



**Australian Government**  
**Registered Organisations Commission**



**GUIDANCE NOTE**

**GN 014 / 23 FEBRUARY 2021**

# Disclosures required by Organisations and Branches under the Fair Work (Registered Organisations) Act 2009



## Contents

<b>Officer and Related Party Disclosure Scheme</b> .....	<b>3</b>
<b>Organisation and Branch Disclosures</b> .....	<b>4</b>
Disclosure of remuneration and benefits for the top 5 rankings of officers (s. 293BC) .....	4
What if there are no disclosures to be made? .....	4
What is an officer? .....	4
What if more than one officer has the same relevant remuneration? .....	5
What if a person leaves office? .....	5
What is included in relevant remuneration?.....	6
Payments to a person after they cease to be an officer.....	8
Can you break down the remuneration disclosed?.....	8
What is included in relevant non-cash benefits? .....	8
Examples of required disclosures for the top 5 rankings of officers .....	10
Disclosure of payments to related parties and declared persons or bodies (s. 293G) .....	12
What is a related party? .....	12
When is an entity controlled by a person or another entity? .....	14
Payments to related parties that do not need to be disclosed.....	15
What is a declared person or body?.....	18
Alternative disclosure arrangements regarding payments to related parties and declared persons or bodies (s. 293H) .....	18
The officer and related party disclosure statement (s. 293J).....	19
<b>Disclosure of material personal interests: actions required by the organisation or branch (s. 293C)</b> .....	<b>20</b>
<b>Further information</b> .....	<b>21</b>



## Officer and Related Party Disclosure Scheme

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.

This Guidance Note explains the disclosures that organisations and branches of 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.

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 registered organisations 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 and training requirements of holders of office, see [GN 013: Disclosures and training required by Holders of Office under the Fair Work \(Registered Organisations\) Act 2009](#) and [FS 025: Officer Financial Training](#).



The requirement for organisations and branches to comply with the officer and related party disclosure scheme is separate from financial reporting obligations. Reporting units exempt from financial reporting still need to prepare and lodge an Officer and Related Party disclosure statement.



## Organisation and Branch Disclosures

### Disclosure of remuneration and benefits for the top 5 rankings of officers (s. 293BC)

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<sup>1</sup>
- the actual amount of each officer's relevant remuneration<sup>2</sup>
- the value and type of the officer's relevant non-cash benefits.<sup>3</sup>

The disclosure must occur within the *Officer and Related Party Disclosure Statement* (the **ORP statement**). Specific civil penalties apply to a failure to provide this statement (see below).<sup>4</sup>

### What if there are no disclosures to be made?

Even if there are no disclosures to be made, organisations and branches are still required to complete an ORP statement and make it clear in the statement that there are no disclosures. Refer to the [ROC's template ORP statement](#) for further guidance.

### What is an officer?



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.

For example the President, Vice President, Secretary, Assistant Secretary, Treasurer, members of the Committee of Management and often delegates to Conference or Council of the organisation or a branch of the organisation are officers.

The RO Act should be read in conjunction with the rules of a registered organisation to determine whether a person in a registered organisation is an officer.

<sup>1</sup> Subsections 293BC(1)(a) and (2)(a), RO Act.

<sup>2</sup> Subsections 293BC(1)(b)(i) and (2)(b)(i), RO Act.

<sup>3</sup> Subsections 293BC(1)(b)(ii) and (2)(b)(ii), RO Act.

<sup>4</sup> Subsection 293BC(3) and section 293J, RO Act.



### What if more than one officer has the same relevant remuneration?

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

#### Example:

JKL union's two Assistant Secretaries, Oleg and YeLing, receive the same relevant remuneration, as do five officers on the union's Conference (defined in the union's rules as a policy making body). JKL union ranks its officers by relevant remuneration as follows:

1. Maria: Secretary
2. Oleg and YeLing: Assistant Secretaries
3. Bella: President
4. Viktoria: Vice President
5. Eduardo, Kai, Anita, Adam and Judy: Conference delegates

The identity, relevant remuneration and relevant non-cash benefits should be disclosed for all 10 of these officers, because all of them are ranked no lower than fifth by relevant remuneration.

### What if a person leaves office?

The disclosure is based on the remuneration paid to officers during the financial year. Accordingly, the identity of each officer ranked no lower than fifth should be disclosed, even if one or more officers are no longer with the organisation or branch because they left during the year.

