



# General Manager's response

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## Registered Organisations Governance and Compliance External Review report

Melbourne, 28 September 2023

On 21 August 2023, I received a report outlining the findings of the independent Registered Organisations Governance and Compliance External Review. This is my initial response to that report.

### Background of the review

#### Transfer of functions

Schedule 1, Part 1 of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* provided for the abolition of the Registered Organisations Commission and the transfer of the functions to the General Manager of the Fair Work Commission (Commission). The relevant provisions commenced on 6 March 2023.

The new s.329A 'Functions of the General Manager' replaced the s.329AB 'Functions of the [RO] Commissioner' in the *Fair Work (Registered Organisations) Act 2009* (RO Act). The General Manager in performing those functions must now seek to embed a culture of good governance and voluntary compliance with the law within organisations.

To assist with the transition of functions to the Commission, in February 2023 I established the Registered Organisations Commission Transitional Advisory Committee (ROCTAC). The group consisted of senior representatives from the ACTU, ACCI and AiGroup.

#### Establishing the review

In late March 2023, I engaged two external independent reviewers, Anna Booth and Jonathan Hamberger, to consult with registered organisations, their peak bodies and Commission staff.

I consulted with ROCTAC on the selection of the reviewers and in defining the terms of reference for the review. Both the choice of reviewers and terms of reference were endorsed by all members of the ROCTAC.

The review's terms of reference were published on the FWC's website on 29 March 2023.

- Read the [Terms of Reference for the review](#)

## Submissions, workshops and meetings

On 21 April 2023, the reviewers wrote to all registered organisations to invite submissions on the issues covered by the Terms of Reference. Submissions closed on 30 June 2023. The review received 21 submissions.

The reviewers conducted workshops and meetings with representatives from registered organisations (state and federal branches) and their peak bodies. The registered organisations who participated in the review were diverse, including in relation to industry sector, size, complexity, location and financial resources.

The reviewers also consulted with the staff from the Registered Organisations Services Branch (ROSB) of the Commission who assist me in performing my functions under the RO Act.

## The report

On 21 August 2023, I received a report outlining the findings of the review.

### Download the report

[Registered Organisations Governance and Compliance External Review report](#)

The report commences with the following observations:

*It is important that in performing their functions under the (RO) Act, the GM and the staff in the ROSB have regard to the underlying purpose of the regulatory scheme. This is not to achieve 'compliance for compliance's sake' but to protect the interests of members of registered organisations by:*

- *ensuring that organisations are representative of and accountable to their members*

- *ensuring that organisations are run democratically*
- *ensuring that organisations are able to operate effectively*
- *encouraging members are able to participate in the affairs of their organisation*
- *ensuring that financial reporting is in a form that assists members; and organisations are managed efficiently. The focus on protecting the members' interests needs to be reflected in the Branch's planning.*

It then describes approximately 25 specific recommendations that relate to the current statutory framework.

At the time of writing this response, we have commenced work on over half of the report's recommendations. See [Table 1 — Implementation of recommendations](#) and [Chart 1 — Implementation timeline](#) at the end of this response.

While a great deal of work is already underway, we are just at the start of this journey.

## **Next steps**

In our most recent ROCTAC meeting, the group agreed to remain convened as a permanent advisory group, the Registered Organisations Advisory Committee (ROAC). The group will continue to provide advice and assistance to the Commission with regards to its registered organisations functions.

Over the coming weeks, I will meet with staff of the ROSB to discuss the report, including the feasibility of implementing some of the recommendations in the context of the legislative framework we operate within. I will also consult with the members of the ROAC about initial priorities and to establish the primary governance arrangements that will guide the future activities of the ROAC and the planned Compliance Practitioners' Reference Group (CPRG).

In keeping with the commitment to operate in an open and transparent manner, these arrangements will also seek to codify the framework for ongoing consultation, cooperation and communication with registered organisations.

One of the first items for consultation with the ROAC and CPRG (once established) will be to seek feedback on the Commission's proposed performance reporting framework for the

Commission's registered organisations services. Work is already underway to develop this draft framework.

## Thank you

I extend my deep appreciation to the registered organisations and their peak associations for their meaningful engagement with this independent review. I intend to acknowledge and respect their contribution on an ongoing basis by ensuring their feedback meaningfully informs the future delivery of education, advice and compliance services.

I thank Anna Booth and Jonathan Hamberger for the care, diligence and objectivity with which they conducted the review. I have received consistently positive feedback about the conduct of the external review. In our most recent meeting, ROCTAC members were complimentary about the reviewers' approach and endorsed their findings.

Finally, I would like to acknowledge and thank the staff within the ROSB for their contribution to the review and their unending commitment to supporting registered organisations.

