

Submission by the Australian Nursing and Midwifery Federation

# Registered Organisations Governance and Compliance External Review

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Australian  
Nursing &  
Midwifery  
Federation



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## Introduction

1. The Australian Nursing and Midwifery Federation (**ANMF**) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 321,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks the General Manager (**GM**) of the Fair Work Commission (**FWC**) for the opportunity to provide feedback on their review of registered organisations governance and compliance.

## Overview

6. Australian unions have traditionally been subjected to high levels of legal regulation. The ANMF makes this submission to share its experience in the space of governance and compliance. In addition, the ANMF supports the submission of the Australian Council of Trade Unions (**ACTU**).



7. The ANMF welcomes the approach of the updated *Fair Work (Registered Organisation) Act 2009 (RO Act)* which will allow the FWC to work with registered organisations to “embed a culture of good governance and voluntary compliance with the law within organisations.”<sup>1</sup> It is a welcome change in the RO Act.

## Officer and related party disclosure statement

8. Section 293J of the RO Act mandates that the ANMF and its branches must separately lodge an ‘officer and related party disclosure statement’ (**ORPDS**) by 31 December each year, as the ANMF’s financial year ends on 30 June.
9. The ORPDS includes remuneration paid by the ANMF (or a branch) to an officer<sup>2</sup> and “remuneration disclosed to the organisation or the branch by the officer under subsection 293B(1) or (2)”<sup>3</sup> of the RO Act. These subsections mandate that an organisation (or branch) must disclose the details of any remuneration “...paid to the officer...”<sup>4</sup> because they are on a board only because of being an officer of the organisation or because they were nominated by the organisation or a peak council.
10. The RO Act is clear that remuneration must be paid to the officer for it to be reportable in the ORPDS. However, the Registered Organisations Commissioner (**RO Commissioner**) took the view that the ORPDS submitted by organisations and their branches must include payments from superannuation funds directly to an organisation (or branch), where the officer was not paid these monies.
11. In the 2023 ORPDS submitted by ANMF Federal Office, the approach of the RO Commissioner led to the bizarre situation where the Federal Assistant Secretary appeared to be paid more than the Federal Secretary.<sup>5</sup> Board directors’ fees were paid directly to the ANMF for work done by both the Federal Secretary and Federal Assistant Secretary. These

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<sup>1</sup> RO Act s329A(2)

<sup>2</sup> RO Act s293BC(4)(b)

<sup>3</sup> RO Act s293BC(4)(a)

<sup>4</sup> RO Act s293B(1) and s293B(2)

<sup>5</sup> <https://regorgs.fwc.gov.au/sites/default/files/2022-12/145v-orp2022-209.pdf>



fees were reported on the ORPDS per the advice of the RO Commissioner.

12. Superannuation for these board fees was paid to the officers in line with superannuation law. The ANMF recognises that these amounts need to be declared in the ORPDS.
13. If money is not paid to an officer for their services on a board of a superannuation fund or similar, that is a matter that the officer and the organisation can arrange with a third party. It is not a secret, as the amount of the fees negotiated is captured in the annual General Purpose Financial Report (**GPFR**) submitted to the FWC.
14. Part of the remuneration paid for by an Organisation (or branch) to an officer can be in recompense for their time spent on the board or boards in question. Reporting the monies paid by the Board to the Organisation (or branch) therefore can overstate the remuneration amount declared to be paid to the officer in the ORPDS, as the same amount is being wholly or partially reported twice.
15. The ANMF believes that the GM of the FWC should review this issue as soon as possible. Ideally, the ANMF believes the situation can be rectified by the GM issuing clear advice that fees paid directly to an organisation are not to be reported on the ORPDS.

## Barriers to best practice governance

16. The RO Act states that it is parliament's intention that the legislation provides "...for the democratic functioning and control of organisations..."<sup>6</sup> The RO Act also provides that the functions of the General Manager of the FWC include "...to monitor acts and practices to ensure they comply with the provisions of this Act providing for the democratic functioning and control of organisations."<sup>7</sup>
17. However, there are numerous barriers in the RO Act which undermine the intention of parliament to provide for democratic organisations. The ACTU submission discusses some

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<sup>6</sup> RO Act s5(3)(d)

<sup>7</sup> RO Act s329A(1)(b)



of these barriers.

18. One barrier the ANMF would like to highlight is the requirement for officers to complete financial training within six months of taking office. Section 293K of the RO Act states:

**Officers to undertake approved training**

(1) Unless exempted under section 293M, each officer of an organisation or a branch of an organisation whose duties include duties (*financial duties*) that relate to the financial management of the organisation or the branch must undertake training:

(a) approved by the General Manager under section 293L; and

(b) that covers each of the officer's financial duties.

(2) The organisation or branch must ensure that the officer completes the training within 6 months after the person begins to hold the office.

Civil penalty: 100 penalty units.

