

AUSTRALIAN GOVERNMENT

Regulation of Registered Organisations

Regulation Impact Statement

Department of Employment

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1. Context

Employee associations and employer associations are formed to represent their members' broad interests and provide advice on workplace matters. Employee associations (including enterprise based associations) and employer associations can apply to the Fair Work Commission (FWC) for registration under the *Fair Work (Registered Organisations) Act 2009* (RO Act). As at 3 March 2015, there were 112 registered organisations listed with the FWC of which 66 were employer organisations and 46 were employee organisations.

Section 5 of the RO Act sets out Parliament's intention in enacting the RO Act, which is:

- to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation, and
- to assist employers and employees to promote and protect their economic and social interests through the formation of employer and employee organisations, by providing for the registration of those associations and according rights and privileges to them once registered.

Section 5 of the RO Act also states that the Parliament "...recognises and respects the role of employer and employee organisations in facilitating the operation of the workplace relations system". Associations that become registered organisations can access privileges and rights under the RO Act and *Fair Work Act 2009* (FW Act) that allow them to represent the interests of their members more effectively in workplace matters, for example by:

- in the case of employee organisations, having a right to enter workplaces providing they meet a number of statutory requirements,
- assisting or representing their members during FWC proceedings, such as unfair dismissal hearings, and
- making an application to vary a modern award outside of the four-yearly modern award review process.

To access these rights and privileges, registered organisations must comply with detailed regulations in relation to registration, rules, financial reporting, elections, conduct of officers and other matters.

The FWC is responsible for administering the provisions of the RO Act that relate to registered organisations. Under Chapter 11, Part 4 of the RO Act, the General Manager of the FWC may make inquiries and conduct investigations into registered organisations, in addition to the examination of registered organisations' financial reports lodged with the FWC each year. As at 3 March 2015, there were four inquiries and five investigations underway at the FWC.

The conduct and regulation of registered organisations and their officers have recently been of significant public interest. The most prominent example was the lengthy investigation into the Health Services Union (HSU) that arose due to allegations of misuse of members' funds and inappropriate conduct of officers.

The previous government's response to the findings of the FWC investigation into the HSU was the *Fair Work (Registered Organisations) Amendment Act 2012* (RO Amendment), which provided for increased financial accountability of registered organisations, strengthened investigative powers of the FWC and increased penalties under the RO Act in line with the FW Act. The FWC also made some improvements to its investigative processes.

While the RO Amendment was broadly supported, there was concern among some stakeholders that the RO Amendment did not go far enough. In a submission to the Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the RO Amendment, the Australian Mines and Metals Association wrote that "the changes the government has proposed are not tough

enough to deliver accountability that members of those organisations are seeking.” Similarly, the Institute of Public Affairs asserted that “[f]urther measures should be taken to strengthen the financial management and regulation of registered organisations, commensurate with their considerable financial resources.”

The Government, as an election commitment, announced its *Policy for Better Transparency and Accountability of Registered Organisations* in July 2013. This policy outlines measures to further strengthen regulatory oversight of registered organisations and their officers. Registered organisations and their officers will have fiduciary and statutory responsibilities that are more closely aligned with those of companies and directors, provided under the *Corporations Act 2001* (Corporations Act). This is to ensure that they are held to higher standards of accountability in relation to their conduct and use of members’ funds. This will be achieved by:

- increasing civil penalties and introducing criminal offences for serious breaches of officers’ duties similar to those applicable under the Corporations Act - imprisonment for up to 5 years or 2,000 penalty units (currently \$340,000),
- amending the requirements surrounding officers’ disclosure of material personal interests (and related voting and decision making rights) and changes to grounds for disqualification and ineligibility for office,
- strengthening financial accounting and disclosure obligations under the RO Act by aligning these obligations with the higher standards that apply to companies, putting these obligations on the face of the Act (rather than a requirement in the registered organisation’s rules) and making them enforceable as civil remedy provisions, and
- creating a Registered Organisations Commission to enforce the regulations.

1.1 Current regulation of registered organisations

In addition to an overview of the current regulatory framework, the discussion below outlines two elements of the current framework: requirements for organisations’ rules as a result of the RO amendment and the distinct responsibilities of the FWC.

1.1.2 Registration and registered organisations’ rules

Chapter 2 of the RO Act, sets out the criteria for registration and procedural matters. There are a number of steps involved in this process. The FWC cannot register an employee or employer association unless the rules of the association make provision for matters as required by the RO Act. For example, organisations must have rules for:

- eligibility of members,
- power and duties of the committees of the organisation and its branches,
- the manner in which the property of the organisation is to be controlled and its funds invested, and
- elections for offices, such as the office of president or secretary.

The RO Amendment introduced disclosure and reporting requirements that registered organisations are required to include in their rules. The new rules require organisations to:

- disclose remuneration paid to officers of an organisation or branch (section 148A),
- disclose material personal interests of officers and their relatives (section 148B),
- disclose payments to related parties made by an organisation or branch (section 148C), and
- provide training to officials in their governance and accounting obligations (section 154D).

Associations seeking registration are required to include these provisions in their rules while all registered organisations were required to alter their rules accordingly by 1 January 2014. The procedure for altering rules varies from organisation to organisation and must be conducted in accordance with the specific procedures contained in each organisation's own rules.

The FWC provides the following advice to registered organisations regarding rule changes not involving a change to the name or eligibility rules of the organisation. Once the alteration to the rules has been transacted, the organisation must lodge an application to the FWC for the General Manager or delegate to certify the changes. An application to the FWC must include:

- a notice setting out the particulars of the alterations, for instance a document stating what the rules looked like before the alteration and what they will look like if certified, and
- a declaration signed by the secretary (or if relevant, another authorised officer under the rules) stating:
 - that the alteration was made in accordance with the rules of the organisation,
 - all the steps the organisation took to comply with their rules when making the alteration, and
 - that the particulars set out in the notice are true and correct to the best of the secretary's knowledge and belief.

