



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2022-199

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	20
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [no-reply@act.gov.au](mailto:no-reply@act.gov.au)  
**To:** [CMTEDD FOI](#)  
**Subject:** Freedom of Information request  
**Date:** Friday, 1 July 2022 11:38:28 AM

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Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

### Your details

**All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.**

Title:  
First Name:  
Last Name:  
Business/Organisation:  
Address:  
Suburb:  
Postcode:  
State/Territory:  
Phone/mobile:  
Email address:



### Request for information

**(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)**

Under the Freedom of Information Act 2016 I want to access the following document/s (\*required field):

All policy advice and supporting data provided to the Minister relating to his decision to exempt ACT firearm dealer license holders from the provisions of the Automatic Mutual Recognition (AMR) scheme, effective 1 July 2022.

I do not want to access the following documents in relation to my request::

Any sensitive law enforcement intelligence or other security related items which might support a claim that the release of this information is "not in the public interest".

Thank you.  
Freedom of Information Coordinator



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2022-199  
CMTEDDFOI 2022-200



## **FREEDOM OF INFORMATION REQUEST**

I refer to your applications under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 1 July 2022 and 4 July 2022, in which you sought access to:

- *All policy advice and supporting data provided to the Minister relating to his decision to exempt ACT firearm dealer license holders from the provisions of the Automatic Mutual Recognition (AMR) scheme, effective 1 July 2022.*

and

- *All ACT Government contributions to the Firearms and Weapons Policy Working Group (Chaired by the Dept of Home Affairs) relating to the application of Automatic Mutual Recognition (AMR).*

Section 43(2) of the Act states:

*A respondent is entitled to consider two or more applications as one application if the applications are related and are made by the same applicant or by people acting together in relation to the applications.*

I have chosen to combine your applications in this case.

### **Authority**

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 29 July 2022.

### **Decision on access**

A search of CMTEDD records has failed to identify any documentation in relation to your second request (CMTEDDFOI 2022-200). The search was conducted using the information you provided.

I am satisfied that appropriate searches were completed and that no documents relevant to your request (CMTEDDFOI2022-200) are held by CMTEDD.

Searches were completed for relevant documents relating to your first request (CMTEDDFOI 2022-199) and five documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to four documents relevant to your request. I have decided to grant partial access to one document as I consider it to contain information that is contrary to the public interest information under schedule 1 of the Act.

My access decisions are detailed further in the following statement of reasons (in accordance with section 54(2) of the Act) and the documents released to you are provided as **Attachment B** to this letter.

### **Statement of Reasons**

In reaching my access decisions, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request.

### **Exemption claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### Contrary to the public interest information under schedule 1 of the Act

Folio one of the identified documents contains information that is considered to be contrary to the public interest under schedule 1 of the Act as it contains information that is protected under legal professional privilege.

Schedule 1 states:

*Information mentioned in this schedule is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.*

s1.2 further states

*Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.*

Additionally, this document contains information that falls outside of the scope of your request and has been marked as such.

### **Charges**

Processing charges are not applicable for this request because the number of pages being released to you is below the charging threshold of 50.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log. Your personal contact details will not be published.

You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely



Katharine Stuart  
Information Officer  
Chief Minister, Treasury and Economic Development Directorate

29 July 2022



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

### WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

*All policy advice and supporting data provided to the Minister relating to his decision to exempt ACT firearm dealer license holders from the provisions of the Automatic Mutual Recognition (AMR) scheme, effective 1 July 2022.*

and

*All ACT Government contributions to the Firearms and Weapons Policy Working Group (Chaired by the Dept of Home Affairs) relating to the application of Automatic Mutual Recognition (AMR).*

CMTEDDFOI 2022-199

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-11	Ministerial brief	24 Jun 2022	Partial release	Schedule 1 s1.2 Out of Scope	Yes
2	12-14	Attachment A to above brief	24 Jun 2022	Full release	N/A	Yes
3	15-20	Attachment C to above brief	24 Jun 2022	Full release	N/A	Yes
4	21-22	Attachment D to above brief	24 Jun 2022	Full release	N/A	Yes
5	23-25	Attachment E to above brief	24 Jun 2022	Full release	N/A	Yes
<b>Total No of Docs</b>						
5						

