

South Australia

Co-operatives (South Australia) Regulations 2015

under the *Co-operatives National Law (South Australia) Act 2013*

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1—Short title

These regulations may be cited as the *Co-operatives (South Australia) Regulations 2015*.

2—Commencement

These regulations will come into operation on the day on which the *Co-operatives National Law (South Australia) Act 2013* comes into operation.

3—Interpretation

- (1) In these regulations—
Act means the *Co-operatives National Law (South Australia) Act 2013*;
CNL (SA) or *the Law* means the *Co-operatives National Law (South Australia)*;
CNR (SA) means the *Co-operatives National Regulations (South Australia)*.
 - (2) Terms used in these regulations and also in the CNL (SA) have the same meanings as they have in the CNL (SA).
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4—Secrecy (section 13 of Act)

For the purposes of section 13(1)(d) of the Act, the following entities are prescribed:

- (a) the Independent Commissioner Against Corruption;
- (b) the Office for Public Integrity.

5—Unsuitable names for co-operatives (section 220(5) of CNL (SA) and regulation 3.7 of CNR (SA))

For the purposes of section 220(5) of the CNL (SA) and regulation 3.7 of the CNR (SA), a name is to be regarded as an unsuitable name if the Registrar is satisfied that it is likely to mislead.

6—Prohibited names for corporations (section 18(c) of Act and section 220(7) of CNL (SA))

- (1) For the purposes of section 220(7) of the CNL (SA), an entity is exempt from section 220(4) of the Law if the entity is—
 - (a) an entity that is allowed under an Act of any jurisdiction or of the Commonwealth to use the word "co-operative" or "cooperative" or the abbreviation "co-op" or "coop" in its name; or
 - (b) an entity—
 - (i) that has taken over, or that is to take over, the undertaking (or a part of the undertaking) of a transitioning housing co-operative under clause 15 of Schedule 3 of the *Community Housing Providers (National Law) (South Australia) Act 2013*; and
 - (ii) that is registered under the *Community Housing Providers National Law*; or
 - (c) an entity that is exempted by the Registrar by written notice from the operation of section 220(4) of the Law and that complies with any conditions to which the exemption is made subject.
- (2) The following provisions apply in relation to an exemption granted by the Registrar under subregulation (1)(c):
 - (a) the exemption may be limited as to time;
 - (b) the Registrar may vary the conditions of the exemption, or revoke the exemption, by written notice to the entity.

7—Restrictions on use of word co-operative or similar words (section 225(2) of CNL (SA))

- (1) For the purposes of section 225(2) of the CNL (SA), an entity is exempt from section 225(1) of the Law if the entity is—
 - (a) an entity referred to in regulation 6(1)(a) or (b); or
 - (b) a housing co-operative within the meaning of the *South Australian Co-operative and Community Housing Act 1991*; or

- (c) an entity that is exempted by the Registrar by written notice from the operation of section 225(1) of the Law and that complies with any conditions to which the exemption is made subject.
- (2) The following provisions apply in relation to an exemption granted by the Registrar under subregulation (1)(c):
 - (a) the exemption may be limited as to time;
 - (b) the Registrar may vary the conditions of the exemption, or revoke the exemption, by written notice to the entity.

8—Application for transfer (section 403 of CNL (SA))

For the purposes of section 403(b) of the CNL (SA), a co-operative may apply to become registered, incorporated or otherwise established as a corporation under:

- (a) the *Associations Incorporation Act 1985*;
- (b) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth;
- (c) any other legislation of any jurisdiction or of the Commonwealth that provides for the incorporation of a building society, credit union or friendly society.

9—Examination of involved person—fees and expenses (section 522(4) of CNL (SA))

An involved person who attends for examination by an investigator is entitled to be paid the allowance and expenses that would be payable for expenses and loss of time that he or she would be entitled to receive on attending to give evidence, or to produce a document, at the trial of civil proceedings before the District Court of South Australia.

10—Procedures regarding giving of exemptions (section 621 of CNL (SA))

For the purposes of section 621 of the CNL (SA), the procedure for the giving of exemptions that are provided for under the Law is as follows:

- (a) an application for an exemption must be made in the approved form but, if there is no relevant approved form, the application must be made in writing;
- (b) where relevant, the application must be made within a reasonable time before the event or the occurrence of the matter for which the exemption is sought;
- (c) the application must be accompanied by the relevant fee prescribed by Schedule 1.