#### Example:

Jessie was the President of EFG employer organisation until 15 May 2018. Jessie's remuneration from 1 July 2017 to 15 May 2018 places her second for the 2017/18 financial year. Jessie's identity and her relevant remuneration will need to be disclosed in the report for the 2017/18 financial year.



## What is included in relevant remuneration?

**Relevant remuneration** includes the following received from the organisation or branch:<sup>5</sup>

- pay, wages or salary (including superannuation)
- fees
- allowances
- leave entitlements
- benefits
- other entitlements
- remuneration from Board positions or related parties disclosed by an officer<sup>6</sup> (see GN 013: Disclosures required by Holders of Office under the Fair Work (Registered Organisations) Act 2009).

### Example:

June is an honorary officer of XYZ union and does not receive remuneration from boards and related parties as described above. June is employed full-time by a company that is unrelated to the union. June's wages from her job are not 'relevant remuneration' and do not need to be disclosed.

### Example:

Sheng is the Secretary of OPQ, which is an employer organisation. He receives a fee and travel allowance from a training company, AP. Co., for speaking at one of their training sessions. AP. Co. is a related party of OPQ.

Sheng should disclose to OPQ the fee and travel allowance he receives from AP. Co. Sheng is one of OPQ's most highly remunerated officers so OPQ will then need to include the fee and travel allowance disclosed by Sheng as part of Sheng's relevant remuneration in the ORP statement.



Remuneration paid to an officer from a Board position and disclosed to the organisation or branch needs to be disclosed in the ORP statement even where it is passed on to or ultimately received, in part or in full, by the organisation or branch.

To avoid ambiguity, the organisation or branch may wish to include a note on the ORP statement indicating that some or all of the amount was passed on and not kept by the officer.

<sup>5</sup> Section 6 and subsections 293BC(4), 293B(1) and 293B(2), RO Act.

<sup>6</sup> Subsections 293B(1), (2) and 293BC(4), RO Act.



Organisations and branches should have in place processes to ensure that officers make the necessary declarations about other payments they receive.

'Relevant remuneration' will also include a reimbursement paid to an officer by the organisation or branch relating to an expense that is in the nature of 'remuneration'.

Remuneration does not include the reimbursement of an out-of-pocket expense reasonably incurred by the officer performing his or her duties as an officer (i.e. a business-related disbursement). However, when the payment of a reimbursement conveys a personal benefit to the relevant officer in the nature of allowances, benefits or other entitlements it may form part of the officer's 'relevant remuneration'.

Remuneration does not include benefits or entitlements provided in a form other than money. However they may still need to be disclosed as a non-cash benefit, see below.



#### Not relevant remuneration

A business-related disbursement



#### Relevant remuneration

Reimbursement of an expense that conveys a personal benefit

#### Example:

Ravi is the Secretary of HIJ Union. He uses his personal credit card to purchase \$100 of stationery for use in the office, in respect of which he receives a reimbursement. The reimbursement does not form part of Ravi's relevant remuneration and does not need to be disclosed.

Ravi also pays for a gym membership which Ravi is entitled to have reimbursed by HIJ Union. The amounts received by Ravi by way of reimbursement are a personal benefit received as part of his relevant remuneration and need to be disclosed. If HIJ Union paid for a gym membership on Ravi's behalf, that would be a non-cash benefit. See information about non-cash-benefits below.



Relevant remuneration is not limited to remuneration received by an officer in their capacity as an officer. This means that relevant remuneration will include remuneration paid to an officer by the organisation or branch for another role they perform, for example as an employee.

**Example:**

Meera is employed as an industrial officer of XYZ Union. Meera is also a member of the Committee of Management of the Union, for which she receives an honorarium of \$50.00 for every meeting that she attends. Meera's relevant remuneration will include the honorarium she receives for sitting on the Committee of Management as well as her remuneration received as an industrial officer. (Note, however, non-cash benefits that she received as an industrial officer, such as a car provided for the purpose of visiting members do not need to be disclosed, see information about non-cash-benefits below.)



Relevant remuneration should be disclosed on a gross basis, i.e. the ORP statement should set out the pre-tax amounts.

**Payments to a person after they cease to be an officer**

For a payment to be considered relevant remuneration it must be made to an officer of an organisation or branch.<sup>7</sup> If a payment is made after a person ceases to hold office, then the payment is not relevant remuneration. **However**, if the payment was made by the organisation or branch within six months of the person holding office it would likely be considered a payment to a related party.<sup>8</sup> In this case it would need to be disclosed as a related party payment in the organisation's or branch's ORP statement. See below for information about payments to related parties.