**Chief Minister, Treasury and Economic Development Directorate**

<b>To:</b>	Chief Minister	Tracking No.: CMTEDD2022/2692
<b>Date:</b>	24/06/2022	
<b>CC:</b>	Minister for Business and Better Regulation Head of Service	
<b>From:</b>	Head of the Better Regulation Taskforce	
<b>Subject:</b>	Automatic Mutual Recognition of Occupation Registrations: Significant Risk Exemption Declaration for Firearms Dealers	
<b>Critical Date:</b>	28/06/2022	
<b>Critical Reason:</b>	The current temporary exemption instrument will expire on the 1 July 2022	

**Recommendations**

That you:

1. **Note** the Minister for Police and Emergency Services wrote to you on 17 June 2022 (Attachment A) seeking a Significant Risk Exemption for Firearms Dealers for five years;

**Noted / Please Discuss**

2. **Sign** the attached Significant Risk Exemption Declaration for Firearms Dealers for five years (Attachment C); and

**Agreed / Not Agreed / Please Discuss**

3. **Sign** the attached letter to the Minister for Minister for Police and Emergency Services (Attachment D).

**Signed / Not Signed / Please Discuss**

Andrew Barr MLA ...../...../.....

Chief Minister's Office Feedback

## Background

1. Amendments to the *Mutual Recognition Act 1992* (Cth) (the MR Act) commenced on 1 July 2021. These amendments enable an individual registered for an occupation in their home State or Territory to be taken to be registered to carry on, in a second State or Territory, the activities covered by the home State registration.
2. Automatic mutual recognition (AMR) is different to the previous mutual recognition arrangements. Under AMR, no application process is required, nor is a local registration authority permitted to charge a registration fee or impose any conditions. Based on a current home State registration, the individual will be automatically deemed to be registered to undertake the activities covered by the occupation in a second State or Territory where AMR applies. This is called automatic deemed registration (ADR).
3. All States and Territories will be participating in or will have adopted AMR by 1 July 2022, with the exception of Queensland.
4. In order to allow States and Territories additional time to transition to AMR, the MR Act provided that a Minister of a State could declare an occupational registration or activity temporarily exempt from AMR up to 30 June 2022.
5. In your capacity as the Territory's Minister of a State, you made a declaration on the 28 June 2021, which was further amended on the 4 December 2021, to temporarily exempt a number of registrations from the AMR Scheme ([Attachment B](#)).
6. In relation to firearms dealers, this temporary exemption instrument excluded from the operation of ADR in the Territory all registrations under the *Firearms Act 1996*.
7. This temporary declaration will automatically expire on 1 July 2022. There is no provision in the MR Act for an extension. However, the MR Act does allow further exemptions to be made because of a significant risk.
8. Section 42S of the MR Act provides that a Minister of a State may declare an occupational registration or activity exempt from the AMR Scheme for a period of up to five years, based on a significant risk to:
  - a) consumer protection;
  - b) the environment;
  - c) animal welfare; or
  - d) the health and safety of workers or the public.



9. You have received a letter from the Minister for Police and Emergency Services dated 17 June 2022 requesting a significant risk exemption for firearms dealers for a period of five years (Attachment A).

## Issues

### Threshold for Satisfying a Significant Risk Exemption (SRE) Declaration in the Territory

10. A State Minister can only make the declaration if they are satisfied that it is necessary because of a significant risk, arising from particular circumstances or conditions.<sup>1</sup> The risk cannot be general in nature.
11. A State Minister must be able to identify the particular circumstances or conditions leading to the significant risk, but the circumstances or conditions do not have to be unique to the Minister's Territory or State. One or more Territories or States could declare the same exemption on the same grounds if there are circumstances or conditions in each Territory or State that pose the significant risk.<sup>2</sup>
12. A significant risk could include a significant risk to a segment of the public, such as children or another vulnerable group.<sup>3</sup>
13. Consistent with section 99 of the Commonwealth Constitution, a declaration cannot be used to favour one state over another, wholly or in part. To the extent a declaration gives such preference, it will be invalid.<sup>4</sup>

### Firearms licences in scope for AMR

## Schedule 1 1.2

14. The temporary declaration, referred to in paragraphs 4-7, temporarily excluded all licences under the *Firearms Act 1996* (Firearms Act).