Finally, once the application has been lodged with the FWC, a notice must be put on the registered organisation's website informing members that the notification has been lodged.

1.1.3 Role of the Fair Work Commission

As noted above, the FWC is responsible for administering the provisions of the RO Act that relate to registered organisations. These functions are split between responsibilities conferred on the General Manager (the administrative arm) and the Tribunal (the tribunal arm).

The tribunal arm deals with:

- registration of new organisations,
- cancellation of registration,
- approval of amalgamation,
- representation orders in demarcation disputes,
- approval of alterations to the name or member eligibility rules of organisations,
- orders for a member of an organisation to inspect financial records, and
- approval of membership agreements between organisations and state registered unions.

These functions are conducted by the tribunal arm via hearings and submissions from interested or affected parties.

The administrative arm is responsible for:

- overseeing the compliance of registered organisations,
- processing right of entry permit applications, and
- providing information about the rights and obligations of registered organisations.

It also conducts inquiries and investigations into organisations' accounting and auditing obligations as well as any breaches of the civil penalty provisions of the RO Act.

The General Manager is able to commence proceedings in relation to breaches of civil penalty provisions, or refer matters to the Director of Public Prosecutions, or the police, regarding possible criminal offences.

2. Description and scope of the problem

Registered organisations play a significant role in Australia's economy both through their involvement in the workplace relations system and by advocating on behalf of their members and supporting the interests of their members in industrial matters and more broadly.

Registered organisations protect their members' interests by representing members in industrial matters and campaigning on policies that affect them, such as taxation, workplace relations regulation, government policies and assistance in relation to specific sectors or the social safety net. To achieve their aims, registered organisations require funds to cover direct operating costs and other monies used for advertising, campaigns and legal matters. These funds are derived from membership fees, donations and other investments, including property.

As can be seen from [Table 1](#) in section 2.1.1, some registered organisations and their branches command significant financial resources. Therefore it is important that the RO Act requires a high level of financial oversight by officers to ensure that funds are used to benefit members. Moreover, member and community expectations regarding conduct of officers are high and dictate that they must act in the interests of their membership at all times and conduct their business in a transparent manner.

There is evidence that some registered organisations do not meet their obligations. For example, during a Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012, the FWC stated that each year an average of approximately 20 per cent of registered organisations do not submit financial reports on time.

Recent reports and inquiries have revealed the extent to which some registered organisations are failing to meet their statutory obligations and the expectations of their members. An inquiry conducted in 2012 by Ian Temby QC and Dennis Robertson into the NSW registered entity, HSUEast, commissioned by that union's governing council, found that it did not have sufficient processes in place to ensure that members were getting value for their funds.

The level of non-compliance with the reporting obligations, combined with the findings of the FWC investigations into the HSU, demonstrate that the existing regulation of registered organisations is not sufficiently strong to protect members' interests, particularly in relation to financial management. The financial accountability and transparency provisions of the RO Act require amendments to ensure more adequate oversight and enforcement to effectively prevent the malfeasance at which they are directed. The RO Amendment addressed some of these problems, however, it did not provide a strong deterrent for wrongdoing, in the form of criminal sanctions, or give the regulator adequate powers to thoroughly investigate and pursue litigation of contraventions of the RO Act and FW Act in a timely and responsive manner.

For example, registered organisations are currently required to provide for certain financial disclosures in their rules, such as related party payments, officer remuneration and material personal interests of officers and their relatives (see section 1.1.2)). As these obligations are contained in rules, alleged breaches can only be dealt with by a relevant court (for example, the Federal Court) on application for a remedy made by a member of the registered organisation. The General Manager of the FWC does not have standing to bring these matters to court and lacks the power required to hold a registered organisation and its officers to account.

KPMG Forensic's *Process review of Fair Work Australia's investigations into the Health Services Union* (the KPMG Review) conducted in 2012 made a number of recommendations to improve administration of enforcement of registered organisations, all of which are currently being implemented by the FWC. However, the KPMG Review was not tasked with considering, and did not

make recommendations as to whether the General Manager had sufficient powers to regulate registered organisations effectively.

While recent changes to the RO Act have increased civil penalties and improved the FWC's investigative functions, further measures are required to allow the regulator to pursue breaches of the RO Act via investigation and litigation. For example, during a Senate Standing Committee on Education, Employment and Workplace Relations inquiry into the Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012, the Institute of Public Affairs highlighted concerns in relation to the RO Amendment and added that recent "events give rise to reasonable doubt about the utility of the current regulations, particularly their deterrent effect." The New South Wales Government provided evidence on its own jurisdiction where stronger regulation of employee and employer associations has been implemented.

The findings in relation to the HSU demonstrate a need for reform to meet the expectations of members, and the community more broadly, in relation to the standards of financial management and fiduciary duties observed by officers of registered organisations.

2.1 Affected parties

The parties likely to be directly affected by the options to address the problem described above are:

- registered organisations and their officials,
- members of registered organisations:
 - For employee organisations: broadly *workers*
 - For employer organisations: broadly *businesses*, including small businesses, and
- the Australian community.

2.1.1 Registered organisations

As at 3 March 2015, there were 112 registered organisations listed with the FWC of which 66 were employer organisations and 46 were employee organisations. The majority of registered organisations are not-for-profit and operate to serve the interests of their members. Some have additional arms or subsidiaries to the organisation that are not related to their status as a registered organisation, such as a for-profit training arm.

To develop a profile of registered organisations, the financial reports and annual returns lodged by registered organisations to the FWC as of October 2013 have been analysed. These reports are made available on the FWC website.

