



**SouthEast**  
Housing Co-operative Ltd

*Housing Futures*

# **RULES**

**Member Approved Version at 21 02 2022**

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## Part 1. Preliminary

## 1 Application of these rules

These rules are the rules of the SouthEast Housing Co-operative Ltd, a registered housing provider within the meaning of the Act and incorporated as a co-operative under the Co-operatives National Law Application Act 2013.

## 2 Definitions

In these rules:

**Act** means the Housing Act 1983.

**ballot paper** means a ballot paper in paper or electronic form.

**basic minimum financial statements** means the financial statement required of a small co-operative under the National Regulations.

**Board** means the Board of the co-operative.

**CNL** is a reference to the Co-operatives National Law Application Act 2013 as applying in this jurisdiction.

**Director** means a Director of the co-operative.

**member** means a member of the co-operative who has qualified membership and voting rights .

**member Director** and **non-member Director**—see rule 33 (CNL ss172 & 174).

**Registrar (Co-operatives)** means the person for the time being holding the office of Registrar of Co-operatives under the Co-operative National Law Application Act 2013.

**Registrar (Housing Agencies)** means the person for the time being holding the Office of the Registrar of Housing Agencies under the Housing Act 1983 (Vic).

**RHA** means Registered Housing Agency within the meaning of the Housing Act 1983

**standard postal times** means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.

**the co-operative** means the SouthEast Housing Co-operative Ltd.

**the National Regulations** means the Co-operatives' National Regulations as applying in this jurisdiction

## 3 Name of the co-operative (CNL ss220–222 & 224)

The name of the co-operative is SouthEast Housing Co-operative Ltd.

#### **4 Primary Activity**

For the purposes of Part 2.6 of the CNL, the primary activity of the co-operative is to provide secure affordable rental housing to members.

#### **5 Statement of Objectives**

The co-operative has been formed to promote the relief of poverty, sickness and the needs of the aged by providing affordable rental housing to persons in housing need because they are low-income households, or because a member of the household is infirm or aged.

#### **6 Statement of Powers**

The powers of the co-operative as a Registered Housing Agency (RHA) include those set out in Schedule 7 of the *Housing Act 1983*:

The RHA's powers include powers to—

- (a) acquire, by way of purchase, lease, transfer or otherwise, real property;
- (b) dispose of any real property, subject to the consent of the Director under section 109 of the *Housing Act 1983*;
- (c) provide security for the payment of money, subject to the consent of the Director under section 109 of the *Housing Act 1983*;
- (d) apply for and accept, grants or loans from any Federal, State or local government or authority;
- (e) enter into contracts and joint ventures with any public or private entity;
- (f) do anything incidental to or in furtherance of its objectives.

### **Part 2. Membership**

#### **7 Membership Generally**

- (1) To be an active member a member must be a tenant of a property owned and/or managed by the co-operative (CNL ss112(2), 144, 148 & 156–166) and:

- (a) remain a tenant of good standing through paying rent on time, providing income statements on time, responding to surveys and keeping their house in good order; and
  - (b) subject to rules attend and participate in all General Meetings of the co-operative and other meetings of members to establish and maintain active membership of the co-operative.
- (2) A member will be deemed to have attended and participated in a meeting for the purpose of rule 7(1)(b) if the member provides an apology to the meeting with reasons for the member's non-attendance and such reasons are accepted by the meeting as constituting a legitimate reason for non-attendance at the meeting.
- (3) A member may be granted exemption from rule 7(1)(b) by the Board if the member suffers from a disability and requests exemption. Other exemptions from the requirements of rule 7(1)(b) that may be granted by the Board are:
- (a) Long Service Leave (maximum exemption 12 months in aggregate) – for members that have been a member for at least 5 years, and that:
    - (i) during their membership have attended and participated in not less than 75% of members' meetings; and
    - (ii) have not previously requested leave of absence for 12 months or longer (in aggregate) from the requirement to attend members' meetings.
  - (b) Extended Long Service Leave – for members that have been a member for a period of at least 15 years.
  - (c) Retirement for Older Members – for members aged 70 years and over.
  - (d) Special Circumstances – members for whom attendance and participation at meetings is particularly onerous or difficult due to their special circumstances.
- (4) An exempt member can apply to the Board in writing for the removal of their exemption from rule 7(1)(b) and this will be automatically approved unless the exemption has automatically lapsed under 7(3)(a).