Murray Furlong  
General Manager  
Fair Work Commission

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**Table 1: Implementation of recommendations**

Recommendation	Status	Update
Endorsement of the independent report and all recommendations	Complete	On 25 August 2023, ROCTAC members endorsed the independent report and all recommendations
There should be a permanent advisory committee with the GM and representatives from the ACTU, ACCI, and AiG	Complete	On 25 August 2023, ROCTAC members approved the recommendation to establish a permanent Registered Organisations Advisory Committee (ROAC). A committee charter will be prepared for endorsement at the next ROAC meeting. It will be shared with all registered organisations.
Our attention has been drawn to the growth of unregistered associations that purport to be membership-based and participate in the industrial relations system alongside ROs. Some ROs have expressed concern that such organisations operate without the obligations upon ROs that are designed to protect members' interests. This is an issue that stakeholders and policy makers may wish to explore further.	Not yet commenced	This recommendation will be communicated to the Department of Employment and Workplace Relations EWR for consideration. Requires legislative change. The ROAC will also discuss this recommendation.

Recommendation	Status	Update
<p>We recommend a full review be undertaken of the penalties that apply under the RO Act – including the application of criminal penalties and the impact this may have on the participation of members in the running of their organisation. The review should have regard to the penalty regimes that apply to other not for profit institutions.</p>	<p>Not yet commenced</p>	<p>Further analysis to be completed by expert ROSB staff and discussion at ROAC to assist the General Manager to learn more about this recommendation.</p>
<p>There should be a regular compliance practitioners’ reference group (CPRG) to consult on technical matters</p>	<p>Underway</p>	<p>I will seek nominations from registered organisations through the ROAC and ROSB, with the first meeting of the group to be held in December 2023.</p> <p>Additionally, I intend to meet compliance officers working in registered organisations to learn about their jobs and find out how we might make it easier for them to do their jobs. With the agreement and participation of registered organisations, I hope that the <i>General Manager’s Listen and Learn</i> program can begin in November 2023.</p>

Recommendation	Status	Update
<p>The GM should publish a Compliance and Enforcement policy using FWO’s policy as a template..... The policy should ensure a positive regulatory culture that encourages voluntary compliance and supports the democratic functioning of organisations and is aligned with the interests of the members.</p>	<p>Underway</p>	<p>Drafting has commenced on a Compliance and Enforcement Policy. Consultation with the ROAC is programmed to occur in October 2023.</p> <p>This will include draft guidelines for the use of the General Manager’s new enforcement powers in respect of Enforceable Undertakings and Infringement Notices. It will also include an outline of the strategic approach the General Manager will adopt, including triaging and prioritisation.</p>
<p>A portal should be implemented to allow for the submission of all reports and applications... This should enable ROs to see online all the previous reports they have submitted. The portal should be designed in consultation with the CPRG</p>	<p>Underway</p>	<p>There is consensus that the current lodgement process is inefficient. It requires registered organisations to print, complete, scan and email forms to the Commission. It is also burdensome for ROSB staff who manually process forms.</p> <p>The former ROC completed a requirements gathering process in 2022. Before commencing this project, the FWC will need to resolve several systems and data projects arising from the transition of functions from the ROC.</p>

Recommendation	Status	Update
<p>The financial statement should no longer be automatically assessed. Assessment should only occur in accordance with strategic compliance principles.</p> <p>The ROSB should develop, in consultation with the CPRG, an 'easy to read' model summary financial statement for members. The auditor should confirm that this summary document is consistent with the full financial report.</p>	Not yet commenced	<p>ROSB will also continue to engage with Registered Organisations to remind them of their reporting obligations and deadlines. This will occur via the portal when established.</p> <p>Further analysis to be completed by expert ROSB staff and discussion at ROAC to assist the General Manager to learn more about this recommendation. The current practice of ROSB involves primary and advanced review of financial statements. Primary reviews assess a reduced range of disclosure requirements in respect of the content of financial statements.</p>
<p>Model rules, including election rules, should be developed in consultation with ROAC to encourage democratic and efficient management</p>	Underway	<p>The ROSB has begun gathering information to inform a public tender for expertise in drafting an annotated and practical set of rules that will work for many organisations. ROSB will also develop and maintain a publicly accessible benchbook.</p>



Recommendation	Status	Update
<p>An induction pack for organisation compliance staff should be developed in conjunction with the CPRG</p>	<p>Underway</p>	<p>The Education Induction Pack for Compliance Officers will be completed by 30 June 2024, in consultation with the CPRG and ROAC.</p> <p>Registered organisations provided very positive feedback about the value of the current education, assistance and advice provided by the ROSB. Commitment made to enhance resourcing for these services</p>