11—Prescribed fees

- (1) For the purposes of a provision specified in Column 2 of Schedule 1, the prescribed fee is the amount specified in Column 4 of that Schedule in relation to the matter described in Column 3 of that Schedule.

- (2) Fees for anything done by or in relation to the Registrar under provisions of the Corporations Act as applied under the CNL (SA) that is not otherwise provided for in Schedule 1 are to be the same as the fees for chargeable matters under the *Corporations (Fees) Act 2001* of the Commonwealth and the regulations under that Act.
- (3) The Registrar may waive, reduce or refund any fee chargeable under these regulations in any case or class of case if, in the opinion of the Registrar, there are special circumstances that justify this action.

12—Co-operatives may continue to operate under old rules

- (1) Subject to subregulation (2), a co-operative may continue to operate under the rules (*old rules*) applying to the co-operative that were in force immediately before the commencement of the Act.
- (2) While a co-operative is operating under the old rules—
- (a) if there is any inconsistency between a provision of the old rules and a provision of the Act, the CNL (SA), the CNR (SA) or these regulations, the provision of the Act, the CNL (SA), the CNR (SA) or these regulations prevails; and
 - (b) if there is a reference in the old rules to a requirement contained in the *Co-operatives Act 1997* or the *Co-operatives Regulations 2012*, that reference is to be read as a reference to the equivalent requirement contained in the Act, the CNL (SA), the CNR (SA) or these regulations; and
 - (c) if there is a reference in the old rules to—
 - (i) the co-operative being a trading co-operative—that reference is to be read as a reference to the co-operative being a distributing co-operative; and
 - (ii) the co-operative being a non-trading co-operative—that reference is to be read as a reference to the co-operative being a non-distributing co-operative.

Schedule 1—Fees

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
1	CNL (SA) s 26(1)(b)(ii)	Application for registration of proposed co-operative—draft formation disclosure statement required under CNL (SA) s 23	\$353.00
2	CNL (SA) s 26(1)(b)(ii)	Application for registration of proposed co-operative—draft formation disclosure statement not required under CNL (SA) s 23	\$178.00
3	CNL (SA) s 31(b)(ii)	Application for registration of existing corporation—draft formation disclosure statement required under CNL (SA) s 23	\$353.00
4	CNL (SA) s 31(b)(ii)	Application for registration of existing corporation—draft formation disclosure statement not required under CNL (SA) s 23	\$178.00

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Fees—Schedule 1

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
5	CNL (SA) s 37(b)(ii)	Issue of duplicate certificate of registration	\$44.50
6	CNL (SA) s 60	Application for Registrar’s prior approval of certain rule amendments	\$88.00
7	CNL (SA) s 63(2)	Application for registration of rule amendment, other than where pre-approved under CNL (SA) s 60—per rule (maximum of \$140.00 per lodgement) Plus fee for late lodgement:	\$14.00
		(a) within first 28 days after due date	\$51.50
		(b) after first 28 days after due date	\$159.00
8	CNL (SA) s 63(4)	Application for issue of certificate of registration of rule amendment	\$44.50
9	CNL (SA) s 71(1)	Application for exemption from any or all provisions of Division 2 of Part 2.4 of CNL (SA)	\$353.00
10	CNL (SA) s 82(3)(a)	Application for registration of disclosure statement for compulsory share take up	\$353.00
11	CNL (SA) s 119(5)	Application to extend period for carrying on business with too few members	\$353.00
12	CNL (SA) s 152(3)	Application for determination of a member’s eligibility to vote on an active membership resolution	\$178.00
13	CNL (SA) s 171	Application for exemption of co-operative from any or all provisions of Division 5 of Part 2.6 of CNL (SA) (former member entitlements)	\$353.00
14	CNL (SA) s 213(1)(d)	Application for approval to keep register at another office	\$44.50
15	CNL (SA) s 220(7)	Use of “co-operative”, “co-op” etc—application for exemption by Registrar (cl 5 of this Regulation)	\$353.00
16	CNL (SA) s 221(1)	Application to approve omission of “Limited” or “Ltd” in name	\$44.50
17	CNL (SA) s 222(e)	Application to approve abbreviation or elaboration of name	\$44.50
18	CNL (SA) s 224	Application to approve change of name	\$44.50
19	CNL (SA) s 225(2)	Restriction on use of “co-operative”, “co-op” etc—application for exemption by Registrar (cl 6 of this Regulation)	\$44.50
20	CNL (SA) s 226(4)	Lodgement of notice of change of address Fee for late lodgement:	nil
		(a) within first 28 days after due date	\$51.50
		(b) after first 28 days after due date	\$159.00
21	CNL (SA) s 226(6)	Application for exemption for a small co-operative or class of small co-operatives from CNL (SA) s 226(3) requirement for a notice about the name of a co-operative and its registered office	\$88.00