## **8 Qualifications for membership (CNL s112)**

- (1) A person qualifies to apply for membership of the co-operative if the person:
- (a) qualifies for housing assistance under government policy; and
  - (b) lives in Victoria; and

- (c) does not own or earn more than the current general public housing income and asset limits; and
- (d) has Australian citizenship or permanent residency status; and
- (e) is not subject to a Centrelink's two year waiting period for newly arrived migrants; and
- (f) does not own or part-own a house, unit or flat; and
- (g) does not owe any money from a previous public housing tenancy or bond loan; and
- (h) can provide proof of identity, residency status, and income and other documents that we require for each person applying; and
- (i) is able to use or contribute to the services of the co-operative; and
- (j) there are reasonable grounds for believing that the person will be an active member of the co-operative under rule 7(1).

## **9 Entry fees, regular subscriptions (CNL s124) and fines (CNL ss56 and 126)**

- (1) There are no entry fees or regular subscriptions for an application for membership.
- (2) The Board will not impose fines on members.

## **10 Membership applications**

- (1) Applications for membership must be lodged at the registered office in the application form approved by the Board.
- (2) Every application must be considered by the Board.
- (3) If the Board approves the application, the applicant's name and any other information required under the CNL must be entered in the register of members within 28 days of the Board's approval.
- (4) The applicant must be notified in writing of the entry in the register and the applicant is then entitled to the privileges attached to membership.
- (5) The Board may, at its discretion, refuse an application for membership.
- (6) The Board need not assign reasons for the refusal.

## **11 Cessation of membership (CNL s117)**

A person ceases to be a member in either of the following circumstances:

A person ceases to be a member in either of the following circumstances:

- (a) if the membership ceases in any circumstances specified in CNL s117; or
- (b) if the member no longer qualifies for membership under rule 8 (f).

## **12 Expulsion of members (CNL s117)**

(1) A member may be expelled from the co-operative by special resolution to the effect:

- (a) that the member has seriously or repeatedly failed to discharge the member's obligations to the co-operative under these rules or a contract entered into with the co-operative under CNL s125; or
- (b) that the member has acted in a way that has:
  - (i) prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
  - (ii) brought the co-operative into disrepute; or
  - (iii) been contrary to one or more of the co-operative principles as described in CNL s10 and has caused the co-operative harm.

(2) Written notice of the proposed special resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity to be heard at the meeting.

(3) At the general meeting when the special resolution for expulsion is proposed the following procedures apply:

- (a) at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross-examine witnesses called against the member;
- (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the member's alleged conduct must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
- (c) once the alleged conduct is considered, the co-operative may decide to expel the member concerned;
- (d) the co-operative must not make a decision on the alleged conduct or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and entitled to vote;
- (e) a motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion;
- (f) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution.



### **13 Resignation of members (CNL s117)**

A member may resign from the co-operative by giving seven days' notice in writing in the form approved by the Board. Members who permanently vacate a property will be deemed to have resigned whether or not they have resigned in writing.

### **14 Monetary consequences of expulsion or resignation (CNL s128)**

- (1) If a member is expelled or resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (2) Subject to CNL s128, payment to the expelled or resigning member of any amount owing by the co-operative to the former member:
  - (a) must be made at the time decided by the Board but within one year from the date of expulsion or resignation; or
  - (b) may be applied at the time decided by the Board, but within one year from the date of expulsion or resignation, in the manner set out in CNL s128, if there is agreement by the Board and former member or if the Board considers that repayment would adversely affect the financial position of the co-operative.

### **15 Disputes and mediation (CNL s129)**

- (1) The grievance procedure set out in this rule applies to disputes under these rules between:
  - (a) a member and another member; or
  - (b) a member (including a former member) and the co-operative.
- (2) If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.
- (3) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:
  - (a) the dispute coming to the attention of each party; or
  - (b) a party giving notice, to each of the other parties involved, of the dispute or grievance.

- (4) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:
  - (a) for a dispute between a member and another member, a person appointed by the Board; or
  - (b) for a dispute between a member (including a former member) and the co-operative, a person appointed by a mediation service accredited by the Australian Mediation Association.
- (6) The mediator may (but need not) be a member of the co-operative, unless the member is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must:
  - (a) give the parties to the mediation process every opportunity to be heard; and
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator cannot determine the dispute.
- (10) The mediation must be confidential and without prejudice.
- (11) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (12) Nothing in this rule applies to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (13) Nothing in this rule applies to any dispute involving the expulsion or suspension of a member.
- (14) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute at law.

