



Compliance update:

Is your organisation transparent and complying with notification of change requirements?

The Fair Work Commission (the Commission) has noticed a number of registered organisations continue to have ongoing compliance issues with notification of change (NOC) requirements under the *Fair Work (Registered Organisations) Act 2009* (the RO Act). **The purpose of this update is to explain the requirement in order to assist with general compliance.**

When certain changes occur, an organisation must update its records and then:

- have the correct person notify lodge the Commission
- clearly identify the change
- submit the NOC with the Commission within 35 days after the change occurs.

The obligation to lodge NOCs helps to ensure the availability of accurate and current information, promoting transparency and participation, and its significance is recognised by the legislation. The failure to comply with the notification requirements under the RO Act can expose an organisation to civil penalties.



Fair Work
Commission



People are accessing this information, so make sure it's correct

The annual return of information and NOC lodgements are among the most popular files downloaded from the Commission website.

Members access this information to better understand who the office holders making important decisions within their registered organisation are.

The Commission provides guidance and monitors and enforces compliance with the NOC requirements. We've noticed several instances of repeat non-compliance, and many of these may have been prevented through simple record-keeping procedures and other governance measures being implemented within the organisation.

In the table below we've described examples of the types of non-compliance issues the Commission has been engaging with registered organisations about, together with some strategies for prevention.



Examples of common issues	How to prevent non-compliance
<p>Lodge NOCs <u>after</u> a change has occurred, not before</p> <p>Case study example</p> <p>A registered organisation receives a letter of resignation from an officer, giving notice of their intention to leave office in four weeks.</p> <p>The registered organisation must lodge a NOC about the officer's departure <u>after</u> they have left office (and not before).</p> <p>A notification that is lodged before a change has occurred is not a valid NOC (because the change hasn't happened yet), and as a result the organisation will be asked to lodge again within 35 days <u>after</u> the change takes place.</p>	<p>Advance lodgement exposes the organisation to the risk of forgetting to lodge a NOC when it's due.</p> <p>Set diary reminders to ensure future notifications are lodged within the legislative timeframes.</p> <p>A change that is expected to occur in the future may not actually happen and notifying the Commission early may compromise the accuracy of the organisations' records.</p>



<p>Changes must be clearly identified – it’s about transparency</p> <p>Organisations must identify the specific changes that have occurred and ensure correct details are provided to the Commission.</p> <p>The Commission sees two common errors:</p> <ul style="list-style-type: none">• no NOC is lodged because the information was put in the annual return (the changes are included but not identified)• the organisation provides the entire officer list when notifying the Commission about changes after an election (even where some of those listed haven’t changed office). <p>This is likely to result in:</p> <ul style="list-style-type: none">• the change(s) not being readily identified• insufficient information being included, such as the date the change(s) took effect or who has left office• less clarity and therefore reduced transparency to members.	<p>Using Commission templates can help organisations achieve voluntary compliance and maintain high levels of transparency to members.</p> <p>NOCs should be separate to the annual return to ensure that all changes are easily identified <u>and</u> lodged on time.</p> <p>If an organisation lodges a NOC together with the annual return, it must ensure that all NOC requirements are complied with, including setting out people who have left office.</p> <p>After an election, ensure that you only include details of offices that have changed, that is:</p> <ul style="list-style-type: none">• outgoing office holders• incoming office holders• offices that are now vacant. <p>Do not include people who have been re-elected to the same office.</p>
--	---



<p>Don't forget to notify the Registered Organisations Services Branch (ROSB) of the Commission after a relevant rule change</p> <p>Case study example</p> <p>The Commission certifies rule changes that close a branch. Once the change takes effect, the organisation must update its records and lodge NOCs about:</p> <ul style="list-style-type: none">• the closure of the branch• the officers who are leaving office• the removal of the offices of the branch.	<p>Understand the full impact of rule changes before they take effect.</p> <p>Pay attention to whether the changes apply from the date the rule change is certified by the Commission, or a different date specified under the rules.</p> <p>A NOC must be lodged with ROSB within 35 days after a change occurs.</p>
<p>NOCs must be signed by the right person</p> <p>We've seen multiple instances of unauthorised employees and officers signing the annual return and NOCs on behalf of the registered organisation.</p> <p>The RO Act and RO Regulations require that these lodgements are signed by the Secretary or other prescribed officer, who is authorised under the rules of the organisation to lodge information with the regulator.</p>	<p>In most registered organisations, the Secretary or the President sign the declaration contained in the annual return and NOCs.</p> <p>Check your rules carefully to determine who can sign on behalf of your organisation.</p>



Fair Work
Commission

We're committed to digital transformation

The Commission is increasingly using digital solutions to reduce red tape for registered organisations and help them achieve higher levels of compliance.

We are actively working to implement an online interface on our website for the lodgement and updating of records. This interface, also known as a portal, is expected to improve the accuracy and speed of lodgements and give members up-to-date access to information about organisations. The Commission also expects the portal will help organisations to monitor their own compliance.



The portal project is a significant undertaking and is in the early stages of development.

Registered organisations must still comply with their statutory obligations under the current arrangements in place. A portal will provide the ability in the future for organisations to lodge certain documents online through the Commission website. It won't change an organisation's obligations, but it is designed to make the processes quicker and easier.

The steps you can take right now to support voluntary compliance

We recommend that registered organisations:

- **ensure administration staff and responsible office-holders know how to update records and lodge NOCs with the Commission.** There is a [NOC module in the Commission's E-Learning Centre](#), which guides you through the compliance requirements, and the resources that can help you achieve compliance. It's an excellent resource to include when inducting new staff and officers who undertake compliance activities on behalf of your organisation.
- **have governance systems** in place to ensure lodgements are accurate and timely. As the notification of change requirement is ongoing and changes sometimes can't be predicted, organisations must be vigilant. For example, set up reminders to coincide with possible changes, such as the conduct of an



Fair Work
Commission

election or a change of rules. Have established administrative processes and checks in place to ensure that changes (even unexpected ones) are notified within the 35-day timeframe.

Registered organisations with branches are encouraged to have arrangements in place between the national office and individual branches to ensure that a single entity has responsibility for maintaining up-to-date records and notifying the FWC of changes.

- **use a Commission [template](#)** to lodge the annual return and notifications of change. From our experience, it's clear that organisations that use our templates are more likely to comply the first time, without the need to amend and re-lodge documents
- **self-report possible contraventions of the RO Act** and promptly address the reasons for non-compliance. Most issues are resolved quickly, following guidance and tailored assistance from the Commission.
- Early acknowledgement of problems can make a big difference. In the case study linked to below, the trial judge said in the judgment that the organisation did not admit the breaches as early as it could and waited more than a year before putting in place systems to ensure compliance. In that case, the penalty for multiple instances of failing to keep accurate records and lodge NOCs on time was \$200,000.

Further resources



Case study – Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia [2020] FCA 96

Read our plain language case summary [online](#).



Visit the Commission's E-Learning Centre

There is a [notifications of change module](#), which steps you through the legal obligations, and the resources that are available to help organisations achieve compliance. You can also quiz yourself on how much you learnt!



Fair Work
Commission



Use a Commission template to make your NOC lodgements

The templates help registered organisations meet their obligations.



Need tailored information? Book a 'Governance to You' visit

We're available to provide tailored information, or present to a group of people from your organisation. Complete the form and we'll be in touch.

If you require further assistance regarding the information in this compliance update please email the Fair Work Commission at regorgs@fwc.gov.au or call us on 1300 341 665.

© Commonwealth of Australia 2023

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*.