

South Australia

Community Housing Providers (National Law) (South Australia) Regulations 2014

under the *Community Housing Providers (National Law) (South Australia) Act 2013*

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Legislative history

1—Short title

These regulations may be cited as the *Community Housing Providers (National Law) (South Australia) Regulations 2014*.

3—Interpretation

In these regulations—

Act means the *Community Housing Providers (National Law) (South Australia) Act 2013*;

SACCH Act means the *South Australian Co-operative and Community Housing Act 1991*.

5—Appeal period

For the purposes of Schedule 2 clause 4(2)(a) of the Act the prescribed period is 30 days from the day on which the person receives written notice of the decision of the community housing provider.

6—Transitional provisions

- (1) During the transitional period, a reference to a community housing provider registered under the *Community Housing Providers National Law* in any Act, other than the *Community Housing Providers (National Law) (South Australia) Act 2013*, or in any other regulations, will, in respect of a transitioning housing co-operative or a transitioning housing association, be taken to include a reference to a housing co-operative or a housing association registered under the *South Australian Co-operative and Community Housing Act 1991* immediately before the repeal of that Act by the *Community Housing Providers (National Law) (South Australia) Act 2013*.

- (2) The following provisions apply if the *Community Housing Providers (National Law) (South Australia) Act 2013* commences before the commencement of section 4(4) of the *Residential Tenancies (Miscellaneous) Amendment Act 2013*:
- (a) a reference to a registered housing co-operative in the *Residential Tenancies Act 1995* will be taken to be—
 - (i) a reference to a community housing provider registered under the *Community Housing Providers National Law*; or
 - (ii) in respect of a transitioning housing co-operative or transitioning housing association—a reference to a housing co-operative or housing association registered under the *South Australian Co-operative and Community Housing Act 1991* immediately before the repeal of that Act by the *Community Housing Providers (National Law) (South Australia) Act 2013*;
 - (b) a reference to a member of a co-operative in the *Residential Tenancies Act 1995* will be taken to be—
 - (i) a reference to a member of a community housing provider registered under the *Community Housing Providers National Law*; or
 - (ii) in respect of a transitioning housing co-operative or transitioning housing association—a reference to a member of a housing co-operative or housing association registered under the *South Australian Co-operative and Community Housing Act 1991* immediately before the repeal of that Act by the *Community Housing Providers (National Law) (South Australia) Act 2013*.
- (3) In this regulation—
- transitional period* has the same meaning as in Schedule 3 Part 4 of the Act;
- transitioning housing association* has the same meaning as in Schedule 3 Part 4 of the Act;
- transitioning housing co-operative* has the same meaning as in Schedule 3 Part 4 of the Act.

7—Transitional provisions—making of charges under substitute agreements

For the purposes of clauses 15(11)(d) and 16(5)(d) of Schedule 3 of the Act, and regulation 9, a notice to the Registrar-General—

- (a) must be in the same form as a notice under section 22(2) of the Act (subject to such modifications as the Registrar-General, in the Registrar-General's discretion, requires); and
- (b) must be accompanied by such documents or instruments as the Registrar-General may require.

8—Transitional provisions—recognition of SAHT rights of action

In connection with clauses 15(15) and 16(7) of Schedule 3 of the Act, the provisions of the SACCH Act that continue to apply under those clauses will apply in relation to SAHT so as to preserve any right (or prospective right) of action, enforcement or recovery, and so as to allow SAHT to take any other step or action, envisaged by those provisions of the SACCH Act.

9—Transitional provisions—transitioning housing associations and corresponding entities

- (1) In addition to the provisions of clause 16 of Schedule 3 of the Act, if an entity (a *corresponding entity*)—
- (a) is an entity that, by virtue of an order of the Commission under section 42 of the *Associations Incorporation Act 1985*, has taken over the undertaking of a transitioning housing association; or
 - (b) is an entity that is recognised by the Minister by notice in the Gazette as an entity that has taken over, or that is to take over, the undertaking (or part of an undertaking) of a transitioning housing association,

then the following provisions of this regulation apply in respect of that transitioning housing association (and the corresponding entity).