## **16 Liability of members to co-operatives (CNL ss117(2) & 121)**

- (1) A member is liable to the co-operative for the amount, if any, unpaid by the member in respect of rent together with any charges payable by the member to the co-operative under these rules.

- (2) Joint members are jointly and severally liable for any amount unpaid in respect of items mentioned in rule 16(1).

### **17 Forfeiture and cancellations—inactive members (CNL ss156–163)**

The Board must declare the membership of a member cancelled if:

- (a) the member has vacated a property and is no longer a tenant; or
- (b) the member is not presently active and has not been active within the meaning of rule 7 in the past year.

## **Part 3. General Meetings, Resolutions And Voting.**

### **18 Annual General Meeting (CNL s252)**

- (1) General meetings including the Annual General meeting may be held electronically.
- (2) An Annual General Meeting (AGM) must be held each year, at a place and on a date and a time decided by the Board, within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar (Co-operatives).
- (3) The notice of the AGM shall include the location, date, and hour of the meeting.

### **19 Business of General Meetings and Annual General Meetings**

- (1) The ordinary business of the AGM of the co-operative must be:
  - (a) to confirm minutes of the last preceding General Meeting (whether annual or special), and:
  - (b) to receive from the Board, auditors or officers of the co-operative:
    - (i) the financial reports of the co-operative for the financial year;
    - (ii) a report on the state of affairs of the co-operative; and
  - (c) to approve any payments of fees to Directors, and:
  - (d) to appoint the auditor of the co-operative's financial statements for the current financial year.
- (2) The AGM may also transact special business of which notice has been given to members under these rules.
- (3) All business of a General Meeting, other than business of the AGM that is ordinary business, is special business.

## **20 Members' power to requisition a General Meeting (CNL s257)**

- (1) The Board must call a General Meeting of the co-operative on the requisition in writing by members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative.
- (2) Members who together are able to cast at least 20% of the total number of votes that are able to be cast at a meeting of the co-operative, and who have a resolution to submit to a General Meeting, must give written notice of it to the co-operative at least 45 days before the day of the meeting.
- (3) The provisions of CNL s257 apply to a meeting requisitioned by members.

## **21 Notice of General Meetings (CNL ss239, 254 & 611)**

- (1) The Board may, whenever it considers appropriate, call a special General Meeting of the co-operative.
- (2) At least 14 days' notice of a General Meeting (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given.
- (3) The Board is not required to call a General Meeting of members to consider matters that are not matters for decision by the members at a General Meeting.

## **22 Quorum at General Meetings**

- (1) An item of business cannot be transacted at a General Meeting unless a quorum of members is present when the meeting is considering the item.
- (2) Unless these rules state otherwise, 15 members present in person, each being entitled to exercise a vote, constitute a quorum.
- (3) If a quorum is not present within half an hour after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

## **23 Chairperson at General Meetings**

- (1) The Chairperson (if any) of the Board may preside as Chairperson at every General Meeting of the co-operative.

- (2) If there is no Chairperson, or if at a meeting the Chairperson of the Board is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the members present must choose someone from their number to be Chairperson (until the Chairperson of the Board attends and is willing to act).
- (3) The Chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

## **24 Attendance and voting at General Meetings (CNL ss228 & 256)**

- (1) The right to vote attaches to membership.
- (2) Joint members have only one vote between them.
- (3) Every joint member is entitled to attend and be heard at a General Meeting.
- (4) In the event of a dispute between joint members as to which member will vote (subject to the grant of power of attorney), the joint member whose name appears first in the register of members is entitled to vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.
- (6) Subject to rule 24 (7) and rule 24 (8), a question for decision at any General Meeting must be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.
- (8) If before a vote is taken or before or immediately after the declaration of the result on a show of hands:
  - (a) the Chairperson directs that the question is to be determined by a poll; or
  - (b) at least 5 members present in person demand a poll; *the question for decision must be determined by a poll.*
- (9) The poll must be taken when and in the manner that the Chairperson directs.
- (10) A poll on the question of adjournment must be taken immediately and without debate.

- (11) Once the votes on a show of hands or on a poll have been counted, then subject to sub rule (8) a declaration by the Chairperson that a resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.
- (12) The result of the vote must be entered in the minute book.

## **25 Voting on a show of hands (CNL ss234 & 256)**

On a show of hands at a General Meeting, each member:

- (a) present; or
- (b) represented by a non-member acting under a power of attorney; or
- (c) represented by a non-member appointed under the provisions of the CNL may exercise only one vote.

