

South Australia

South Australian Co-operative and Community Housing (Housing Associations) Regulations 2010

under the *South Australian Co-operative and Community Housing Act 1991*

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Legislative history

1—Short title

These regulations may be cited as the *South Australian Co-operative and Community Housing (Housing Associations) Regulations 2010*.

2—Commencement

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

3—Interpretation

In these regulations—

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

4—Mandatory provisions of rules (Schedule 1 clause 2(5)(e) of Act)

The rules of a registered housing association must contain the following provisions:

- (a) the name of the association;
 - (b) the principal address of the association;
 - (c) the objects of the association;
 - (d) if the association has members—
 - (i) the manner in which applications for membership of the association may be made;
 - (ii) the conditions of admission to the association;
 - (iii) the circumstances under which a membership will be suspended or cease;
 - (iv) the procedure to be followed in taking action against a member, including provisions to the effect that the association will not—
 - (A) without the consent of the member, take action to suspend or terminate the membership of a member; or
 - (B) take action that would cause detriment to a member (being a detriment that is not to be suffered by all or a substantial proportion of the members of the association),
unless and until the member has been given—
 - (C) a notice in writing setting out—
 - the circumstances surrounding the proposed course of action; and
 - a statement of the member's rights in the matter; and
 - (D) a reasonable opportunity to make representations about the matter at a general meeting of the association;
- (e) the appointment of an appeals committee within the association;
- (f) the manner in which an auditor is appointed;
- (g) the number of members of the committee of management;
- (h) the manner in which committee members are appointed;
- (i) the appointment of a person to the office of Treasurer of the association, and the powers and functions of the person who holds that office;
- (j) the powers and duties of the committee of management and the manner of calling meetings, the quorum for meetings, and the procedure at meetings of the committee of management;

- (k) the manner of calling meetings of the association and the frequency of those meetings;
- (l) the manner in which notice of a meeting of the association is to be given to members of the association;
- (m) if the association has a common seal, the custody and use of the common seal;
- (n) the specification of the financial year of the association as being from 1 July in any year to the following 30 June;
- (o) the manner in which the assets of the association are to be managed and applied;
- (p) a provision to the effect that a surplus or saving arising from the operations of the association will be applied to the provision of housing (or housing services), or in some other manner approved by the Minister;
- (q) the manner in which the association may be wound up;
- (r) the distribution of the assets of the association on a winding up.

5—Accounts (Schedule 1 clause 4(2) of Act)

- (1) A registered housing association must prepare any—
 - (a) income and expenditure statement; or
 - (b) balance sheet,in accordance with the requirements of Schedule 1 clauses 1 and 2.
- (2) A housing association that owns or manages more than 100 houses or dwellings must, in addition to complying with the other requirements under the Act and these regulations relating to accounts, at the request of the Minister by notice in writing, lodge with the Minister—
 - (a) an interim income and expenditure statement for the period specified in the notice, prepared in accordance with the requirements of Schedule 1 clause 1; and
 - (b) an interim balance sheet showing current assets, current liabilities and non-current liabilities as at a date specified in the notice, prepared in accordance with the requirements of Schedule 1 clause 3.

6—Auditor's report—prescribed associations (Schedule 1 clause 4(5) and (6) of Act)

- (1) The report required under Schedule 1 clause 4(5) of the Act must include—
 - (a) a statement whether the financial statements are, in the opinion of the auditor, properly prepared—
 - (i) so as to give a true and fair view of income and expenditure of the association for the relevant financial year, and so as to give a true and fair view of the assets and liabilities of the association, and the general state of affairs of the association, as at the end of that financial year; and
 - (ii) in accordance with the provisions of the Act;

- (b) a statement of any defect or irregularity in the financial statements or accounting records of the association and any matter not set out in the financial statements without regard to which a true and fair view of the results for the relevant financial year and the state of affairs of the association as at the end of that financial year would not be obtained; and
 - (c) if he or she is not satisfied as to any matter referred to in paragraph (a), a statement of the reasons for not being so satisfied.
- (2) The copy of the audited financial statements and the auditor's report (together with accompanying material) required to be furnished to the Minister under Schedule 1 clause 4(6) of the Act must be furnished on or before 30 September immediately following the financial year to which they relate.

