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Guidance Note

Disclosures and training required by Holders of Office under the *Fair Work (Registered Organisations) Act 2009*

Guidance Note: Disclosures and training required by Holders of Office under the *Fair Work (Registered Organisations) Act 2009*

Disclosure Schemes

The *Fair Work (Registered Organisations) Act 2009* (the **RO Act**) requires organisations, and the officers and branches of organisations, to make disclosures concerning remuneration, non-cash benefits, and payments to related parties and declared persons or bodies. It also requires that officers with financial duties must complete approved training.

This Guidance Note explains the disclosures that holders of office in registered organisations are required to make as set out in Chapter 9, Part 2A of the RO Act. The RO Act mandates when these disclosures must occur, how they are made and to whom.

Compliance with this disclosure framework will ensure high levels of transparency in the transactions entered into by officers, and their remuneration, for the benefit of members of registered organisations and the broader community.

This Guidance Note also explains the training requirements with which officers who have financial duties must comply.

A number of the key concepts in these provisions are based on those found in relevant provisions of the *Corporations Act 2001* (the **Corporations Act**). This Guidance Note explains those concepts, where relevant, to assist in understanding the equivalent RO Act provisions.

This Guidance Note draws on the experience and understanding of the Registered Organisations Commission (**ROC**) to promote compliance by office holders through step-by-step instructions and practical examples. This Guidance Note will be updated following case law developments or in light of the outcomes of ongoing engagement with relevant stakeholders. This Guidance Note is not legal advice.

These disclosure requirements are separate and in addition to any disclosure scheme contained in the rules of an organisation.

For information about disclosure requirements under the RO Act of organisations and branches, see GN 014: Disclosures required by Organisations and Branches under the *Fair Work (Registered Organisations) Act 2009*.

Disclosures by Holders of Office

Disclosures that must be made by ALL OFFICE HOLDERS (s. 293B)

Each officer of an organisation and each officer of a branch of an organisation must disclose to the organisation or branch any remuneration paid to the officer:

- I. because the officer is a member of a Board and:
 - the officer is **only** a member of the Board because they are an officer, or
 - the officer was **nominated** to the Board by the organisation, branch or peak body; or
- II. by a **related party** of the organisation or branch in connection with the officer's duties as an officer. For information about who is a 'related party' of an organisation or branch, please see Appendix 1 of this guidance note.

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An **officer** of an organisation or branch is defined in the RO Act (sections 6 and 9). It includes a person who, under the organisation or branch rules, is entitled to participate directly in the management of the affairs, or the determination of policy, of the organisation or branch, and will usually be a person who has been elected to their position.

The President, Vice President, Secretary, Assistant Secretary, Treasurer and members of the Committee of Management of the organisation or a branch of the organisation are normally officers.

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Remuneration that officers are required to disclose is defined in the RO Act to include pay, wages, salary, fees, allowances, leave, benefits or other entitlements, but does not include a non-cash benefit.

The definition of 'remuneration' is discussed in GN 014: Disclosures required by Organisations and Branches under the *Fair Work (Registered Organisations) Act 2009*.

The disclosure must be made in writing to the Committee of Management of the organisation or branch:

- as soon as practicable after it is paid,¹ or

¹ Section 293BA, RO Act.

- as part of a standing disclosure made before or as soon as practicable after the first payment.² Standing disclosures can be made in relation to remuneration paid to an officer under a contract or arrangement regularly during a financial year. The officer must update the standing disclosure, where the amount they are paid exceeds that previously notified³; or if (at the end of a financial year) the amount differs from that notified.⁴ See also ‘Standing Disclosures’ below.

Example: Sheng is the Secretary of OPQ, which is an employer organisation. AP Co. is a training company which provides approved governance training, and OPQ is able to appoint two-thirds of its directors. AP Co. has asked OPQ whether Sheng can speak at one of their training sessions, drawing on his role and experience as Secretary of OPQ. OPQ agrees to the request. AP Co. will pay Sheng a fee and provide a travel allowance.