## **26 Voting on a poll**

On a poll called at a General Meeting, each member:

- (a) present; or
- (b) represented by a person acting under a power of attorney; or
- (c) represented by a person appointed under the provisions of the CNL has one vote.

## **27 Determining the outcome where equality of votes (CNL s228)**

- (1) This rule applies where the votes in favour and against a resolution are equal.
- (2) If the Chairperson of the meeting is a member of the co-operative, he or she may exercise a second or casting vote.
- (3) If the Chairperson is not a member of the co-operative or decides not to exercise a second or casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

## **28 Proxy votes (CNL s229)**

Voting by proxy is not permitted at a General Meeting.

## **29 Postal ballots (other than special postal ballots) (CNL s247 & 250)**

- (1) A postal ballot must be held in respect of a special resolution where members who together are able to cast at least 20% of the total number of votes able to be cast at a meeting of the co-operative may requisition the Board to conduct the special resolution by postal ballot.

- (2) If a postal ballot is requisitioned by members under rule 29 (1), the requisition should specify whether the postal ballot is to be a secret ballot.
- (3) A postal ballot requisitioned under rule 29 (1) is to be conducted in accordance with the National Regulations and in the form and manner determined by the Board.
- (4) The Board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (5) If the Board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.
- (6) The Board is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the Secretary is the returning officer.
- (7) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members giving:
  - (a) particulars of the business in relation to which the postal ballot is being conducted, and;
  - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote, and;
  - (c) notice of the closing date and closing time of the postal ballot, and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.
- (8) This rule does not apply in relation to special postal ballots.

### **30 Special postal ballots (CNL ss248 & 249)**

- (1) This rule applies where a special postal ballot is required.
- (2) Ballot papers (in such form and with such content as the Board may approve) must be sent to all voting members so that they arrive (assuming standard postal times) at least 28 days before the closing date of the special postal ballot.
- (3) The Board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (4) If the Board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.

### **31 Special resolutions (CNL ss238–241)**

- (1) A special resolution is a resolution that is passed:
  - (a) by a two-thirds majority at a General Meeting; or
  - (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
  - (c) by a three-quarters majority in a special postal ballot of members.
- (2) A notice of special resolution is required to be given to members at least 21 days before the vote or ballot time (or 28 days notice in the case of a special postal ballot).
- (3) The notice of special resolution must state:
  - (a) the intention to propose the special resolution; and
  - (b) the reasons for proposing the special resolution; and
  - (c) the effect of the special resolution being passed.

## **Part 4. Board Of Directors**

### **32 Board (CNL s172)**

The business of the co-operative is to be managed by or under the direction of the Board Of Directors, and for that purpose the Board has and may exercise all the powers of the co-operative that are not required to be exercised by the co-operative in a General Meeting.

The Board must have no less than seven and no more than ten Directors; of whom up to seven are to be member Directors and three are to be independent Directors.

### **33 Qualifications of Directors (CNL s174)**

- (1) A person is not qualified to be a Director of the co-operative unless the person is an individual over the age of 18 years and is either:
  - (a) an active member of the co-operative of two years' standing (minimum) who has attended all General Meetings over the last two years; or
  - (b) not an active member but who possesses special skills in management or other technical areas of benefit to the co-operative as specified by the Board from time to time.
- (2) A person qualified to be a Director under rule 33 (1) (a) is known as a "member Director". A person qualified under rule 33 (1) (b) is known as a "non-member Director" or "independent Director".



- (3) An exempt member is not qualified to stand as a Director until their exemption has been removed or has automatically lapsed under the provisions of rule 7 (4).
- (4) The Board of Directors must have a majority of member Directors.

### **34 Chief Executive Officer**

- (1) The Board may, if it considers appropriate, appoint a person to be responsible for the day to day management of the co-operative. The person may be a Director or the Secretary or a member of the co-operative or some other person.
- (2) The appointed person is the Chief Executive Officer (CEO) of the co-operative.
- (3) The conditions and the period of appointment including termination must be decided by the Board.
- (4) The CEO is not entitled to be present or to vote at a meeting of Directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.
- (5) The CEO cannot be required to be an active member of the co-operative.
- (6) In the event of any conflict between the terms of the appointment of a person as the CEO and that person's obligations or privileges under the Law, the terms of the Law prevail over the terms of appointment.

