



# Compliance update: Managing conflicts of interest

The Fair Work Commission (the Commission) is investigating recent whistleblower allegations about a range of apparent ongoing behavioural issues, including those related to conflicts of interest. **The purpose of this update is to raise awareness about issues related to conflicts of interest, share real-life examples and provide practical strategies for registered organisations to promote high levels of compliance in this area.**

Registered organisations sometimes deal with people, related parties, companies and other organisations that share a pre-existing relationship or common interest. There are thousands of office holders in federally registered organisations and every one of them is likely to have social, family and business relationships. Often those relationships bring positive benefits to registered organisations, their officers and members. However, these relationships require organisations and officers to take steps to avoid potentially negative risks and consequences which might arise from conflicts of interest.

Where personal interests exist, there is a real risk they can come into conflict with officer duties, to the detriment of the registered organisation. These risks, however, can be effectively managed through good governance practices, including transparent disclosure and proper decision-making practices.



## When in doubt, disclose

Be transparent. If you're unsure whether the law or your organisation's internal rules or policies requires a disclosure, act with care and declare the interest.

A possible conflict of interest may also be a matter of perception. Officers should consider how a situation or decision may be perceived by members, and act appropriately.



The *Fair Work (Registered Organisations) Act 2009* (the RO Act) recognises that conflicts of interest must be managed. The RO Act has controls that are designed to protect the integrity of decisions, including:

- the requirement for officers to disclose material personal interests, certain board payments and related party payments to their registered organisation
- the public disclosure of payments to officers and certain related party payments, in the officer and related party disclosure statement (the ORP statement)
- restrictions on officers taking part in decisions where they have a material personal interest or where an apparent conflict of interest exists.

Federally registered organisations are expected to comply with the RO Act and actively promote a culture of transparency. This will help organisations to comply with their legal obligations and support committees of management to make decisions that are in the best interests of members.

In the table below we've described examples of non-compliance, and the potential consequences that can result from them.

Case study examples	The issues
<p><b>Don't participate in the decision-making process if you stand to benefit</b></p> <p>In a matter decided by the <a href="#">Federal Court</a>, two officers were found to have breached their statutory duties when they:</p> <ul style="list-style-type: none"><li>• made decisions to purchase luxury cars without the authorisation of the branch committee of management, and then assumed personal ownership over them</li><li>• implemented a generous redundancy policy, which enabled one of them to receive an increased severance payment.</li></ul>	<p>If an officer may receive a direct financial benefit because of a decision, there is a clear personal interest.</p> <p>Officers must:</p> <ul style="list-style-type: none"><li>• disclose the interest</li><li>• remove themselves from participating in the decision-making process.</li></ul> <p>Failing to take these steps can amount to a breach of the officer duties under the RO Act (which can bring with it civil penalties) and</p>



	can also cause significant financial and reputational harm to the organisation.
<p><b>Personal relationships can cloud your judgment.</b></p> <p>The regulator has received whistleblower disclosures about an official alleged to have been in a range of undisclosed, intimate relationships with employees, while also making decisions about their salaries, promotions, etc.</p> <p>In another matter, it has been alleged that an official was involved in making administrative changes, which resulted in the official’s intimate partner reporting directly to them in the organisation.</p>	<p>Conflicts of interest are not always about money. In some situations, the conflict of interest may arise because you are able to do a favour for someone or have a significant influence over their conditions in the workplace. Transparency is essential, regardless of whether the circumstances involve a direct financial benefit.</p>
<p><b>Be aware of perception</b></p> <p>The regulator also received a whistleblower disclosure about an organisation’s appointment of a registered auditor.</p> <p>It was alleged that the appointed auditor was also the personal tax accountant for several members of the committee of management.</p>	<p>A pre-existing connection between a registered auditor and the officers responsible for their appointment could compromise the integrity of an audit process. It is important for an auditor to both maintain independence and be seen to be independent.</p> <p>Even in circumstances where a conflict of interest is perceived (and not real), the perception can cause problems for the organisation.</p>



### **Full and frank disclosure of material personal interests is an ongoing responsibility**

Even where something has previously been disclosed, don't forget to update disclosures where there is a change in circumstances.

Standing disclosures about material personal interests must be updated whenever the nature of the interest materially changes. For example, if there is a change in the officer's shareholding in a company.

## **The Commission recognises that conflicts of interest are sometimes inevitable, and it is how they are managed that will define their impact.**

You can protect your registered organisation and its officers from the effects of conflicts of interest through the following practices:

- **Enforcing a conflict of interest policy** can set expectations about disclosures and how potential conflicts of interest will be managed. A policy should outline when disclosures are required, how they are declared and to whom. The failure of an officer to disclose a conflict of interest can cause harm to the organisation, and may have legal consequences for the officer, so it's a good idea to also address the consequences of not reporting disclosures.
- **Keep detailed records about disclosures in a register of interests.** A register will help to detect conflicts of interest before they arise and can give organisations more time to think about how they can be managed. A register that is properly maintained will also help organisations and branches provide accurate and timely information in the ORP statement to members.

Organisations must document decisions that involve conflicts of interest (for example, the meeting minutes should record that a disclosure was made, that the officer removed themselves from participating in the decision, and the outcome). The regulator has inspected records following whistleblower complaints and during inquiries and investigations. We know that organisations that keep good records can better defend their decisions and resolve issues quickly.



Fair Work  
Commission

- **Promote a culture of disclosure.** To be effective, policies, procedures and rules must exist in a compliance culture. Officers should be actively encouraged and reminded to make disclosures so that the practice is an ordinary and expected part of the officers' role and of every meeting.

**Strategies for building a positive compliance culture include:**

- providing training to new officers about the organisations' policies and procedures, and encouraging officers to access refresher training (including financial governance training under s 293K of the RO Act)
- making it easy for officers to disclose interests by providing a form or other easy-to-understand administrative procedure
- providing simple access to the register of interests so that officers can record their interests, update them, and review interests declared by other officers
- making conflicts of interest a standing agenda items at meetings to remind officers before decisions are made.



**It's about making informed decisions for the benefit of members**

If you have a possible conflict of interest it is best practice to remain at arm's length from the decision-making process. However, in some instances once you have made your disclosure your organisation may want you to participate in discussion and voting.

In those circumstances, the committee of management must pass a resolution that it:

- acknowledges the details of the disclosure
- specifically agrees to you being involved in decision-making about it.

The passing of such a resolution will ensure that the organisation is fully informed of any competing interests and has a record of that. Keeping thorough records supports transparency and can help officers to defend decisions if they are later questioned.



Fair Work  
Commission

It is likely that if the current trend continues, the Commission will be required to continue to investigate allegations about conflicts of interest. We will take steps to promote high levels of compliance with the requirements and provide guidance and support to officers and registered organisations.

## Further resources



### **Case study – General Manager of the Fair Work Commission v McGiveron and Burton [2017] FCA**

Read our plain language case summary [online](#).



### **Podcast – Good governance in practice: conflicts of interest**

[Listen to practical governance strategies](#) for managing conflicts of interest in your registered organisation.



### **Disclosure obligations of officers' guidance note**

The [guidance note](#) includes a more detailed explanation of the legal obligations of officers, with further practical examples.



### **Visit the Commission E-Learning Centre**

Our [disclosures module](#) steps you through the legal obligations, and the resources that are available to help organisations of officers achieve compliance.

If you require further assistance regarding the information in this compliance update please email the Fair Work Commission at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au) or call us on 1300 341 665.