



Australian Government
Registered Organisations Commission

17 May 2019

Mr Jos de Bruin
Chief Executive Officer
Master Grocers Australia Limited

By email to: Desma Harrod, Finance & Administration Manager, desma.harrod@mga.asn.au

Dear Mr de Bruin,

Exemption from financial governance training application for Deborah Smith – Master Grocers Australia Limited – GT2019/18

I refer to the application dated 6 March 2019 made on behalf of the Master Grocers Australia Limited (**the organisation**) to the Commissioner of the Registered Organisations Commission (**ROC**) for an exemption under section 293M of the *Fair Work (Registered Organisations) Act 2009* (**RO Act**) in respect of Deborah Smith, President of the organisation.

I also refer to the further information provided in the organisation's letter dated 10 May 2019 in response to the ROC's letter dated 3 May 2019.

As you would be aware, section 293K of the RO Act requires each officer of the organisation or branch whose duties include financial duties that relate to the financial management of the organisation, to undertake approved training that covers each of the officer's financial duties, unless exempted under section 293M.

You will be aware that significant changes have recently been introduced into the regulatory scheme relevant to registered organisation including but not limited to the introduction of a much broader whistleblower protection scheme with serious implications for taking reprisals and significantly increased penalties, including possible criminal penalties. There is also an enhanced officer disclosure regime, the introduction of a mandatory auditor registration scheme and the establishment of the ROC.

You will also be aware that each relevant financial training package previously approved by the Fair Work Commission (**FWC**) has had to be significantly amended to include all of the relevant amendments to the regulatory scheme including those referred to above.

Subsection 293M(2) of the RO Act allows the Commissioner to grant an exemption if he is satisfied that the officer has a proper understanding of the officer's financial duties within the organisation due to the officer's:

- a) experience as a company director; or
- b) experience as an officer of a registered organisation; or
- c) other professional qualifications and experience.

The Commissioner has formally delegated, to the Executive Director of the ROC, the relevant powers relating to the exemption of approved training.

The organisation has advised that Ms Smith has held the office of President since January 2019 and that prior to that date she held the office of Vice President from January 2018 to January

2019, having previously been a Director of the organisation from November 2005 to January 2018.

The organisation has advised the ROC that Ms Smith completed governance training, in the format then approved, in 2014.

Subsection 293K(2) of the RO Act requires that an organisation or branch must ensure that the officer completes financial training *within 6 months after the person begins to hold the office* (my emphasis), whether the holding of that office occurs by appointment or by election.

As indicated in the ROC's letter dated 3 May 2019, it appears that no training was undertaken by Ms Smith upon assuming her most recent previous office (that of Vice President), nor at any time during the 12 months holding that office – an apparent contravention of section 293K of the RO Act and something that exposes the organisation to the potential for civil penalty liability.

In light of the relevant timeframes set out, I note that if the application for exemption were not to be granted, Ms Smith would need to complete approved governance training. In circumstances where training was not completed in respect of the office of Vice President, if the exemption were not granted the training would need to be completed forthwith.

Delay in making application for exemption

Your letter dated 10 May 2019 acknowledges that the organisation was aware of the obligation for officers to complete financial governance training. It also acknowledges that the organisation is aware that failure to comply with section 293K could result in civil penalty proceedings being commenced.

The letter advises that the 'mitigating circumstances' associated with the non-compliance apparently included: difficulties with course availability (including cancellations); cost; and personal business commitments. It also notes that the organisation is preparing to submit an application for approval of a governance training package by the Commissioner.

In circumstances where the RO Act does not make provision for extensions of time to be granted for completion of approved governance training, it is important for registered organisations to take the necessary steps to ensure either completion of the training within 6 months after taking office or to seek an exemption in a timely manner (i.e. within a similar timeframe).

Assessment

In the circumstances of this application, I must be satisfied that Ms Smith has a proper understanding of her financial duties within the organisation because of her experience as an officer of a registered organisation or other professional qualifications or experience.

The organisation has submitted that the specific circumstances that warrant consideration for an exemption under section 293M relate to Ms Smith having experience in performing her duties, including duties, as:

- Owner/Director of three independent supermarkets in Toowoomba, Queensland;
- Board Member of Australian United Retailers Ltd (Foodworks) from 2002 to 2015; and
- Director of the following companies: A & D (Qld) Holdings Pty Ltd, DAALT Pty Ltd, Australian United Grocers Pty Ltd and Oakey Foodworks Pty Ltd

The organisation has also submitted that Ms Smith holds the following qualifications:

- Certificate in Business Management;
- Diploma of Business Management;
- Master of Business Management; and

- Diploma of Teaching.

