



Compliance Update: Current issues with disclosures and benefits

The Registered Organisations Services Branch at the Fair Work Commission is responsible for regulating federally registered organisations in Australia. This includes assessing and investigating allegations such as those related to transparency and making adequate disclosures to members and to the regulator. The Registered Organisations Services Branch has also been reviewing officer and related party (ORP) disclosure statements and making further enquiries designed to facilitate organisations and branches being aware of and that they are complying with their obligations.

The purpose of this update is to raise awareness about current issues we have identified related to benefits and disclosures, to share real-life examples and to provide practical strategies for registered organisations to promote and achieve compliance in this area.

The *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires that officers, branches and organisations make disclosures about remuneration and non-cash benefits, as well as payments to related parties and declared persons or bodies. The RO Act sets out when these disclosures must occur, how the disclosures are made and who they are made to. These disclosures are separate and in addition to any scheme that may be in an organisation's rules.

What needs to be disclosed?

There are different disclosures that need to be made.

For officers this includes:

- Remuneration paid to an officer:



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- if they are a member of a board (even if the officer has agreed to the payment being made to their branch or organisation)
- by a related party of the organisation or branch, in connection with their duties as an officer
- Material personal interests of an officer with financial management duties (for example committee of management members) that could relate to the affairs of the organisation or branch. This applies whether the interest belongs to the officer or to someone related to them, including a spouse.

For organisations and branches, disclosures that are required include:

- Payments to the top five officers when ranked by remuneration, including relevant salary and any non-cash benefits (this could be more than five officers where some receive equal remuneration)
- Details about any officers' material personal interests
- Details about payments made to related parties of the organisation or branch, or to declared persons or bodies of the organisation or branch.

More information (including an explanation of these terms) is available in our [fact sheet](#) on officer disclosures.



Officer and related party disclosure statements (ORPs)

Every organisation and each of their branches must prepare an [officer and related party disclosure statement \(ORP statement\)](#). An ORP statement is required every financial year.

It must be provided to members and a copy lodged with the General Manager of the Fair Work Commission within six months after the end of the financial year.

Even if there are no disclosures, organisations and branches are still required to lodge the ORP statement and make it clear in the statement that there were no disclosures.

The RO Act requires disclosures to protect the integrity of decisions that are made in registered organisations. Disclosures are an essential part of good governance and can help organisations to identify and effectively manage conflicts of interest. A [compliance update on managing conflicts of interest](#) is available which provides more in-depth information and real life examples.



Disclosures by officers must be made in writing to the Committee of Management of the organisation or branch, and must be made as soon as practicable once the officer is aware of the conflict. This could be immediately after they know that a payment will be received, or as part of a standing disclosure made before, or as soon as practicable after, the first payment.

Disclosures about material personal interests can be made to the Committee of Management either orally or in writing. The disclosure must include sufficient details about the nature and extent of the interests, as well as how it may relate to the affairs of the organisation or branch, so that the organisation can take the necessary steps to deal with it.

In the table below, we've described examples of non-compliance and the consequences that can result from them.

Case study examples	The issues
<p>Understand the conflict of interest provisions and be prepared to provide evidence to your members or the regulator that your organisation acted transparently</p> <p>The regulator has written to several organisations recently after examining their officer and related party disclosure statements that disclosed payments to a related party of an officer or where an officer has a material personal interest.</p> <p>This has included payments to businesses owned by family members of officers and contracts with entities where an officer could personally benefit from the transactions.</p>	<p>It isn't enough to simply disclose the transaction in your ORP statement. Section 293F of the RO Act restricts officers being involved in decision making processes when they have a material interest. The officer must disclose the interest to their organisation and remove themselves from participating in the decision making process.</p> <p>Organisations should document any decisions that involve conflicts of interest, for example the minutes of meetings should record when a disclosure was made and that the officer removed themselves from participating in the discussion and the decision making, and the process outcome. An organisation must be able to show whether this has occurred, particularly when the regulator makes requests for further information. We routinely inspect</p>



