Fact sheet

How to register as an organisation with the Fair Work Commission

What is a registered organisation?

A registered organisation is an association of employers, an association of employees or an enterprise association which has been registered by the Fair Work Commission (the Commission) under the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

The Commission and the Registered Organisations Commission are jointly responsible for the registration and accountability of registered organisations.

Who can register as an organisation?

The following types of associations can be registered:

- an association of employers
- an association of employees, and
- an enterprise association. An association of employers must:
  - be a constitutional corporation or have some or all members who are federal system employers—for further information refer to s.18A of the RO Act;
  - be an association for furthering or protecting the interests of its members;
  - have members who are employers who, in the aggregate, throughout the six months before the application, have employed on an average taken per month at least 50 employees.

An association of employees must:

- be a constitutional corporation or have some or all members who are federal system employees—for further information refer to s.18B of the RO Act;
- be an association for furthering or protecting the interests of its members;
- be free from control by, or improper influence from, an employer or by an association/organisation of employers;
- have at least 50 members who are employees. An enterprise association must:
- have the majority of members who are employees performing work in the same enterprise;
- be an association for furthering or protecting the interests of its members;
- be a constitutional corporation or have some or all members who are federal system employees—for further information and inclusion categories refer to s.18C of the RO Act;
- have at least 20 members who are employees.
What is the process for becoming a registered organisation?

**Step 1:** An association lodges an application form using form F55, F56 or F57

**Step 2:** The Commission publishes notice in the Gazette stating that an application for registration has been received

*Timeline:* As soon as practicable after receiving application

**Step 3:** Any interested party may lodge a notice of objection to the registration of the association using form F58

*Timeline:* No later than 35 days after a notice of application for registration is published

**Step 4:** If an objection is lodged, the objecting party must serve a copy of the notice of objection on the association

*Timeline:* Within 7 days lodging in the Commission

**Step 5:** In answer to the objection, the association may lodge a written statement signed by an authorised officer of the association

*Timeline:* No later than 14 days after service of the objection on the association

**Step 6:** If an answer to the objection is lodged, the association must serve a copy of the answer on the objector

*Timeline:* Within 7 days of lodging in the Commission
What must an application for registration as an organisation contain?

An application for registration as an organisation must:

- be on form F55 for employer associations, F56 for employee associations or F57 for enterprise associations (available on the Commission’s website at www.fwc.gov.au/resources/forms);
- contain a declaration by an authorised officer (authorised under the rules of the association) verifying the facts in the application and in any document lodged with the application;

be lodged in the Commission with:

- a list of members showing the name and postal address of each member;
- a list of the offices in the association and in each branch of the association;
- a list of the name, postal addresses and occupations of the persons holding the offices;
- a list of the branches of the association, showing each branch, its name and the location of its office;
- the rules of the association and the rules of each of its branches;
- a copy of a resolution in favour of the registration of the association as an organisation passed in accordance with the rules of the association by a majority of the members of the association present at a general meeting of the association or by an absolute majority of the committee of management of the association.

An association applying for registration as an organisation may lodge an additional statement supporting the application in the Commission.

What will the Commission examine to determine if an association can become a registered organisation?

The Commission will examine whether:

- the association is an association under s.18(a), (b) or (c); and
- the association is a genuine association and satisfies the criteria under s.19 or s.20 of the RO Act; and
- the association would conduct its affairs in a way that meets the obligations of an organisation under the RO Act and the Fair Work Act 2009 (FW Act); and
- the association has rules that make provision as required by the RO Act to be made by the rules of organisations (see below table); and
- the association does not have the same name as that of an organisation, or a name that is so similar to the name of an organisation as to be likely to cause confusion; and

Step 7: The Commission will hold a hearing to determine the application.
a resolution in accordance with s.19(1)(h) or s.20(1)(h) of the RO Act, in favour of registration of the association as an organisation, has been passed; and

the registration of the association would further Parliament’s intention in enacting the RO Act (see s.5) and the object set out in s.3 of the FW Act.

For employer or employee associations

The Commission will also examine whether:

- there is no organisation to which members of the association might belong, or
- if there is such an organisation, it is not an organisation to which the member of the association could more conveniently belong and that would more effectively represent those members
  - if there is another organisation as above, the Commission can accept an undertaking from the association that the Commission considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rule of the organisation and the association
  - in considering the effectiveness of the representation of an organisation or association, the Commission must take into account if the representation would be consistent with Parliament’s intention in s.5 of the RO Act and s.3 of the FW Act. For enterprise associations

The Commission will also examine whether:

- the association is free from control by, or improper influence from any employer, any person or body with an interest in that enterprise or any organisation or association; and
- a majority of the persons eligible to be members of the association support its registration as an organisation.

What must the rules of a registered organisation contain?