## Schedule 1 1.2

<sup>1</sup> Clause 161 of the Mutual Recognition Amendment Bill 2021 Explanatory Memorandum

<sup>2</sup> Clause 162 of the Mutual Recognition Amendment Bill 2021 Explanatory Memorandum

<sup>3</sup> Clause 163 of the Mutual Recognition Amendment Bill 2021 Explanatory Memorandum

<sup>4</sup> Clause 168 of the Mutual Recognition Amendment Bill 2021 Explanatory Memorandum

# Schedule 1 1.2

## SRE for Firearms Dealers

26. You have previously received a copy of an AMR Implementation Brief that outlined the possibility of a SRE for Firearms dealers occupations/activities in the Territory – see [CMTEDD2022/1717](#).
27. In his letter, the Minister for Police and Emergency Services has stated that there is an identified significant public health and safety risk to the Territory if individuals relying on ADR were to undertake the occupation and activities in the Territory provided

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<sup>5</sup> S25 of the Firearms Regulation  
Tracking No.: CMTEDD2022/2692

under home State laws relating to firearms dealers. The Minister has advised that risk arises from the following circumstances:

No assessment of suitability by the ACT regulator

28. The Minister notes that there are varying standards for assessing suitability of the application of the “fit and proper” person test across jurisdictions and that prospective dealers might identify with the state or territory with the lowest standard of suitability requirements for a dealers licence.
29. The Taskforce notes that a key concept of mutual recognition is that once a person is licensed for an occupation in the first state, laws of the second state which impose pre-conditions on a successful registration of a person cannot operate to prevent registration of that person. Mutual recognition operates by presuming that these factors have already been considered by the relevant regulatory body in the first state and the fact of registration is sufficient for registration in the second state. As this principal has already been established in relation to mutual recognition, AMR represents no additional risk in this regard.
30. AMR introduces a new concept of *home State* which means a person’s principal place of residence, or principal place of work for an occupation, where the person is also registered for the occupation. This definition is intended to minimise the opportunities for jurisdiction shopping through this requirement as the entitlement to ADR is based on an individual’s home State registration.

Gaps in the legislative frameworks

31. The Minister points to gaps and inconsistencies in regulatory requirements across jurisdictions for the carrying on of the occupation of firearms dealing. For example, there are inconsistent record-keeping requirements across jurisdictions including what type of, and how, information needs to be recorded – i.e. whether the location of each firearm acquired/disposed/stored needs to be recorded.
32. In 2008, the Australian Institute of Criminology (AIC) conducted a review of both federal and state and territory legislation and found that while there was general compliance with the law, “opportunities to divert firearms were inadvertently facilitated by legislative loopholes or oversights and/or a general lack of deterrence based on the offences prescribed and the maximum penalties attached”<sup>6</sup>.
33. As part of its 2012 report concerning firearm trafficking, the AIC noted gaps in the law with respect to firearms dealers and that regulation with regard to dealerships and the registration and manufacture of firearms were key areas requiring change

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<sup>6</sup> Commonwealth Senate Inquiry Report, 2015, ‘The ability of Australian law enforcement authorities to eliminate gun-related violence in the community’, Chapter 4, accessible online, <[Report – Parliament of Australia \(aph.gov.au\)](#)>

including improved scrutiny around sale and disposal records maintained by dealers and increasing penalties on the wilful entry of false information.<sup>7</sup>

34. The ACT regulatory framework for manufacturers is not robust as its compliance requirements are the same as for a retail dealer and club armourer. Should an interstate firearms manufacturer be able to rely on ADR to operate as a manufacturer in the ACT, noting the lack of a specific regulatory framework and accompanying compliance activities by the ACT Firearms Registry, detection of corrupt activities will be particularly challenging.
35. Furthermore, firearms record-keeping in the ACT is paper based while other jurisdictions such as NSW are electronic based. While complying with ACT's paper-based record-keeping requirements may be a deterrent to an interstate dealer setting up a business here, the ACT Firearms Registry's ability to conduct effective enforcement activities would be significantly hampered as the ACT Firearms Registry would require additional resourcing to carry out a thorough audit particularly if a dealer holds a significant number of firearms.

#### Lack of ongoing regulatory oversight

36. The Minister advises that allowing interstate dealers to rely on ADR to operate from the ACT would have resourcing impacts on the ACT Firearms Registry, relating to its ability to reconcile firearms transfers and therefore increasing risks of diversion of illicit firearms. For example, an interstate dealer relying on ADR may set up temporarily as a backyard dealer in the ACT, operate for a short period of time and then return to their home state. This would present difficulty for the Firearm Registry to trace what firearms had been traded in that short period.

