any appreciable costs on the community, or part of a community under section 34 (1) of the *Legislation Act 2001*.

## **CLAUSE NOTES**

### **Clause 1 Name of regulation**

Clause 1 provides that the name of the regulation is the *Agents Amendment Regulation 2024 (No 1)*.

### **Clause 2 Commencement**

This clause indicates that the commencement date of the regulation is the day after it is notified.

### **Clause 3 Legislation amended**

This clause provides that the regulation amends the *Agents Regulation 2003* (the **Agents Regulation**)

### **Clause 4 Section 5C**

This clause substitutes the existing Section 5C (Entities to which Act does not apply – Act, s 6 (l)).

The existing section 5C prescribes that the *Agents Act 2003* does not apply to Community Housing Canberra (only when carrying on business as a real estate agent in relation to managing a community housing asset), Havelock Housing Association and YWCA Canberra, and their employees.

The new Section 5C (1) (Entities to which Act does not apply – Act, s 6 (l)) prescribes the Act does not apply to all registered community housing providers, and their employees, to the extent they are providing or offering to provide a tenancy management service.

New Section 5C (2) carries over the definition of a registered community housing provider from the previous section 5C. Section 5C (2) cross-references and applies the definition of a registered community housing provider contained in the section 4 (1) of the *Community Housing Providers National Law (ACT)*.

New section 5C (2) also inserts a new definition of tenancy management services. The definition provides that each of the following services are taken to be a tenancy management service, for the purposes of section 5C:

- leasing land;
- negotiating with a person to enter into, or make or accept an offer to enter into, a lease of land;
- collecting payments under a lease; and
- managing property under a lease.

Registered community housing providers will only be exempt from the *Agents Act 2003* to the extent they are engaging in tenancy management services. If a registered community housing provider were to engage in real estate agent services other than tenancy management services, such as facilitating the sale and purchase of property, they would be required to comply with the *Agents Act 2003*. This approach reflects the purpose behind the amendment, that is, to make it easier for registered community housing providers to provide affordable rental properties to households on very low, low, and moderate incomes, or for people with additional needs.

If a community housing provider's registration is cancelled, their exemption will cease to apply and they will be required to comply with the *Agents Act 2003* and hold a licence if they intend to offer tenancy management services. This is because they would no longer be required to comply with the NRSCH and subject to the oversight of the Registrar.