Based on the available reports, information on the net assets, number of members and number of employees has been considered to create a profile of registered organisations and their members. This information is set out in [Table 1](#).

Table 1 - profile of registered organisations¹

Value of net assets	Percentage of Employer organisations	Percentage of Employee organisations
Less than \$2m	54%	27%
Between \$2m - \$5m	10%	9%
Between \$5m and \$20m	22%	25%
Between \$20m and \$50m	1%	24%
More than \$50m	6%	11%
Not available	6%	4%
Number of employees	Percentage of Employer organisations	Percentage of Employee organisations
Less than 15	64%	35%
15 or more	30%	58%
Not available	6%	7%

Based on the information in Table 1, and for the purposes of this regulation impact statement, registered organisations have been grouped into small and large organisations. Small organisations are defined as those with less than 15 employees and less than \$2 million in net assets, while large organisations are all other organisations. Just over a half of all organisations are large organisations, and just under a half are small.

Based on the information available in financial and annual reports lodged with the FWC, the percentage of registered organisation members have been estimated by organisation size. These are set out in Table 2 below.

Table 2 – distribution of members across organisations²

Type of organisations	Percentage of total members
large employee organisations	90%
small employee organisations	5%
large employer organisations	4%
small employer organisations	1%

As can be seen from Table 1 and 2, overall, registered organisations are most likely to be small employer organisations or large employee organisations. Furthermore, members of registered organisations are concentrated in large employee organisations, with small employer organisations representing the smallest number of members.

¹ Registered Organisations' financial reports and annual returns can be accessed from the FWC website - <http://www.fwc.gov.au/index.cfm?pagename=regorgslist>

² As above

It is expected that these differing characteristics will see registered organisations impacted differently by regulatory change. These differences have been accounted for in estimates of likely compliance costs and impact analysis.

2.1.2 Officials of registered organisations

Registered organisations vary considerably in terms of their branch structures and rules for appointing individuals in offices. For example, the number of offices in some organisations is fixed, while in others it is dependent on the number of members. Furthermore, in many cases individuals hold multiple offices within one organisation or across its branches.

To estimate how many individuals hold office, a sample of registered organisations' financial reports and annual returns have been analysed. Based on this, there are approximately:

- **4700** individuals who hold office in an employee organisation, and
- **1600** individuals who hold office in an employer organisation.

In order to estimate the number of officers whose duties relate to the financial management of an organisation it was assumed that each organisation's committee of management would have financial duties. Based on an analysis of a sample of registered organisations' financial reports and annual returns there are approximately 8 officers with financial duties per organisation.

2.1.3 Members of employee organisations

Based on financial reports and annual returns of registered organisations lodged with FWC there are around 1.9 million people who are members of employee organisations in Australia.

This figure is broadly supported by the Australian Bureau of Statistics' (ABS) data on trade union membership (cat. no. 6310.0). According to the ABS, in August 2012, 1.8 million people were members of trade unions in their main job. Despite a slight increase since 2008, trade union membership has decreased, overall, since 1990. It is expected that the number of members of employee organisations will remain steady or decrease over time if current trends hold.

2.1.4 Members of employer organisations

Based on financial reports and annual returns of registered organisations there are over 90,000 members of employer organisations. While the financial reports compiled by organisations generally do not provide information on the type of members, it is assumed that members are usually businesses or in some cases, not-for-profit bodies or individuals in their capacity as employers. Anecdotal evidence suggests that the majority of members are small or medium-sized businesses.

2.1.5. Other affected parties

The Australian community

Due to the large number of businesses and workers that are members of registered organisations, and the role that registered organisations play in the workplace relations system, the Australian community is also a stakeholder broadly affected by the regulation.

3. Objectives of the regulation

The proposed amendments will give effect to election commitments made by the Government in its *Policy for Better Transparency and Accountability of Registered Organisations* (July 2013) (the Policy).

In line with the Policy, the Government introduced the Fair Work (Registered Organisations) Amendment Bill 2013, which was later voted down in the Senate.

The Fair Work (Registered Organisations) Amendment Bill 2014 was introduced into Parliament in the same form. Government amendments to the Bill were introduced and agreed to in the House of Representatives on 15 July 2014. The amendments reflected recommendations made by the Senate Education and Employment Legislation Committee in its report on the Fair Work (Registered Organisations) Amendment Bill 2013, tabled on 2 December 2013. These amendments:

- further aligned the material personal interest disclosure provisions of the Bill with the *Corporations Act 2001*,
- included exemptions for disclosure of payments based on those under the *Corporations Act 2001*, and
- provided an exemption for training requirements where an individual has significant knowledge of relevant financial obligations.

The Fair Work (Registered Organisations) Amendment Bill 2014 was voted down in the Senate.

The new Bill similarly gives effect to the Policy. The Bill aims to amend the RO Act to ensure as far as possible, that registered organisations are regulated in the same way as companies and directors. Currently, registered organisations and their officers are required to comply with requirements and obligations under the RO Act that are similar to those placed on companies and directors under the Corporations Act. However, registered organisations and their officers do not face the same penalties as companies and their officers for breaching these requirements.

The objective of the Policy is to increase financial transparency and accountability of registered organisations to rebuild member and community confidence through stronger governance and increased penalties.

Transparency and accountability is critical to ensuring that members' interests are protected and that funds are not used for personal gain or inappropriate purposes. Registered organisations have an important role in the workplace relations system, and members and the public must have confidence in them or the system itself will be undermined.

The Policy outlines a commitment to establish a new independent regulator called the Registered Organisations Commission (ROC). The establishment of this body is to ensure higher standards are effectively monitored and enforced.