### **35 Directors and election of Directors (CNL ss173 & 179)**

- (1) The term of office of Directors is to be not more than 3 years.
- (2) Directors can serve for a maximum of 6 years, and are not then normally eligible to renominate for a further three year term unless there are no members willing to nominate for the available vacancies. In this circumstance a Director who has served six years can renominate.
- (3) The term of office for Directors is to commence from the AGM at which they are elected and ends on the day of the third AGM thereafter.
- (4) The members of the Board are to be elected in the manner specified in this rule.
- (5) At an AGM at which a Director retires, the vacated office may be filled in the following manner:
  - (a) At least 6 weeks before an AGM, the Board must:
    - (i) notify all members of the number of Directors retiring at the AGM; and
    - (ii) if there is to be an election, advise the members of:

- A. their eligibility to nominate as a Director; and
  - B. the duties and responsibilities of a Director; and
  - C. the anticipated remuneration (if any); and
  - D. the nomination and election procedures.
- (6) A notice must also be displayed at the place of business of the co-operative inviting nominations of nominees to serve as Directors.
- (7) A nomination must:
- (a) be signed by 2 or more members; and
  - (b) provide details of the qualifications and experience of the person nominated; and
  - (c) be accompanied by a notice in writing signed by the nominee consenting to their nomination.
- (8) The nomination and the notice of consent must be lodged with the Secretary of the co-operative at least 30 days before the AGM.
- (9) To ensure their eligibility for election as a Director, all candidates seeking election (including retiring Directors) must:
- (a) provide to the Secretary of the Board information necessary to undertake a National Police Criminal Records Check and a bankruptcy check not less than 30 days prior to the AGM, and;
  - (b) attend a Board orientation workshop prior to the AGM.
- (10) Failure to comply with any of the requirements of rules 35 (7), (8) or (9) will automatically disqualify a candidate for election as a Director.
- (11) In the event of the number of nominations received exceeding the number of Directors retiring, a printed ballot paper containing the names of all the candidates in alphabetical order and initialled and numbered by the returning officer, together with the details outlined in rule 29 (7) shall be delivered or posted to every member entitled to vote at least twenty-one days before such AGM.
- (12) Such ballot-papers shall be returned to the registered office on or before the date and time stated on such ballot paper not being less than seventy two hours before the AGM.
- (13) Each candidate may appoint one observer to attend the checking of the envelopes and counting of votes.
- (14) The returning officer shall be appointed by the Board before each AGM. In default of such appointment in sufficient time to allow the above procedure to be followed, the co-operative Secretary shall be the returning officer.

- (15) The Board may cause to be issued ballot-papers in such manner that they may on return be checked with the register of members without the contents of the ballot papers being disclosed at the time of such checking, and so that after such checking the votes may be counted without the identity of the voter being disclosed.
- (16) The returning officer in the presence of such observers, if any, shall count the votes and notify the result to the chairperson of the AGM.
- (17) If there is an equality of votes, the outcome must be determined by lot.
- (18) The decision of the returning officer as to the formality of any ballot paper shall be final.
- (19) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the AGM.
- (20) If there are insufficient nominees to fill all vacancies the nominees will be declared elected and the vacancies are to be casual vacancies and must be filled in accordance with rule 38.

### **36 Removal from office of Director (CNL s180)**

The co-operative may by resolution under CNL s180, with special notice as required by that section, remove a Director before the end of the Director's period of office, and may by a simple majority appoint another person in place of the removed Director. The person appointed must retire when the removed Director would otherwise have retired.

### **37 Vacation of office of Director (CNL s179)**

In addition to the circumstances set out in the CNL, a Director vacates office if the Director dies. A member Director that ceases to be a tenant of the co-operative is deemed to have resigned as a Director from the date the member ceased to be a tenant.

### **38 Casual vacancies (CNL s173 & 177)**

- (1) The Board may appoint a qualified person to fill a casual vacancy in the office of Director until the next AGM.
- (2) The Board may appoint a person to act as a Director (an alternate Director) in the place of an absent Director.
- (3) A person is not qualified to be appointed as an alternate Director for:

- (a) a member Director—unless the person is qualified for appointment as a member Director; or
  - (b) a non-member Director—unless the person is qualified for appointment as a non-member Director.
- (4) An alternate Director holds office until the next AGM or until the next General Meeting held to elect Directors to fill any vacancies (whichever is earlier).
- (5) An alternate Director for a Director (the principal Director) vacates office:
  - (a) in similar circumstances or cases to those in which the principal Director would vacate office (and for that purpose the provisions of these rules and Division 1 of Part 3.1 of the CNL accordingly apply in relation to the alternate Director); or
  - (b) if the alternate Director is removed from office by the Board as alternate Director for failure, without its leave, to attend a meeting of the Board at which the principal Director is absent (and for that purpose the provisions of section 179(2)(b) of the CNL do not apply in relation to the alternate director).