Sheng should disclose to OPQ the fee and travel allowance he receives from AP. Co. This is because AP Co. is a related party of OPQ (see Appendix 1 of this guidance note for further information), and Sheng’s speaking engagement is likely to be connected to his duties as an officer of OPQ.

Example: Jennifer is an officer of XYZ union, which has nominated her to the Board of MNO organisation. MNO will pay Jennifer a monthly Board fee of \$500. Jennifer can make a standing disclosure to XYZ’s Committee of Management any time before, or as soon as practicable after, she receives the first monthly payment. She will need to update the standing disclosure if, for example, MNO increases the monthly Board fee to \$750.

Jennifer would also need notify the committee of management at the end of the year if the total amount MNO had paid her was more or less than she had earlier disclosed they would.

Example: Lee is a Director on the Board of KLM Pty Ltd, to which he was nominated by JKL union.

KLM Pty Ltd pays Lee an annual fee of \$250 000 and also provides health insurance. Upon receipt of the fees from KLM, Lee always transfers them directly to JKL union.

Lee ought to disclose the fees he receives from KLM Pty Ltd, even though he passes them on to JKL union. He sits on the Board due to a nomination from JKL union and is entitled to the fees because he is a member of the Board.

Lee does not need to disclose the health insurance because this is a non-cash benefit, and non-cash benefits do not need to be disclosed by officers in these circumstances.

² Subsections 293BB(1) & (5), RO Act.

³ Subsection 293BB(3), RO Act.

⁴ Subsection 293BB(4), RO Act.

Penalties: Officers are liable for civil penalties of a maximum of \$21 000, or a maximum \$252 000 for serious contraventions, for breaches of these disclosure obligations.⁵

Disclosures that must be made by ‘disclosing officers’ (s. 293C)

A disclosing officer is an officer whose duties include duties that relate to the financial management of the organisation or branch⁶ – for example, an organisation’s Secretary, Treasurer and Committee of Management members. An officer will have duties relating to the financial management of the organisation or branch where they are, for example, responsible for authorising payments or approving the financial reports.

A disclosing officer must disclose to the Committee of Management of the organisation or branch details of any material personal interest that the officer has or acquires in a matter that relates to the affairs of the organisation or branch.⁷

The meaning of ‘material personal interest’

‘Material personal interest’ is not defined in the RO Act, but the same concept is used in the Corporations Act, and therefore the following principles are likely to apply:⁸

- ‘Material’ means matters that may influence an officer’s consideration of a matter relevant to the organisation, including influencing how an officer may vote on an issue determined by the Committee of Management.
- A ‘personal interest’ does not have to be financial – for example, it might arise from cultural or social interests which might influence the officer in considering some matters relevant to the organisation.
- A ‘personal interest’ does not need to be held by the officer directly – for example, where an officer’s relative will benefit from a matter relevant to the organisation, this may amount to a material personal interest of the officer if it could influence the officer’s consideration of the matter.
- An interest which does not give rise to a ‘real [and] sensible possibility of conflict’⁹ of interest on the part of an officer would not be a material personal interest.
- An assessment must be made of the connection between any advantage an officer might personally obtain, and the matter relating to the organisation or branch. If the officer’s interest is real or substantial, it must be disclosed.

⁵ Subsections 293B(1) & (2), RO Act. Note: all maximum penalties in this Guidance Note are current as at the date of publication.

⁶ Subsection 293C(1), RO Act.

⁷ Subsections 293C(2) & (3), RO Act.

⁸ These principles are found in *Ford, Austin and Ramsay’s Principles of Corporations Law* (17th edition, 2018), at [9.130.3].

⁹ *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41.

A disclosing officer should consider the following questions regarding any possible material personal interest:

Step 1	Step 2	Step 3	Step 4
Does it affect me personally?	Does it affect someone I know?	Is the connection close enough or important enough to influence me?	Could the interest give rise to a real and sensible possibility of conflict?
No – go to Step 2 Yes – go to Step 3	No – no material personal interest Yes – go to Step 3	No – go to Step 4 Yes – likely material personal interest	No – no material personal interest Yes – likely material personal interest

Examples

In the examples below, the disclosing officers' duties include duties that relate to the financial management of the organisation.

