



Australian Government
Registered Organisations Commission

16 May 2019

Ms Deborah Smith
President
Master Grocers Australia Limited

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

Dear Ms Smith,

Exemption from financial governance training application for Graeme Gough – Master Grocers Australia Limited – GT2019/23

I refer to your application dated 19 March 2019 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 Graeme Gough, a Director 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 also be aware that significant changes have recently been introduced into the regulatory scheme relevant to registered organisations 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.

As a result of the legislative amendments, 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.

You have advised that arising from a casual vacancy Mr Gough held office as a Director following his appointment to the organisation's Board in July 2017, and that he was subsequently re-elected to that office on 16 November 2017.

In examining the organisation's annual return records, that information indicates that Mr Gough commenced holding office on 5 July 2017. Subsection 293K(2) of the RO Act requires that an organisation 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 election.

As indicated in the ROC's letter dated 3 May 2019, it is apparent that no training was undertaken by Mr Gough upon assuming the office of Director and that more than 18 months have passed since he commenced 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, Mr Gough would need to complete approved governance training forthwith, as the six month period for undertaking financial training elapsed on 5 January 2018 and it is therefore overdue.

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 Mr Gough has a proper understanding of his financial duties within the organisation because of his experience as an officer of a registered organisation or other professional qualifications or experience.

You have submitted that the specific circumstances that warrant consideration for an exemption under section 293M relate to Mr Gough having experience in performing his duties, including financial duties as:

- Director of Negrada Pty Ltd from 2009 to the present time;
- Director of Quaymarket Pty Ltd from 2011 to the present time;
- Director of G & L Gough Pty Ltd from 1994 to the present time; and
- Director of the Australasian Convenience and Petroleum Marketers Association from 2002 to 2003 and from 2005 to 2006.

In addition, you have confirmed that Mr Gough has been provided with:

- a copy of the organisation's rules, including those applicable to the exercise of his duties (particularly his 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 him to familiarise himself with specific obligations under the RO Act and the organisation's rules.

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

In addition to the financial duties set out in the RO Act, the Board of the organisation (of which Mr Gough has been a member since July 2017) has the following duties and responsibilities in respect of financial governance:

- determining the amounts of entrance fees and annual subscriptions payable from time to time (Rule 7.32) 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 of 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).

Decision

I have taken into account this officer's experience in performing his duties as Director of the organisation and his broader business experience (including various directorships over an extended period), 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.

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

I note that if there is a change in the office that Mr Gough holds (for example, if he is appointed or elected to a different officer role) the requirement for governance training or an exemption must again be considered by the organisation in accordance with section 293K of the RO Act.

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 Andrea O'Halloran, Senior Adviser either by email to andrea.o'halloran@roc.gov.au or by phone on 03 9954 2965.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'CE', with a small dash to the right.

Chris Enright
Executive Director
Registered Organisations Commission