### **39 Remuneration of Directors (CNL s203)**

- (1) Directors' remuneration must comply with the provisions of the CNL and requires the approval of the co-operative at a General Meeting.
- (2) A Director will receive an attendance fee of \$200 for each full Board meeting attended and the Chairperson will receive an additional \$200, and the Secretary an additional \$100. Attendance fees are not paid for meetings of committees of the Board.
- (3) Travel and child care costs will also be paid for attendance at Board and committee meetings according to procedures established by the Board and will not be paid unless these procedures are observed.
- (4) An access to internet fee will also be established by the Board, and provision will be made for the loan of co-operative computer equipment according to policies and procedures adopted by the Board. The access to internet fee will not be payable unless these policies and procedures are observed.

#### **40 Proceedings of the Board (CNL ss175 & 176)**

- (1) Meetings of the Board (including meetings conducted outside Board meetings pursuant to section CNL s176) are to be held as often as may be necessary for properly conducting the business of the co-operative. In any case they must be held at least every 3 months and not less than 10 times per annum.
- (2) A meeting may be held with one or more of the Directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.
- (3) Questions arising at a meeting must be decided by a majority of votes.
- (4) If votes are equal, the Chairperson has a second or casting vote.
- (5) Other than in special circumstances decided by the Chairperson, at least 48 hours' notice must be given to the Directors of all meetings of the Board; without which the meeting cannot be held.

#### **41 Quorum for Board meetings (CNL s175)**

- (1) The quorum for a meeting of the Board is 50% of the number of Directors (or if that percentage of the number of Directors is not a whole number, the whole number next higher than one half).
- (2) For a quorum, the number of member Directors must outnumber the non-member Directors.

#### **42 Election of the Chairperson of the Board (CNL s177)**

- (1) The Chairperson of the Board is to be elected by Directors at the first available Board meeting after the retirement or removal of the previous Chairperson. If the incumbent retires or is removed at a Board meeting the election of the new Chairperson should take place at that meeting.
- (2) The Chairperson will be elected by the Board for a three-year term with a maximum of two consecutive three-year terms in office.
- (3) To be eligible to for the position of Chairperson a Director should have served on the Board for a minimum of one year unless there are no Directors who have served for one year or more or those Directors who have served one year or more are not willing to nominate.
- (4) If the Chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as Chairperson of the meeting, the Directors

present may choose one of their number to be Chairperson of the meeting until the Chairperson attends and is willing to act as Chairperson.

- (5) The Chairperson may be removed, and a new Chairperson elected, by ordinary resolution at a Board meeting.

#### **43 Delegation and Board committees (CNL s178)**

- (1) The Board may by resolution delegate to:

- (a) a Director; or
- (b) a committee of 2 or more Directors; or
- (c) a committee of members of the co-operative; or
- (d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or
- (e) a committee of Directors and other persons;

the exercise of the Board's powers (other than this power of delegation) specified in the resolution. The co-operative or the Board may by resolution revoke all or part of the delegation.

- (2) A delegation under this rule may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (3) Despite any delegation under this rule, the Board may continue to exercise the power delegated.
- (4) A committee may elect a Chairperson of their meetings. If no Chairperson is elected, or, if at a meeting the Chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be Chairperson of the meeting.
- (5) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the Chairperson has a second or casting vote.

#### **44 Other committees**

- (1) The Board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the board and to committees of Directors.

- (2) Rules 43 (6) and 43 (7) apply to committees appointed under this rule, with the changes approved by the Board.
- (3) The quorum for a meeting of the committee is half the number of committee members (or, if half is not a whole number, the whole number next higher than one half).

## **45 Minutes**

- (1) The Board must keep minutes of meetings and, in particular, of:
  - (a) all appointments of officers and employees made by the Directors, and;
  - (b) the names of the Directors present at each meeting of the Board and of a committee of the Board, and;
  - (c) all resolutions and proceedings at all meetings of the co-operative and of Directors and of committees of Directors, and;
  - (d) any declarations of interest by Directors to be recorded in the minutes.
- (2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- (3) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the Chairperson of that meeting or the Chairperson of the next meeting.

