



## **Fact sheet**

### **Disclosures required by the *Fair Work (Registered Organisations) Act 2009***

#### **Disclosure Schemes**

The *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires officers, branches and organisations to make disclosures concerning remuneration, non-cash benefits, and payments to related parties and declared persons or bodies.

The RO Act mandates when these disclosures must occur, how they are made and to whom.

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

#### **Officer Disclosures**

##### **Disclosures that must be made by All Officers**

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

- 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
- By a related party of the organisation or branch in connection with the officer's duties as an officer.

The disclosure must be made in writing to the Committee of Management

- as soon as practicable after it is paid or
- as part of a standing disclosure made before or as soon as practicable after the first payment.

##### **Disclosures that must be made by 'disclosing officers'**

A disclosing officer is an officer whose duties include duties that relate to the financial management of the organisation or branch.

A disclosing officer must disclose any material personal interest that the officer has or acquires that relates to the affairs of the organisation or branch.

The disclosure must:

- be made as soon as practicable after the interest is acquired;

- include details of the nature and extent of the interest and how it relates to the affairs of the organisation or branch;
- be made at a Committee of Management meeting (orally or in writing) or to the Committee of Management members individually in writing.

#### Interests that do not need to be disclosed

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

- 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
- in relation to the officer's remuneration as an officer
- in relation to a contract of the organisation or branch that is subject to approval by the members
- 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
- already contained in an effective standing notice of disclosure. Section 293D of the RO Act contains information on how to make standing disclosures.

#### Restriction on taking part in decisions

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

- relates to the affairs of an organisation or branch AND
- is required to be disclosed.

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. The requirements of the resolution are set out in section 293F of the RO Act.

## **Organisation and Branch Disclosures**

### **Disclosure of top 5 rankings of officers**

Each organisation and branch must rank all of its officers from highest to lowest by relevant remuneration and for each officer ranked no lower than fifth, disclose in relation to the financial year:

- their identity
- the actual amount of each officer's relevant remuneration
- the value and form of the officer's relevant non-cash benefits

Relevant remuneration and relevant non-cash benefits are defined in section 293BC of the RO Act.

It is possible that an organisation or branch will need to disclose the identify, relevant remuneration and non-cash benefits of more than five officers. This could occur where two or more officers have received the same relevant remuneration which ranks them equal first, second, third, fourth or fifth.

The disclosure must occur within the *officer and related party disclosure statement*.

### **Disclosure of material personal interests**

Once an organisation or branch receives a disclosure of a material personal interest 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 non-meeting disclosure).

The organisation or branch must provide any member details of the disclosure within 28 days of receiving a written request from the member.

### **Disclosure of payments to related parties and declared persons or bodies**

For each financial year, the organisation and branch must disclose each payment made during the financial year to:

- a related party of the organisation or branch
- a declared person or body of the organisation or branch.

The disclosure must occur within the *officer and related party disclosure statement*.

#### Payments that do not need to be disclosed

A payment does not need to be disclosed by an organisation or branch if:

- the related party is an officer of the organisation or branch and the payment relates to remuneration or reimbursement for expenses reasonably incurred in performing their duties
- the payment arises from a deduction from remuneration paid to officers or employees
- the payment would be a reasonable arm's length transaction
- the total of non-disclosable payments to the related party is less than the amount prescribed by the regulations
- the payment is made to a related party in their capacity as a member of the organisation or branch and does not discriminate unfairly against other members.

The definition of related party is found in section 9B and the definition of declared person or body is found in section 293G of the RO Act.

### **The officer and related party disclosure statement**

Each organisation and branch must prepare an officer and related party disclosure statement as soon as practicable after the end of the financial year. The statement must be provided to members and lodged with the Commissioner within 6 months after the end of the financial year.

A template officer and related party disclosure statement is available from the ROC's website.

### **Training**

Each officer of an organisation or branch that has duties which includes duties that relate to the financial management of the organisation must undertake training approved by the

Commissioner that covers each of their financial duties within 6 months of beginning to hold office.

## Penalties

The disclosure regime is subject to civil penalties under the RO Act. An officer, branch or organisation can be penalised up to 1,200 penalty units for a serious contravention. The penalty is 5 times greater for a body corporate.

For the amounts of penalties for individual sections please refer to the RO Act. The amount of a penalty unit is able to be found in section 4AA of the *Crimes Act 1914* and is routinely indexed.

## Exemptions

### Training

An organisation or a branch of an organisation may apply, in writing, to have an officer exempted from the requirement to undertake training. The Commissioner may grant the exemption if satisfied the officer has a proper understanding of the officer's financial duties within the organisation or branch because of their:

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

### Alternative disclosure arrangements

Organisations can apply for alternative disclosure arrangements if they believe the requirements are too onerous and that special circumstances exist in relation to the organisation.

## Further information

For further information please contact the Registered Organisations Commission at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au).

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