3.1 Options for addressing the problem

3.1.1 Option One – the status quo

If the status quo is maintained, registered organisations will continue to be subject to the RO Act and all functions related to registered organisations will remain the responsibility of the FWC. In addition to enhancing workplace relations in the federal system, the objects of the RO Act are to:

- provide for the registration of associations and accord rights and privileges to them once registered,
- provide for the democratic function and control of organisations,

- ensure that registered organisations are representative of and accountable to their members, and
- ensure that registered organisations operate efficiently.

Recent amendments to the RO Act which took effect on 29 June 2013 provided for increased penalties to align with the FW Act, a more comprehensive disclosure regime, and enhanced investigative powers for the FWC, after the previous Government identified areas of the RO Act that could be clarified and strengthened. The maximum penalties that can currently be imposed are 300 penalty units for a body corporate (equivalent to \$51,000) and 60 penalty units for an individual (equivalent to \$10,200).

These changes will continue to operate under Option One. However, these penalties may not be sufficient to deter non-compliance. The Australian Mines and Metals Association (AMMA) submission to the Senate Education, Employment and Workplace Relations Committee inquiry into the Fair Work (Registered Organisations) Amendment Bill 2012 noted that all registered organisations should be subject to “the same high standards as organisations operating under the present-day legislation for corporate entities – the Corporations Act 2001.” The AMMA submission also notes that “the more immediate problem is the fact there is not a dedicated body or sufficient resources to properly police those requirements.”

Further, Option One does not include measures to reduce red tape for registered organisations that is imposed by the current RO Act. The changes proposed in Option Two remove unnecessary disclosure requirements on officers and organisations that were first included by the previous Government’s 2012 amendments to the RO Act. In addition, the Registered Organisations Commissioner is able to grant exemptions from the financial duties training requirements of officers of registered organisations, if the Commissioner is satisfied that the officers fully understand their financial duties because of their level of qualification.

3.1.2 Option Two – applying corporate standards of regulation to registered organisations, reducing red tape for registered organisations, and establishing the Registered Organisation Commission

Option Two reflects the Government’s election commitment. Under this option, registered organisations and their officers will have fiduciary and statutory responsibilities that are more closely aligned with those of companies and directors, provided under the Corporations Act. These increased responsibilities are accompanied by a reduction in the red tape for registered organisations resulting from the additional requirements which were introduced in the 2012 amendments to the RO Act.

Higher civil penalties and criminal offences

To deter non-compliance, registered organisations and their officials will be subject to similar penalties as company directors. Maximum civil penalties under the RO Act will be increased to align more closely with those in the Corporations Act. A three tier penalty system will be introduced:

- The top tier will impose the maximum civil penalty in line with the existing Corporations Act penalties. Civil penalty provisions under this tier would generally be limited to offences that relate to an officer’s fiduciary duties.
- The middle tier includes provisions relating to the provision of information about the operation and internal governance of registered organisations, including making false statements and provisions relating to financial disclosure obligations.
- The low tier relates to either the lodging of documents with the FWC or simple administrative tasks such as removing non-financial members from the organisations register. Breaches of these obligations do not have a direct effect on any person or organisation.

Criminal offences will be introduced to reinforce the importance to officers of complying with their financial management duties under the RO Act. These provisions will operate in the same way as the Corporations Act, which imposes criminal sanctions in similar situations. The criminal offences will apply where:

- an officer of an organisation or branch is reckless or intentionally dishonest and fails to exercise his or her powers and discharge his or her duties in good faith in the best interests of the organisation or for a proper purpose,
- an officer or employee of an organisation or branch uses his or her position dishonestly:
 - with an intention of directly or indirectly gaining an advantage for himself or herself (or someone else) or to cause detriment to the organisation, or
 - reckless as to whether the use of their position may result in themselves (or someone else) directly or indirectly gaining an advantage, or in causing detriment to the organisation, and
- a person dishonestly uses information obtained because he or she is, or has been, an officer or employee of an organisation or branch:
 - with the intention to gain advantage for him or herself or to cause detriment to the organisation, or
 - is reckless as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the organisation.

Criminal offences will also be introduced in relation to breaches of new investigation powers of the Registered Organisations Commissioner that will align with those currently exercised by the ASIC in accordance with the *Australian Securities and Investments Commission Act 2001*.

Moving financial reporting and disclosure obligations to the legislation

Under Option Two, new disclosure and reporting requirements for rules of registered organisations introduced by the RO Amendment will become obligations on the face of the legislation. This means that disclosure and reporting obligations will be in the legislation itself, rather than the legislation requiring organisations to provide for these obligations in their rules, as is the case under Option One. These obligations will require organisations to:

- disclose remuneration paid to officers of an organisation or branch,
- disclose material personal interests of officers
- disclose payments to related parties made by an organisation or branch, and
- provide training to officials in their governance and accounting obligations.

A new obligation will be included on the face of the legislation that requires organisations or branches to prepare a separate 'officer and related party disclosure statement' (ORPDS), which will set out some of the matters required to be disclosed by the proposed amendments outlined above, as well as the remuneration of the five highest paid officers of the organisation. The rules relating to the preparation and lodgement of the ORPDS will be built into the general purpose financial report framework to ensure that compliance is straightforward and the standards required are already well understood by registered organisations.

While there are significant similarities in the obligations on registered organisations for both Option Two and Option One, higher penalties (including criminal penalties) will apply for breaches and the regulator will have standing to bring alleged breaches to a court under Option Two. This will ensure that a more effective compliance regime is in place to prevent misconduct without significantly increasing the overall compliance burden for registered organisations.

Reducing red tape for registered organisations

Under Option Two unnecessary disclosure requirements on officers and organisations that were first included by the 2012 amendments to the RO Act are removed. These amendments align disclosure requirements more closely with long standing governance and accountability provisions under the *Corporations Act 2001*.