**Can you break down the remuneration disclosed?**

Organisations and branches might choose to break down the remuneration in their statements so that each source of remuneration is identified and other explanatory detail is provided, but this is not a requirement of the RO Act.

**What is included in relevant non-cash benefits?**

**Relevant non-cash benefits** are non-cash benefits provided to an officer in connection with performance of their duties, by the organisation or branch or a related party, such as:<sup>9</sup>

- property or services in any form other than money
- a motor vehicle and associated running expenses
- access to services such as health insurance or financial advice
- the provision of free childcare.

<sup>7</sup> Section 293BC(1)(b), RO Act.

<sup>8</sup> Section 293G and subsection 9B(5), RO Act

<sup>9</sup> Section 6 and subsection 293BC(5), RO Act.





However non-cash benefits do not include a computer, mobile phone or other electronic device that is used only or mainly for work purposes.<sup>10</sup>

**Example:**

Jill is the President of HIJ Union. If HIJ Union provided Jill with a house to live in, this would be a non-cash benefit. If, instead, HIJ Union provided Jill with a sum of money to assist her with meeting the costs of her accommodation, the sum of money would be part of Jill's relevant remuneration.



The RO Act does not prescribe how non-cash benefits should be valued.

In some cases, the value of the non-cash benefit may be simple to calculate based on the actual cost to the registered organisation of the non-cash benefit. In other circumstances, a market value estimate may be appropriate. The value of non-cash benefits should include the GST component, and any other fee or charges that are generally associated with the use and access of the benefit.

Organisations and branches should disclose the value of non-cash benefits as the grossed-up value and not the taxable value (as per the fringe benefit tax rules). Organisations and branches may disclose additional notes to explain their method of calculating the non-cash benefit.

The disclosure must occur within the ORP statement. Specific civil penalties apply to a failure to provide this statement (see below).<sup>11</sup>



Unlike relevant remuneration, relevant non-cash benefits only includes non-cash benefits provided to the officer in connection with their duties as an officer. See the example regarding Meera above.

<sup>10</sup> Section 6, RO Act.

<sup>11</sup> Subsection 293BC(3) and section 293J, RO Act.



## Examples of required disclosures for the top 5 rankings of officers

### Example:

Frank is the President of an employer association. Frank receives a salary of \$150 000, a motor vehicle and a laptop. Frank also receives income protection insurance paid for by the employer association.

In addition, Frank discloses to the employer association that he receives \$15 000 a year from being a director of AAZ Pty Ltd, a company that is connected to his role at the employer association.

Relevant remuneration	Relevant non-cash benefits	Not disclosable
Salary – \$150 000  Director's fees from AAZ Pty Ltd – \$15 000	Motor vehicle  Income protection insurance	Laptop, as Frank uses this mainly for his work performed for the employer association.

### Example:

Lisa is the Vice-President of the Victorian Branch of BCD Union, for which she receives a salary of \$100 000 and a travel allowance of \$10 000. She also receives free childcare from BCD Union. Lisa is given a mobile phone and a tablet for BCD Union purposes only.

In addition, Lisa discloses to BCD Union that she receives \$5000 a year from sitting on the board of XYZ Super, a position to which she was nominated by BCD Union. Lisa is also the director of KLM Pty Ltd, for which she receives \$8000 per year. Lisa's role at KLM Pty Ltd is not connected to her role at BCD Union.

Relevant remuneration	Relevant non-cash benefits	Not disclosable
Salary – \$100 000  Travel allowance – \$10 000  Board fees from XYZ Super – \$5000	Free childcare, as this is a personal financial benefit provided to Lisa by BCD Union because she is an officer of BCD Union	Free mobile phone and tablet, as Lisa uses these mainly for BCD Union purposes, and not for personal use.  Directors' fees from KLM Pty Ltd, as they do not relate to her position at the organisation or branch.

**Example:**

Natalena is on the Committee of Management of HIJ Union for which she receives an honorarium of \$50 for every committee meeting she attends. She is also employed by HIJ Union as an industrial officer, for which she receives a salary of \$100 000, plus a car, laptop and mobile phone, all of which she uses mainly for her industrial officer position.