In addition, the organisation has confirmed that Ms Smith has been provided with:

- a copy of the organisation's rules, including those applicable to the exercise of her duties (particularly her financial duties) as an officer of the organisation;
- the relevant amendments to the RO Act and as they relate to an officer's financial duties and financial governance, disclosure and record keeping responsibilities; and
- a copy of the ROC's Officer Induction Kit to enable her to familiarise herself with specific obligations under the RO Act and the organisation's rules.

I understand that having provided this information to Ms Smith, the organisation has satisfied itself that the officer has a sufficient understanding of her duties, particularly her financial duties, as an officer of the organisation.

Relevant rules of the organisation

In addition to the financial duties set out in the RO Act, the Board of the organisation (of which Ms Smith has been a member since 2005) has the following duties and responsibilities in respect of financial governance:

- determining the amounts of the entrance fees and annual subscriptions payable from time to time (Rule 7.2) and the power to reinstate membership if arrears of subscriptions are paid (Rule 7.5);
- determining the manner in which the organisation's property is to be controlled, funds are to be invested, the conditions under which funds are to be spent, and authorising the delegation of powers vested in the Board or a director and the terms on which that occurs (Rule 22.2);
- determining, from time to time, the manner in which cheques, promissory notes, drafts, bills of exchange and other instruments, and all receipts for money are to be signed, drawn, accepted, endorsed or otherwise executed (Rule 22.5);
- exercising all powers of the organisation to borrow money, mortgage or charge the whole or any part of the Organisation's undertaking and property, and issue debentures and other securities, including as security for any debt, liability or obligation of the organisation (Rule 22.11);
- the appointment of employees and determination of their remuneration and terms and conditions of employment (Rule 22.12);
- the appointment of the Company Secretary and determination of their remuneration and terms and conditions of employment (Rules 23.1 and 23.5);
- determining, from time to time, the remuneration of officers, including whether a retirement benefit may be paid (Rule 29);
- authorising the making of loans, grants and donations exceeding \$1000 in accordance with the rules of the organisation, including the security proposed to be given and repayment arrangements (Rule 40); and
- authorising the use of the organisation's seal (Rule 46).

In relation to specific financial duties exercised, or potentially exercised, by the President (i.e. aside from matters such as the convening and chairing of meetings), the only additional duty of a financial nature appears to be that which is specified in Rule 24.13, which provides that:

It will be the duty of the President and Vice-President to do all such acts and things and exercise all such functions of the Board as may be delegated to it by the Board or by the Organisation in general meeting.

It is apparent from this rule that the President can only exercise these functions if delegated by the Board or by the organisation, and that the President is therefore not empowered to exercise financial authority beyond that already held by the Board, of which they themselves are a member.

Decision

I have taken into account this officer's experience in performing her duties as President, and formerly as Vice President and Director, of the organisation, her broader business experience (including various directorships over an extended period) and her professional qualifications, as well as the steps taken to ensure that the officer is familiar with the specific requirements in respect of officer duties and other matters set out by the RO Act in relation to registered organisations and the requirements of the organisation in particular, including under its rules. I have also taken into account that the officer completed approved financial governance training, albeit in 2014.

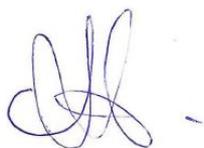
In accordance with section 293M, having considered all of the relevant matters, I am satisfied that Deborah Smith has a proper understanding of her financial duties as they are relevant to a registered organisation. I therefore grant an exemption to Deborah Smith from the requirement to undertake approved financial training in respect of the office of President of the organisation.

I have considered whether the exemption granted should be subject to any condition. Taking into account all of the material before me and all relevant matters, I do not consider that any conditions are, in this case, appropriate.

As part of its commitment to educating registered organisations and their officers as to the duties and obligations under the RO Act, the ROC regularly published information (including decisions) to assist in this regard. On that basis, I request that you consider consenting to the publication of this decision on the page of the ROC's website dedicated to your organisation. I request that you advise the ROC of your views in this regard by **Friday 26 May 2019**.

Any enquiries that you have in relation to this matter may be directed to Bill Steenson, Principal Lawyer Compliance & Investigations, either by email to bill.steenson@roc.gov.au or by phone on 02 8293 4665.

Yours faithfully



Chris Enright
Executive Director
Registered Organisations Commission