Fair Work Commission

**MD 078** | 29 August 2024

# RO POD episode 54 – Emerging trends in financial reports

## Speaker Key

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**AN:** Welcome to RO pod: Talking about governance of registered organisations with the Registered Organisation Services branch at the Fair Work Commission, the official podcast about the regulation of unions and employer associations. In this podcast we'll share essential information, uncover handy hints and tips and reveal our best tools for proactive compliance with the complex legislative requirements.

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**00:00:44**

**SG:** Hello and welcome to RO pod. My name's Sam Gallichio and I'm a Senior Adviser in the Education and Advice team in the Fair Work Commission's Registered Organisations Services Branch. In today's episode we will be talking about financial reports and the processes and requirements under the *Fair*

*Work (Registered Organisations) Act 2009*, or as we commonly refer to it as, the 'RO Act' as it's commonly referred to. We'll also look at some of the compliance issues we've recently seen with financial reports lodged with us by registered organisations.

Here with me today is Kylie Ngo, who is an Adviser in the Financial Analysis Team. Welcome Kylie.

**KN:** Hello Sam, thanks for having me on.

**00:01:24**

**SG:** You're welcome, it's great to have you here. Now, for those who might not be overly familiar with them, what is a financial report under the RO Act?

**KN:** Financial reports, or more specifically the general purpose financial report, is your statement of comprehensive income, statement of financial position, or balance sheet as some might call it. It also includes your statement of cash flows, statement of changes in equity and the notes to the financial statements. Next, the subsection 255(2A) report, which is unique to this jurisdiction. And finally also unique to this jurisdiction, is the committee of management statement and if the reporting unit chooses to prepare, the officer's declaration statement.

**SG:** Yes, and the subsection 255(2A) report is a report showing the breakdown of particular items of expenditure such as remuneration of employees, donations to political parties and legal costs among others. The requirement to prepare a subsection 255(2A) report can be found in the General Manager's reporting guidelines. Now the General Manager's reporting guidelines, they are a legislative instrument registered by the General Manager of the Fair Work Commission, right Kylie?

**KN:** That's correct Sam, and these reporting guidelines have particular requirements, such as where certain pieces of information must be disclosed in the reporting unit's financial statements or the notes, even if they are NIL.

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**SG:** Yes, and the reporting guidelines are updated periodically, most recently in June 2024. And apart from the reporting guidelines, what other legal requirements do financial reports need to be prepared in accordance with?

**KN:** Well there are quite a few governing instruments that reporting units need to be considered and complied with. As you mentioned there is the RO Act, and the accompanying *Fair Work (Registered Organisations) Regulations 2009*. Then there's also the Australian Accounting Standards.

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**SG:** You mentioned there are reporting units, what exactly is a reporting unit? Does that mean each registered organisation?

**KN:** Good question Sam. Every organisation and every branch of an organisations is a reporting unit, unless a certificate is issued by the General Manager of the Fair Work Commission that divides the organisation into reporting units on an alternative basis. Each reporting unit must comply with the financial reporting process. Some reporting units could be eligible to apply for an exemption certificate, which is issued by the General Manager, and reduces a reporting units financial reporting obligations. Further information on these exemptions certificates can be found on our website in the 'Financial reporting' section under the 'Running a registered organisation' tab.

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**SG:** There's some strict timelines in place when it comes to preparing and lodging financial reports with the Commission. And I understand that these timeframes are often a source of confusion for some registered organisations. Each year we see some reporting units not quite getting these correct, and this can result in them having to re-do the process which isn't an efficient use of an organisations' resources. Can you take us through the timeline of requirements?

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**KN:** Well we do see this a lot of this and it's definitely something that can be easily avoided with careful planning. The process can essentially be broken down into six steps. The first step for reporting units is always to prepare the general purpose financial report and the operating report, and this should be done as soon as possible after the end of the financial year. Step number 2 is finalising the committee of management statement. This involves the committee of management – in what is known as the "first meeting" – passing resolutions about the general purpose financial report. These include confirming that the financial statements and notes comply with the Australian Accounting Standards and the General Manager's reporting guidelines, that they give a true and fair view of the reporting unit's financial position, financial performance and cash flows and that the reporting unit can pay its debts when they are due. There's also some other items that need to be ticked off.