The specific reductions in disclosure requirements are to:

- limit the obligation to disclose material personal interests to officers whose duties relate to the financial management of the organisation or branch and remove the express material personal interest disclosure obligations relating to an officer's relatives,
- provide that officers must make disclosures of material personal interests to the committee of management, and for such disclosures to be recorded in the meeting minutes and available to members upon request, and
- further align the obligation of officers to disclose material personal interests with disclosure of payment requirements under the *Corporations Act 2001* by inserting similar exclusions.

Further, under Option Two, the Registered Organisations Commissioner is able to grant exemptions from the financial duties training requirements of officers of registered organisations, if the Commissioner is satisfied that the officers fully understand their financial duties because of their level of qualification.

Establishing a Registered Organisations Commission (ROC)

Under Option Two, an independent ROC will be created. The ROC will assume functions and powers of the General Manager of the FWC under the RO Act outlined above, and will be given stronger investigative and information gathering powers that align with those available to the ASIC.

The Minister for Employment will appoint an independent Registered Organisations Commissioner who will manage the affairs of the ROC and be responsible for the performance of its functions. The ROC will:

- enforce the RO Act, including the amended reporting and compliance requirements,
- educate registered organisations about the new obligations and provide information to members of registered organisations about their rights, as well as acting as the body to receive complaints from members, and
- cooperate with law enforcement bodies where it is in the public interest to do so.

Option Two will create a stronger regulator and a real deterrence for non-compliance. Having a body which is independent and stand-alone will raise awareness among the public and registered organisations of the importance of ensuring strong governance and accountability. It will assist in regaining the confidence of members and the public in registered organisations and the importance of their role in workplace relations.

4. Impact analysis

The approach taken in this section is to use Option One, the current situation, as the benchmark for estimating the benefits that the enhanced financial transparency and accountability of registered organisations described in Option Two, will have for members of registered organisations, registered organisations themselves, and the Australian community. This is balanced against estimated compliance costs registered organisations may incur to adopt the changes outlined in Option Two.

The methodology takes account of the characteristics of the affected parties described in section 2.1.

4.1 Option One

Option One maintains the status quo. It has been used as the benchmark for considering the costs and benefits of the two options.

Prevalence of non-compliance

It is expected that the majority of registered organisations operate with acceptable governance arrangements and for the benefit of their members. However, there is little information available to confirm how prevalent non-compliance and maladministration is among officials of registered organisations.

The analysis of registered organisation financial statements and annual reports lodged with the FWC indicates that many registered organisations provide timely and detailed financial information to their members. The recent FWC investigations into the HSU provide evidence that serious non-compliance has occurred in the past.

Benefits

The main benefit of retaining the existing arrangements is that any costs to registered organisations associated with the regulatory change are avoided. This benefit would be most pronounced for small employer and employee organisations that are often solely volunteer-run and for their members.

Option One would allow for an assessment of the effectiveness of the RO Amendments after they became mandatory on 1 January 2014, noting that the RO Amendment changes do not establish an effective framework for investigating or discouraging non-compliance.

Members of organisations will not be deterred from taking up office, voluntarily or in a paid role, by criminal offences or high civil penalties.

Costs

The FWC investigations suggest that the current approach to regulation of registered organisations may not be an effective way of ensuring that registered organisations comply with the RO Act or operate at the standard expected by their members, and the Australian community.

The current obligations on registered organisations are significant. However, the FWC investigations suggest that the regulator lacks the powers necessary to rigorously enforce these provisions and the subsequent penalties available are not sufficient to deter non-compliance. This has a number of impacts. Most directly, it will still be difficult for non-compliance to be identified, investigated or penalised.

Registered organisations play a specific role in the operation of the federal workplace relations system, as discussed in section 1. The rights and responsibilities are balanced to enhance relations between employers and employees, reduce the adverse effects of industrial disputation and allow all

parties to promote and protect their economic and social interests. The nature of this representative role is such that non-members are also indirectly or directly affected by the work of registered organisations. For example, non-members may be affected by the outcome of Enterprise Agreement negotiations led on behalf of staff by the relevant registered organisation at the workplace.

Registered organisations also play a larger role by advocating publicly for their members on other issues that are important to them. If registered organisations cannot be held to account by their members or an effective regulator, maladministration may continue and the community may lose further confidence in registered organisations. This will have an adverse social cost by diminishing the credibility of registered organisations in the view of members and the community more broadly. This will reduce their ability to be involved meaningfully in public discourse and advocate on social and economic issues.

Specifically for registered organisations, Option One represents a higher red tape impact as the exemptions to disclosure requirements and training are not applied.

4.2 Option Two

To quantify the cost and benefits of Option Two, it is necessary to understand how highly members value the principal of “value for money” and higher accountability standards.

Based on the most recent ABS statistics, workers in three out of the five industries with the highest number of union members earned below the Average Full Time Adult Total Earnings in May 2013 (cat. no. 6102.0.55.001). Employee organisations generally apply a progressive fee structure where higher wages earner pay higher fees.

The relatively low earnings of a large number of employee organisation members and the prevalence of progressive fee structures supports the conclusion that “value for money” with regards to membership fees, would be valued highly by members of employee organisations. Following from this, it is assumed that higher accountability standards would also be valued highly.

There is no definitive data on the profile of members of employer organisations. Knowing that employer organisations are formed to further the interests of their members, it can be assumed that businesses or not-for-profits pay fees to join employer organisations in order to maximise their competitive position, via advocacy or influence on the part of the organisation. Based on this, it can be assumed that “value for money” and accountability is also valued highly by members of employer organisations.

Benefits

It is expected that the level of non-compliance by officials in registered organisations will decrease and that general standards of governance within registered organisations will increase as a result of the changes proposed in Option Two.