Material personal interest	No material personal interest
<p>Julie is President of DEF employer organisation, which is currently considering the purchase of property to relocate its head office. Julie's sister, Dominique, is a real estate agent specialising in commercial property. Julie would like to use Dominique's agency to purchase the property. This would amount to a material personal interest on the part of Julie, because Dominique is a relative who will benefit from the purchase. Julie must disclose this to DEF's Committee of Management.</p> <p>Material Personal Interest: YES</p>	<p>Louise is on the board of union HIJ which is seeking to purchase new premises. HIJ is currently determining which bank to take out a mortgage with. Louise is aware that she may indirectly own shares in some of the major banks through her superannuation fund.</p> <p>This is unlikely to be considered a material personal interest on the part of Louise, given that issuing one mortgage is unlikely to have any significant effect on the value of the bank's shares, and is therefore unlikely to benefit Louise in any meaningful way.</p> <p>Material Personal Interest: NO</p>
<p>Stacey is the Secretary of WXY Union which is considering the appointment of a new organiser. A candidate for appointment to the role is Alan, who is Stacey's brother. Stacey thinks Alan would do an excellent job and thinks he is far superior to any of the other candidates for the role. Stacey</p>	<p>Ioannes is the honorary President of QRS Union, which is currently acting as a bargaining representative for some members of the union in enterprise bargaining with Sty Ltd. Sty Ltd employs some of the union's members, including</p>

<p>believes that she has reached this conclusion on an objective assessment of Alan's abilities and experiences. Nevertheless as their relationship has the potential to affect Stacey's vote on the appointment of an organiser she is required to disclose her relationship to the Committee of Management as a material personal interest.</p> <p>Material Personal Interest: YES</p>	<p>Ioannes. Ioannes owns a small quantity of shares in Sty Ltd.</p> <p>Assuming that the outcome of enterprise bargaining is unlikely to have any meaningful effect on the Sty Ltd share price, this is unlikely to be considered to be a material personal interest on the part of Ioannes, although it may be best practice to disclose it anyway.</p> <p>Material Personal Interest: NO, but best practice to disclose</p> <p>The situation might be different where, for example, the enterprise bargaining negotiations are protracted and result in prominent headlines or political involvement, or if Ioannes owns a substantial shareholding. Here the outcome may have a real or substantial effect on the share price or ongoing profitability.</p> <p>Material Personal Interest: Probably YES</p>
<p>Andrew is the Treasurer of MNO union which is considering which superannuation fund to use as its default fund for the union's employees. Andrew's husband, Steve, is a funds manager at EFG Super. Steve's remuneration has a performance component, based on the number of new members who join EFG Super each year. This would amount to a material personal interest on Andrew's behalf which he must disclose to MNO's Committee of Management.</p> <p>Material Personal Interest: YES</p>	<p>Gustav is a member of the Committee of Management of employer organisation TUV, which is hoping to contract with LMN Pty Ltd. Gustav is a non-executive director of LMN Pty Ltd.</p> <p>Gustav is paid a fixed fee for his role at LMN Pty Ltd. It is therefore unlikely that the contracting of the companies would constitute a material personal interest.</p> <p>Material Personal Interest: Probably NO</p> <p>The situation would be different if Gustav received performance based remuneration from LMN Pty Ltd, or held shares in LMN Pty Ltd, where the contract may have a real or substantial effect on the performance of LMN Pty Ltd, and therefore Gustav has received a financial advantage.</p> <p>Material Personal Interest: Probably YES</p> <p>In either scenario, however, there may be a conflict of interest between Gustav's two roles in negotiating and executing the contract. Therefore it would be best practice for Gustav to disclose that he is a non-executive director of LMN Pty Ltd</p>