#### Other Jurisdictions

37. The Minister advises that Victoria already has an SRE in place for firearms licences. This is not the case. We understand that NSW is intending to make an SRE for firearms dealers for five years but this has not yet occurred.

# Schedule 1 1.2

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<sup>7</sup> Ibid.

# Schedule 1 1.2

## Better Regulation Taskforce Analysis

# Schedule 1 1.2

43. To assist you in reaching the requisite statement of mind, the Taskforce provides the following assessment of the relevant considerations for an SRE Declaration for firearms dealers and activities on the grounds of significant public health and safety risk:

- a) The Taskforce considers that the risk to public health and safety is **significant** because gaps and inconsistencies in regulatory requirements across jurisdictions for the carrying on of the occupation of firearms dealing have already been identified as an area of exploitation by illicit dealers. For example, there are inconsistent record-keeping requirements across jurisdictions including what type of, and how, information needs to be recorded – i.e. whether the location of each firearm acquired/disposed/stored needs to be recorded.

Lack of a co-ordinated, consistent and robust information sharing approach between firearms regulators can enable perpetrators to take advantage of loopholes and gaps in licensing frameworks.

Notwithstanding the provisions under the AMR scheme relating to notification of intention to work and the requirement under the Firearms Regulations for separate approval of the premises, there could be a diminution in regulatory oversight under AMR of individuals operating in ACT under from time to time.

## OFFICIAL

This is because, once a dealer notifies of an intention to work and obtains the relevant premises approval, no further notification is required. Under AMR, an interstate dealer relying on ADR may set up temporarily as a backyard dealer in the ACT, operate for a short period of time and then return to their home state. This would present difficulty for the Firearm Registry to trace what firearms had been traded in that short period.

Work is being done at national level to progress these issues of consistency and information sharing.

Even a slight diminution in regulatory oversight of trading of firearms by dealers carrying on the occupation in the ACT carries a particularly high risk profile.

- b) The basis of the risk arises from the **particular circumstances or conditions in the ACT**. The ACT Firearms Registry record-keeping is paper based while other jurisdictions such as NSW are electronic based which exacerbates the potential for illicit dealers to exploit inconsistencies.
  - c) The exemption is **necessary**. Alternative arrangements to address this risk are not present and could not be developed or implemented during the temporary exemption period due to their complexity.
  - d) The exemption is **appropriate and adapted to the legitimate aims** of s42S of the MR Act. The exemption is necessary because of a significant risk to public health and safety and the risk arises because of the specific circumstances and conditions existing in the ACT.
44. The Taskforce further recommends that, if the Declaration is agreed, JACS undertakes the necessary policy work to consider options to mitigate the risks of AMR in relation to firearms dealers.
45. Stakeholder consultation, required under s17 of the *Legislation Act 2003* (Cth) has been undertaken by the administering directorate (see paragraph 66).
46. The Taskforce recommends that, if you are satisfied that an exemption is necessary because a significant risk exists to public health and safety based on the particular circumstances or conditions in the ACT, a Commonwealth Significant Risk Exemption Declaration is made to exempt firearms dealers for a period of five years.
47. The Taskforce has consulted with Parliamentary Counsel's Office (PCO) to prepare a Significant Risk Exemption Declaration for your signature at Attachment C, should you agree.
- a) As required by the MR Act, the Declaration includes a statement explaining the risk to public health and safety. The statement aligns with the advice in this brief.

### Next Steps

# Out of Scope

## Human Rights

### Schedule 1 1.2

50. Section 40B of the HR 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 any declaration under s 42S, it is important that you consider any relevant human rights as required by s 40B.
51. Section 27B(1) of the HR Act provides that everyone has the right to work, including the right to choose their occupation or profession freely.

### Schedule 1 1.2

53. A significant risk exemption does not prevent an interstate worker from working in the ACT per se. An exemption preserves the status quo. In other words, during the significant risk exemption period, interstate workers can continue to have their state qualifications recognised in the ACT under existing mutual recognition provisions as they do now, and through that established path obtain registration to work in the ACT.