Even if the current level of non-compliance is low, a small increase in accountability which leads to better oversight and management of members’ funds will be valued highly by members. This will benefit all members of registered organisations, regardless of whether serious non-compliance exists in their organisation, through better oversight of expenditure.

An indirect benefit of the changes will be increased confidence in registered organisations by members and the Australian community. This is important given the role that registered organisations play in the workplace relations framework and the recent findings in relation to the HSU which have undermined member and community confidence.

An additional benefit is a reduction in red tape for registered organisations compared to Option One through the introduction of exemptions to disclosure requirements, as well as a decrease in the

number of officers required to make material personal interest disclosures. Further, the Registered Organisations Commissioner is able to grant exemptions from the financial duties training requirements of officers of registered organisations, if the Commissioner is satisfied that the officers fully understand their financial duties because of their level of qualification.

Costs

The costs associated with Option Two have been estimated at an average of around \$1,900 per year for small organisations and \$2,800 per year for large organisations. Overall, the average cost is \$2,450 per year for each registered organisation. The assumptions to arrive at this figure are discussed in section 5. However these costs are reduced by the introduction of the mechanism allowing officers of registered organisations to apply for an exemption from financial training. With the saving in compliance costs from the potential exemption from training the average cost is \$750 per year for small organisations and \$1,650 for large organisations. Overall average compliance cost per year for each registered organisation is \$1,275.

Broadly, it is assumed that large organisations have the capacity to absorb these additional compliance costs without charging additional fees from members. This is based on a consideration of financial resources and number of employees. Large organisations are likely to incorporate new reporting obligations into standing administrative practices to minimise overall compliance costs because of their higher staff levels which would be more adaptive to new work arrangements and tasks.

Small organisations, on the other hand, with fewer financial resources and employees are assumed to have less capacity to absorb new compliance costs than large organisations. They also have fewer members on which to pass on the new costs. Nevertheless, in the case that small organisations were required to pass costs onto members, overall, the cost increase per member would not be significant.

Other non-monetary costs relate to members nominating for office within organisations. Some individuals may find the reporting and accountability obligations associated with holding office and new criminal sanctions too burdensome, which may deter them from nominating for office. The deterrence effect is likely to be more pronounced for small organisations because senior officials in small organisations are more likely to be volunteers with fewer resources to help them meet their obligations.

The deterrence effect is expected to be less pronounced on large organisations, which have significant financial and staffing resources to assist officials to meet their obligations. There is, however, a risk that large organisations may seek to reduce exposure to criminal and civil penalties by restructuring their organisation to significantly reduce the number of officers. Restructuring in this way could centralise decision-making and reduce the ability for members to participate in the affairs of the organisations, such as policy development.

The budgetary cost to the Government is nil.

5. Compliance costs and offsets

5.1 Compliance costs

This section estimates the compliance costs associated with the Option Two when compared with Option One, which represents business as usual. Option Two will only marginally increase the overall reporting and accountability requirements when compared with business as usual. Registered organisations already have reporting obligations under Option One, as required by the RO Act. Under Option Two, these obligations are being transferred from the rules of registered organisations to the face of the legislation and exemptions are being introduced. There will be a small number of new obligations that will increase compliance costs for registered organisations.

For the purposes of calculating the costs, registered organisations have been divided into two groups – large organisations and small organisations. Based on the registered organisations financial data, the compliance costs have been calculated on the assumption that just over one half of all registered organisations are large organisations and just under one half are small organisations.

In assessing the cost increase associated with Option Two, the Department has compared the detail of the new requirements under Option Two to business as usual. New obligations are summarised in [Table 3](#) along with their effects on compliance costs for registered organisations.

Table 3 – Option Two amendments

Amendment	Increased obligations	Decreased obligations
1. Officer and related party disclosure statement (ORPDS)		
Require organisations and branches to prepare a separate 'officer and related party disclosure statement' that outlines much of the disclosure information for the organisation	Organisations required to produce a new report (report is based on information previously required to be collected by organisations)	N/A
2. Disclosure of officers' remuneration		
Rules to provide certain matters, with statutory requirements for those matters to be disclosed: - identity, remuneration and non-cash benefits of the top 5 highest paid officers in the organisation and branches - disclosure must be made as part of the 'officer and related party disclosure statement' - the actual amount of each officer's remuneration - the actual value and form of each officer's non-cash benefits	Increases reporting requirements for branches	N/A
3. Disclosure of material personal interests		
Replace rule obligations with statutory requirement to disclose material personal interests a) of an officer or relative of an officer b) as soon as practicable after the interest is acquired c) provide particulars on nature and extent of interest and how it related to the affairs of the organisation or branch	Disclosures must be made available to members upon request	Only officers whose duties include financial duties to make disclosures. No requirement to disclose interests of relatives. Currently the obligation is on all officers and material personal interests of relatives must also be disclosed. This along with a number of new exemptions will limit the number of disclosures made. Disclosures are made to the committee of management not the whole organisation and do not need to be included in the ORPDS.
4. Exemptions from financial training		
Introduce mechanism to allow officers to apply to the RO Commissioner to be granted an exemption on the basis of: a) the officer's experience as a company director b) the officer's experience as an officer of a registered organisation; or c) other professional qualifications of experience.	N/A	Some officers will be granted exemptions from financial training.

5.1.1 New obligations and their compliance costs

Obligation 1 - Officer and related party disclosure statement

This is a new obligation that requires organisations to prepare a separate 'officer and related party disclosure statement'. The statement compiles information disclosed as per requirements that will be moved from organisations' rules to the face of the legislation under Option Two. Therefore, while the obligation to create the statement is new, organisations are already required to keep a record of most of its content. This obligation will affect all registered organisations.

