



## DECISION

*Fair Work (Registered Organisations) Act 2009*

s.30(1)(a) RO Act - Application by organisation for cancellation of registration

### **Aged & Community Services Australia**

(D2020/18)

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 16 MARCH 2021

*Cancellation of registration on application by organisation made under the regulations; section 30(1)(a) RO Act.*

[1] Aged & Community Services Australia (Association) has applied to the Fair Work Commission (the Commission) under s.30(1)(a) of the *Fair Work (Registered Organisations) Act 2009* (Act) and reg. 34 of the *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations), to cancel the registration of the organisation. The application was made on 30 October 2020. Section 30(1)(a) provides that the Commission may cancel the registration of an organisation on application by the organisation made under the regulations.

[2] Regulation 34 of the RO Regulations deals with applications for the cancellation of registration and sets out the various requirements that need to be satisfied, before the Commission may exercise its discretion to cancel the registration. Reg. 34 states:

#### **“34 Application for cancellation of registration (s 30(1)(a))**

(1) An application by an organisation under paragraph 30(1)(a) of the Act for the cancellation of its registration must:

(a) be in the form set out in the Procedural Rules or in a form otherwise approved by the President; and

(b) set out full particulars of the circumstances that entitle the organisation to make the application; and

(c) contain a declaration signed by an officer of the organisation authorized to sign the declaration verifying the facts in the application; and

(d) be lodged with the FWC.

(2) An organisation that has a web site must publish on its web site a notice that it has lodged the application mentioned in subregulation (1).

(3) The FWC, on receipt of an application mentioned in subregulation (1), must publish a notice of the receipt of the application in the Gazette.

(4) Within 35 days after publication of the notice mentioned in subregulation (3), an interested person (the objector) may lodge with the FWC a notice of objection to the application for cancellation of registration.

(5) A notice of objection must:

(a) be in the form set out in the Procedural Rules or in a form otherwise approved by the President; and

(b) be lodged with the FWC; and

(c) comply with the requirements of regulation 14.

(6) An objector must, within 7 days after lodging a notice of objection under subregulation (4), serve copies of the notice of objection on the organisation applying to cancel its registration.

(7) The FWC must:

(a) fix a time and place for hearing the application and any objection to the application; and

(b) notify the organisation and any objector of the time and place fixed for the hearing.

(8) The FWC must not:

(a) refuse to grant an application for cancellation of registration without giving the applicant an opportunity to be heard; or

(b) grant the application without giving any objector an opportunity to be heard.”

**[3]** On 25 February 2020, the Association applied to the Commission to approve a procedure for a ballot of the Association’s members in accordance with reg.33(b)(ii) of the RO Regulations, regarding an application for the cancellation of the Association’s registration as a registered organisation under s.30(1)(a) of the RO Act.

**[4]** The application was listed for a telephone mention hearing before me on 5 June 2020. The Applicant was asked to file written submissions in support of the orders sought. These were filed on 18 June 2020.

**[5]** On the basis of the material filed by the Association, including a supporting statement signed by Ms Patricia Sparrow, the Association’s Chief Executive Officer, dated 7 February 2021,<sup>1</sup> I was satisfied that the Association’s rules did not make provision for ascertaining by a ballot whether a majority of members voting support the cancellation of its registration as an

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<sup>1</sup> Exhibit 1

organisation under the RO Act and accordingly, a ballot could not be undertaken in accordance with reg.33(a) of the RO Regulations.<sup>2</sup> I was also satisfied that rule 40.3 of the Association's rules did not apply as on a plain reading of rule 40.3, any election of the Association's officers by a direct voting system must be conducted by the Australian Electoral Commission (AEC) and because the AEC declined to conduct such a ballot, the procedure could not be applied.<sup>3</sup>

**[6]** Accordingly, on 28 July 2020, I approved procedures to enable the Association's members to vote on a resolution for approval to apply to the Commission for cancellation of the Association's status as a registered organisation.<sup>4</sup> Specifically, I approved the vote to be in accordance with the draft notice of special general meeting set out at Annexure PS-7 of Exhibit 1. In approving the procedure the Association was required to give notice of special general meeting, hold a special general meeting at which consideration of the resolution would occur, and to comply with the requirements in the Association's rules regulating these matters, in particular rules 16, 17 to 32, and 59 to 60.<sup>5</sup>

**[7]** On 1 September 2020, a notice of special general meeting (SGM Notice) to consider a resolution for approval for the Association to apply for the cancellation of its registration was sent by email to the Association's members (the Resolution).<sup>6</sup>

**[8]** I am satisfied that the SGM Notice was given in accordance with the draft notice of special general meeting set out at Annexure PS-7 of Exhibit 1, and the giving of the SGM Notice complied with the Association's rules regarding such matters.

**[9]** On 23 September 2020, a Special General Meeting was held in accordance with the SGM Notice.<sup>7</sup> Twenty-five members of the Association attended the Special General Meeting, including Ms Sparrow.<sup>8</sup> Five members voted at the Special General Meeting by valid proxy.<sup>9</sup> A majority of members voting at the meeting approved the Resolution.<sup>10</sup>

**[10]** I am satisfied that the holding of the Special General Meeting, and consideration of the Resolution, complied with the Association's rules regulating such matters.

**[11]** I am satisfied relevantly that there has been compliance with each of the matters set out in reg. 34 of the Regulations. Specifically, a notice of the application for cancellation of the registration of the organisation was published on the Association's website on 30 October 2020.<sup>11</sup> A notice of the application for cancellation of the registration of the organisation was published in the Commonwealth of Australia Government Gazette on 8 December 2020. The

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<sup>2</sup> [2020] FWC 2726 at [5]

<sup>3</sup> Ibid at [7]

<sup>4</sup> Ibid at [9]

<sup>5</sup> Ibid at [8]

<sup>6</sup> Exhibit 2 at [4] and PS-8

<sup>7</sup> Ibid at [11]

<sup>8</sup> Ibid at [12]

<sup>9</sup> Ibid

<sup>10</sup> Ibid at [13] and PS-12

<sup>11</sup> Ibid at [16] and PS-13

period during which objections could be lodged ended on 11 January 2021. The application was listed for hearing on 15 March 2021 as the Act requires that I do. There was no appearance from any objectors and no objection to the cancellation of the registration application has been lodged.

[12] In those circumstances, I am satisfied that there has been compliance with the matters set out in s.30(1)(a) of the Act, and reg. 34 of the Regulations, and there are no apparent grounds of which I am aware which would provide a basis for declining the application to cancel the registration of the Association. I am satisfied of these matters based on the application that has been filed and the material in support of the application supported by the statutory declaration of Ms Patricia Sparrow dated 15 March 2021.

[13] I am satisfied that relevant notice was published in the Commonwealth of Australia Government Gazette. I am satisfied that no person or organisation has lodged an objection. I am satisfied that the notice of hearing was published in the usual way and that any party who wished to object had ample opportunity, either in writing or by attendance, to do so.

[14] Accordingly, I propose to grant the application and to cancel the registration of the Aged & Community Services Australia with effect and from 17 March 2021 pursuant to s.30(1)(a) of the RO Act.

[15] An order giving effect to this decision is separately issued in PR727777.



DEPUTY PRESIDENT

*Appearances:*

*B Tallboys, solicitor for the Applicant*

*Hearing details:*

2021  
15 March  
Melbourne

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