Relevant remuneration	Relevant non-cash benefits	Not disclosable
Honorarium - \$50 for every committee meeting she attended  Salary as industrial officer– \$100 000	none	Car, laptop and mobile phone because all of these are provided in connection with her employment as an industrial officer



## Disclosure of payments to related parties and declared persons or bodies (s. 293G)

For each financial year, an organisation or branch must disclose each payment it has made during the financial year to:

- a related party of the organisation or branch
- a declared person or body of the organisation or branch.<sup>12</sup>

The disclosure must occur within the ORP statement. Specific civil penalties apply to the obligation to provide this statement (see below).<sup>13</sup>



The ORP statement should set out **each** payment made to **each** related party or declared person or body, not the total value of multiple payments made. If a regular payment is made to a related party or declared person or body, then the ORP statement could state that as one line item.

### Example:

Cleaning Firm Pty Ltd is a declared body because Jill, the President of HIJ Union, made a material personal interest disclosure (see below for further information about declared persons or bodies). HIJ pays Cleaning Firm Pty Ltd \$2000 per month for cleaning services. HIJ's ORP statement could state that \$2000 was paid each month to Cleaning Firm Pty Ltd for office cleaning services.

### What is a related party?

The definition of a related party is set out in s 9B of the RO Act. A related party to an organisation includes:

- an entity controlled by an organisation, **other than**:<sup>14</sup>
  - a branch, sub-branch, division or subdivision of the organisation
  - a State/Territory-registered association of employees or employers of which the organisation is the federal counterpart
- officers of an organisation, and spouses of officers (including de facto partners)<sup>15</sup>
- relatives of officers (a parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister of the officer)<sup>16</sup>

<sup>12</sup> Subsections 293G(1) & (2), RO Act.

<sup>13</sup> Subsection 293G(3) and section 293J, RO Act.

<sup>14</sup> Section 9B(1), RO Act.

<sup>15</sup> Section 6 and subsection 9B(2), RO Act.

<sup>16</sup> Section 6 and subsection 9B(3), RO Act.



- relatives of an officer's spouse<sup>17</sup>
- an entity controlled by any of the above related parties (unless the entity is also controlled by the organisation)<sup>18</sup>
- the entity was a related party of one of the above at any time within the previous six months<sup>19</sup>
- 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<sup>20</sup>
- 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.<sup>21</sup>

These definitions of related party also apply in respect of a branch of an organisation, as if references to an organisation were references to a branch.

As noted above, a related party relevantly includes officers and their spouses, and relatives of officers and spouses, but does not include spouses of relatives.

#### 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.



The definition of a 'related party' in s 9B of the RO Act applies for the purposes of the ORP statement. This definition is different from the definition in the accounting standards which applies to an organisation or branch's financial reports.

For example, a state-registered association of which the organisation is the federal counterpart is *not* a related party within the meaning of s 9B of the RO Act, but is a related party within the meaning of AASB 124 Related Party Disclosures.

<sup>17</sup> Section 6 and subsection 9B(3), RO Act.

<sup>18</sup> Subsection 9B(4), RO Act.

<sup>19</sup> Subsection 9B(5), RO Act.

<sup>20</sup> Subsection 9B(6), RO Act.

<sup>21</sup> Subsection 9B(7), RO Act.



## 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.<sup>22</sup> 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.<sup>23</sup>

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 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?<sup>24</sup>

### 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><b>Related Party: YES</b></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><b>Related Party: YES</b></p> <p>However payments made to MNO Legal do not need to be disclosed if they are at arm's length (see below).</p> <p><b>Related Party: YES, but exempt from being disclosed</b></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><b>Related Party: NO</b></p> <p>The position may be different if for any other reason, UXY has the practical ability to control GHI.</p> <p><b>Related Party: Possibly YES</b></p>

<sup>22</sup> Section 6, RO Act, and section 50AA, *Corporations Act 2001*.

<sup>23</sup> Section 6, RO Act.

<sup>24</sup> *Ford, Austin and Ramsay's Principles of Corporations Law* (17<sup>th</sup> edition, 2018), at [9.510].



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

A payment to a related party 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,<sup>25</sup>

### Example:

Mark is an officer of DEF Union. Mark is reimbursed by DEF Union for the costs he incurs in travelling to different sites to meet members. These payments do not need to be disclosed as they are reimbursements for expenses reasonably incurred in performing his duties.

- the payment arises from a deduction from remuneration paid to officers or employees,<sup>26</sup>

### Example:

Angela is an officer of MNO, an employer organisation. Her superannuation fund is a related party of MNO. Angela has set up the arrangement to salary sacrifice a portion of her wages into her superannuation. This payment does not need to be disclosed as it is a deduction from the remuneration paid to Angela by MNO.

