



Becoming a registered organisation

Unions, employer associations and enterprise associations can apply to the Fair Work Commission (the Commission) to be registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* (the RO Act).



IMPORTANT: We recommend you contact the Commission before lodging an application

We focus on providing education, advice and assistance. We can help applicants for registration prepare their lodgement by reviewing their proposed rulebook and application. An association must take several key steps before completing the form and the application must be accompanied by a series of documents.

We can help an association understand the application process, including the possibility of objections and hearings. Applicants for registration must also understand that registration comes with many rights, privileges and legal obligations.

[Contact us](#) for advice and assistance as early as possible before lodging an application.

Overview

Associations must meet certain criteria to be eligible for registration. The application process can take time as the application, potential objections and submissions must be properly considered by the Commission. The Commission may schedule hearings at which the applicant and potential objectors can present their cases.

If successfully registered, organisations enjoy various rights and privileges granted by that registration. Registration also attracts legal obligations, with many carrying legislated time frames for compliance.



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The purpose of this guidance note is to provide an overview of the pathway to registration. This guidance note will cover the following topics:

- criteria for registration
- the application process
- rights and obligations arising from registration.

Who can register as an organisation?

Three types of associations can be registered:¹

- an association of employers
- an association of employees (union)
- an enterprise association.

An association of employers must:²

- be a constitutional corporation or have some members who are federal system employers
- be an association for furthering or protecting the interests of its members
- have members who are employers and who, in the aggregate employ on average at least 50 employees per month.³

An association of employees must:⁴

- be a constitutional corporation or have some members who are federal system employees
- 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 or organisation of employers
- have at least 50 members who are employees.

¹ Section 18 of the RO Act.

² See sections 18A and 19 of the RO Act.

³ Subsection 19(1)(c) of the RO Act requires this average to be calculated over the six months before the application for registration is made.

⁴ See sections 18B and 19 of the RO Act.



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An enterprise association must:⁵

- be a constitutional corporation or have some members who are federal system employees, or the employer at the relevant enterprise is a constitutional corporation or operates in Victoria or in a Territory⁶
- have a majority of members who are employees performing work in the same enterprise
- be an association for furthering or protecting the interests of its members
- have at least 20 members who are employees
- be free from control by, or improper influence from, an employer, any person or body with an interest in the enterprise, any organisation, or an association of employers or employees.

Benefits of registration

Registration means the association becomes a body corporate and gives it certain rights, including to:

- have perpetual succession
- sue, or be sued, in its registered name
- represent members before the Commission and during bargaining
- hold elections for office bearers which are conducted by the Australian Electoral Commission (AEC) at the Commonwealth's expense
- buy, hold, sell, lease, mortgage, exchange and otherwise own, possess, and deal with property
- for unions and enterprise associations, to apply for entry permits to enter the employer's premises to meet with employees and investigate suspected contraventions of workplace laws, including State and Territory work, health and safety laws.

The significant benefits which come with registration as a federally registered organisation should be considered in the context of the statutory obligations which accompany that registration. Any person or

⁵ See sections 18C and 20 of the RO Act.

⁶ Subsection 18C(2) of the RO Act sets out a number of characteristics of the relevant employer, any one of which will meet the criteria for an enterprise association to be registered under the RO Act.



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association seeking registration under the RO Act should consider obtaining independent legal advice as to whether registration is the most appropriate option for them.

Rules required before applying for registration



We recommend the content of any draft rules of the prospective organisation be discussed with a Commission staff member prior to application for registration.

An association must have rules to become a registered organisation. An association's rules (commonly referred to as a rule book) must include various rules required under the RO Act.

Associations sometimes underestimate how detailed and complex rule books must be. The Commission has a checklist to assist with including these requirements. The requirements are set out in Chapter 5 of the RO Act.

Each registered organisation and its current rule book are publicly available on the Commission's website along with any recent rule alterations: Find a registered organisation.

The Commission has published 'model rules' to make drafting rule books easier for existing and prospective organisations. The Model Rules and an accompanying guidance note are now available on the Commission's website.