### Schedule 1 1.2

# Schedule 1 1.2

56. The statement in the Declaration addresses these considerations.

# Out of Scope

## Consultation

# Out of Scope

## External

63. Section 17 of the *Legislation Act 2003* (Cth) provides that before an instrument is made, the rule-maker must be satisfied that there has been consultation that is appropriate and reasonably practicable.
64. Relevant matters include the extent to which the consultation drew on the knowledge of person having expertise in relevant fields and also that likely affected persons had an adequate opportunity to comment on the proposed content.
65. The Minister for Police and Emergency Services advises that the Justice and Community Safety Directorate has contacted all dealers licenced in the ACT via the email or phone number registered with the Firearms Registry (approximately 25 individuals), providing information on the AMR scheme and seeking views on the proposal to seek a SRE. Feedback from dealers who responded was generally

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<sup>8</sup> <https://www.legislation.act.gov.au/di/2021-114/>



supportive of making a SRE, including for the reasons set out above. No specific concerns were flagged with the proposal to seek a SRE for firearms dealers.

# Out of Scope

## Attachments

Attachment	Title
Attachment A	Letter from the Minister for Police and Emergency Services
Attachment B	<i>Automatic Mutual Recognition (Australian Capital Territory) (Temporary Exemptions Declaration 2021 (No 2))</i>
Attachment C	Significant Risk Exemption Declaration – Firearms Dealers
Attachment D	Letter to the Minister for Police and Emergency Services
Attachment E	Explanatory Statement



**Mick Gentleman MLA**  
Manager of Government Business  
Minister for Planning and Land Management  
Minister for Police and Emergency Services  
Minister for Corrections  
Minister for Industrial Relations and Workplace Safety

Member for Brindabella

Our ref: PRO22/1716

Mr Andrew Barr MLA  
Chief Minister  
By email: [barr@act.gov.au](mailto:barr@act.gov.au)

Dear Chief Minister *Andrew Barr*

I write to request that you declare a significant risk exemption (SRE) under section 42S of the *Mutual Recognition Act 1992 (Cwlth)* (MR Act) for a period of five years in relation to firearms dealers.

The MR Act has facilitated the recognition of occupational licences between jurisdictions for some time, aiming to make mobility between jurisdictions easier for workers.

On 1 July 2021, the Commonwealth amended the MR Act to introduce an Automatic Mutual Recognition (AMR) of Occupational Registrations scheme. AMR allows workers who hold occupational registration or a licence in one Australian State or Territory to work in other Australian States or Territories without needing to pay additional fees or apply for a separate registration - Automatic Deemed Registration ('ADR').

From 1 July 2022, ADR will apply to firearms dealers unless you, in your capacity as Chief Minister, declare a SRE. A SRE would prevent interstate firearms dealers from working in the ACT under ADR. An exemption under section 42S is for the maximum five years.

The significant risk in relation to firearms dealers identified is to the health and safety of the public.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

+61 2 6205 0218 [gentleman@act.gov.au](mailto:gentleman@act.gov.au)

[@GENTLEMANMick](https://twitter.com/GENTLEMANMick)

[MickGentleman](https://www.facebook.com/MickGentleman)

[mick.gentleman](https://www.instagram.com/mick.gentleman)

The risks identified are based on the following:

- a. AMR does not permit the ACT firearms registry to assess an interstate person's suitability to hold a dealer licence.

With varying standards for assessing suitability or the application of the “fit and proper person” test across jurisdictions, there is a real risk that prospective dealers (particularly those seeking to be licensed for illegitimate purposes) might identify the state or territory with the lowest standard of suitability requirements for applying for dealer licences, facilitating entry to the national firearms market, including the ACT. In discussions with counterparts in other jurisdictions, it has not been clear whether the suitability test is applied to a consistent standard or based on consistent types of information (for example, classified information).

- b. AMR heightens the risk of firearms dealers circumventing scrutiny from the ACT firearms registry by exploiting regulatory inconsistencies in firearms regulation across jurisdictions.

There are inconsistent record-keeping requirements across jurisdictions including what type of, and how, information needs to be recorded – i.e. whether the location of each firearm acquired/disposed/stored needs to be recorded. Firearms record-keeping in the ACT is paper based while other jurisdictions such as NSW are electronic based.

The ability of the ACT Firearms Registry to conduct effective enforcement activities would be significantly hampered by the introduction of AMR as it would require additional resourcing to carry out a thorough audit particularly if a dealer holds a significant number of firearms.

