

## CLAUSE NOTES

### Occupational Licensing (Automatic Mutual Recognition Consequential Amendments) Bill 2022

Clause 1	This Act may be cited as the Occupational Licensing (Automatic Mutual Recognition Consequential Amendments) Act 2022.
Clause 2	This Act commences on a day or days to be proclaimed.
Clause 3	In this Part, the <i>Architects Act 1929</i> is referred to as the Principal Act.
Clause 4	<p>Amends section 2 by inserting new definitions of “architect”,</p> <p>An “architect” means a person either registered by the Board under the Principal Act, or a person holding deemed registration as an architect, as is provided under the Automatic Mutual Recognition provisions of the Commonwealth’s Mutual Recognition Act 1992</p> <p>A “deemed registration” refers to the principle of an entitlement to hold registration to work in another jurisdiction, as the result of a person already holding an occupational licence or registration to do similar work in their Home State (where they live or work). This entitlement arises from the Automatic Mutual Recognition provisions of the Commonwealth’s Automatic Mutual Recognition Act 1992, as amended in July 2021.</p> <p>A “register” means the register of architects kept by the Registrar of the Board of Architects for the purposes of the Act, and includes details such as their names and business addresses.</p>
Clause 5	Amends section 9 to provide for additional matters to be included on the register of architects.
Clause 6	<p>Inserts new sections 11A, 11B and 11C.</p> <p>Section 11A clarifies that an application for registration as an architect under the Principal Act does not apply to a person holding deemed registration under Automatic Mutual Recognition.</p> <p>Section 11B provides that a person holding deemed registration as an architect under Automatic Mutual Recognition is required to notify the Registrar of the Board of Architects before working. Changes to that person’s details (such as their address) must also be notified.</p> <p>Section 11B(5) provides that a person holding deemed registration as an architect under Automatic Mutual Recognition is required to work within the same scope of work as provided by their Home State registration.</p>

	<p>Section 11B(6) provides powers for the Registrar to suspend or cancel deemed registration in certain circumstances</p> <p>Section 11C provides that a person holding deemed registration as an architect under Automatic Mutual Recognition is required to have professional indemnity insurance before working and to provide evidence of a policy to the Registrar.</p>
Clause 7	Section 17 is amended to provide that certificate of registration provisions apply to persons who apply for registration under the Principal Act and also to architects holding deemed registration.
Clause 8	In this Part, the <i>Conveyancing Act 2004</i> is referred to as the Principal Act.
Clause 9	<p>Section 3 (Interpretation) is amended.</p> <p>“Approved Institution” is amended to provide that a financial institution that holds a conveyancer’s trust account, must have branch or head office in Tasmania.</p> <p>“Licence” is amended to include a person holding deemed registration as a conveyancer under the Automatic Mutual Recognition.</p> <p>“Trust Account” is amended to clarify that such an account must be created and maintained for the statutory purposes of the Principal Act.</p>
Clause 10	<p>Section 4 is substituted to provide that a conveyancer is a person either licensed under the Principal Act, or a person holding deemed registration as a conveyancer under the Automatic Mutual Recognition.</p> <p>A new section 4A is inserted to provide that a person licensed as a conveyancer in another jurisdiction is entitled to be registered in Tasmania under Automatic Mutual Recognition.</p> <p>Subsections (2) and (3) provide requirements for persons holding deemed registration to make a notification to the Director of Consumer Affairs and Fair Trading before starting work in Tasmania.</p> <p>Subsection (5) provides that the scope of work for persons holding deemed registration is the same as their Home State conveyancer licence.</p> <p>Subsection (6) provides powers for the Director to suspend or cancel deemed registration in certain circumstances.</p> <p>Subsection (7) provides that persons holding deemed registration may be required to provide the Director with any information relating to Continuing Professional Development activities undertaken by the person.</p>
Clause 11	Section 5 is amended to provided that in the case of a conveyancer holding deemed registration in another jurisdiction, they are ineligible to be licensed in Tasmania under the Automatic Mutual Recognition if they are in breach of

