



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 regulator, 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 Fair Work Commission 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
<p>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.</p>	<p>Potential contraventions of:</p> <ul style="list-style-type: none">• the rules of the organisation• officers duties in sections 285, 286 & 287 of the RO Act• disclosure required by section 237 of the RO Act• disclosures required by section 293BC, section 293G and section 293J of the RO Act
<p>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 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>	<p>Potential contraventions of:</p> <ul style="list-style-type: none">• the internal policies of the organisation• officers duties in sections 285, 286 & 287 of the RO Act• employees duties in section 287 of the RO Act.• disclosures required by section 293BC, section 293G and section 293J of the RO Act
<p>An allegation that an elected official of a registered organisation has a practice of</p>	<p>Potential contraventions of:</p> <ul style="list-style-type: none">• the internal policies of the organisation



Disclosure	Potential contraventions
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.	<ul style="list-style-type: none">officers duties in sections 285, 286 & 287 of the RO Act.

The Fair Work Commission (the Commission) recommends organisations review their practices, policies & procedures

In exercising the General Manager'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 Commission 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 Commission will continue to investigate these types of allegations

The Commission 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.



Fair Work
Commission

Further information

For further information about this compliance update please contact the Commission at regorgs@fwc.gov.au or call us on 1300 341 665.

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This Compliance Update is not intended to be comprehensive. The Fair Work Commission does not provide legal advice. Users must rely upon the relevant legislation, which is set out in the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Fair Work (Registered Organisations) Regulations 2009*.