



Management Support Unit (MSU)



Information Sheet 11:

The legalities of managing an incorporated community organisation

The following is a general list of legislative requirements relevant to associations incorporated in NSW as well as duties of a community sector employer. It is not intended to be a comprehensive list. If you are a state government funded organisation, we recommend you take particular notice of all the requirements listed in the agreement with your funding body. If the legislation you are seeking is not listed here, we suggest you contact the on-line access to NSW legislation on www.legislation.nsw.gov.au and on-line access to Commonwealth legislation on www.austlii.edu.au.

NB: The Principles of Common Law¹ also apply to community organisations.

Associations Incorporation Act 1984 No 143

Incorporation is a system of registration which gives an organisation some legal advantages in return for accepting some legal responsibilities. Once incorporated, an association is recognised as a legal entity separate from its members. The association is able to do things in its own name, such as sign a lease or appear in court.

For further information contact NSW Department of Commerce on (02) 9895 0111 or website www.commerce.nsw.gov.au

Charitable Fundraising Act 1991 No 69

Any person or association wishing to conduct a fundraising appeal must hold a "fundraising authority". This authority is for a specified period only. You **do not** need a fundraising authority if your association is:

1. Requesting or receiving membership fees
2. Conducting an appeal to the members of the association
3. Requesting that money or property be left in a will
4. An appeal among workers for a fellow employee (or his family)
5. An application for or receipt of government funds
6. Funds received as a genuine charge for services offered by the association

However, if one or more of your income sources is not listed above, then a fundraising authority may be required. A fundraising authority is **needed** when your association:

1. Solicits or received any money, property or other benefits eg. seeking or obtaining donations, selling tickets in a lottery, art union or other competition, seeking

¹ Common Law is that part of our law which is developed by judges in the course of deciding cases. Common law is sometimes known as case law.

- sponsorship in a walkathon, telethon etc. selling food, entertainment or any other goods or services, or operating a commercial undertaking
2. Represents that the money etc. being solicited or received is for a charitable purpose.

NB: Religious organisations that are recognised under the Marriage Act 1961 are exempt from all the requirements of the Act unless the Office of Charities orders otherwise. This exemption may be passed on to affiliated groups.

For further information or to obtain a Fundraising Authority contact Office of Charities, Department of Gaming and Racing on (02) 9995 0300 or website www.dgr.nsw.gov.au.

Taxation legislation enables certain organisations to the following exemptions or benefits:

1. Tax deductible donations available to public benevolent institutions², public hospitals, libraries, museums or art galleries, schools or colleges and specific organisations listed in the **Income Tax Assessment Act** (contact the Australian Taxation Office on 13 28 66 or website www.ato.gov.au)
2. Income tax exemption available to religious, charitable, sporting and public educational institutions and other organisations listed in the Income Tax Assessment Act (contact the Australian Taxation Office on 13 28 66 or website www.ato.gov.au)
3. Exemption from payroll tax available to religious or public benevolent institutions and charitable organisations³ (contact the NSW Office of State Revenue on 1800 673 402 or (02) 9685 2188 or website www.osr.nsw.gov.au)
4. Exemption from stamp duty available to institutions established for the relief of poverty, promotion of education, promotion of the interests of Aborigines, or other charitable or benevolent purposes (contact the NSW Office of State Revenue on 1800 629 550 or (02) 9685 2122 or website www.osr.nsw.gov.au)
5. Exemption of land tax available to religious, charitable, educational sporting and other non-profit groups (contact the NSW Office of State Revenue) on 1800 061 163 or 9685 2155 or website www.osr.nsw.gov.au)
6. Exemption from Council rates available to religious, educational, public benevolent and charitable institutions (contact local council)

Privacy: There is Commonwealth and State legislation that deals with the collection, storage and access of personal information.

1. **The Privacy and Personal Information Protection Act 1998 (PPIP Act) No 133(NSW)** aims to provide individuals with greater control over the way their personal information is handled by NSW Government Departments. The Act sets out 12 principles which determine the way information is collected, used, accessed, disclosed and stored.
2. Principles 1- 4 deal with the way information is collected by government departments.
3. Principle 5 deals with how the information must be kept and destroyed when no longer needed.
4. Principles 6 – 8 deal with how a person can get access to stored personal information.

² A benevolent institution is an organisation that has as their dominant object the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness

³ A charitable organisation includes organizations for the relief of poverty, the advancement of religion or education and for other purposes beneficial to the community.

5. Principles 9-10 deal with how public sector agencies can and can't use that information and Principles 11-12 provide public sector agencies with rules on disclosure of personal information.
6. All public sector agencies must comply with these 12 Principles unless there is a specific exemption that applies to them.

For further information contact the Office of the Privacy Commissioner on (02) 9268 5588 or website www.lawlink.nsw.gov.au/pc.

The Privacy Act 1988 (Commonwealth) has new provisions that apply to large community organisations and all health service providers. The provisions came into affect in December 2001 and are intended to give people greater control over how their information is used and to provide improved safeguards for sensitive information.

Organisations will be required to adhere to 10 National Privacy Principles (NPPs) covering:

1. The collection of information
2. Its use and disclosure
3. Ensuring the quality of data
4. Data security
5. Openness regarding privacy policies
6. Rights of access and correction
7. The use of Commonwealth numbers as identifiers
8. Anonymity
9. Transferring data overseas
10. The use of sensitive information.