## **Part 5. Rules**

### **46 Amendments and copies of rules (CNL ss57 & 60–63)**

- (1) Any amendment of the rules must be approved by special resolution in accordance with the Co-operatives National Law Application Act 2013. However, if model rules are adopted in the manner specified under CNL 65(a), any amendments to the model rules as notified by the Registrar (Cooperatives) are included in the co-operative's rules without the need for a special resolution.
- (2) A proposal to amend the rules of the co-operative must be made in a form approved by the Board which clearly shows;
  - a. the existing rule or rules concerned, and;
  - b. any proposed amendment to the rules, and;
  - c. the reasons for the proposed amendment(s)

- (3) A member is entitled to a copy of the co-operative's rules at no charge.

## **Part 6. Administrative Matters**

### **47 Seal (CNL ss49 & 223)**

- (1) This rule applies if the co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative's name and registration number must appear on its common seal and any official seal. The common seal must be kept at the registered office in the custody that the Board directs.
- (3) The co-operative may have one or more official seals for use outside the State or Territory in place of its common seal. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (4) The seal of the co-operative must not be affixed to an instrument other than under a resolution of the Board. Two directors, or one director and the secretary, must be present and must sign all instruments sealed while they are present.

### **48 Inspection of records and registers (CNL ss214 & 215)**

- (1) Members of the co-operative have free access to the records and registers referred to in section CNL s214 (1) of the Law and they may make a copy of any entry in the registers free of charge.
- (2) Members do not have access to the minutes of Board or committee meetings, but may request access to any such minutes in writing addressed to the board.

### **49 Notices to members (CNL s611)**

- (1) This rule applies in addition to CNL s611 regarding how a notice or other document may be given to a member of the co-operative.
- (2) A notice or other document required to be given to a member of the co-operative may be given by the co-operative to any member by any form of technology (for example, by fax or email), where the member has given consent and notified the co-operative of the relevant contact details.



- (3) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (5) A notice may be given by the co-operative to joint members by giving the notice to the joint member named first in the register of members.
- (6) A notice may be given by the co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively, it can be addressed to the person by the title of representative of the deceased or incapacitated person, or trustee of the bankrupt, or by any like description, and:
  - (a) the address should be that supplied for the purpose by the person claiming to be entitled; or
  - (b) if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

## **Part 7. Accounting And Financial Matters**

### **50 Financial year end date (CNL ss102-105)**

The financial year of the co-operative ends on 30 June.

### **51 Accounts**

- (1) The Board must have at least one financial institution account, electronic or otherwise, in the name of the co-operative, into which all amounts received by the co-operative must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the co-operative must be signed by 2 authorised persons.

- (3) The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by 2 authorised persons.
- (4) For the purposes of this rule, an **authorised person** is:
  - (a) a Director; or
  - (b) a person approved by the Board.

## **52 Appointing an auditor (CNL s298)**

- (1) The co-operative must appoint an auditor in respect of its financial statements.
- (2) An auditor appointed under this rule is to conduct an audit of the co-operative's financial statements as presented to members.
- (3) The appointment of an auditor under this rule is to be made at an AGM.
- (4) The co-operative may appoint another auditor at a subsequent AGM if there is a vacancy in the office of the auditor.
- (5) The provisions of CNL s300 (2) apply to an auditor appointed under this rule in the same way (but with any necessary adaptations) as they apply to an auditor appointed for a large co-operative.

## **53 Disposal of surplus funds during a financial year (CNL ss19, 355 & 356)**

- (1) The assets and income of the co-operative must be applied solely for the purposes for which the co-operative is incorporated and cannot be distributed directly or indirectly to co-operative members except as a bona fide compensation for services rendered or expenses incurred on its behalf.
- (2) The co-operative may retain all or part of the surplus assets and income arising in any year from the business of the co-operative, to be applied strictly for the benefit of the co-operative, by furthering the purpose for which the co-operative has been incorporated.
- (3) No part of any surplus income or assets may be paid or transferred directly or indirectly, by way of profit, bonus or otherwise to members of the co-operative, except as provided for under rule 53 (1) above.
- (4) The business of the co-operative is not for the purposes of profit or gain to individual members.

## **54 Provision for loss**

The Board must make appropriate provision for losses in the co-operative's accounts, and when reporting to members is to indicate whether the loss is expected to continue and whether there is any real prejudice to the co-operative's solvency.