- (2) If part of the undertaking of a transitioning housing association referred to in subregulation (1) (and transferred to the corresponding entity) included premises subject to a statutory charge, the charge will be taken to be a charge under section 22 of the Act (over the same real property and with the same ranking) by force of this regulation.
- (3) If—
- (a) a transitioning housing association referred to in subregulation (1) has been a party to an agreement with SAHT under Part 7 Division 3 of the SACCH Act; and
 - (b) the agreement has not been replaced by a community housing agreement under the Act between SAHT and the corresponding entity, or otherwise brought to an end by agreement with SAHT, by the end of the transitional period,

the agreement under Part 7 Division 3 of the SACCH Act is voidable at the option of SAHT.

- (4) If SAHT avoids an agreement under subregulation (3), SAHT may—
- (a) take steps to enforce any relevant charge under Part 7 Division 4 of the SACCH Act; and
 - (b) recover any outstanding amount, together with compensation for any loss or expenses suffered or incurred by SAHT from the corresponding entity.
- (5) A right of recovery under subregulation (4) is exercised as follows:
- (a) in the case of subregulation (4)(a), the right is against any assets that form part of the undertaking of the transitioning housing association held by the corresponding entity at the time that SAHT avoids the relevant agreement (notwithstanding the dissolution of the housing association);

- (b) in the case of subregulation (4)(b), the right is a right to sue for a debt due to SAHT by the corresponding entity by action in a court of competent jurisdiction.
- (6) In addition to the preceding subregulations, if—
- (a) a community housing agreement is entered into between SAHT and a corresponding entity; and
 - (b) SAHT declares that the agreement is in substitution for an agreement with a transitioning housing association under Part 7 Division 3 of the SACCH Act; and
 - (c) a charge is to be imposed under section 22 of the Act over real property that was subject to the agreement with the transitioning housing association in substitution for a statutory charge; and
 - (d) SAHT gives notice to the Registrar-General in accordance with regulation 7, the charge under section 22 will, when it is imposed, rank in the same place as the statutory charge has ranked over the relevant real property (and the Registrar-General may make such alterations or notations with respect to the Register Book to take into account the operation of this subregulation).
- (7) The SACCH Act will, despite its repeal by the Act, continue to apply to and in relation to the transitioning housing association despite the housing association being dissolved and, where relevant to the corresponding entity.
- (8) In addition, despite the housing association being dissolved, or ceasing to be registered under the SACCH Act, the following provisions of the SACCH Act will continue to apply in relation to the housing association or, if relevant, the corresponding entity:
- (a) section 49, insofar as the Minister may require the furnishing of a final return;
 - (b) Part 7, subject to the operation of a preceding provision of this regulation;
 - (c) Parts 8 and 12, insofar as is relevant to—
 - (i) any matter or circumstance that occurred before the dissolution or registration came to an end; or
 - (ii) the operation of this regulation;
 - (d) Schedules 1 and 2, insofar as is relevant to the operation of this regulation.
- (9) In this regulation—
- Commission** means the Corporate Affairs Commission;
- statutory charge** means a charge imposed under section 65 of the SACCH Act;
- transitional period** has the same meaning as in Schedule 3 Part 4 of the Act;
- transitioning housing association** has the same meaning as in clause 16 of Schedule 3 of the Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2014	35	<i>Gazette 6.2.2014 p593</i>	1.4.2014: r 2
2015	16	<i>Gazette 5.3.2015 p887</i>	29.3.2015: r 2
2015	191	<i>Gazette 30.7.2015 p3679</i>	30.7.2015: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>29.3.2015</i>
r 3		
SACCH Act	inserted by 191/2015 r 4	30.7.2015
<i>r 4</i>	<i>deleted by 16/2015 r 4</i>	<i>29.3.2015</i>
rr 7—9	inserted by 191/2015 r 5	30.7.2015
<i>Sch 1</i>	<i>deleted by 16/2015 r 5</i>	<i>29.3.2015</i>

Historical versions

29.3.2015