The ACT regulatory framework for firearms has limitations in relation to manufacturing activity - compliance requirements for manufacturers are the same as for a retail dealer and club armourer. Noting the lack of a specific regulatory framework and accompanying compliance requirements for firearms manufacturers in the ACT, detection of risky activities will be particularly challenging.

Research conducted by the Australian Institute of Criminology (AIC)<sup>1</sup> has also indicated that legislative gaps and inconsistency with respect to firearms dealers across jurisdictions have facilitated firearm trafficking.

- c. AMR compromises the ACT Firearms Registry's capability to provide appropriate regulatory scrutiny.

An interstate dealer relying on ADR may set up temporarily as a backyard dealer in the ACT, operate for a short period of time and then return to their home state. This would present difficulty for the Registry to carry out a thorough audit or reconcile firearms transfers and trace firearms that had been traded in that short period.

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<sup>1</sup> Australian Institute of Criminology, 2012, 'Firearm trafficking and serious and organised crime gangs', accessible online, <[Firearm trafficking and serious and organised crime gangs \(aic.gov.au\)](http://aic.gov.au)>

For a SRE to be sought and made, relevant stakeholders must be consulted. The Justice and Community Safety Directorate has contacted all dealers licenced in the ACT via the email or phone number registered with the Firearms Registry (approximately 25 individuals), providing information on the AMR scheme and seeking views on the proposal to seek a SRE. Feedback from dealers who responded was generally supportive of making a SRE, including for the reasons set out above. No specific concerns were flagged with the proposal to seek a SRE for firearms dealers. Accordingly, I consider that the subject matter experts and those who are most likely to be affected by the decision to make a SRE have been consulted and hold no significant objections to the proposal.

I have also been advised that Victoria already has an SRE in place for firearms licences and a number of other jurisdictions have indicated their intention to make SREs due to holding similar concerns about the application of AMR to certain types of firearms licences, to those outlined above.

Thank you for considering this request.

Yours sincerely

  
Mick Gentleman MLA  
Minister for Police and Emergency Services

*17/6/2022*



## **Automatic Mutual Recognition (Australian Capital Territory) (Exemptions—Firearms Dealers) Declaration 2022**

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

Dated

Andrew Barr  
Chief Minister

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## Contents

1 Name.....	1
2 Commencement.....	1
3 Authority.....	1
4 Simplified outline of this instrument.....	1
5 Definitions.....	1
6 Exemption.....	2
7 Significant risk statement.....	2
8 Human Rights Act statement.....	3



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## 1 Name

This instrument is the Automatic Mutual Recognition (Australian Capital Territory) (Exemptions—Firearms Dealers) 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 firearm dealer occupations, or for activities covered by firearm dealer 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 the health and safety of workers or the public.

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.



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## 6 Exemption

For section 42S(1)(a) of the Act, a registration under the *Firearms Act 1996* of the Australian Capital Territory is excluded from the operation of automatic deemed registration in the Australian Capital Territory until 1 July 2027 because of the significant risks set out in section 7.

## 7 Significant risk statement

For section 42S(2) of the Act, the exclusion in section 6 is necessary because of the significant risk in the ACT to the health or safety of workers or the public. Gaps and inconsistencies in regulatory requirements across jurisdictions for the carrying on the occupation of firearms dealer have already been identified as an area of exploitation by illicit dealers.

In 2008, the Australian Institute of Criminology (AIC) conducted a review of both federal and state and territory legislation and found that, while there was general compliance with the law, legislative loopholes or oversights inadvertently facilitated opportunities to divert firearms.

As part of its 2012 report concerning firearm trafficking, the AIC noted gaps in the law with respect to firearms dealers and that regulation with regard to dealerships and the registration and manufacture of firearms were key areas requiring change including improved scrutiny around sale and disposal records maintained by dealers, and increasing penalties on the wilful entry of false information

For example, there are inconsistent record-keeping requirements across jurisdictions including what type of, and how, information needs to be recorded, including whether the location of each firearm acquired/disposed/stored needs to be recorded. Record keeping in the ACT is currently paper-based.

Under automatic mutual recognition, challenges may arise for the ACT regulator to trace firearms dealing by interstate dealers who may operate temporarily in the ACT and this could provide opportunities for illicit activity by dealers.