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Schedule 1—Fees

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
22	CNL (SA) s 233(2)	Application by member for review of voting entitlement	\$353.00
23	CNL (SA) s 243(2)(c)(ii)	Filing fee for registration of special resolution—per resolution (maximum of \$222.50 per lodgement) Plus fee for late lodgement: (a) within first 28 days after due date (b) after first 28 days after due date	\$44.50 \$51.50 \$159.00
24	CNL (SA) s 244(3)	Application for certificate of registration of special resolution	\$44.50
25	CNL (SA) s 248(3)	Application for approval of disclosure statement for special postal ballot	\$353.00
26	CNL (SA) s 289	Lodgement of annual financial reports by large co-operative Plus fee for late lodgement: (a) within first 28 days after due date (b) after first 28 days after due date	\$88.00 \$51.50 \$159.00
27	CNL (SA) s 290	Lodgement of half yearly reports by co-operative that is a disclosing entity Fee for late lodgement: (a) within first 28 days after due date (b) after first 28 days after due date	nil \$51.50 \$159.00
28	CNL (SA) s 293	Lodgement of annual return by small co-operative Plus fee for late lodgement: (a) within first 28 days after due date (b) after first 28 days after due date	\$88.00 \$51.50 \$159.00
29	CNL (SA) s 316(1)	Application for exemption of certain persons (in relation to a co-operative) from all or specified requirements of “target provisions”	\$353.00
30	CNL (SA) s 317(1)	Application for exemption of certain persons (in respect of a class of co-operatives) from all or specified requirements of “target provisions”	\$353.00
31	CNL (SA) s 319(1)	Application for exemption of certain persons from all or specified requirements of “target provisions”	\$353.00
32	CNL (SA) s 320(1)	Application for exemption of certain persons (in respect of classes of audit firms or audit companies) from all or specified requirements of “target provisions”	\$353.00
33	CNL (SA) s 322	Application for exemption from a provision of CNR (SA) made under Part 3.3 (Financial reports and audit) of CNL (SA)	\$353.00
34	CNL (SA) s 337	Lodgement of disclosure documents for issue of securities other than an issue of securities under CNL (SA) s 338	\$2 504.00

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
35	CNL (SA) s 337	Application for exemption or modification of disclosure provisions under Chapter 6D of Corporations Act (as applied)	\$353.00
36	CNL (SA) s 338(3)	Application for approval of disclosure statement for issue of non-share securities to members or employees of co-operative	\$353.00
37	CNL (SA) s 343(3)(a)	Application for approval of disclosure statement for compulsory loan from members to co-operative	\$353.00
38	CNL (SA) s 343(10)	Application for exemption from all or specified provisions of CNL (SA) s 343 (requirements for compulsory loans from members to co-operative)	\$353.00
39	CNL (SA) s 350(1)(b) and (c)	Application for approval of the statement and terms of issue of CCUs	\$353.00
40	CNL (SA) s 359(3)	Application for exemption from a provision of CNL (SA) s 248 and s 359 (requirements in respect of disposal or acquisition of significant assets)	\$353.00
41	CNL (SA) s 363(2)	Application to permit a higher maximum level of share interest than 20% in particular co-operative	\$353.00
42	CNL (SA) s 372(1)	Application by an individual from the restrictions on share interests, relevant interests etc	\$353.00
43	CNL (SA) s 374(1)(b)	Application for approval of share offers provided for in CNL (SA) s 373 that may result in structural change of co-operative	\$353.00
44	CNL (SA) s 376(5)	Application to extend time permitted for board to consider a share offer of the kind specified in CNL (SA) s 373(1)	\$88.00
45	CNL (SA) s 380(1)	Application for exemption from a provision of Division 2 of Part 3.5 and s 248 of CNL (SA) (requirements for share offers under Division 2 of Part 3.5 of CNL (SA))	\$353.00
46	CNL (SA) s 396(2)	Application for consent to merger or transfer of engagements by way of board approval	\$88.00
47	CNL (SA) s 397(2)	Application for approval of disclosure statement for purposes of a merger or transfer of engagements	\$353.00
48	CNL (SA) s 397(4)	Application for exemption of co-operative from complying with CNL (SA) s 397 in relation to disclosure statement about a merger or transfer of engagements	\$353.00
49	CNL (SA) s 398(1)	Application for approval of merger or transfer of engagements	\$353.00
50	CNL (SA) s 404(4)	Application for exemption from a provision of CNL (SA) s 248 and s 404 (requirements for transfer of incorporation)	\$353.00
51	CNL (SA) s 416(1)(a)	Application for Registrar's permission to shorten notice	\$88.00
52	CNL (SA) s 418(1)(f)	Application for direction exempting from	\$353.00