7—Right of inspection (Schedule 1 clause 6 of Act)

For the purposes of the application of section 50 of the Act to a registered housing association—

- (a) a reference in section 50 to a member will be taken to include a reference to a tenant of a registered housing association (as that section applies to a registered housing association); and
- (b) the following documentary material is prescribed for the purposes of section 50(1)(e) in relation to registered housing associations:
 - (i) policy documents adopted by the association or the committee of management of the association;
 - (ii) documents that directly relate to the member or tenant;
 - (iii) other documentary material that the association has resolved to make generally available for inspection by members and tenants of the association; and
- (c) the following information is excluded from the operation of section 50 in relation to registered housing associations:
 - (i) minutes of any meeting that relates to—
 - (A) a dispute between a member or tenant and an association;
 - (B) proceedings before an appeals committee established by the association;
 - (C) action to evict a tenant, or to suspend or terminate the membership of a member,other than where the member or tenant requesting the information is directly involved in the dispute or proceedings, or is the member or tenant against whom the action is or has been, or is proposed to be, taken;
 - (ii) information relating to a member or tenant of the association, or supplied to the association, that the association has agreed by special resolution to keep confidential.

8—Special powers of intervention (Schedule 1 clause 10 of Act)

- (1) A failure by a registered housing association to comply with regulation 10 is prescribed for the purposes of Schedule 1 clause 10(2)(l) of the Act.
- (2) A requirement to engage an expert, consultant or other person to assist it in the conduct of its affairs is prescribed for the purposes of Schedule 1 clause 10(5)(m) of the Act.

9—Registers to be kept by a registered housing association (Schedule 1 clause 16(b) of Act)

A registered housing association must keep the following registers:

- (a) if the association has members—
 - (i) a register of members (setting out the full name of each member); and
 - (ii) a register of applications for membership (setting out the full name of each applicant and the date of the application);
- (b) a register of tenants (setting out the full name of each tenant);
- (c) a register of land or premises owned or occupied by the association (setting out the full address of the land or premises).

Maximum penalty: \$5 000.

10—Mandatory provision in funding agreement (Schedule 1 clause 16(d) of Act)

An agreement for the provision of funding to a registered housing association must (subject to any determination of the Minister) contain a provision of a form determined or approved from time to time by the Minister, on the advice of SAHT after consultation with registered housing associations, and notified in the Gazette that—

- (a) fixes tenancy eligibility criteria and conditions relating to tenancy by reference to financial circumstances and special needs;
- (b) requires periodic reporting by tenants to the association as to their financial circumstances and special needs;
- (c) provides for the review of tenants' financial circumstances on a periodic basis and the variation of the conditions of tenancy in specified circumstances.

11—Forms

- (1) The forms set out in Schedule 2 must—
 - (a) be used for the purposes specified in the Schedule; and
 - (b) contain the information required by and be presented and completed in accordance with the instructions contained in the forms.
- (2) If the space provided in a form is insufficient to contain all the required information—
 - (a) the information must be set out in an annexure to the form; and
 - (b) the annexure must have a distinguishing mark such as a letter or numeral; and

- (c) the space in the form must contain the statement "See Annexure" together with the distinguishing mark for the annexure, or words to similar effect.

12—Fees

The fees set out in Schedule 3 are payable to the Minister for the purposes of the Act.