An exclusion for five years is necessary because it will enable the ACT to continue to engage with other jurisdictions to address gaps and inconsistencies in regulatory requirements and progress a nationally consistent information exchange scheme. Work is being done at a national level to progress these issues of consistency and information sharing but it is not sufficiently progressed to mitigate the risks to public health or safety.

It will also enable the ACT to review its existing licencing framework, including firearms manufacture, to ensure it is fit for purpose and addresses the risks identified by the AIC.

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## 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 the occupation of a firearms dealer in the ACT. Rather, the making of the exclusion will mean that all individuals who wish to carry on an activity covered by the occupation of firearms dealer in the ACT must meet particular registration requirements set out in ACT law. Upon meeting the relevant registration requirements, individuals would be able to carry on an activity covered by the occupation of firearms dealer in the ACT. The registration requirements are a necessary, proportionate and reasonable measure through which safeguards are provided to protect public health and safety. Any limitation on the right to work is reasonable and justified because the exclusion will allow the ACT to address risks associated with the transitioning to AMR while ensuring there is no diminution in current levels of safeguards in relation to public health and safety. The exclusion will enable the risks to public health and safety to be addressed by working to resolve gaps and inconsistencies in regulatory requirements with other jurisdictions and progress a more robust and reliable information exchange scheme.



**Andrew Barr MLA**  
Chief Minister  
Treasurer  
Minister for Climate Action  
Minister for Economic Development  
Minister for Tourism  
  
Member for Kurrajong

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Mr Mick Gentleman MLA  
Minister for Police and Emergency Services  
ACT Legislative Assembly  
GPO Box 1020  
Canberra City ACT 2601

Dear Minister Gentleman

Thank you for your letter about the implementation of the Automatic Mutual Recognition Scheme for Occupational Registrations in the Territory and your request that I declare a Significant Risk Exemption to exclude all firearms dealers from the AMR Scheme for a period of five years, based on a significant risk to the health and safety of workers or the public.

As outlined in the ACT Recovery Plan 2021-22, the ACT Government is committed to building the Territory's economic recovery after unprecedented natural disasters and the COVID-19 pandemic. While a critical component of this is investing in the local workforce, it is also recognised that schemes like the Automatic Mutual Recognition Scheme (AMR Scheme) will help local businesses in the delivery of services by attracting interstate workers who are able to work in the Territory without the regulatory burden of paying additional registration fees.


However, it is also noted that the Commonwealth's AMR Scheme enables a state Minister to exempt a registration in their state from being subject to automatic mutual recognition for a renewable period of up to five years because of a significant risk to consumer protection, the environment, animal welfare, or the health or safety of workers or the public.

Thank you for your advice that there is a significant risk to the health and safety of the public in the Territory if individuals relying on automatic deemed registration (ADR) were to undertake the activities provided to firearms dealers in the Territory. You advise that there are gaps and inconsistencies in regulatory requirements across jurisdictions for the carrying on of the occupation

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of example, there are inconsistent record-keeping requirements across jurisdictions including what type of, and how, information needs to be recorded – i.e. whether the location of each firearm acquired/disposed/stored needs to be recorded. fall within the AMR Scheme. You also note that the ACT regulatory framework for manufacturers is not robust as its compliance requirements are the same as for a retail dealer and club armourer. Should an interstate firearms manufacturer be able to rely on ADR to operate as a manufacturer in the ACT, noting the lack of a specific regulatory framework and accompanying compliance activities by the ACT Firearms Registry, detection of corrupt activities will be particularly challenging. Furthermore, firearms record-keeping in the ACT is paper based while other jurisdictions such as NSW are electronic based, making it more thorough audit particularly if a dealer holds a significant number of firearms. I have taken your advice into consideration.

I am satisfied that the threshold for a significant risk arising from particular circumstances or conditions has been met, as required under the *Mutual Recognition Act 1992* (Cth). I am also satisfied that consultation on the significant risk declaration has been met, as required under the *Legislation Act 2003* (Cth).

To this effect, I confirm that I have signed a Significant Risk Declaration to exclude firearms dealers from the operation of ADR in the Territory for a period of five years due to the significant risk to health and safety of the public in the Territory. The signed Federal Instrument will now be sent to the Taskforce who will arrange for it to be uploaded to the Federal Register of Legislation. The Taskforce will liaise directly with the policy area when this has been completed.

