



DECISION

Fair Work (Registered Organisations) Act 2009
s.293M—Exemption from financial training

Australian Entertainment Industry Association (GT2018/6)

MR ENRIGHT

MELBOURNE, 28 MAY 2018

Exemption from financial training

[1] On 8 May 2018 the Australian Entertainment Industry Association lodged with the Registered Organisations Commission an application for an officer of the organisation, Ms Susan Donnelly, to be exempted from the requirement to undertake training under section 293K of the *Fair Work (Registered Organisations) Act 2009* ('the RO Act'). The application was lodged under section 293M of the RO Act.

[2] Section 343B provides that various functions or powers of the Registered Organisations Commissioner under particular provisions of the RO Act, which include section 293M, may be delegated, and as Delegate of the Commissioner I have exercised the power to determine the matter.

[3] Before setting out the reasons for my Decision granting the application, it is useful to set out relevant provisions of the legislation. Section 293K provides as follows:

- (1) Unless exempted under section 293M, each officer of an organisation or branch of an organisation whose duties include duties (financial duties) that relate to the financial management of the organisation or the branch must undertake training:
 - (a) approved by the Commissioner under section 293L; and
 - (b) that covers each of the officer's financial duties.
- (2) The organisation or branch must ensure that the officer completes the training within 6 months after the person begins to hold the office.

Section 293K is a civil penalty provision. Section 293M relevantly provides as follows:

- (1) An organisation or branch of an organisation may, in writing, apply to the Commissioner for an officer of the organisation or the branch to be exempted from the requirement to undertake training under section 293K.
- (2) The Commissioner may grant the exemption if the Commissioner is satisfied that the officer has a proper understanding of the officer's financial duties within the organisation or the branch because of 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.
- (3) The Commissioner may grant the exemption subject to any conditions that the Commissioner considers appropriate in the circumstances.

[4] Ms Donnelly began to hold her office of Executive Council member¹ on 1 December 2017, from the date of the Annual General Meeting held on that date, in accordance with sub-rule 11(d) of the rules of the organisation which provides:

The Executive Council shall be elected for a term of two years in accordance with Rules 13 -17. They shall hold office from the conclusion of the Annual General Meeting at which they assume office until the conclusion of the next Annual General Meeting at which the two year term of office will have expired.

[5] This means that, to comply with subsection 293K(2), the organisation would have to ensure that Ms Donnelly completed her training by 1 June 2018. At the time of the lodging of the application on 8 May 2018, a relatively brief period of approximately 23 days remained in which the training could have been completed in the ordinary course. Were the exemption not to be granted, that is to say, were it to be refused at this time, the organisation may have encountered difficulty in complying with subsection 293K(2), a difficulty that would in such circumstances have been avoided if the application had been made earlier during the period following 1 December 2017. I drew the organisation's attention to this in correspondence on 18 May 2018.

[6] The question for consideration is whether I am satisfied that Ms Donnelly has a proper understanding of the officer's financial duties within the organisation because of her (a) experience as a company director; or (b) experience as an officer of a registered organisation; or (c) other professional qualifications and experience (s.293M).

[7] Section 293M does not prescribe any particular form by which applications may be made. The information in the application received is set out in an initial draft of a form prepared by the Registered Organisations Commission that is subject to further consideration and has not been formally issued for use. An issue I have to consider is whether the information provided in the application demonstrates Ms Donnelly's understanding of her financial duties based on her experience or qualifications. For the reasons I set out below, I am satisfied that I can come to a reasonable conclusion about the merit of the application.

[8] The application states that Ms Donnelly had not previously held office in a federally registered organisation, so it is not necessary for me to consider this criterion further. However the application provides details of current and previously held positions as company director and other professional experience, so I examined these criteria and how they might be considered to ground Ms Donnelly's understanding of the financial duties of the organisation. I also have to consider whether Ms Donnelly's understanding of the financial duties could be described as 'proper'. I address this matter first.

[9] I take the term 'proper' to bear the various meanings or any of them attributed to it such as 'applicable', 'belonging', 'accurate', 'answering fully to the description'², 'of the required or correct type or form', 'suitable'³ or 'satisfactory' or 'adequate' which means literally, from its Latin root, 'equal to'(e.g. the task).⁴ If Ms Donnelly showed understanding of her financial duties that was applicable, suitable or equal to the task of fulfilling her financial duties, then her understanding would be proper.

¹ See E2017/166 declared 20 November 2017

² See The New Shorter Oxford English Dictionary, Vol 2, Clarendon Press (1993) p. 2379

³ See <https://dictionary.cambridge.org/dictionary/english/proper>

⁴ See Lewis C., A Latin Dictionary for Schools, Clarendon Press (1953) p. 20 e.g. 'adaequo' *make equal to*

[10] In the application Ms Donnelly demonstrates a proper understanding of her financial duties by specific reference, in part, to matters such as an officer's disclosure obligations. For example, Ms Donnelly correctly identified the obligation to disclose (i) specific remuneration, which correlates to section 293B, (ii) specific material personal interests, which correlates to section 293C, and (iii) restrictions on participating in certain discussions and decisions in meetings, which correlates to section 293F.