Schedule 1—Accounts

1—Income and expenditure statement

- (1) An income and expenditure statement must include the following information:

INCOME

Rental income

Donations

Fundraising

Membership fees

Levies from tenants

Interest received

Rebates, refunds and credits

Capital contributions (deficit funding) receivable from SAHT

Other receipts

TOTAL INCOME

EXPENSES

Administration expenses

Capital contributions payable to SAHT

Depreciation (optional)

Insurance

Maintenance expenses—

 maintenance expenses incurred in accordance with funding agreement

 levy paid to Comhouse Cooperative Limited

 maintenance expenses incurred outside funding agreement

Rates and taxes

Write-offs (rent adjustments)

Other expenses

TOTAL EXPENSES

NET OPERATING SURPLUS

TRANSFERS TO/FROM PROVISIONS

NET SURPLUS

- (2) Such of the words set out in subclause (1) as are relevant must be specified in an income and expenditure statement with the aggregate amount to which those words refer as an entry or part of an entry.
- (3) The entries in an income and expenditure statement must be set out in the same sequence as the groups of words are set out in subclause (1).
- (4) An income and expenditure statement must also show separately the amounts and particulars of any other matters necessary to present a true and fair view of the income and expenditure of the housing association.

2—Balance sheet

- (1) A balance sheet must include the following information:

CURRENT ASSETS

Cash on hand

Cash with an ADI—

 cheque account

 investment account

 maintenance fund account

Trade and other receivable debts—

 rent arrears

 GST

 other

Deficit funding receivable from SAHT

Overpayment of capital contributions to SAHT

Other current assets

TOTAL CURRENT ASSETS

NON-CURRENT ASSETS

Property, plant and equipment

less: provision for depreciation

Intangible contractual rights (debentured assets)

Other non-current assets

TOTAL NON-CURRENT ASSETS

TOTAL ASSETS

CURRENT LIABILITIES

Trade and other payables to creditors

Capital contributions payable to SAHT

Provisions/other liabilities

Borrowings

TOTAL CURRENT LIABILITIES

NON-CURRENT LIABILITIES

Contributed debentured property

Maintenance provision

Borrowings

Other non-current liabilities

TOTAL NON-CURRENT LIABILITIES

TOTAL LIABILITIES

NET ASSETS

MEMBERS FUNDS

Asset revaluation reserves

Accumulated surpluses balance brought forward

Surplus/deficit this year

TOTAL MEMBERS FUNDS

- (2) The headings set out in subclause (1), to the extent that they are relevant, must be specified in a balance sheet.
- (3) Such of the words set out in subclause (1) as are relevant and do not comprise a heading must be specified in a balance sheet with the aggregate amount to which those words refer as a subheading or part of a subheading.
- (4) Each amount specified in a balance sheet forming part of the accounts as the amount of assets of the housing association as at the end of a financial year must be aggregate of the amounts in respect of which those assets are recorded in the books of the housing association at the end of that period less the aggregate provided for in respect of those assets by way of depreciation, amortisation, diminution in value or doubtful debts in those books as at the end of that period.
- (5) The headings and subheadings, in a balance sheet must be specified in the same sequence as the headings and words, or groups of words, are set out in subclause (1).
- (6) In relation to the headings referred to in the balance sheet there must be shown separately the amounts and particulars necessary to present a true and fair view of the state of the affairs of the housing association.

3—Interim balance sheet

- (1) An interim balance sheet must include the following information:

CURRENT ASSETS

Cash on hand

Cash with an ADI—

cheque account

investment account

maintenance fund account

Trade and other receivable debts—
 rent arrears
 GST
 other
Other current assets
Deficit funding receivable from SAHT
Overpayment of capital contributions to SAHT

TOTAL CURRENT ASSETS

CURRENT LIABILITIES

Trade and other payables to creditors
Capital contributions payable to SAHT
Provisions/other liabilities
Borrowings

TOTAL CURRENT LIABILITIES

NON-CURRENT LIABILITIES

Contributed debentured property
Maintenance provision
Borrowings
Other non-current liabilities