I am recommending that the administering directorate undertakes the necessary policy work to consider options to mitigate the risks of AMR in relation to firearms dealers. This should be undertaken before any consultation is required for any further SRE before the end of the five year period of the current declaration.

The implementation of the AMR Scheme in the Territory has been an extensive and complex whole of Government project and I thank you and the directorate policy officials for the work undertaken. If you have any questions, please contact the Head of the Better Regulation Taskforce, Sam Engele, at [Sam.Engele@act.go.au](mailto:Sam.Engele@act.go.au) or on 6205 0230.

Yours sincerely

Andrew Barr MLA  
Chief Minister

## **EXPLANATORY STATEMENT**

### ***Mutual Recognition Act 1992***

#### **Automatic Mutual Recognition (Australian Capital Territory) (Exemption—Firearms Dealers) Declaration 2022**

This explanatory statement provides notes on the operation of the Automatic Mutual Recognition (Australian Capital Territory) (Exemption—Firearms Dealers) Declaration 2022 (the Declaration). The specific provisions in the Declaration are outlined in Attachment A. The information in the explanatory statement is an aid to understanding the Declaration and should not be substituted for the Declaration.

#### **Context and purpose**

Part 3A of the *Mutual Recognition Act 1992* of the Commonwealth (the MR Act) provides for the automatic mutual recognition of occupational registrations (AMR). AMR allows an individual to carry on an activity in a second State, under the registration covering the activity in their home State through Automatic Deemed Registration (ADR).

Part 3A of the MR Act also provides for the making of a Declaration to exempt registrations for occupations, or for activities covered by occupations, from the automatic deemed registrations provisions of the MR Act. The *Legislation Act 2003* of the Commonwealth provides for the making of legislative instruments.

#### **Summary**

Through this Declaration, the Chief Minister for the Australian Capital Territory (the Chief Minister) exempts registrations for firearms dealers from another State or Territory from operating in the Territory under AMR until 1 July 2027 because of a significant risk to the health and safety of workers or the public. The Declaration commences on 1 July 2022.

#### **Consultation**

The Australian Capital Territory consulted with all firearms dealers that are licensed in the ACT, as well as the ACT Firearms Registry.

This is the appropriate consultation to have undertaken regarding whether a Significant Risk Exemption Declaration for interstate workers is appropriate.

The Chief Minister is satisfied that the consultation undertaken is appropriate and practical for the purposes of making the Declaration. The consultation drew on the knowledge of subject matter experts.

## **Attachment A**

### **Details of the Automatic Mutual Recognition (Australian Capital Territory) (Exemptions—Firearms Dealers) Declaration 2022**

#### **Part 1 – Preliminary**

##### **Section 1 – Name**

This section provides that this Declaration is to be cited as the Automatic Mutual Recognition (Australian Capital Territory) (Exemption—Firearms Dealers) Declaration 2022 (the Declaration).

##### **Section 2 – Commencement**

This section provides the date on which the Declaration comes into operation.

The Declaration comes into operation on 1 July 2022 when the AMR scheme becomes fully operational in the Territory.

##### **Section 3 – Authority**

This section outlines the authority under which the Declaration is made. The Declaration is made under section 42S of the *Mutual Recognition Act 1992* of the Commonwealth.

##### **Section 4 – Simplified outline of the instrument**

This section explains that the purpose of this instrument is to exempt firearms dealer occupations, or for activities covered by firearms dealer occupations, from the automatic deemed registration provisions of the *Mutual Recognition Act 1992* of the Commonwealth for a period of five years because of a significant risk to the health and safety of workers or the public.

##### **Section 5 – Definitions**

This section provides, for the purposes of this Declaration, self-explanatory definitions of the following terms:

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

##### **Section 6 - Exemption**

This section lists the specific paragraph of the MR Act relied on to make the Declaration excluding a registration mentioned from the operation of automatic deemed registration in the Australian Capital Territory.

The Declaration is made in accordance with paragraph 42S of the MR Act. This means that an individual cannot rely on automatic deemed registration in the Australian Capital Territory because of the significant risk to the health and safety of workers or the public.

**Section 7 – Significant risk statement**

This section explains the specific significant risks arising from circumstances to the health and safety of workers or the public in the Territory.

**Section 8 – Human Rights Act statement**

This section outlines that the exclusion of occupations and activities under section 6 is not considered incompatible with the provisions under the *Human Rights Act 2004* (ACT).

Andrew Barr

Chief Minister