

South Australia

Community Housing Providers (National Law) (South Australia) (Transitional Provisions) Variation Regulations 2015

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

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Community Housing Providers (National Law) (South Australia) (Transitional Provisions) Variation Regulations 2015*.

2—Commencement

These regulations come into operation on the day on which they are made.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Community Housing Providers (National Law) (South Australia) Regulations 2014*

4—Variation of regulation 3—Interpretation

Regulation 3, after the definition of *Act* insert:

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

5—Insertion of regulations 7 to 9

After regulation 6 insert:

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).

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- (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.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 30 July 2015

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