For further information contact the Privacy hotline on 1300 363 992 or on website www.privacy.gov.au

Industrial Relations Act 1996 No 17 makes it possible for employers and employees to make their own enterprise agreements establishing specific conditions for individual workplaces. When the agreement is finalised, it will prevail over the provisions of any NSW State award. However it must comply with a number of minimum employment conditions:

1. The ordinary hourly rate of pay cannot be less than that in the relevant award(eg Social and Community Services Employees (State) Award)
2. The provisions for long service leave (NSW Long Service Leave Act 1955), annual leave (NSW Annual Holidays Act 1944) and parental leave must not be less than the statutory minimums. There must be at least one weeks' sick leave on full pay per year
3. Hours of work cannot exceed 40 hours per week when averaged over 52 weeks.

For further information contact the NSW Department of Commerce on 131 628 or website www.commerce.nsw.gov.au

Superannuation Guarantee Act 1992 (Commonwealth) requires an employer to make compulsory contributions to employees' superannuation. In 2003 the rate of payment is 9% of gross salary. This contribution includes part-time workers, casual workers and even

some contractors. The contributions are to be paid into a superannuation fund which complies with the provisions of the Occupational Superannuation Standards Act (OSSA). For more information contact The Australian Taxation Office on 13 10 20 or website www.ato.gov.au

NSW Occupational Health and Safety Act 2000 No 40 requires that an employer ensures the health, safety and welfare of all employees at the workplace, including visitors to the workplace.

For further information contact WorkCover on 131 050 or website www.workcover.nsw.gov.au

Workers Compensation Act 1987 No 70 requires that all employers have a current workers compensation policy with a licensed workers compensation insurer.

For further information contact WorkCover on 131 050 or website www.workcover.nsw.gov.au

Anti-Discrimination Act 1977 No 48 makes it illegal to discriminate on the grounds of race, sex, age, marital status, physical impairment and homosexuality in certain specified areas including employment, accommodation and access to goods and services. Unlawful discrimination in employment involves denying a person equal treatment in terms of access and conditions, for reasons other than those that relate directly to their ability to carry out the job. The Act covers all stages of employment from the job advertisement through to dismissal.

For further information contact the Anti-Discrimination Board (ADB) on 1800 670 812 or website www.agd.nsw.gov.au/adb.nsf/pages/index

Other relevant Commonwealth Acts include:

1. Racial Discrimination Act 1975
2. Sex Discrimination Act 1984
3. Human Rights and Equal Opportunity Commission Act 1986
4. Affirmative Action (Equal Employment Opportunity for Women) Act 1986
5. Disability Discrimination Act 1992

For further information on the Federal legislation contact the Human Rights and Equal Opportunities Commission (HREOC) on 1400 369 711 or website www.humanrights.gov.au

Obligations in relation to your publications:

International Standard Book Number (ISBN)

Although it is not a legal requirement, you should obtain an ISBN for any book published by your organisation. To do this contact the ISBN section of the National Library of Australia on 1800 026 372 or (02) 6262 1111 or website www.nla.gov.au

Under copyright law, a copy of any book published in NSW must be lodged, free of charge, at the libraries listed below within two calendar months of the day the book is first made available:

- State Library of NSW phone (02) 9273 1414
- Parliamentary Library (NSW) phone (02) 9230 2111
- University of Sydney Library phone (02) 9351 7268
- National Library of Australia (Canberra) (02) phone 1800 026 372

For advice on copyright contact the Australian Copyright Council on (02) 9318 1788 or website www.copyright.org.au.

Relevant resources available from Management Support Unit (MSU)

- **MSU Information Sheet 1** Simple measures to assist non-government organisations in maintaining good governance (Free)
- **MSU Information Sheet 2** A Code of Conduct for Boards of Management of Incorporated Non-Government Organisations (Free)
- **MSU Information Sheet 3** Roles and Responsibilities of Office Bearers and General Members of Boards of Management of Incorporated Associations (Free)
- **MSU Information Sheet 4** A Code of Conduct for Executive Officers of Voluntary Organisations (Free)
- *Better Meeting* Community Child Care Co-operative (Loan)
- *Effective Meetings* Community Child Care Co-operative (Loan)
- *Incorporation: an explanation of the Associations Incorporation Act* G. Wheeler, NCOSS (Purchase)
- *Legalities: Guidelines for running a community organisation* G. Wheeler, NCOSS (Purchase)
- *Just Relations: Industrial relations for the community services industry* Deb Tipper (Purchase)
- *Managing Community Organisations* Ettinger House (Series of 5 booklets) (Loan)
- *The Book of the Board: Effective Governance for Non-Profit Organisations* David Fishel (Loan)
- *Corporate Governance Handbook for the Board* Department of Family & Community Services 2001 (Free)
- *Good Governance Practice for Voluntary Committees of Management Resources and Materials* Bradfield Nyland Group 2002 (Free)

The information contained in this information sheet has been taken from 2 NCOSS publications, *Incorporation - an explanation of the Associations Incorporations Act* (\$22.50 or \$19 for members) and *Legalities- guidelines for running a community organisation 4th edition* (\$15 or \$13.50 for members). If you would like to be fully informed about the legalities of incorporation we strongly recommended that you purchase these publications. They are available by phoning NCOSS or via the NCOSS website.

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