The rules of a registered organisation must include rules which address the following:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purposes of the organisation</td>
<td>s.141(1)(a)</td>
</tr>
<tr>
<td>Eligibility for membership</td>
<td>s.141(1)(a)</td>
</tr>
<tr>
<td>Powers and duties of the committees and offices</td>
<td>s.141(1)(b)(i)</td>
</tr>
<tr>
<td>Manner of summoning meetings</td>
<td>s.141(1)(b)(ii)</td>
</tr>
<tr>
<td>Removal of holders of offices</td>
<td>s.141(1)(b)(iii)</td>
</tr>
<tr>
<td>Control of committees</td>
<td>s.141(1)(b)(iv)</td>
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<tr>
<td>Execution of documents</td>
<td>s.141(1)(b)(v)</td>
</tr>
<tr>
<td>Notifying the Commission of industrial disputes</td>
<td>s.141(1)(b)(vi)</td>
</tr>
<tr>
<td>Cessation of membership otherwise than by resignation</td>
<td>s.141(1)(b)(vii)</td>
</tr>
<tr>
<td>Topic</td>
<td>Section</td>
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<td>Resignation of members under s.174 of the RO Act</td>
<td>s.141(1)(b)(viii)</td>
</tr>
<tr>
<td>Property of the organisation</td>
<td>s.141(1)(b)(ix)</td>
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<tr>
<td>Audit of the accounts</td>
<td>s.141(1)(b)(x)</td>
</tr>
<tr>
<td>How funds may be spent</td>
<td>s.141(1)(b)(xi)</td>
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<tr>
<td>Register of the members</td>
<td>s.141(1)(b)(xii)</td>
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<tr>
<td>Alteration of rules</td>
<td>s.141(1)(b)(xiii)</td>
</tr>
<tr>
<td>Development and implementation of financial policies</td>
<td>s.141(1)(c)</td>
</tr>
<tr>
<td>Information for applicants for membership</td>
<td>s.141(1)(d)</td>
</tr>
<tr>
<td>Elections for offices</td>
<td>ss.143, 144</td>
</tr>
<tr>
<td>Terms of office</td>
<td>s.145</td>
</tr>
<tr>
<td>The keeping of minute books by committees of management</td>
<td>s.141(i)(b)(iia)</td>
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<tr>
<td>Conditions for loans, grants and donations</td>
<td>s.149</td>
</tr>
<tr>
<td>Membership agreements</td>
<td>s.151</td>
</tr>
<tr>
<td>Assets and liabilities agreements</td>
<td>s.152</td>
</tr>
<tr>
<td>Requirement for officers to undertake approved financial training</td>
<td>s.154D</td>
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</tbody>
</table>

The rules of a registered organisation may include rules which address the following:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal from office</td>
<td>s.141(1)(c)</td>
</tr>
<tr>
<td>Eligibility for membership of independent contractors</td>
<td>s.141(2)</td>
</tr>
<tr>
<td>Filling of casual vacancies</td>
<td>s.146</td>
</tr>
<tr>
<td>Membership agreements</td>
<td>s.151</td>
</tr>
<tr>
<td>Assets and liabilities agreements</td>
<td>s.152</td>
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<tr>
<td>Any other matter</td>
<td>s.141(3)</td>
</tr>
</tbody>
</table>

For full provision of what is required in the rules of registered organisations, please refer to Chapter 5 of the RO Act.

**What are the rights of being a registered organisation?**

The rights gained by becoming a registered organisation include:
being able to represent members in the Commission;
free elections of officers conducted by the Australian Electoral Commission in accordance with the registered organisation’s rules;
becoming a body corporate;
having perpetual succession;
having the power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property;
being able to sue or be sued in its registered name.

What are the responsibilities of being a registered organisation?

The responsibilities gained by becoming a registered organisation include:

- must have a common seal;
- must have rules that comply with the RO Act;
- must comply with the standards set out in the RO Act to achieve organisations:
  - being representative and accountable to members;
  - operating effectively;
  - encouraging members to participate in the affairs of the organisation;
  - having efficient management and high standards of accountability to their members;
  - having democratic functioning and control;
- must hold elections for offices in accordance with the RO Act;
- must submit annual returns and financial reports to the Registered Organisations Commission in accordance with the RO Act.

Glossary

The Commission means the Fair Work Commission

constitutional corporation means:

- a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial or trading corporation formed within the limits of the Commonwealth; or
- a body corporate that is incorporated in a territory; or
- a Commonwealth authority

demarcation dispute includes:

- a dispute between 2 or more organisations or with an organisation as to the right, status or functions of members of the organisation in relation to the employment of those members;
- a dispute arising between employers and employees, or between members of different organisations, as to the demarcation of functions of employees or classes of employees;
- a dispute about the representation under the RO Act or the FW Act of industrial interests of employees by an organisation of employees.

federal system employer means:
• a constitutional corporation; or
• the Commonwealth/designated Commonwealth authority; or
• a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as a flight crew officer, a maritime employee or a waterside worker; or
• a body corporate incorporated in a territory; or
• a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the territory; or
• an employer outside of Western Australia, so long as the provisions of the RO Act that would apply to:
  o the employer as a federal system employer; or
  o an association of which the employer is a member;
fall within the legislative power referred to the Commonwealth under the respective referral legislation in each state except for Western Australia.

**federal system employee** means:

• an individual so far as he or she is employed, or usually employed, by a federal system employer, except on a vocational placement; or
• an individual who is employed outside of Western Australia, so long as the provisions of the RO Act that would apply to:
  o the individual as a federal system employee; or
  o an association of which the individual is a member;
fall within the legislative power referred to the Commonwealth under the respective referral legislation in each state except for Western Australia; or
• an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee who could be characterised in either or both of the ways mentioned above.

**more conveniently belong** This term has been the subject of definition and re-definition by courts over time. An understanding of the term will require a review of that case law.

**RO Act** means the *Fair Work (Registered Organisations) Act 2009—Registration and Accountability of Organisations*

**Further information**

For further information on registration of organisations see:

• The Registered Organisations Commission