	certain public protection requirements (e.g. bankruptcy, licence is suspended or cancelled etc.).
Clause 12	Section 6 is amended to provide that persons holding deemed registration in another jurisdiction do not need to make a licence application (instead they make a notification under the new section 4A)
Clause 13	Section 7 is amended to provide that a character report is only required for a person making a licence application under section 6, and not to a notification of deemed registration under section 4A
Clause 14	Section 8 is substituted and the new section provides the grounds for refusal of a licence application that is made under the Principal Act.
Clause 15	Section 9 is amended to provide that the Director may apply conditions to a licence granted under the Principal Act.
Clause 16	Section 11 is amended to provide that a licence granted under the Principal Act is valid for three years, and a licence held under deemed registration applies while the person's registration in another jurisdiction remains in effect.
Clause 17	Section 12 is amended to provide that the Director may provide evidence of being licensed (a licence card or similar) to a person who has become licensed in Tasmania under deemed registration.
Clause 18	Section 13 is amended to provide that a conveyancer's licence is suspended while they are uninsured. This applies to all licensees including persons with deemed registration to work in Tasmania.
Clause 19	New section 15A is inserted. Provides that if a conveyancer's licence has been suspended, either under the Principal Act, or any Act of another state or territory, they are prohibited from advertising their services.
Clause 20	Section 17 is amended to provide that for the purposes of the Principal Act a licensed conveyancer must open and maintain a trust account in an approved financial institution that has a branch or head office in Tasmania. The intent is that the trust account is solely for the conveyancer's transactions undertaken in Tasmania and not in other jurisdictions.
Clause 21	Section 35 is substituted. It provides that complaints and investigations by the Director may now be made against former licensed conveyancers, including where a deemed registration was cancelled by the Director during an investigation.

Clause 22	Section 39 is amended. In relation to a person who has ceased to carry on business as a conveyancer, it provides a new power for the Director to permanently prohibit a person from holding a licence, or to disqualify them from holding a licence for a specific period. This is an important safeguard, because for persons using deemed registration there is no formal application process, and they could practise again in Tasmania simply by submitting a new notification of their intent to work here.
Clause 23	Section 44 is amended to provide for the Director to maintain a register of licensed conveyancers including persons holding deemed registration.
Clause 24	In this Part, the <i>Motor Vehicle Traders Act 2011</i> is referred to as the Principal Act.
Clause 25	Section 3 (Interpretation) is amended.  "Motor vehicle trader licence" now includes persons holding deemed registration.  Inserts new definitions of "deemed registration" and "licence number."
Clause 26	Section 4 is amended to include a motor vehicle trader's business located in another state or territory that deals in vehicles in Tasmania.
Clause 27	A new section 6A is inserted to provide for persons who are deemed to hold registration as a motor vehicle trader. This includes that they are required to notify the Director of Consumer Affairs and Fair Trading before working, and only practice within the scope of their Home State licence.
Clause 28	A new section 6B is inserted to provide that provisions for making an application for a licence do not apply to persons eligible for deemed registration.
Clause 30	A new section 12A is inserted to provide that certain provisions of the Principal Act do not apply to persons eligible for deemed registration.
Clause 31	Section 16 is substituted to provide that a licence granted under the Principal Act is valid for three years, and a licence held under deemed registration applies while the person's registration in another jurisdiction remains in effect.
Clause 32	New sections 19A and 19B are inserted to provide that in certain circumstances the Director may cancel a deemed registration, and may obtain a report from the Commissioner of Police or similar interstate officers when reviewing those circumstances.

Clause 33	Section 21 is amended to provide that in appropriate circumstances the Director may cancel a motor vehicle trader licence.
Clause 34	Section 23 is amended to provide when a motor vehicle trader licence ceases to have effect. For a licence held under deemed registration, the licence ceases when the person's Home State licence is no longer in effect.
Clause 35	Section 25 is amended to provide that this section does not apply to a deceased motor vehicle trader whose licence was held under deemed registration. No other person can then use the licence that was held by that person.
Clause 36	Section 27 is amended to provide that the Director is to maintain a register of motor vehicle traders and may include certain details relevant to persons holding deemed registration.
Clause 37	In this Part, the <i>Mutual Recognition (Tasmania) Act 1993</i> is referred to as the Principal Act