Election rules

The office bearers of registered organisations must be elected by their members and the rules of registered organisations must set out steps for the conduct of elections.⁷ Model rules developed in partnership with the AEC provide a set of procedures which may be used in whole or in part by organisations for the conduct of elections.

⁷ See Division 2 of Chapter 5 of the RO Act.



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Eligibility rules

Rule books must have eligibility rules.⁸

Eligibility rules set out who can become a member of a particular employer association, union or enterprise association. The eligibility rules will mainly refer to the work a person does or, where they do it, or the type of business of an employer. Your eligibility rules must only include people who can legally join an organisation. If a prohibited person joins your organisation as a member, your organisation can be deregistered. For example, an employee is prohibited from joining an employer association.⁹

Some associations may decide to have a rule which describes the industry it is connected to. If you decide to have an industry rule, take care when drafting as it may limit the operation of your other eligibility rules.

Eligibility rules can only be changed on application to the Commission.¹⁰ Applications to change eligibility rules are subject to objections and hearings may be held. A change requires a Decision by a Presidential Member of the Commission.¹¹



Eligibility rules are a very important part of your application. When you apply for registration, your eligibility rule will be published on our website. Existing organisations and other interested parties may object to your registration on the basis of the coverage being proposed.

If you intend to register and have prepared a draft rule book, contact us when those rules are still in draft form. Commission staff can provide you with advice about your draft rules and assist you to meet the requirements of the RO Act.

⁸ Section 140 of the RO Act.

⁹ See subsections 18A(3), 18B(3) and 18C(3) of the RO Act.

¹⁰ Section 158 of the RO Act. In certain limited circumstances the General Manager of the Commission may determine an application to alter an organisation's eligibility rules, see section 158A of the RO Act.

¹¹ Section 162 of the RO Act.



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Vote required before applying

Before you apply for registration, your association must have a formal vote on becoming registered.¹²

A formal vote is one cast by:

- a majority of the members of the association present at a general meeting of the association; or
- an absolute majority of the committee of management of the association.

You must follow your rules around holding votes at meetings, and a copy of this resolution and the result must be attached to your registration form.

Before you lodge

For an application to be successful, in addition to the resolution above, your application must:¹³

- be made using the relevant form to register an employer association (Form F55), or register a union (Form F56), or register an enterprise union (Form F57)
- contain a declaration, made by an authorised officer of the association, verifying the facts stated in the application and in any document lodged with the application
- be lodged with the Commission
- be lodged with the following documents:
 - (i) a list of the members of the association, showing the name and postal address of each member
 - (ii) a list of the offices in the association and in each branch of the association
 - (iii) a list of the names, postal addresses and occupations of the persons holding the offices
 - (iv) a list of the branches of the association, showing the name and the location of each office
 - (v) the rules of the association and the rules of each of its branches
 - (vi) a copy of a resolution in favour of the registration of the association as an organisation passed by a formal vote in accordance with the rules of the association.

You may also lodge an additional statement supporting the application.

¹² See subsections 19(1)(h) and 20(1)(h) of the RO Act.

¹³ Regulation 21 of the *Fair Work (Registered Organisations) Regulations 2009* (RO Regulations)



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Forms can be lodged by email to regorgs@fwc.gov.au or by post to your nearest [Commission office](#).

After you lodge

Preliminary review

Commission staff will conduct a preliminary review of your application.

If the application has significant issues or is missing documents, a Commission staff member will contact you to discuss what further information or actions are required.

Gazettal

After receiving an application for registration, the General Manager must publish a notice in the *Commonwealth of Australia Gazette* as soon as practicable stating that an application for registration has been received. The Commission will also publish a copy of the application and declarations on its own website, but private information will be redacted.

Any interested organisation, association or person may, no later than 35 days after a notice is published in the *Gazette*, lodge a notice of objection to the registration with the Commission. They are called an objector to the application.



Privacy

Once advertised, anyone can download a copy of your redacted application from our website.

In addition, anyone can obtain a full copy of your application and related documents on request.

We recommend that applicants include a request to the Commission at the time of making the application that its list of members be private and not shared publicly.