19. The requirement to undertake approved training has had at least two outcomes with respect to organisations. It has discouraged rank-and-file members of organisations to fully participate in the democratic control of their organisation. It has also led to some organisations modifying their rules so that a narrower group of people have financial duties.
20. Numerous organisations have also withdrawn their registration as an organisation under the RO Act entirely. These have been mostly employer organisations.
21. Most officers within organisations are unpaid volunteers. This is the case within the ANMF where all offices are unpaid except for the Federal Secretary, Federal Assistant Secretary, Branch Secretary and Branch Assistant Secretary (where one exists). The other 140 offices consisting of presidents, Branch Executive Members and Branch Councillors are unpaid.<sup>8</sup>
22. All ANMF branch office holders have financial duties as defined in their powers under Rule 67 of the ANMF Rules. Therefore, each officer is required to undertake financial training or the ANMF can be prosecuted.

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<sup>8</sup> Some Presidents and Vice Presidents are paid a small stipend



23. Unions are not corporations and are not run to make a profit for shareholders. The overwhelming majority of officers of registered organisations are volunteers as opposed to full-time employees. The regulatory framework should reflect this reality and attach the most severe repercussions for full-time union officials and not unpaid volunteers.
24. To ensure members can participate in their unions, the ANMF recommends that the GM of the FWC should review the content of the training required under s293K of the Act. Training should be tailored to an officer's financial duties, which can vary depending on their role.
25. The training requirement under s293K(2) of the RO Act requires all new office holders to undertake training, irrespective of whether that office holder has already completed training when holding a previous office. This has led to the situation where office holders at the ANMF have had to complete training twice in the space of a few months.
26. Whilst s293M(2)(b) of the RO Act allows for an exemption from training where an officer has "...experience as an officer of a registered organisation", this is not an automatic right and must be applied for by writing to the GM of the FWC. The RO Act does not proscribe a timeframe for a response by the GM for an application for an exemption.
27. The ANMF believes that the FWC should publish clear guidance on when an exemption will be granted under s293M of the RO Act, when an officer moves from one office to another. Officers should not be concerned that they need to complete the same training twice within the space of a couple of years.

## General Purpose Financial Report (GPFR)

28. Under section 253(1) of the RO Act, a reporting unit is required to have a GPFR prepared. The GPFR must be prepared in accordance with the Australian Accounting Standards. The disclosure requirements prescribed by the Reporting Guidelines<sup>9</sup> are ostensibly directed

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<sup>9</sup> Reporting Guidelines for the purposes of section 253 - fifth edition  
<<https://www.legislation.gov.au/Details/F2018L00592>>



towards providing members of a reporting unit with information to enable them to gauge the performance of the committee of management and other officer holders in relation to the financial management of the reporting unit.

29. Per the Reporting Guidelines issued by the now abolished RO Commissioner, it is a requirement that all reporting units apply the Tier 1 reporting requirements as per Australian Accounting Standard AASB 1053 Application of Tiers of Australian Accounting Standards.<sup>10</sup>
30. ANMF considers that the current Tier 1 reporting fails to provide meaningful information to our members. A simplified reporting framework that is shorter and easier to understand would serve a better purpose for them. It would be in our members' interest to provide a meaningful financial report so that our members could understand the content. It also would remove complex jargon that usually does not apply to not-for-profit organisations.
31. ANMF believes that the GM of the FWC should review the current Tier 1 reporting requirement contained within the Reporting Guidelines, with the option for registered organisations to move to a Tier 2, which is "Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities" (AASB 1060).<sup>11</sup> Registered Organisations are not publicly listed corporations, whose users rely on the GPFR for making economic and investment decisions.
32. The new AASB 1060 released in March 2020, introduced a "Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities". The Australian Accounting Standards Board identified that the costs of preparing GPFR for some entities was greater than benefits for the users of those GPFR. In the case of ANMF, those users are the ANMF members.

## Conclusion

33. ANMF has discussed three areas which it has identified as relevant to the Registered Organisations Governance and Compliance External Review.

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<sup>10</sup> Rule 8 of the Reporting Guidelines

<sup>11</sup> <[https://aasb.gov.au/admin/file/content105/c9/AASB1060\\_Amendments\\_03-20.pdf](https://aasb.gov.au/admin/file/content105/c9/AASB1060_Amendments_03-20.pdf)>





34. The ANMF has many other concerns within the current RO Act that we have not addressed, as they are outside the scope of the current terms of reference. Most of these issues require a legislative fix to the RO Act itself, so that the legislation meets its stated intention concerning the “...democratic functioning and control of organisations...”<sup>12</sup>
35. Anything the FWC can do to educate, rather than punish, would be a positive first step in addressing the regulatory burden placed on registered organisations. The ANMF welcomes the GM’s consultative approach around governance and hope it continues.

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<sup>12</sup> RO Act s5(3)(d)