



Compliance update: below-value disposal of vehicles – a potential emerging issue

In April 2017, Barker J issued a judgment in the Federal Court which included reference to contraventions of various provisions of the Fair Work (Registered Organisations) Act 2009 (the RO Act) by former officials of a federally registered organisation. A number of relevant contraventions related to the purchase of luxury F350 motor vehicles contrary to the interests of the organisation. The Federal Court decision can be found at:

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0405>

While that case related to the *purchase* of motor vehicles using branch funds, compliance with policies, procedures, rules and RO Act provisions can also be relevant as they relate to the *sale, transfer* or *disposal* by an organisation of vehicles.

Emerging theme regarding the sale or transfer of vehicles

In three separate and unrelated protected disclosures received by the ROC in recent months, a consistent theme related to the transfer of used motor vehicles belonging to federally registered organisations to their employees, officials or third parties at below market value.

In these circumstances, it is timely to highlight the theme of these disclosures, their potential consequences and to indicate that the ROC proposes to consider any relevant compliance, governance or reporting issues which may emerge in the event that there is substance to any of the disclosures which have been made.

To highlight the issue, the following separate and unrelated examples are provided:

Disclosure	Potential contraventions
An allegation that an elected officer of a registered organisation regularly 'gifts' motor vehicles to departing officials and/or employees without seeking or obtaining the requisite prior approval of the relevant Committee of Management.	Potential contraventions of: <ul style="list-style-type: none"> the rules of the organisation officers duties in ss. 285, 286 & 287 of the RO Act disclosure required by s. 237 of the RO Act disclosures required by s. 293BC, s. 293G and s. 293J of the RO Act
An allegation that an elected officer of a registered organisation had a practice of approving the below value sale of vehicles to employees and/or officials of that	Potential contraventions of: <ul style="list-style-type: none"> the internal policies of the organisation

Disclosure	Potential contraventions
<p>organisation. This enabled the vehicles to be very quickly and in some cases immediately 'on-sold' to private or commercial purchasers – the sales are alleged to have resulted in significant profits to those employees and/or officials – to the consequential financial detriment of the registered organisation and its members.</p>	<ul style="list-style-type: none"> • officers duties in ss. 285, 286 & 287 of the RO Act • employees duties in s. 287 of the RO Act. • disclosures required by s. 293BC, s. 293G and s. 293J of the RO Act
<p>An allegation that an elected official of a registered organisation has a practice of approving the sale of the organisation's vehicles at a heavily reduced cost to a third party commercial car dealer who then on-sold the vehicles for up to four (4) to five (5) times the amounts paid to the registered organisation for each vehicle – to the financial detriment of the registered organisation and its members.</p>	<p>Potential contraventions of:</p> <ul style="list-style-type: none"> • the internal policies of the organisation • officers duties in ss. 285, 286 & 287 of the RO Act.

The ROC recommends organisations review their practices, policies & procedures

In exercising the Commissioner's function of promoting the efficient management of organisations and high standards of accountability of organisations and their office holders to their members, as well as compliance with the financial reporting and accountability requirements of the RO Act, the ROC recommends that:



Federally registered organisations and/or their branches (where relevant) review their current practices, policies and governance procedures related to the sale, transfer or disposal of motor vehicles to their employees and officials to satisfy themselves that high standards of governance and accountability are being achieved and that officers and employees are meeting their duties under the RO Act.

The ROC will continue to investigate these types of allegations

The ROC will continue to investigate whistleblower disclosures made to it involving the below-value sale, transfer or disposal of motor vehicles by registered organisations to their employees and officials which may be to the detriment of registered organisations and their members.

Further information

If you require further information about this compliance update please contact the ROC at regorgs@roc.gov.au or call us on **1300 341 665**.

© Commonwealth of Australia 2020

This compliance update is not intended to be comprehensive. It is designed to assist in gaining an understanding of the relevant provisions of the Fair Work (Registered Organisations) Act 2009 and the Registered Organisations Commission and its work. The Registered Organisations Commission does not provide legal advice.