The steps involved in preparing the report are the same as the general financial report. These are:

1. Keep proper financial records to create the statement
2. Draft statement (or engage third party to draft the report)
3. Submit the statement to an auditor
4. Distribute the statement to members and present it at a General Meeting or Committee of Management meeting
5. Lodge the statement with the FWC.

It is assumed that the drafting of the statement is completed by a clerical officer, with clearance by a high ranking official, such as a Secretary or President, of the organisation. A higher number of labour hours are allocated to each step for large organisations because their reports are likely to be more complex. It is also assumed that half of all organisations will engage a third party, such as an accountancy firm, to draft their report.

Obligation 2 - Disclosure of officers' remuneration

This obligation previously existed in Option One, however, Option Two applies it to more officers. The new obligation requires the remuneration of an additional three of the highest paid branch officials to be disclosed. The new obligation only applies to organisations with branches and has only been costed for large organisations which are assumed to be more likely to have branches. The obligation introduces new administrative costs to draft documentation and have these cleared by senior officials.

Obligation 3 - Disclosure of material personal interests

This obligation exists under Option One; however Option Two applies it to fewer officers.

Under Option One this obligation applies to all officers of registered organisations and requires officers to disclose not only their own material personal interests but those of their relatives. Under Option Two the obligation to disclose material personal interests will only apply to 'disclosing officers', that is, those officers whose duties relate to the financial management of an organisation, and will not include disclosure of interests of relatives. This will result in fewer people making disclosures.

Under Option One there are no interests exempted from disclosure. Under Option Two a number of exemptions have been introduced. It has been assumed that this will lead to a slight reduction in the time officers spend preparing their disclosures. Under Option Two disclosures will also no longer need to be made to an organisation as a whole, only to an organisation's committee of management. As disclosures must be made as soon as practicable it has been assumed that each officer will inform the committee of management separately. Each disclosure will require time spent by the officer, a clerical officer to prepare any material for the committee of management, time of the committee members, and record keeping by a clerical officer. It has been assumed that not all officers will have a personal interest to disclose every year.

Under Option Two organisations must still make the content of disclosures available to members upon request. It has been assumed that this will therefore take the time of a member to prepare a request and the time of a clerical officer to respond.

Obligation 4 – Exemptions from financial training

This potential exemption was not available under Option One. This new mechanism allows officers who are required to undertake training to apply for an exemption from financial training. It has been assumed that a reasonable percentage of officers required to undertake financial training will apply for an exemption and that all of these exemptions will be granted. The reduction in compliance costs associated with financial training has been calculated against the baseline of an officer having to spend eight hours at training. The compliance costs associated with an exemption being applied for and granted include an officer seeking approval from a senior officer to apply and a clerical officer preparing the application.

5.1.2 Standard costs applied

The compliance costs associated with the proposal are administrative costs, in the form of labour costs. There are no substantive compliance costs or delay costs. A number of assumptions have been made regarding the labour costs used in the analysis. These are based on an assessment of indicative salary range data derived from jobs and recruitment websites for the selected occupations and, in the case of officials, including and high-ranking officials, information contained in registered organisations' financial reports. Fortnightly wages have been calculated by multiplying annual salaries by 12 and dividing by 313. This calculation averages annual pay out over four years to account for an irregular number of fortnights per year and a leap year. Assuming 76 working hours in a fortnight, the hourly rates are as follows:

Role	Annual salary	Hourly rate
Clerical officer	\$55,000	\$27.75
Official	\$65,000	\$32.79
Financial Accountant	\$90,000	\$45.40
Secretary/President	\$100,000	\$50.45
Registered Organisations Commissioner	\$280,000	\$141.70
Member	N/A	\$27

In order to estimate costs associated with amendments made to the Bill, additional hourly rates were calculated for the Registered Organisations Commissioner and for members of registered organisations. The Regulatory Burden Measurement Framework from the Department of Prime Minister and Cabinet estimates an average hour of leisure time to cost \$27. This figure has been used for costs associated with members' time. The hourly rate for the Registered Organisations Commissioner has been calculated based on an annual salary of \$280,000 which is roughly commensurate with the salaries of similar Commonwealth officer holders.

5.2 Regulatory Burden Estimate

The compliance costs discussed above are summarised in Table 4.

Table 4 – Regulatory Burden Estimate

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$	\$137,942	\$	\$137,942
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Workplace Gender Equality Agency (OBPR ID number 16810141121)	-\$6,900,000	\$	\$	-\$6,900,000
Are all new costs offset?				
<input checked="" type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = -\$6,762,058				

6. Stakeholder Consultation

6.1 Consultation with relevant stakeholders

Relevant stakeholders are:

- State and Territory Governments
- Registered organisations and their officials
- Members of registered organisations:
 - For employee organisations: broadly *workers*
 - For employer organisations: broadly *businesses*, including small businesses.

The following groups have been consulted formally in relation to the changes outlined in Option Two:

- state and territory ministers were consulted through the Council of Australian Governments' Select Council on Workplace Relations (SCWR). Officials from states and territories were also consulted through a High Level Officials meeting, and
- Employer and employee organisations were consulted through the National Workplace Relations Consultative Council and the Council's Committee on Industrial Legislation.

The Department also considered public comments made by stakeholders regarding the regulation of registered organisations following the release of the Government's *Better Transparency and Accountability of Registered Organisations* policy in July 2013. Stakeholder feedback on related proposed regulation of registered organisations was also considered, including:

- consideration of submissions to a Senate Committee Inquiry into the Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012 moved as a Private Members Bill in November 2012, which sought to give effect to parts of the Government's policy, and
- submissions received on 25 June 2013 by the Senate Committee Inquiry into the RO Amendment which include opinions on compliance with increased regulation of registered organisations.