	<p>regardless of whether he receives fixed or variable remuneration.</p> <p>Best Practice to disclose</p>
<p>Max is the Vice President of ABC Union. The union is considering making a donation to GHI foundation, a community organisation that provides free employment legal assistance to those in need. There are two other similar not-for profit organisations to which the donation could also be made. Max sits on the Board of GHI foundation.</p> <p>Max's interest in GHI foundation is likely to influence him when ABC Union is deciding whether to make the donation to GHI foundation or to another organisation. Max should therefore disclose his Board position at GHI foundation.</p> <p>Material Personal Interest: YES</p>	

**Best
practice
tip**

If it is unclear whether an interest is material, the ROC encourages officers to disclose the interest. This ensures compliance and increases transparency.

It is important to note that officers must also consider their obligations under other provisions of the RO Act, especially the duties of an officer to act in good faith/for proper purposes and not to misuse their position improperly to gain advantage for themselves/others: sections 286-287 and 290A. Common law rules relating to conflicts of interest may also apply, along with any conflict rules in the rules of the organisation (this is the effect of section 293E of the RO Act).

Disclosing the material personal interest

The disclosure of a material personal interest must:

- be made as soon as practicable after the officer acquires the interest¹⁰

¹⁰ Subsection 293C(5)(a), RO Act.

- include sufficient details of the nature and extent of the officer’s interest and how it relates to the affairs of the organisation or branch¹¹ to enable the Committee of Management to understand the scope of the interest and any potential benefit to the officer¹²
- be made at a Committee of Management meeting (orally or in writing) or to the Committee of Management members individually in writing.¹³

An officer may also provide standing notice of a material personal interest to the Committee of Management of an organisation or branch.¹⁴

Best practice tip

Even if the officer has already made a standing disclosure, the ROC encourages officers to raise a material personal interest with the Committee of Management when the Committee is considering a matter that relates to that interest.

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Not every material personal interest of an officer is required to be disclosed.

Interests that do not need to be disclosed

Officers are not required to disclose material personal interests if the interest is:¹⁵

- due to the officer being a member or representative of a member and the interest is held in common with other members of the organisation or branch, for example, it is an interest held by all members of a union

Example: Michael is an officer (and member) of XYZ Union. XYZ Union owns three properties which it holds on trust for the benefit of all members. It uses two of the properties as its branch headquarters (and derives no income from these), and leases one property out to a third party and returns the proceeds to fund union activities.

Michael’s interest as one of the members who benefits from the properties being held on trust does not have to be disclosed – his interest is no less and no more than that of all other members.

¹¹ Subsection 293C(5)(b), RO Act.

¹² *Ford, Austin and Ramsay’s Principles of Corporations Law* (17th edition, 2018), at [9.130.9].

¹³ Subsection 293C(5)(c), RO Act.

¹⁴ Subsection 293C(4)(b) and section 293D, RO Act.

¹⁵ Subsection 293C(4), RO Act.

- in relation to the officer's remuneration as an officer

Example: Jane is an officer of DEF Union. Jane is paid \$10 000 annually for her role as an officer. Jane is also provided with a travel allowance of \$2000 annually to perform her role as an officer. Jane is also employed by DEF Union to work three days per week in the membership team, for which she is paid \$40 000 annually.

All of the payments made to Jane are material personal interests. However, Jane is not required to disclose the \$10 000 annual fee or \$2000 allowance as they relate to her remuneration as an officer. Jane is required to disclose her salary of \$40 000 she earns as an employee.

- in relation to a contract of the organisation or branch that is subject to approval by the members

Example: Ishant is an officer of LMN, an employer organisation. LMN owns a property, which is valued at approximately \$800 000. LMN intends to sell the property and Ishant is aware that his sister, Pavi wishes to buy it. The rules of LMN provide that the Committee of Management is not able to sell an asset of LMN worth in excess of \$100 000 without the approval of the members. Such approval is to be determined by a majority vote.