- the payment would be a reasonable arm's length transaction – that is, the payment would be reasonable if the organisation/branch and the related party were dealing at arm's length, or the payment is less favourable to the related party than an arm's length payment,<sup>27</sup>



The concept of dealings at **arm's length**, under the Corporations Act, assumes (among other things) that the relevant transaction does not involve any undue influence or pressure and that the entity making the payment is concerned only to achieve the best commercial result for itself.<sup>28</sup>

<sup>25</sup> Subsection 293G(4), RO Act.

<sup>26</sup> Subsection 293G(5), RO Act.

<sup>27</sup> Subsection 293G(5A), RO Act.

<sup>28</sup> *Ford, Austin and Ramsay's Principles of Corporations Law* (17<sup>th</sup> edition, 2018), at [9.530].

**Example:**

Malia is an officer of EFG, an employer organisation. Malia's husband is the part owner of an office supplies company LMN Pty Ltd. After reviewing the price of office supplies from three companies, EFG decides to purchase its office supplies from LMN Pty Ltd, because they have the lowest publicly advertised prices. Assuming that Malia or her husband have not sought to improperly influence this decision, the purchase of the office supplies at publicly available commercially competitive rates is likely to be considered an arm's length transaction.

If, however, Malia holds duties that relate to the financial management of the organisation, then she would likely need to make a material personal interest disclosure and any payments to LMN Pty Ltd would need to be disclosed in EFG's ORP statement as payments to a declared person or body. LMN Pty Ltd is both a related party and a declared body and the arm's length exception does not apply to payments to a declared body. See below for information about payments to declared persons or bodies.

**Example:**

James is an officer of QRS, an employer organisation. James' parents own a commercial property which QRS would like to lease to use as its new offices. After investigating some other less expensive options, QRS and James' parents agree that QRS can lease the property at a discounted rate, well below market rent. QRS does not need to disclose the monthly rental payments to James' parents (as related parties) because they are less favourable to James' parents than the terms they would have received at an arm's length rental agreement for the property.

If James holds duties that relate to the financial management of the QRS, then he would likely need to make a material personal interest disclosure and any payments to James' parents would need to be disclosed in QRS' ORP statement. See below for information about payments to declared persons or bodies.

**Example:**

Emily is an officer of UVW Union and is the de facto partner of an administrator employed by the union, Alice. Alice receives a salary which is set out in UVW's enterprise agreement. The payment of Alice's salary is paid at arm's length in accordance with an impartial industrial agreement.

This situation would be different if the union decides to pay a bonus or other discretionary payment to Alice. In this case the payment is unlikely to be at arm's length and the payment would need to be included in the union's ORP statement as a payment to a related party. Also if a bonus or other discretionary payment is made and if Emily holds financial management duties, then she would likely need to make a material personal interest disclosure. See below for information about payments to declared persons or bodies.





- when added to other payments made to the related party in a financial year, the total amount of all payments is less than the amount prescribed by the regulations (\$5000 at the time of publication of this Guidance Note),<sup>29</sup>

### Example:

Diego is an officer of PQR Union and his father, Pablo runs a coffee business, Pablo's Coffee. PQR Union purchases coffee from Pablo's Coffee on a monthly basis at \$100 per month, totalling \$1200 for the year. This is less than the prescribed amount and therefore does not need to be disclosed as a related party payment.

If, however, PQR Union purchases coffee on a monthly basis at \$1000 a month, totalling \$12 000 for the year, this is more than the prescribed amount and must be disclosed in the statement.

Irrespective of the amount paid to Pablo's Coffee, if Diego's duties include financial duties, then he would likely need to make a material personal interest disclosure. In this case all payments to Pablo's Coffee would need to be disclosed in PQR Union's ORP statement as a payment to a declared body. See below for information about payments to declared persons or bodies.

- 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.<sup>30</sup>

### Example:

Xian is a delegate to BCD Union's conference (a policy making body) and a member of the union. Xian was severely injured in an accident while on an overseas holiday and suffers financial hardship as a consequence. Xian received a payment from BCD's benevolent fund. The purpose of the fund is to provide financial assistance to members in financial hardship. Assuming Xian's circumstances meet the criteria for disbursement of payments from the fund and that the terms of the fund do not discriminate unfairly against other members, this payment does not need to be disclosed as a related party payment.



The exemptions listed above only apply to payments to related parties.

If a payment is made to a related party which is also a declared person or body then the payment must be disclosed, see below for further information.

<sup>29</sup> Subsection 293G(5B), RO Act and regulation 167A, Fair Work (Registered Organisations) Regulations 2009.