Further, an options-stage RIS and details-stage RIS were published in 2013, for use throughout the consultation process.

6.2 Outcome of formal consultations

Prior to introduction of the Fair Work (Registered Organisations) Amendment Bill 2013

SCWR is a consultative forum for relevant state and territory ministers to discuss workplace relations, workers' compensation and occupational health and safety issues of mutual interest. Consultation with state and territory ministers is required under the Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector when changes are proposed to the FW Act, including the RO Act.

The Committee on Industrial Legislation (CoIL), a subcommittee of National Workplace Relations Consultative Council (NWRCC) meets when required to provide technical input on draft or existing workplace relations legislation.

SCWR was held on 1 November 2013 and the proposal to apply corporate standards of regulation to registered organisations and establish the Registered Organisation Commission was considered. State and territory officials were consulted on the draft legislation through a High Level Officials meeting.

The NWRCC includes seven representatives from the Australian Council of Trade Unions and seven representatives selected from the Australian Chamber of Commerce and Industry, Australian Industry

Group, National Farmers' Federation, Master Builders Australia and Business Council of Australia. These organisations are peak industrial relations bodies and, as such, are representatives of employer and employee associations more broadly. They were consulted on the draft legislation through the CoLL.

6.2.1 Committee on Industrial Legislation

The CoLL was provided with confidential draft legislation for consideration, followed by discussion of their questions and feedback with Department of Employment officials on 30 and 31 October 2013.

CoLL members acknowledged that the draft legislation broadly reflected the Government's policy for *Better Transparency and Accountability of Registered Organisations* (the Policy).

Members expressed some concern in relation to the inclusion of criminal penalties for non-compliance with the RO Act and increased disclosure requirements for officers of registered organisations. Members also provided feedback in relation to technical elements of the draft legislation, particularly in relation to alignment of the RO Act with the Corporations Act. Consideration of this feedback resulted in various minor and technical amendments to the draft legislation.

6.2.2 High Level Officials meeting

High level state and territory officials were provided with confidential draft legislation for consideration and discussion with Department of Employment officials on 31 October 2013. State and territory officials provided general high level comments on technical elements of the draft legislation, which have been considered by the Department.

6.2.3 Select Council on Workplace Relations

The Select Council on Workplace Relations was held in Melbourne on 1 November 2013. The SCWR noted the Government's commitment to strengthen the transparency and accountability of registered organisations by giving effect to legislation and establishing a Registered Organisations Commission.

Consultation in 2014 and 2015

The 2013 Bill was reviewed by the Senate Education and Employment Legislation Committee and its report was tabled on 2 December 2013. The Senate Legislation Committee recommended that the Bill be passed, subject to amendments being made to:

- further align the material personal interest disclosure provisions of the Bill with the *Corporations Act 2001*,
- include exemptions for disclosure of payments based on those under the *Corporations Act 2001*, and
- provide an exemption for training requirements where an individual has significant knowledge of relevant financial obligations.

Amendments reflecting the recommendations by the Senate Education and Employment Legislation Committee were introduced and passed by the House of Representatives on 15 July 2014. These amendments represent the measures to reduce red tape for registered organisations, described in Option Two.

Prior to introduction of the amendments, the Government conducted targeted consultations with stakeholders on the detail of the amendments. Some minor changes to the amendments were made as a result of these consultations.

In February 2015 the Minister for Employment consulted with NWRCC members on the measures to reduce red tape for registered organisations, outlined in Option Two. As a result of this consultation, the Department provided a document for the information of members, to explain the amendments.

7 Conclusion

The Department recommends implementing Option Two for the following reasons:

- Option Two provides a benefit to members of registered organisations that they value highly.
- Option Two will restore member and community confidence in registered organisations as it will show that the Government is determined to protect their interests through strong regulation, compliance and appropriate penalties.
- Option Two also considers the regulatory impact on registered organisations. It reduces the amount of disclosures that are required to be made, while still ensuring appropriate disclosures and obligations for people who have some role in the financial affairs of the organisation. It will also mean that the details of personal interests are not unduly publicised, while still ensuring that members can access these details if they wish.
- The number of organisations affected is low, with only 112 registered organisations as at 3 March 2015.
- The compliance cost for each registered organisation is comparatively low at around \$1,275 per year on average. It is likely that the large majority of registered organisations will be able to absorb these costs.
 - If these costs were passed onto individual members via an increase in fees, the cost increase per member would be negligible.
 - Furthermore, the majority of members are part of registered organisations that have significant financial assets and staffing resources.
- The overall budgetary impact for the Government is nil.

8 Implementation and Review

8.1 Implementation

Once the legislation has received Royal Assent, the FWO, FWC and the Department will commence consultation and negotiations in order to establish the ROC and see it commence operations. In particular, staffing arrangements will need to be finalised early in the implementation phase, including the commencement of the appointment process for a Registered Organisations Commissioner and transfer of relevant positions from the FWC to the ROC. Appropriate governance arrangements will need to be established for the ROC's operation within the FWO. A detailed implementation plan which covers ongoing administration of the ROC is being prepared to operationalise the legislative changes proposed in Option Two.

8.2 Review

Review of the implementation phase will assess whether government and Parliamentary processes have been adhered to and whether the legislation has been fully and successfully developed and implemented. The key milestone to be achieved is the passage of legislation implementing the measures outlined in Option Two, and the corresponding commencement of the ROC.

The operation and effectiveness of the new body will be areas for review by FWC, FWO and once established, the ROC. It will be recommended as part of the ROC implementation plan, that the ROC undertake a review after 18 months of operation to consider:

- whether the legislation has assisted in achieving better transparency and accountability standards,
- whether the ROC is able to effectively regulate registered organisations, and
- any changes to operations or legislation that may be necessary.