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What will the Commission consider when determining if an association can become a registered organisation?

The Commission considers various factors, depending on the type of association applying for registration.¹⁴ In addition to the requirements for registration summarised above, the Commission will consider and ask:

- is the association a genuine association under subsection 18(a), (b) or (c) of the RO Act?
- is the association's purpose to further or protect its members' interests?
- whether 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)?
- is registering the association consistent with the purposes of the FW Act and the RO Act?
- does the association have rules as required by the RO Act?
- is the association's name too similar to others?
- are the members in favour of registration?

For employee or employer associations, a key test is whether there is an existing organisation:

- to which members could more conveniently belong; and
- that would more effectively represent those members.

For enterprise associations, the Commission will also ask:

- do a majority of persons eligible to join the association support its registration?

Applicants should be prepared to address any objections from existing organisations concerning these questions.

Hearings

There may be a hearing for your application.¹⁵

¹⁴ Sections 19 and 20 of the RO Act

¹⁵ Regulation 24 of the RO Regulations.



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The Commission must not:

- refuse to grant the application without giving the applicant an opportunity to be heard; or
- grant the application without giving a valid objector an opportunity to be heard.

At the hearing, the Commission may give directions on how the hearing is to happen. You will have an opportunity to present your case and counter the arguments of any objectors.

The Commission must be fair and just and consider the merits of the case.¹⁶ It may determine the matter immediately or on a later day, or it may schedule further hearing dates.

Withdrawing an application

At any time before the application is determined by the Commission, an association may seek to withdraw an application by lodging:¹⁷

- a notice of withdrawal; and
- a resolution in favour of withdrawing an application for registration passed by a formal vote in accordance with the rules of the association.

Determination of application

An application will be considered and determined by a Presidential Member of the Commission.¹⁸

It can take time for an application to be determined if objections and submissions need to be considered by the Commission. When a determination has been made, a written decision will be issued and published on the Commission's website.

Obligations upon registration

Registration comes with a number of obligations¹⁹ including:

¹⁶ See sections 577 and 578 of the FW Act.

¹⁷ Regulation 21 of the RO Regulations.

¹⁸ Section 33 of the RO Act.

¹⁹ See Chapters 7, 8 and 9 of the RO Act.



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- maintaining a register of members
- maintaining a list of office and office holders
- notifying the Commission every time the holder of an office changes
- having elections for office holders
- preparing an audited financial report and appointing a registered auditor
- lodging information annually with the Commission, including information about offices, office holders, branches and membership numbers, making disclosures about some office holders, including disclosures about their remuneration
- undertaking approved training by office holders who have financial duties.

Finally, officers have specific duties which can have significant penalties if not complied with.²⁰

Many of the obligations carry legislated time frames for compliance.

Civil penalties may apply for non-compliance and in some cases contraventions of the RO Act are also criminal offences.



Registration comes with serious obligations

In [Transport Workers' Union of Australia v Registered Organisations Commissioner \[No 2\] \[2018\] FCAFC 203](#) the Full Federal Court stated:

‘As the objects set out in section 5 of the *Registered Organisations Act* make clear, registration confers rights, privileges and protections upon registered organisations. However, those advantages come with **serious obligations, including obligations to keep accurate records about their membership**. It is important that registered organisations should understand that those obligations must be complied with and that **non-compliance will attract substantial penalties** (emphasis added).’

²⁰ See Chapter 9 of the RO Act.



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Seek advice before lodging an application for registration. You can contact the Registered Organisations Services Branch of the Commission via email at regorgs@fwc.gov.au or by phone on 1300 341 665 between 9am and 5pm, Monday to Friday, AEST. You can also [book a Governance to You visit](#).

Further information on the regulatory requirements for registered organisations can be found on our website: www.fwc.gov.au

Further resources

- the *Fair Work (Registered Organisations) Act 2009* – [Federal Register of Legislation – Fair Work \(Registered Organisations\) Act 2009](#)
- the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations) – [Federal Register of Legislation – Fair Work \(Registered Organisations\) Regulations 2009](#)
- [Become a registered union or employer association](#)