TOTAL NON-CURRENT LIABILITIES

MEMBERS FUNDS

Asset revaluation reserves
Accumulated surpluses balance brought forward
Surplus/deficit this year

TOTAL MEMBERS FUNDS

- (2) The headings set out in subclause (1), to the extent that they are relevant, must be specified in an interim balance sheet.
- (3) Such of the words set out in subclause (1) as are relevant and do not comprise a heading must be specified in a balance sheet with the aggregate amount to which those words refer as a subheading or part of a subheading.
- (4) Each amount specified in a balance sheet forming part of the accounts as the amount of assets of the housing association for a specified period must be an aggregate of the amounts in respect of which those assets are recorded in the books of the housing association at the end of that period less the aggregate provided for in respect of those assets by way of depreciation, amortisation, diminution in value or doubtful debts in those books as at the end of that period.
- (5) The headings and subheadings in a balance sheet must be specified in the same sequence as the headings and words, or groups of words, are set out in subclause (1).

- (6) In relation to the headings referred to in the balance sheet there must be shown separately the amounts and particulars necessary to present a true and fair view of the state of the affairs of the housing association.

Note—

An interim balance sheet is only required in relation to housing associations that own or manage more than 100 houses or dwellings—see regulation 5(2).

Schedule 2—Forms

Form 1—Application for registration of a housing association

South Australian Co-operative and Community Housing Act 1991

To: The Minister

- 1 Full name of association:
- 2 If association has registered office—
Address:
Phone number:
- 3 Details of incorporation of association—
Act under which association is incorporated:
Date of incorporation:
- 4 Objects of association: *[insert brief description]*
- 5 Details of each member of the committee of the association—
Full name:
Residential address:
Occupation:
Office in association (if any) held by that member:
- 6 Details of auditor of association—
Full name:
Address:
- 7 Details demonstrating that the association will be able to pay its debts as and when they are due and payable:
- 8 Details of person authorised by association to apply for registration—
Full name:
Residential address:
Phone number:
Email (optional):

Date:

Signature of person authorised by association to make application:

The following must accompany this application:

- (a) a copy of the rules of the housing association marked "A";
- (b) a statutory declaration relating to this application;
- (c) the prescribed fee.

The following statement must be written on the copy of the rules of the housing association and signed by the person who takes the statutory declaration:

This is the annexure marked "A" referred to in the statutory declaration of [name of applicant] made on [date] before me.

Form 2—Statutory declaration to accompany application for registration of housing association

South Australian Co-operative and Community Housing Act 1991

I [insert full name of applicant] of [insert full residential address of applicant], [insert occupation], do solemnly and sincerely declare that:

- I am the person authorised to apply for registration of [insert full name of association] under the *South Australian Co-operative and Community Housing Act 1991* as a housing association; and
- the particulars set out in the accompanying application for registration of the association under the *South Australian Co-operative and Community Housing Act 1991* dated [insert date] are true; and
- the annexed document marked "A" is a true copy of the rules of the housing association.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1936*.

Signature of applicant:

Declared before me at [insert location] this [insert date].

Signature of person taking declaration:

Schedule 3—Fees

Application for registration of housing association

\$75

Schedule 4—Revocation of *South Australian Co-operative and Community Housing (Housing Associations) Regulations 1996*

The *South Australian Co-operative and Community Housing (Housing Associations) Regulations 1996* are revoked.

Legislative history

Notes

- 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.

Revocation of regulations

These regulations became obsolete on the repeal of the *South Australian Co-operative and Community Housing Act 1991* on 1.4.2014.

However, the Act will continue to apply to certain transitioning entities under Sch 3 Pt 4 of the *Community Housing Providers (National Law) (South Australia) Act 2013*. These regulations continue to apply on the same basis.

Principal regulations

Year	No	Reference	Commencement
2010	150	<i>Gazette 17.6.2010 p3087</i>	17.6.2010: r 2