



PARTICIPATION RULES WAIVER

South Australia

Section 27 *Electronic Conveyancing National Law (South Australia) Act 2013*

Title

This instrument is South Australian Participation Rules Waiver PR 4/2021 – Transfer of Mortgage.

Enabling Provisions

1. Under sections 23 and 25 of the *Electronic Conveyancing National Law (South Australia) Act 2013* (the National Law) the Registrar-General (Registrar) has determined and published Version 6 of the Participation Rules for Electronic Conveyancing (Participation Rules), which came into effect on and from 12 April 2021. Capitalised terms used in this instrument and not defined have the meaning given to those terms in the National Law or the Participation Rules.
2. Section 27 of the National Law permits the Registrar to waive compliance with all or any provisions of the Participation Rules if the Registrar is satisfied that granting the waiver is reasonable in all the circumstances

Affected Participation Rules

Participation Rule 6.13.1(d) (Affected Participation Rule).

Explanatory Statement

Under Participation Rule 6.13.1 where a mortgagor (in its capacity as mortgagor) is not a Subscriber or represented by a Subscriber, the mortgagee, or the mortgagee's Representative, must:

- (a) ensure that the mortgagor grants a mortgage on the same terms as the mortgage signed by, or on behalf of, the mortgagee; and
- (b) ensure that the mortgagee or the mortgagee's Representative holds the mortgage granted by the mortgagor; and
- (c) provide Certification 5 of the Certification Rules; and
- (d) for a transfer of mortgage, ensure that the transferee mortgagee or the transferee mortgagee's Representative holds the mortgage granted by the mortgagor.

Previous versions of the Participation Rules have required mortgagee's or their representatives to comply with the obligations in Participation Rule 6.13.1 (a) – (c). Version 6 of the Participation Rules introduced a new obligation where the electronic Registry Instrument or other electronic Document being Lodged is a transfer of a mortgage, being an obligation for the transferee mortgagee or the transferee mortgagee's Representative to hold the mortgage granted by the mortgagor referred to in Participation Rule 6.13.1(a) and (b) relating to the mortgage being transferred.



An industry peak body has requested a temporary waiver of the Affected Participation Rule on behalf of Subscribers. A temporary waiver will give Subscribers time to make any operational changes required to ensure compliance with the Affected Participation Rule.

Accordingly, the Registrar has determined that it would be reasonable in the circumstances to grant a waiver modifying the obligations of Subscribers under the Affected Participation Rule.

Waiver

Subject to the Conditions, the Registrar grants Subscribers a waiver of their obligation to comply with the Affected Participation Rule.

Conditions

The waiver is granted on the condition that any Subscriber that is complying with the Affected Participation Rule must continue to do so.

Commencement

This waiver commences on 12 April 2021.

Period during which this waiver applies

This waiver operates to the earlier of:

- (a) 12 July 2021, or
- (b) Subscribers fully complying with the Affected Participation Rule; or
- (c) the revocation of this waiver by the Registrar.

Dated: 23 June 2021

Signed by:

A handwritten signature in black ink that reads 'Jenny Cottnam'.

**Jenny Cottnam
Registrar-General**