<sup>30</sup> Subsection 293G(5D), RO Act.



## What is a declared person or body?

Officers whose duties include financial management must disclose to the organisation or branch details of any material personal interests. See GN 013: Disclosures required by Holders of Office under the Fair Work (Registered Organisations) Act 2009 for further information.

A declared person or body is:

- a person or body in respect of whom/which an officer with financial management duties has disclosed a material personal interest, and
- the officer has not notified the organisation or branch that the officer no longer has the interest.<sup>31</sup>

### Example:

Chloe is the President of IJK employer organisation. Chloe's duties include financial management duties. Chloe also owns a catering company. Chloe has disclosed a material personal interest in respect of her catering company. Chloe's catering company is a declared body and payments made to it by IJK employer organisation will need to be disclosed in its ORP statement.



If an exempt payment is made to a related party and the related party is also a declared person or body then the payment must be disclosed. See the examples in the information above about related party disclosures regarding Malia, James, Emily and Diego.

## Alternative disclosure arrangements regarding payments to related parties and declared persons or bodies (s. 293H)

Organisations and branches can apply for an order permitting alternative disclosure arrangements, if they believe the requirements to disclose payments to related parties and declared persons or bodies (in s. 293G) are too onerous and that special circumstances exist in relation to the organisation or branch.<sup>32</sup>

To obtain an order permitting an alternative disclosure arrangement, an organisation or branch will also need to show:<sup>33</sup>

- evidence of its past and current high standards of financial accountability and control, and
- that the proposed alternative arrangement will provide for appropriate transparency.

<sup>31</sup> Subsection 293G(6), RO Act.

<sup>32</sup> Subsections 293H(1) and (8), RO Act.

<sup>33</sup> Subsection 293H(2), RO Act.



## The officer and related party disclosure statement (s. 293J)

Each organisation and branch must prepare an ORP statement as soon as practicable after the end of the financial year<sup>34</sup> showing:

- the identity of those officers for the financial year ranked no lower than fifth when ranked by relevant remuneration
- the amount of relevant remuneration and details of non-cash benefits for each of those officers
- each payment made to related parties and declared persons or bodies.

The statement must be provided to members and a copy lodged with the Commissioner within 6 months following the end of the financial year.<sup>35</sup>

A template officer and related party disclosure statement is available from the ROC's website, at: <http://www.roc.gov.au/resources-and-decisions/fact-sheets-templates-and-webinars>.



**Penalties:** Organisations are liable for civil penalties of up to a maximum of \$111 000, or a maximum of \$1 332 000 for a serious contravention, for breaches of this obligation by an organisation or branch.<sup>36</sup>

<sup>34</sup> Subsections 293J(1)(a) and (2)(a), RO Act.

<sup>35</sup> Subsections 293J(1)(b) and (2)(b), RO Act.

<sup>36</sup> Subsections 293J(1) & (2), RO Act. NOTE: all maximum penalties in this Guidance Notes are current as at the date of publication update.



## 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).<sup>37</sup>

The organisation or branch must provide any member of the organisation or branch details of disclosures within 28 days of receiving a written request from the member.<sup>38</sup>



**Penalties:** Organisations are liable for civil penalties of up to a maximum of \$111 000 for breaches of this obligation by an organisation or branch.<sup>39</sup>

<sup>37</sup> Subsection 293C(6), RO Act.

<sup>38</sup> Subsection 293C(7), RO Act.

<sup>39</sup> Subsections 293C(6) and (7), RO Act.



## Further information

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

Version	Date published	Changes
1.1	23 July 2018	
1.2	20 December 2018	Updates following stakeholder feedback, including additional examples and clarification of the meaning of 'ranked no lower than fifth' for the purpose of disclosing the most highly remunerated officers in the ORP statement.
1.3	28 June 2019	Updates following stakeholder feedback, including the circumstances in which a reimbursement amount may be relevant remuneration, disclosure of payments to related parties which are also declared persons or bodies, and additional examples.
1.4	12 November 2019	Clarification about how to disclose the remuneration of an officer from a board position where the amount is paid to the officer and then passed onto the registered organisation or branch.
1.5	23 February 2021	Update penalty units. Clarification of payments to related parties that do not need to be disclosed

© Commonwealth of Australia 2021

This guidance note is not intended to be comprehensive. It is designed to assist in gaining an understanding of the relevant provisions of the Fair Work (Registered Organisations) Act 2009 and the Registered Organisations Commission and its work. The Registered Organisations Commission does not provide legal advice.