



Automatic Mutual Recognition (Australian Capital Territory) (Exemption—Conveyancers) Declaration 2022

I, Andrew Barr, Chief Minister for the Australian Capital Territory, make the following declaration.

Dated 27 June 2022

Andrew Barr
Chief Minister

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1 Name

This instrument is the Automatic Mutual Recognition (Australian Capital Territory) (Exemption—Conveyancers) Declaration 2022.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2022.	1 July 2022.

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 42S of the *Mutual Recognition Act 1992* of the Commonwealth.

4 Simplified outline of this instrument

The purpose of this instrument is to exempt registrations for conveyancing occupations, or for conveyancing activities covered by occupations, from the automatic deemed registration provisions of the *Mutual Recognition Act 1992* of the Commonwealth until 1 July 2027 because of a significant risk to consumer protection.

This instrument has effect only in relation to the Australian Capital Territory.

5 Definitions

In this instrument:

Act means the *Mutual Recognition Act 1992* of the Commonwealth.

Australian legal practitioner has the same meaning as in the *Legal Profession Act 2006* of the Australian Capital Territory.

6 Exemption

For section 42S(1)(b) of the Act, registration as an Australian legal practitioner in the ACT, to the extent that it authorises the carrying on of conveyancing work, is excluded from the operation of automatic deemed registration until 1 July 2027 because of the significant risks set out in section 7 if automatic deemed registration operates solely on the basis of a registration under any of the following laws:

- a) the *Conveyancers Licensing Act 2003* of New South Wales;
- b) the *Agents Licensing Act 1979* of the Northern Territory;
- c) the *Conveyancers Act 1994* of South Australia;
- d) the *Conveyancing Act 2004* of Tasmania;
- e) the *Conveyancers Act 2006* of Victoria; and
- f) the *Settlement Agents Act 1981* of Western Australia.

7 Significant risk statement

For section 42S(2) of the Act, the exemption in section 6 is necessary because of the significant risk arising from circumstances to consumer protection in the Territory. In other States and Territories, conveyancing activities can be undertaken by registered individuals who are not legal practitioners, for example, conveyancing agents and settlement agents. The ACT does not have a licensing scheme for conveyancing agents or settlement agents, nor is there a regulatory framework for conveyancing activities. In the ACT, conveyancing activities are undertaken by legal practitioners, regulated by the *Legal Profession Act 2006* which includes provisions for occupational registration and a disciplinary framework.

Further, the ACT is unique in terms of its leasehold land title system. Specific training would be required for those relying on automatic deemed registration (ADR) to work in the Territory and there is currently no framework to deliver this.

The outlined issues create a significant risk to consumers who are buying or selling property in the Territory and who may use the services of an individual who is not a legal practitioner but is relying on their ADR to work in the Territory and who will not be regulated to ensure the high level of legal competency in relation to land transfer in the Territory is maintained.

8 Human Rights Act statement

Section 40B(1) of the *Human Rights Act 2004* (ACT) provides that it is unlawful for public authorities to act in a way that is incompatible with a human right or, in making a decision, fail to give proper consideration to a relevant human right. Accordingly, in making this exclusion in section 6, I have considered any relevant human rights that may be impacted as required by s40B. Section 27B(1)

of the *Human Rights Act 2004* provides that everyone has the right to work, including the right to choose their occupation or profession freely. I am satisfied that the making of the exclusion in section 6 would not be incompatible with the right to work and the right to choose an occupation or profession freely.

While the exclusion may limit the right to work, it is important to note that the making of the exclusion does not prevent an individual from carrying on conveyancing work in the ACT. Rather, the making of the exclusion will mean that all individuals who wish to carry on conveyancing work in the ACT must meet requirements set out in ACT law. Upon meeting the relevant requirements, individuals would be able to carry on conveyancing work in the ACT. The requirements are a necessary, proportionate and reasonable measure through which consumer protection is afforded to those seeking conveyancing services in the ACT. Any limitation on the right to work is reasonable and justified because the exclusion will allow the ACT to assess the risks associated with the transitioning of this occupation to AMR to determine if current levels of consumer protection can be maintained.