Clause 38	<p>Sections 6A and 6B are inserted:</p> <p>Disclosure of information to registration authorities in participating jurisdictions:</p> <ul style="list-style-type: none"> <li>• Section 6A broadens the scope of the information sharing provisions in the Commonwealth's Mutual Recognition Act by giving a registration authority for an occupation in the State the discretion to give information on individuals who hold a registration to a registration authority for the occupation in another participating jurisdiction in certain circumstances, including relating to the making of notifications by the licensee or during disciplinary investigations.</li> <li>• These circumstances also include when a Tasmanian registration is suspended or cancelled, a renewal of a Tasmanian registration is refused, a condition is imposed on the individual's Tasmanian registration, when action is taken against an individual on disciplinary grounds, or when civil or criminal proceedings are commenced.</li> <li>• This information can be provided despite any laws relating to confidentiality, privacy or secrecy.</li> </ul> <p>Protection from liability for giving information:</p> <ul style="list-style-type: none"> <li>• Section 6B provides individuals and the State Government protection from liability for giving information in good faith under section 6A of this Act, section 4AAA of the Tasmanian Mutual Recognition Act 1993, or sections 33, 37, 42M, 42N, 42P or 42V of the Commonwealth's Mutual Recognition Act.</li> <li>• No civil or criminal liability will be incurred in respect of giving this information, and the giving of the information is not to be regarded as a breach of any confidentiality, privacy or secrecy imposed by law, or a breach of professional ethics or standards or as unprofessional conduct.</li> </ul>
Clause 39	In this Part, the <i>Occupational Licensing Act 2005</i> is referred to as the Principal Act.
Clause 40	Certain definitions in Section 3 are amended to reflect that persons who are entitled to deemed registration, are also licence holders under the Principal Act. That includes licensed contractors, practitioners, or building services providers.
Clause 41	Section 21 is substituted. The new provision provides that a person working as a contractor must either have a licence issued by the Administrator of Occupational Licensing under the Principal Act, or they hold a deemed registration under Automatic Mutual Recognition.

Clause 42	Section 22 is amended to provide that a person working as a practitioner must either have a licence issued by the Administrator of Occupational Licensing, or hold a deemed registration.
Clause 43	Section 22A is amended to provide that a person working as a building services provider must either have a licence issued by the Administrator of Occupational Licensing, or hold a deemed registration.
Clause 44	<p>Section 27 is amended to provide that a person who holds a deemed registration, before working in Tasmania, must provide the Administrator with a notification and evidence that they have the appropriate insurance cover.</p> <p>An offence of working without insurance is created. Persons found guilty may, as a result, also lose their deemed registration status.</p>
Clause 45	Section 28 is amended to provide that a person intending working as a contractor under deemed registration must notify the Administrator before starting any work in Tasmania.
Clause 46	Section 30 is amended to provide that determinations made by the Administrator regarding prescribed work, may be made for the purposes of the Principal Act, and not specifically in relation to the issuing of licences or permits.
Clause 47	<p>Section 31 is substituted.</p> <p>Subsection (1) provides that the Administrator may determine competencies and other requirements of persons who apply for a licence.</p> <p>Subsection (2) provides that a determination made under (1) relating to continuing competences and other requirements, applies to persons holding deemed registration.</p>
Clause 48	Section 33 is amended to provide that a person who entitled to hold a deemed registration as a contractor does not need to make a licence application for a contractor licence.
Clause 49	Inserts a new section 34A. This section provides that persons intending to work in Tasmania as a contractor under a deemed registration must notify the Administrator before entering any contracts, or allowing commencement of any work or other prescribed activities.
Clause 50	Section 36 is amended to provide that a person who is entitled to hold a deemed registration as a practitioner does not need to make a licence application for a practitioner licence.

Clause 51	<p>Section 37AA is inserted to require a practitioner holding a deemed registration under Automatic Mutual Recognition is to notify the Administrator in a manner and format approved before they commence work.</p> <p>It provides a penalty for new offences - not making the notification, for not maintaining contact details and for not working within the scope of a Home State licence.</p> <p>Deemed registrants found guilty of an offence may have their deemed registration suspended or cancelled by the Administrator.</p> <p>Allows the Administrator to request information on insurance, completion of professional development or other requirements that apply equally to Tasmanian occupational licence holders.</p>
Clause 52	<p>Section 37A is amended to provide that a person who is entitled to hold a deemed registration as a building services provider does not need to make a licence application for a building services provider licence.</p>
Clause 53	<p>Inserts a new section 37E. It provides that persons intending to work in Tasmania as a building services provider under a deemed registration must notify the Administrator in a manner and format approved before entering any contracts, or allowing commencement of any work or other prescribed activities.</p> <p>The changes introduce penalties for new offences - not making the notification, for not maintaining contact details and for not working within the scope of a Home State licence.</p> <p>Deemed registrants found guilty of an offence may have their deemed registration suspended or cancelled by the Administrator.</p>
Clause 54	<p>Section 38 is amended to provide for new offences regarding deemed registration; misrepresentation of their licensed status, of not making a notification, for not maintaining contact details and for not working within the scope of their Home State licence.</p> <p>Deemed registrants found guilty of an offence may have their deemed registration suspended or cancelled by the Administrator.</p>
Clause 55	<p>Section 40 is amended and clarifies that the Administrator has the power to add a condition to a deemed licence holder in the same manner as conditions can be added to other occupational licence holders.</p>
Clause 56	<p>Section 41 is amended and clarifies that the Administrator has the power to issue a certificate of identification to a deemed occupational licence holder in the same manner and with the same conditions as other occupational licence holders.</p>