It is likely that Ishant has a material personal interest in the sale of the property as his sister may stand to gain from the purchase. However, the sale of the property will be subject to approval of the members, so strictly Ishant is not required to disclose his interest. However, in order for members to be able to make a decision in full knowledge of the facts, it would be best practice for Ishant to disclose his interest to the Committee of Management.

- in a contract for the benefit of a related party of the organisation or branch that is a body corporate and arises merely because the officer is on the Board of the related party

Example: Sophia is an officer of FGH, an employer organisation. FGH owns FGH Training Pty Ltd, a registered training organisation of which Sophia is a director. FGH is proposing to lease property it owns to FGH Training Pty Ltd at a discounted rate so that it can run training for various groups.

As a director of FGH Training Pty Ltd, Sophia arguably has a material personal interest in this situation. However, as FGH Training Pty Ltd is a related party of FGH, and Sophia's interest only arises because of her position as a director of FGH Training Pty Ltd, Sophia is not required to disclose this interest. Despite this, it would be best practice for Sophia to disclose her interest to the Committee of Management.

- already contained in an effective standing notice of disclosure (see below).

Example: Lucy is an officer of HIJ Union. As part of her role, Lucy is responsible with others for making decisions with respect to the procurement of computers and other devices for HIJ Union. Lucy is the part-owner of WXY Pty Ltd, a computer and electronic supplies company. Lucy has given a standing notice of her interest in WXY Pty Ltd to all members of the Committee of Management. Lucy is therefore not required to disclose her interest in WXY Pty Ltd again, although it is best practice to do so whenever the Committee of Management is considering a matter that relates to that interest. In certain circumstances Lucy may need to be absent from any deliberation or decision relating to WXY Pty Ltd (see below). Six months after giving her standing notice, Tim joins the Committee of Management. Lucy's standing notice will not be effective until she provides Tim with notice of her interest in WXY Pty Ltd.

Penalties: Officers are liable for civil penalties of a maximum of \$21 000, or a maximum of \$252 000 for serious contraventions, for breaches of these disclosure obligations.¹⁶

Disclosure of material personal interests: actions required by the organisation or branch (s. 293C)

Once an organisation or branch receives a disclosure of a material personal interest from an officer it must record it in the minutes of the meeting of the Committee of Management at which the disclosure was made (or the first meeting after a disclosure made between meetings).¹⁷

The organisation or branch must provide any member of the organisation or branch details of disclosures to the relevant committee of management within 28 days of receiving a written request from the member.¹⁸

Penalties: Organisations are liable for civil penalties of up to a maximum of \$105 000 for breaches of these obligations by an organisation or branch.¹⁹

Restriction on taking part in decisions (s. 293F)

An officer with a material personal interest (see above) must not be present during any deliberation or take part in any decision on the matter if the interest:²⁰

¹⁶ Subsections 293C(2) & (3), RO Act.

¹⁷ Subsection 293C(6), RO Act.

¹⁸ Subsection 293C(7), RO Act.

¹⁹ Subsections 293C(6) & (7), RO Act.

²⁰ Subsections 293F(1), (2) & (3), RO Act.

- relates to the affairs of an organisation or branch, AND
- is required to be disclosed (including, as best practice, interests which have already been notified in a standing disclosure).²¹

The officer may be present and take part in decisions if the remaining members of the Committee of Management have passed a resolution stating the officer should not be disqualified from that decision.²² The resolution must:

- identify the officer, the nature and extent of the officer's interest and how it relates to the affairs of the organisation/branch,²³ AND
- state that the Committee of Management members are satisfied that the interest should not disqualify the officer from being present and taking part in a decision on the matter.²⁴

Best practice tip

Under the equivalent provision in the Corporations Act, a company director must not be present while a proposed resolution permitting him/her to participate in a decision is being considered.²⁵ Having regard to the purpose of these provisions, being to avoid conflicts of interest, this practice should also be observed by a Committee of Management in considering whether to allow an officer of an organisation/branch to participate in a decision in which he/she has an interest.