[11] Ms Donnelly became an Executive Councillor on 1 December 2017 and submitted that all new members of the Executive Council received an Induction Kit that *'includes pertinent information that allows officers to understand the organisation and officers' duties'* and that *'the Chief Executive also meets with new Executive Councillors to relay key information, such as officer obligations.'* This information describes a systematic induction process that I have no reason to doubt applied to Ms Donnelly at the appropriate time. Moreover, she has also stated that she has had the policies, procedures and financial approval processes of the organisation provided and explained to her.

[12] In the application before me, Ms Donnelly correctly summarised the general financial reporting and other disclosure responsibilities and duties under the RO Act, which correlate to sections 252, 253, 254, 255, 257, 265, 266, 268, 293BC and 293K. I am satisfied that Ms Donnelly has demonstrated a proper understanding of the relevant financial reporting and disclosure responsibilities in relation to which she would have to fulfil her financial duties.

[13] In terms of her understanding about the role of the Auditor within the legislative scheme, Ms Donnelly stated in the application that auditors need to be independent and not be responsible for the 'preparation of financials' (*sic*). This is consistent with section 290 of the APES 110 Code of Ethics for Professional Accountants.⁵ Ms Donnelly also stated that the Auditor's role is to report to members on the truth and fairness of financial statements, statutory disclosures and 'going concern', which is consistent with Auditing Standard ASA 700. She stated that the Auditor's role is also to report to those charged with governance timely and significant observations arising from the audit and their oversight of the financial reporting process and that the Management letter on audit findings furnished by the Auditor to management promotes two-way communication, which is consistent with Auditing Standard ASA 260. Finally, Ms Donnelly stated that Auditors are entitled to full and free access to all records, which reflects subsection 257(2), and that it is an offence to hinder an auditor or not produce records requested, which reflects sub-section 258(1). Officers with duties in relation to the preparation and presentation of audited accounts need to understand the role of the Auditor, and Ms Donnelly has demonstrated that she understands this.

Assessment

[14] In the particular circumstances of this application, I must be satisfied that Ms Donnelly has a proper understanding of her financial duties within the organisation because of her experience as a director, or other professional qualifications and experience. To be able to be so satisfied I consider that a person for whom an exemption is sought must provide sufficient information about the nature of that experience to provide confidence, or enable the inference to be drawn, that the understanding otherwise demonstrated will have been facilitated by, or

⁵ As compiled September 2017:

http://www.apesb.org.au/uploads/standards/apesb_standards/20092017153656_Compiled_APES_110_Sept17.pdf

grounded in, duties that are similar or analogous to those which the person must engage in in the organisation.

[15] Ms Donnelly has provided a list of companies or organisations where she has stated she has served, or currently serves, as a Director, and I have taken reasonable steps to verify the information. She has stated that in her work and service on boards over the past 15 years she has been involved in the receipt, understanding and interpretation of financial reports both as an executive and non-executive director. She has stated that she has been involved in liaison with independent auditors, the provision of information, the receipt of their reports and discussion around their findings, discussion on changes in AASB standards⁶ which would affect her organisation, interpretation of their reports and discussions with finance and Audit committees and Boards regarding the financial statements. She has also stated that she has submitted financial statements agreed by the Board to funding bodies and provided contextual information around them.

[16] As a member of the Executive Council, her financial duties, as described in the rules of the organisation, include, amongst other things, the determination of subscription fees, the general management of the affairs of the organisation, the consideration of matters in which the Association is interested,⁷ the appointment or requirement of duties of the Chief Executive which include those related to his or her accounting obligation,⁸ the presentation of a report on the affairs of the organisation along with an audited statement of the accounts to the Annual General Meeting,⁹ being examined by the Auditor in relation to access to the books and accounts,¹⁰ the prescribing, deciding or approving of any withdrawals of money from the accounts, other disbursements and loans,¹¹ the development of policies and procedures relating to the expenditure of the organisation,¹² and the receipt and reporting of disclosures related to remuneration, material personal interests and payments.¹³ The duties summarised by Ms Donnelly in relation to her experience as a director or other professional experience may be considered similar or analogous to her duties in the organisation.

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

⁶ i.e. Australian Accounting Standards Board standards

⁷ See rule 19

⁸ See rules 25, 26

⁹ See rule 29

¹⁰ See rule 31

¹¹ See rule 35

¹² See rule 40

¹³ See rules 41, 42 and 43

[18] I am satisfied Ms Donnelly has a proper understanding of her financial duties within the organisation because of her experience as a company director or other professional qualifications and experience, and under subsection 293M(2) of the *Fair Work (Registered Organisations) Act 2009*, I grant an exemption from the requirement to undertake training under section 293K.



DELEGATE OF THE COMMISSIONER

Printed by authority of the Commonwealth Government Printer

<Price code A, PR351075>