Clause 57	Section 42 replaces the current term of a licence with a two part clause that allows the granting and renewal of a practitioner's licence, a building services licence or a contractor's licence and provides that a licence held by a person holding deemed registration is valid for the period their registration in a Home State is in force.
Clause 58	Section 43 is amended to clarify those holding a deemed registration are not required to renew registration under the Principal Act.
Clause 59	Section 45 is amended to include deemed registrants as licensees who may be issued with a duplicate certificate of identification.
Clause 60	Section 46 is amended to provide the Administrator with powers to cancel a deemed registration on the same grounds as a Tasmanian licence, including that the person does not have sufficient material and financial resources available to enable them to comply with the requirements of this Act; or has ceased to carry on the business to which the licence relates; or has provided any information to the Administrator that is materially false or misleading.
Clause 61	Section 47 is amended to provide that deemed registrants must, like other licensees, produce their certificate of identification if requested to do so.
Clause 62	Section 49 is amended to provide that details on deemed registrants may be added to the register and be included on a website operated by the Administrator.
Clause 63	Section 85 is amended to allow for an increase in time for commencing prosecutions from "12 months" to "two years". This is to accommodate the potential increased complexity of evidence gathering between participating jurisdictions.
Clause 64	Section 98 has been amended to ensure a person who is the holder a contractor licence by virtue of a deemed registration must keep a register of their employees.
Clause 65	In this Part, the <i>Property Agents and Land Transactions Act 2016</i> is referred to as the Principal Act.
Clause 66	Section 3 is amended, with changes to the definitions of "deemed registration", "general auctioneer licence", "licence", "property manager licence", "property representative licence", or "real estate agent licence" that may be held by a person by virtue of them holding deemed registration.

Clause 67	Section 16 is amended to provide a person holding a deemed registration does not need to make an application for a licence under the Principal Act.
Clause 68	Section 20 is amended to allow the Property Agent's Board to impose conditions on a deemed registration.
Clause 69	Section 20A is amended to clarify the Board can require deemed registrants to undertake continuing professional development activities and produce evidence of that to the Board.
Clause 70	Section 21 is amended to provide that the term of a licence continues to be for 12 months, and a licence held by a person holding a deemed registration is valid for the period that registration is in force.
Clause 71	Section 22 is amended to not require those holding a deemed registration to renew registration under the Principal Act.
Clause 72	Section 24 is amended to allow the Board to include on the public register details of any deemed registrants whose licence has been suspended.
Clause 73	<p>Section 24A is inserted to allow the Board to make an assessment of deemed registrants and their financial capacity to comply with the Act, and may cancel a deemed registration if they do not.</p> <p>Section 24B is inserted to require a deemed registrant to notify the Board in a manner and format approved by the Board before they commence work.</p> <p>Introduces penalties for new offences, of not making a notification, not maintaining contact details and not working within the scope of a home state licence.</p> <p>Deemed registrants found guilty of an offence may have their deemed registration suspended or cancelled by the Board.</p> <p>Allows the Board to request additional information on insurance, completion of professional development or other requirements that apply equally to other occupational licence holders</p>
Clause 74	Section 24C is inserted to provide that making an application for a licence does not apply to a person who holds a property agent licence, by virtue of a deemed registration.
Clause 75	Section 29 is amended to ensure details on deemed registrants who hold a property agent licence, may be added to the register along with any required information and included on a website operated by the Board.