Recommendation	Status	Update
<p>The Branch should improve the time it takes to deal with applications for rule changes (which should be made via the portal). It is acknowledged that this might require some additional resources</p> <p>The Branch should adopt performance standards in processing rule change applications (using the certification of rule changes - not time taken to 'assess')</p> <p>Feedback should be provided on where applications are up to in the assessment process (through the portal), and explanations should be provided for any delays</p>	Underway	<p>To date, the ROSB have already:</p> <ul style="list-style-type: none"> <li>• introduced transparent internal reporting and tracking mechanisms</li> <li>• introduced a prioritisation process to immediately focus on the finalisation of aged matters</li> <li>• recruited additional managerial resources to drive innovation, streamlining and reducing timeframes associated with rule amendments</li> <li>• commenced a targeted education and awareness focus relating to efficient and timely rule alteration processes, including by delivering a recent podcast on the topic</li> <li>• begun reviewing operational processes, including piloting refined timeliness benchmarks and providing regular feedback to registered organisations about the progress of applications.</li> </ul> <p>I commit to continue working collaboratively and in partnership with registered organisations to expedite rule assessments and reduce the complexity of the rule altering process.</p>

Recommendation	Status	Update
<p>The process for obtaining a right of entry permit should be significantly streamlined, and the need for one-on-one meetings to verify identity should be eliminated</p> <p>The process for obtaining a permit should be no more onerous than that required to obtain a passport unless there are good grounds for questioning whether the proposed permit holder may not be a fit and proper person</p> <p>Renewal application should be even more streamlined – in particular, there should be no need for further identity checks</p>	Underway	<p>To date, the ROSB have already:</p> <ul style="list-style-type: none"> <li>removed the requirement for committee of management representatives to confirm that they made the relevant application (based on the representative being copied into the original application to the Commission)</li> <li>removed the re-identification process previously required for persons applying to renew an entry permit</li> </ul> <p>The ROSB have also prepared an amended right of entry permit checklist and peer review checklist. Subject to legislative restrictions, I am committed to streamlining the processes associated with right of entry permit applications and the ROSB will undertake a review to achieve further efficiencies for organisations. In this review, ROSB will communicate to the Department of Employment and Workplace Relations any technical issues associated with achieving those efficiencies.</p>
<p>There should be greater involvement of ROSB staff with expertise in RO rules in assisting AEC in conducting elections. There should be an MOU between the FWC and the AEC to promote the fair and efficient conduct of RO elections.</p>	Not yet commenced	<p>ROSB staff will continue to work with the Australian Electoral Commission to discuss ways to promote fair and efficient elections for Registered Organisations, with a view to formalising the engagement between the organisations (for example, through an MOU or exchange of letters).</p>

Table 2: Additional recommendations

Recommendation	Status	Update
<p>There should be a longer-term review of the financial reporting requirements in the RO Act that are in excess of those required of listed companies to assess whether these additional requirements add value.</p>	<p>Not yet commenced</p>	<p>Further analysis to be completed by expert ROSB staff and discussion at ROAC to assist the General Manager to learn more about this recommendation as it may relate to the General Manager’s Reporting Guidelines.</p> <p>Otherwise this recommendation may require legislative change. This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>
<p><b>The legislation should be amended to allow scope for voting electronically.</b></p>	<p>Not yet commenced</p>	<p>Requires legislative change. This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>
<p>The annual return, financial statement, loans, donations and grants report and officer and related party disclosure statement should all be consolidated into one audited return (to be submitted via the portal).</p>	<p>Not yet commenced</p>	<p>Requires legislative change. This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>

Recommendation	Status	Update
<p>The only changes in office holders that should continue to be reported as they occur throughout the year should be for positions that exercise significant direct control over the operations and finances of the registered organisations on a day-to-day basis. Otherwise, changes in office bearers should be reported once a year as part of the consolidated report. Changes in office holders should be reported through the portal.</p>	<p>Not yet commenced</p>	<p>Requires legislative change. This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>
<p>Financial training should not be required for those who have changed office if they have completed the training in the previous five years.</p>	<p>Not yet commenced</p>	<p>Requires legislative change. This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>

Recommendation	Status	Update
<p>ROs should be audited to the Tier 2 standard that applies to charities and other not-for-profit entities. This would impact disclosures rather than financial results reporting and be a time saver for ROs. Publicly listed companies are subject to Tier 1 audits because of the unique requirement to provide details to shareholders. ROs do not warrant this level of auditing.</p>	<p>Not yet commenced</p>	<p>Requires legislative change.</p> <p>Provision is made in the RO Act for reduced reporting requirements for organisations with income less than \$100,000, although this threshold has not increased for several decades, and no organisations currently fall under the threshold.</p> <p>This recommendation will be communicated to the Department of Employment and Workplace Relations for consideration.</p>

Chart 1: Implementation timeline

