



Australian Government

Registered Organisations Commission

4 December 2019

Paul Bastian
National Secretary
Australian Manufacturing Workers' Union

By email: national.secretary@amwu.asn.au
chystal.mcclelland@amwu.org.au

Dear Paul,

Application for exemption from financial governance training – Australian Manufacturing Workers' Union – GT2019/108 – 140, GT2019/152 – 162, GT2019/164 – 165

I refer to the application made by the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers' Union (the **organisation**) to the Commissioner of the Registered Organisations Commission (the **ROC**) for exemptions under section 293M of the Fair Work (Registered Organisations) Act 2009 (**RO Act**) on behalf of various office holders. The ROC received the application on 22 October 2019 with additional officers added to this application on 12 November 2019. On 29 November 2019, the organisation provided further information relating to relevant office holders.

The Fair Work (Registered Organisations) Amendment Act 2016 introduced a range of amendments to the RO Act, which took effect in May 2017. Included in the amendments was the insertion of section 293K of the RO Act. This section requires each officer of an organisation or branch, whose duties include financial duties, to undertake approved training that covers each of the officer's financial duties, unless exempted under section 293M. A civil penalty provision applies to section 293K for non-compliance.

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 me, as the Executive Director of the ROC, the relevant powers relating to the exemption of approved training.

The application is seeking an exemption for 46 of the organisation's office holders. The organisation has advised the dates each office holder commenced to hold the relevant office and I have included a list of the office holders along with the relevant details in an annexure (**Annexure A**) to this letter. It is clear from the information provided in the application that approved training in accordance with section 293K for the office holders would otherwise be required to be completed by a range of different dates in 2020 in the event that the application were to be declined.

Assessment

In the circumstances of the application, I must be satisfied that the office holders have a proper understanding of the financial duties of their office within the organisation because of the factors listed in subsection 293(2), i.e. their experience as an officer of a registered organisation, a company director, or other professional qualifications or experience.

It has been submitted that each office holder has undertaken an accredited financial governance training course and Annexure A contains the date the office holders completed the relevant and approved training. The completion of the training occurred over the period from 23 January 2019 – 13 November 2019. The training undertaken was the Australian Council of Trade Unions Governance Course, approved by the ROC under section 293L of the RO Act in July 2017. The organisation has provided a copy of the certificate evidencing the office holder's completion of the relevant training, except for [REDACTED] and [REDACTED] who completed their training on 13 November 2019. Once received, I understand that the organisation will provide the ROC with a copy of their certificates of completion.

It is my understanding that during a recent election process for the organisation, each office holder was elected to an initial office and then subsequently elected to a further office. The election to the subsequent office occurred either on the same day or within no more than 18 days of the initial election, with the exception of [REDACTED] and [REDACTED] whose subsequent election occurred 2 months after their initial election.

The accredited financial governance training course undertaken by each office holder occurred after their election to each of their offices and within 6 months of election except for the following:

- [REDACTED]: elected to National Councillor 29 August 2019 – training completed 27 August 2019 (2 days before commencing subsequent office);
- [REDACTED]: elected to National Conference Delegate 1 July 2019 and State Councillor 10 July 2019 – training completed 23 January 2019 (approximately 5 months before commencing initial and subsequent office);
- [REDACTED]: elected to National Conference Delegate 1 July 2019 and State Councillor 11 July 2019 – training completed 15 April 2019 (approximately 2 months before commencing initial and subsequent office);
- [REDACTED]: elected to National Councillor 29 August 2019 – training completed 27 August 201 (2 days before commencing subsequent office); and
- [REDACTED] elected to National Conference Delegate and National Councillor 29 August 2019 – training completed 22 August 2019 (7 days before commencing initial and subsequent office).

It has also been submitted that 24 of the office holders have held previous offices within the organisation, with 22 of the office holders being newly elected.

Financial duties as per the organisations rules

The application is seeking exemptions for the following offices within the organisation:

- National Conference Delegate;
- National Councillor;
- Rank & File Delegate to National Council;
- Additional Delegate to National Council;
- State Councillor; and
- Assistant State Secretary.

The organisation's rules (**the rules**) provide that members of the National Conference exercise functions including:

- to raise or spend funds as are in the opinion of Conference necessary to carry out the objects (rule 5A2.1(a));
- to impose levies in accordance with the rules (rule 5A2.1(c) and 8E.1);
- to give directions relating to budgets adopted by National Council (rule 5A2.1(d));
- to exercise all or any of the powers of National Council (rule 5A2.1(k));
- to fix the salary, conditions of employment and allowances for all full-time officials and salaried officers (rule 5A2.1(l) and 9I.1); and
- determine the maximum amount of contributions to be paid by members and the National Council (rule 7B.1).

The rules provide that the responsibilities of the National Council include:

- to control and conduct the business and affairs of the organisation while the National Conference is not in session (rule 5B2.1(c));
- expend such money as may, in the opinion of the Council be necessary and invest such money as may, in the opinion of the Council, be necessary or desirable (rule 5B2.1(e));
- fix the salary conditions of employment and allowances for all clerical and administrative staff employed by the Union (rule 5B2.1(l));
- approve the making of loans, grants and donations (rule 5B2.6);
- develop and approve each year a National Budget and Subsidiary Budgets that, when combined, amount to the total sums of income and expenditure provided for in the National Budget (rule 5B2.7);
- review the income and expenditure levels of the organisation and each section of the organisation for which a Subsidiary Budget has been prepared (rule 5B2.9); and
- approve the payment of Funeral Benefits and Special Grants (rule 7E.2).

The rules provide that the responsibilities of the State Council and its Delegates include:

- is the executive body of the State Conference in the State concerned (rule 5E2.2)
- approve the making of loans, grants and donations (rule 5E2.3);
- collect all contributions, fines, levies etc. payable under the rules and issue receipts (rule 5E2.7)
- provide special grants to members (rule 7E.3)
- bank monies received (rule 8C.1)
- administer any monies raised by levies (rule 8E.4)

Rule 5H4.4 sets out the responsibilities of an Assistant State Secretary. I note that rule 5H4.4 provides that the position of Assistant State Secretary generally assists the State Secretary and carries out duties that are allocated by the State Council, State Conference, National Council or National Conference. It appears that the responsibilities of an Assistant State Secretary relating to financial duties are not substantially different to those of the other positions on the State Council, State Conference, National Council or National Conference.

Decision

I have taken into account the fact that the office holders have completed relevant and approved financial governance training within the last 12 months, with the majority of office holders completing the training within the last 3 – 4 months and within 6 months of election to their initial and subsequent offices. I note that the financial duties undertaken within the roles of National Conference Delegate, National Councillor, Rank & File Delegate to National Council, Additional

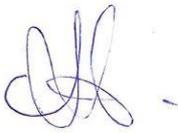
Delegate to National Council, State Councillor and Assistant State Secretary are similar to and replicate some of the financial duties undertaken in their initial office for which training has been completed.

In accordance with section 293M(2), I am satisfied that the office holders have a proper understanding of their financial duties because of their recent completion of accredited governance training. I therefore grant the office holders included and listed in Annexure A an exemption from undertaking approved financial training in respect of the offices also identified in that annexure.

I have considered whether the exemptions 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.

If you have any questions concerning this matter please contact Joanne Fenwick on 1300 341 665 or via email at regorgs@roc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'CE', with a small horizontal line extending to the right.

Chris Enright
Executive Director
Registered Organisations Commission

Annexure A

Annexure A has been redacted in full