Penalties: Officers are liable for civil penalties of a maximum \$21 000, or a maximum of \$252 000 for serious contraventions, for breaches of these requirements not to be present during deliberations or take part in decisions where an officer has a material personal interest.²⁶

Standing Disclosures (ss. 293BB & 293D)

Standing disclosures can be made by officers in respect of their obligation to disclose remuneration paid to them,²⁷ as well as in respect of their obligation to disclose a material personal interest.²⁸

²¹ Subsection 293F(3)(b), RO Act.

²² Subsection 293F(4), RO Act.

²³ Subsection 293F(4)(a), RO Act.

²⁴ Subsection 293F(4)(b), RO Act.

²⁵ *Ford, Austin and Ramsay's Principles of Corporations Law* (17th edition, 2018), at [9.150.5].

²⁶ Subsections 293F(1) & (2), RO Act.

²⁷ Section 293BB, RO Act.

²⁸ Section 293D, RO Act.

Whilst standing disclosures are permissible, it is important that they are kept up to date and that other Committee of Management members are informed of any changes to them.

Standing disclosures in respect of remuneration need to be updated whenever the remuneration received by the officer changes.²⁹ They also need to be updated where the source of the remuneration changes – for example, where the officer changes Boards that they have been appointed to by the organisation.

Standing disclosures in relation to material personal interests need to be updated whenever the nature or extent of the interest materially increases.³⁰ This could be because the officer's interest changes – for example, they increase their shareholding or take on a more senior role in the other entity. It could also be because the interest has become more material – for example, the officer is now responsible for making procurement decisions for the organisation in an area related to their material personal interest.

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A standing notice of a material personal interest ceases to have effect when a new member is elected or appointed to the Committee of Management. For the standing notice to have effect again the new member must be given notice of the material personal interest.³¹

Training (ss. 293K & 293L)

Each officer of an organisation or branch who has duties that relate to the financial management of the organisation or branch, must undertake training approved by the Registered Organisations Commissioner that covers each of their financial duties within 6 months of beginning to hold office.³²

The obligation to ensure that the officer completes the training within that time period falls on the organisation/branch.³³

Penalties: Organisations are liable for civil penalties of up to a maximum of \$105 000 for breaches of this obligation by an organisation or branch.³⁴

Exemptions from financial training (s. 293M)

An organisation or a branch of an organisation may apply, in writing, to have an officer exempted from the requirement to undertake training.³⁵ The Commissioner may grant the

²⁹ Subsections 293BB(3) & (4), RO Act.

³⁰ Subsection 293D(6), RO Act.

³¹ Subsection 293D(5), RO Act.

³² Subsection 293K(1), RO Act.

³³ Subsection 293K(2), RO Act.

³⁴ Subsection 293K(2), RO Act.

³⁵ Subsection 293M(1), RO Act.

exemption – subject to any conditions considered appropriate³⁶ – if satisfied the officer has a proper understanding of the officer’s financial duties within the organisation or branch because of their:³⁷

- experience as a company director,
- experience as an officer of a registered organisation, or
- other professional qualifications and experience.

Further information

For further information please contact the Registered Organisations Commission at regorgs@roc.gov.au.

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This guidance note is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Registered Organisations Commission and its work. The Registered Organisations Commission does not provide legal advice.

Version	Date published	Changes
1.1	23 July 2018	
1.2	24 July 2018	Typographical corrections
1.3	20 December 2018	Updates following stakeholder feedback, including additional examples

³⁶ Subsection 293M(3), RO Act.

³⁷ Subsection 293M(2), RO Act.

Appendix 1

Who is a 'related party' of an organisation or branch?

The definition of 'related party' below refers to related parties of an organisation, but it should also be read to apply in respect of a branch of an organisation, as if references to an 'organisation' were references to a 'branch'.³⁸

A 'related party' to an organisation includes:

- an entity controlled by an organisation, other than:³⁹
 - a branch, sub-branch, division or subdivision of the organisation
 - the federal counterpart of a State/Territory-registered association of employees or employers
- officers of an organisation, and spouses of officers (including de facto partners)⁴⁰
- relatives of officers (a parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister of the officer)⁴¹
- relatives of an officer's spouse⁴²
- an entity controlled by any of the above related parties (unless the entity is also controlled by the organisation).⁴³

When is an entity 'controlled' by a person or another entity?