	<p>these kinds of records during inquiries, investigations and following whistleblower complaints. Organisations that keep good records can more easily show what happened and why, and the strategies they put in place to handle the issue.</p>
<p>Officer legal costs</p> <p>Other examples the regulator has identified in ORP statements have included non-cash benefits such as paying an officer’s personal legal fees.</p>	<p>An entire <u>compliance update on legal costs of officers is available on our website.</u></p>
<p>Officers need to be honest and forthcoming with the Committee of Management</p> <p>An issue we see in whistleblower complaints is when officers have been misleading or ambiguous when disclosing conflicts of interest and sharing information that explains when an officer may benefit from a particular decision.</p> <p>Another scenario we see in whistleblower complaints is the result of a breakdown in communication between an organisation’s paid officers or employees, and the committee of management (CoM) which is usually comprised of members volunteering their time.</p> <p>These honorary officers often rely on the full-time paid officer or employees to provide them</p>	<p>All officers and employees of registered organisations are entrusted by members to make decisions that are in the best interests of members and the organisation. Officers are required by the RO Act to act with care and diligence, and in good faith. Officers and employees must not misuse their position or information available to them to gain an advantage for themselves or others.</p> <p>Failure to comply with these duties can make a person liable to civil penalties. Where reckless or intentional dishonesty is involved they may also be liable for criminal penalties (which can include substantial fines and/or imprisonment).</p> <p>When a person doesn’t disclose relevant information, particularly when it involves financial management or decision-making, they are putting themselves and others at risk of breaches of the RO Act. It is expected that</p>



with the information they need so that they can make informed decisions and carry out their duties with care and diligence.

In some cases, the paid full-time officer may have withheld information, or not fully disclosed information, about expenditure that requires approval from members of the CoM. In these cases, the full-time officer's action can amount to a breach of their legal obligations.

officers will seek information and ask questions. This is a necessary part of **their** duty of care and diligence and they are entitled to this information.

Full-time paid officers and employees should consider the volunteer officers' perspective (i.e. that they do not necessarily see the same level of information on day-to-day matters) and should therefore disclose the information needed for officers to be fully informed before decisions are made.

How disclosures are managed can define their impact.

The following steps will help your organisation:

- **Keep detailed records about disclosures in a register of interests.** A register provides a central location to keep the details of all disclosures made and will help to provide visibility of disclosures so the organisation can think about how they can be managed. A register that is properly maintained will also help organisations and branches provide accurate and timely information in the ORP statement to members and the regulator.
- **Keep good minutes.** Section 141(b) of the RO Act mandates that an organisation's rules must require it to keep minute books which set out the proceedings and decisions of the Committee of Management. Minutes should include clear and concise descriptions of all topics of discussion and any decisions made during the meeting. If an officer has revealed a conflict of interest, notified or updated a material personal interest and/or if they have left the room to allow the meeting to discuss matters they are restricted from being involved in, these should be recorded in the minutes as evidence that they occurred.
- **Enforcing and setting expectations around disclosures and how potential conflicts of interest will be managed.** A policy should clearly outline when disclosures are required, how they are declared and to whom. The failure of an officer to disclose can cause harm to the organisation, and may have legal consequences for the officer, so it's a good idea to both encourage disclosures and highlight the consequences of not reporting disclosures.



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The Registered Organisations Services Branch continues to investigate allegations of non-disclosure and non-compliance. However, we also work closely with organisations to promote high levels of compliance and to provide guidance and support to officers and registered organisations.

Further Resources



E-Learning Centre and Good Governance Guide

There is an [officer and organisation disclosures module](#) where you can learn more about the disclosure requirements for both registered organisations and office holders and how to comply with them. There are also chapters of our Good Governance Guide on [ORP disclosures](#) and [conflicts of interest](#).

[Good Governance Guide Chapter 8: Record-keeping and decision making.](#)

Guidance notes

The [disclosure obligations of officers' guidance note](#) includes a more detailed explanation of the legal obligations of officers, with further practical examples.

The [disclosure obligations of organisations and branches guidance note](#) outlines the disclosures that organisations must make to comply with their obligations under the RO Act.

Fact sheet

[Factsheet: Disclosures required by the Fair Work \(Registered Organisations\) Act 2009.](#)

If you require further assistance regarding the information in this fact sheet, please contact the Commission at regorgs@fwc.gov.au or call us on 1300 341 665.

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This fact sheet 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*.