## **55 Financial reports to members (CNL Part 3.3)**

The co-operative must prepare financial reports and statements in accordance with the CNL, National Regulations and these rules.

# **Part 8. Winding Up**

## **56 Winding up (CNL Part 4.5)**

### **Winding up or revocation of Deductible Gift Recipient (DGR) endorsement**

(1) The winding up of the co-operative must be in accordance with the CNL Part 4.5.

(2) If, on winding up or dissolution of the co-operative, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to an institution(s):

- (a) which is a deductible gift recipient under the Income Tax Assessment Act 1997 (Cth) on the same basis as the cooperative was endorsed;
- (b) which is a registered agency under the Housing Act 1983 (Vic);
- (c) with objects similar to those of the co-operative;
- (d) whose constitution prohibits the distribution of its property among its members; and
- (e) chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.

(3) On revocation of the co-operative's deductible gift recipient endorsement, any surplus tax deductible gifts, fundraising contributions or money received because of them as set out in section 30-125(6)(b) of the Income Tax Assessment Act 1997 (Cth) must be transferred to a fund, authority or institution determined in accordance with rule 56(2).

## **57 Acting as a trustee**

The co-operative must not act as a trustee for any person other than a RHA (unless the Registrar (Housing Agencies) approves).

## **58 Prohibition against being a subsidiary**

The co-operative must not be a subsidiary of any body other than a RHA, unless the Registrar (Housing Agencies) under the Act otherwise approves in writing.

## **Part 9. Eastern Suburbs Rental Housing Cooperative Ltd., Membership (ESRHC) – transitional provision**

### **59 ESRHC Membership – transitional provision**

(1) This rule will have effect on and from the Approval Date until the earlier of:

- (a) three years after the Approval Date; or
  - (b) if there is a casual vacancy in the office of the ESRHC Nominee Director and there is no ESRHC member who is willing or able to take on the role of the ESRHC Nominee Director.
- (2) The provisions of this rule will prevail to the extent of any inconsistency with any other rule of these Rules.

(3) The following definitions apply to this rule:

**Approval Date** means the date of the Transfer of Engagements specified in the approval of the Registrar (Co-operatives) given pursuant to s 400 of the CNL.

**ESRHC** means the Eastern Suburbs Rental Housing Co-operative Ltd (ABN 49 814 673 551) being the entity in existence before the date of Transfer of Engagements specified in the approval of the Registrar (Co-operatives) given pursuant to s 400 of the CNL.

**ESRHC Director** means a Director of ESRHC immediately prior to the Approval Date.

**ESRHC Nominee Director** means the ESRHC Director or ESRHC member appointed pursuant to rule 59(6) and (7) respectively.

**ESRHC member** means those members listed on the ESRHC register of members as at the Approval Date.

**Transfer of Engagements** means the Transfer of Engagements from ESRHC to the co-operative pursuant to s 395 of the CNL.

(4) Provided the Board receives written consent to become a member from an ESRHC member prior to the Approval Date:

- (a) the ESRHC member will be automatically admitted to membership on the Approval Date;
- (b) the ESRHC member's name and any information required under the CNL must be entered in the register of members on the Approval Date;
- (c) the ESRHC member's SEHC commencement date will be deemed to be the date on which they commenced ESRHC membership; and

- (d) the ESRHC member must be notified in writing of the entry in the register of members.
- (5) The maximum number of Board members will be eleven Directors, including up to eight member Directors.
- (6) One of the member Director positions must be held by the ESRHC Nominee Director for a term of three years commencing on the Approval Date.
- (7) ESRHC members are not required to meet the 'active member' requirement in rule 33(1)(a).
- (8) The ESRHC Nominee Director immediately following the Approval Date must be an ESRHC Director nominated by the ESRHC Board prior to the Approval Date.

The Board may appoint an ESRHC member to fill a casual vacancy in the office of the ESRHC Nominee Director for the balance of the three year ESRHC Nominee Director term.

**Version notes:**

1. "Z:\CURRENT CORE DOCS AT 31 01 2018\CONSTITUTION\SouthEast Rules - Member Approved at AGM 20 NOVEMBER 2017 (at 31012018)(revised 2020 AGM 22 02 2021).docx
2. SouthEast Rules - March 2021 – "Registrar" Meanings Revised 29 03 2021.
3. Transitional Provision ESRHCMembership added. Revised 22 11 2021.
4. 2021 AGM, held 21 02 2022, member approved rules changes added