'Control', for purposes of the RO Act, has the same meaning as it has under the Corporations Act.⁴⁴

An entity controls another entity if it has the capacity to determine the outcome of decisions about that other entity's financial and operating policies.⁴⁵

In order to determine whether an entity or person controls another entity, you should ask the following questions:

- Does or can the person or entity exert practical influence over the other entity? The right of the person or entity to enforce contractual or other rights against the other

³⁸ In accordance with subsection 9B(8), RO Act.

³⁹ Section 9B(1), RO Act.

⁴⁰ Section 6 and subsection 9B(2), RO Act.

⁴¹ Section 6 and subsection 9B(3), RO Act.

⁴² Section 6 and subsection 9B(3), RO Act.

⁴³ Subsection 9B(4), RO Act.

⁴⁴ Section 6, RO Act, and section 50AA, *Corporations Act 2001*

⁴⁵ Section 6, RO Act.

entity would generally not be considered to be exerting practical influence over that entity. An example of where practical influence might arise is where an entity does not have a significant shareholding in the other entity, but is nevertheless able to control decisions due to an arrangement which allows it to effectively determine the composition of the board of directors.

- Is there any practice or pattern of behaviour by the person or entity affecting the other entity's financial/operating policies?⁴⁶

Examples:

Related party	Non-related party
<p>WXY Pty Ltd is a registered training organisation. BCD Union is able to appoint two-thirds of the directors to WXY Pty Ltd. WXY Pty Ltd is likely to be a related party of BCD Union.</p> <p>Related Party: YES</p>	<p>UXY is an employer organisation that is a member of an umbrella industry organisation, GHI. GHI is made up of six employer organisations, each of which is able to appoint one director each to the board of GHI. On these facts alone, GHI is unlikely to be considered a related party of UXY, as with only one out of six board positions, it is not likely that UXY can control GHI.</p> <p>Related Party: NO</p> <p>The position may be different if for any other reason, UXY has the practical ability to control GHI.</p> <p>Related Party: Possibly YES</p>
<p>MNO is an employer organisation which owns a separate entity, MNO Legal. MNO purchases legal services on a commercial fee-paying basis from MNO legal. MNO Legal is a related party of MNO.</p> <p>Related Party: YES</p> <p>However payments made to MNO Legal do not need to be disclosed if they are at 'arm's length' (see below).</p>	

An entity is a related party of an organisation at a particular time if:

- the entity was a related party of one of the above kinds at any time within the previous six months,⁴⁷ or

⁴⁶ Ford, Austin and Ramsay's Principles of Corporations Law (17th edition, 2018), at [9.510].

⁴⁷ Subsection 9B(5), RO Act.

- the entity believes, or has reasonable grounds to believe, that it is likely to become a related party of the organisation at any time in the future.⁴⁸

As noted above, a related party relevantly includes officers and their spouses, and relatives of officers and spouses.

Example: Tomas is an officer of XYZ employer organisation. Tomas was the owner of LMN Pty Ltd until May 2018, when he sold the business. LMN Pty Ltd remains a related party of XYZ employer organisation for six months from May 2018 until November 2018.

Example: Miguel was the President of XYZ Union until he lost at the election in March 2018. After the election, Miguel becomes an employee of XYZ Union. Miguel is a former officer and therefore remains a related party for a period of six months from March 2018.

An entity is also a related party of an organisation, if the entity acts in concert with another related party of the organisation, on the understanding that the related party will receive a financial benefit if the organisation gives the entity a financial benefit.⁴⁹

⁴⁸ Subsection 9B(6), RO Act.

⁴⁹ Subsection 9B(7), RO Act.