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Schedule 1—Fees

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
		disqualification from administering compromise or arrangement	
53	CNL (SA) s 424(1)(b)	Application for Registrar's statement of no objection to compromise or arrangement	\$353.00
54	CNL (SA) s 425(4)	Lodgement of Supreme Court order with Registrar relating to compromise or arrangement	\$44.50
		Plus fee for late lodgement:	
		(a) within first 28 days after due date	\$51.50
		(b) after first 28 days after due date	\$159.00
55	CNL (SA) s 428(1)	Application for Registrar's approval of explanatory statement for compromise or arrangement	\$882.00
56	CNL (SA) s 445(3)	Application for exemption from a provision of CNL (SA) s 248 or s 445 (requirements for voluntary winding up)	\$353.00
57	CNL (SA) s 453	Application to Registrar to exercise powers in respect of property of a deregistered co-operative	\$346.00
58	CNL (SA) s 476(2)(a)	Application to local Registrar to consent to merger or transfer of engagements occurring as a result of approval by special resolution or decision by the board—merger between local and participating co-operatives	\$88.00
59	CNL (SA) s 477(2)	Application for approval by appropriate Registrar of disclosure statement for merger or transfer of engagements—local and participating co-operatives	\$353.00
60	CNL (SA) s 477(4)	Application to appropriate Registrar for exemption from requirements of CNL (SA) s 477 applying to a merger or transfer of engagements—local and participating co-operatives	\$353.00
61	CNL (SA) s 478(1)	Application for approval of merger or transfer of engagements—local and participating co-operatives	\$353.00
62	CNL (SA) s 531(1)(a)	Application to Registrar for special meeting	\$353.00
63	CNL (SA) s 531(1)(b)	Application to Registrar for inquiry	\$882.00
64	CNL (SA) s 588(1)	Application to Registrar for a certificate stating that a thing had or had not been done within a specified period or by a specified date	\$88.00
65	CNL (SA) s 588(2)	Application to Registrar for a certificate stating that requirements of the Law had or had not been complied with or had been complied with at a specified date or within a specified period	\$88.00
66	CNL (SA) s 588(3)	Application to Registrar for a certificate stating that on a specified date a body was not or had ceased to be registered as a co-operative under the Law	\$39.00
67	CNL (SA) s 601(1)(a)	Inspection of register of co-operatives	\$25.50
68	CNL (SA) s 601(1)(b)	Inspection of documents kept by Registrar relating to a co-operative and prescribed by the National Regulations	\$25.50

Column 1	Column 2	Column 3	Column 4
Item	Provision	Subject	Fee
69	CNL (SA) s 601(1)(c)	Extract from register of co-operatives inspected under CNL (SA) s 601(1)(a): first page	\$5.60
		each additional page	\$1.50
70	CNL (SA) s 601(1)(d)	Certified copy of document that may be inspected under CNL (SA) s 601(1)(b): first page	\$25.50
		each additional page	\$1.50
71	CNL (SA) s 601(1)(e)	Copy of document that may be inspected under CNL (SA) s 601(1)(b): first page	\$5.60
		each additional page	\$1.50
72	CNL (SA) s 609(1)	Application for extension or shortening of time	\$88.00
73	CNL (SA) s 611(2)(c)(iii)	Application for permission to give notice to members by newspaper	\$88.00
74	CNR (SA) reg 1.4(5)	Application by co-operative for declaration that it is a small co-operative for a particular financial year	\$250.00

Schedule 2—Revocation

1—Revocation

The *Co-operatives Regulations 2012* are revoked.

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 7 May 2015

No 45 of 2015

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