Clause 76	Section 30 is amended to include on the register the address of a real estate agent who holds a deemed registration.
Clause 77	Section 31 is amended to include on the register the address of a property manager who holds a deemed registration.
Clause 78	Section 32 is amended to include on the register the address of a general auctioneer who holds a deemed registration.
Clause 79	Section 33 is amended to include on the register the address of a property representative who holds a deemed registration.
Clause 80	Section 88 is amended to allow for an increase in time for lodging and investigating complaints, from 12 months to two years. This is to accommodate a potential increased complexity of resolving customer disputes and evidence gathering between jurisdictions.
Clause 81	Section 110(1)(c) is amended to provide that the Property Agents Tribunal may disqualify a person from permanently holding a property agent licence, or for a period, as determined by that body.
Clause 82	<p>Section 112 is amended as follows:</p> <p>(a) to manage notification times required for suspending or cancelling a deemed registration, by omitting “as soon as practicable” and substituting “within 5 days after making a determination under section 110”; and</p> <p>(b) by inserting: “business or other address,” to make provision for the addresses of persons from interstate working in Tasmania by virtue of a deemed registration.</p>
Clause 83	<p>Section 134 amends the definition of trust account to ensure that the Property Agents Board can audit trust accounts and retain interest generated, including from the accounts of licensees working under a deemed registration.</p> <p>This trust account must be maintained in this State for the statutory purposes of the Principal Act and not used for any other purposes.</p>
Clause 84	It is clarified that trust accounts for property sales in Tasmania must be kept separate from similar accounts held in other states, in an account in a deposit-taking institution with a head office or branch in this state.
Clause 85	In this Part, the <i>Security and Investigations Agents Act 2002</i> is referred to as the Principal Act.

Clause 86	<p>Section 3 is amended by substituting the definitions of “agent licence” and “employee licence” to now recognise a licence held by a person by virtue of deemed registration.</p> <p>Trust accounts operated by licensees must be held in an account in this State.</p> <p>An identity card may be issued to a person holding deemed registration.</p>
Clause 87	<p>Amends section 4 to provide that a person must not undertake a licenced activity unless licensed by the Director in accordance with this Part; or are entitled to hold a licence by virtue of holding deemed registration.</p>
Clause 88	<p>Section 5 is amended to include persons working under a deemed registration, by deleting “to apply for” and substituting “to hold” in relation to a deemed licence.</p>
Clause 89	<p>Section 5A is inserted to require that a person intending to work in Tasmania under deemed registration, is to notify the Director of Consumer Affairs and Fair Trading before they commence work.</p> <p>Introduces new offences of not making a notification, not maintaining contact details and not working within the scope of a Home State licence. Persons guilty of an offence may have their deemed registration suspended or cancelled.</p>
Clause 90	<p>Section 6 is amended to provide that a person entitled to deemed registration is not required to make an application for a licence.</p>
Clause 91	<p>Section 8 is amended to provide that the Director may receive a character report from the Police Commission before granting or refusing a licence application.</p> <p>A new sub-section 5A is inserted to provide that the Director, at any time, must be satisfied of the matters set out in this section in relation to the good character of any person working in Tasmania under deemed registration.</p>
Clause 92	<p>Section 10 is amended to provide that a person holding a deemed registration may be issued with an identity card by the Director.</p>
Clause 93	<p>Section 13 is amended to clarify that licence conditions may be issued by the Director for an application that is made under the Principal Act.</p>
Clause 94	<p>Section 14 is substituted to provide that a licence held by a person who:</p> <ul style="list-style-type: none"> <li>• had made an application under the Principal Act, is valid for the period specified on the licence; or</li> </ul>

	<ul style="list-style-type: none"> <li>• is holding a deemed registration, is valid for the period in respect of which their Home State registration remains in force.</li> </ul>
Clause 95	Section 18 is amended to provide that if a person who held a licence by virtue of holding deemed registration dies, their legal personal representative is to notify the Director. No other person may then undertake activities under the deceased person's licence.
Clause 96	Section 19 is substituted to provide the Director may issue an identify card, (but does not have to issue a duplicate licence) to a person holding deemed registration.
Clause 97	Section 20 is amended to allow the Director to publish on the register any information considered appropriate in relation to a licence held by a person by virtue of them holding a deemed registration.
Clause 98	Section 32 is amended to provide that a commercial agent who holds a licence under a deemed registration, but does not have a place of business in this State, must keep records of transactions entered into in the course of activities under that licence; and keep records of any person employed by them for the purpose of the operation of the agent's business.
Clause 99	Section 34 is amended to provide that an agent licenced under the Principal Act, must not conduct activities other than at the place of business specified on their licence.
Clause 100	Repeal of this Act will occur on the first anniversary of the day on which the last provision of this Act has commenced.