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**SG:** So we've finalised the general purpose financial report, the operating report and the committee of management statement, so what's required next?

**KN:** The third step is submitting the report to your registered auditor. The auditor conducts the audit and prepares the auditor's report, where they will form an opinion on whether the financial report is prepared, in all material aspects, in accordance with the applicable financial reporting framework and presents a true and fair view of the reporting unit's financial performance, position and cash flows. The auditor's report may also highlight any defects or irregularities that the auditor identified during the audit.

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**SG:** You described the auditor as a registered auditor. This would be the right time to mention that auditors for registered organisations must be registered under the RO Act, and we have a list of registered auditors on our website.

So Kylie, can you tell us what happens if the auditor finds an issue in the financial reports?

**KN:** Well, it depends on the nature of the issue. If they find that the financial report is not free from material misstatement or they have been unable to obtain sufficient appropriate audit evidence, in the auditor's report they must quantify the effect of non-compliance if possible, otherwise they must explain why they cannot do so in the report.

Although in another scenario, such as where the auditor has reasonable grounds to suspect a breach of the RO Act or the reporting guidelines, then the auditor has a different duty. If they don't think the issue can be properly dealt with by a comment in the report or by informing the committee of management, the auditor is required to report the matter to the General Manager of the Commission immediately, which could lead to further action, including an investigation.

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**SG:** Ok, so up to this point, all the steps are the same for every reporting unit, but this is where things can sometimes become a bit tricky and where we see some mistakes made.

**KN:** That's right. So after the first three steps, the next three steps can be completed in different ways, depending on if the reporting unit has and chooses to use their 5% rule if they have one.

**SG:** Yes, and for those listeners who may not be familiar with this concept, the 5% rule is a rule some organisations' have in their rule books that allows 5% or fewer members to call a meeting to consider the audited financial report. It enables the full financial report to be presented to a second committee of management meeting rather than to a general meeting of members.

**KN:** Thanks for that, Sam, that's right.

So firstly, I'll cover where an organisation doesn't have a 5% rule which means the full report must be presented to a general meeting of members, which is the default process under the RO Act. Using this path means that for step 4, a copy of the full report must be provided to all members 21 days before the general meeting of members.

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This can be done by mail, e-mail or by posting on the organisation's website. Regardless of the method you use, it must be provided to members free of charge. Once this is done and after the 21 days has expired, the general meeting takes place, which is step 5. We also call step 5 the 'second meeting'. During this meeting, members must be provided with the opportunity to ask questions about the full report, and this meeting must take place within six months of the end of the financial year.

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**SG:** On that point about members asking questions about the full report, it not only provides transparency for an organisation and its members, but also ensures the organisation is accountable for the use of members' money.

**KN:** Absolutely, and that's why the Commission believes that the financial report and the timeframes surrounding this process is one of the most important obligations registered organisations have. So, the last step, step number 6, is lodging the full report, which includes the auditor's report, with the Commission within 14 days of the general meeting.

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**SG:** There's also the Designated Officer's Certificate and that must be signed and lodged with the full report, is that correct?

**KN:** That's correct Sam. The Designated Officer's Certificate declares that the documents lodged are copies of the documents provided to members, it includes the date that members received a copy of the full report, and the date that the second meeting, which can be either the general meeting of members or the committee of management meeting was held. Importantly, it must be signed by an officer who is an elected official and who is authorised under the rules of the organisation to sign the certificate.

**SG:** So that's what happens when an organisation doesn't have a 5% rule. How does that process vary when an organisation uses its 5% rule to present the report to the committee of management?

**KN:** Well, the main difference relates to step 4 and when the full report needs to be provided to members. So when presenting the full report to a meeting of the committee of management, that is, a second committee of management meeting, the reporting unit needs to provide the full report to members within 5 months of their end of financial year. Step 5 is the same, the second committee of management meeting must be held within 6 months of their end of financial year and step 6 is then the same in that it must be lodged with the Commission within 14 days of that second committee of management meeting.

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**SG:** So that would mean, regardless of whether the financial report goes to a general meeting of members or a second committee of management meeting, as soon as that meeting where the full report is presented to is held, a reporting unit must lodge its full report and designated officer's certificate to the Commission within 14 days.

**KN:** Exactly. There is the ability for a reporting unit to apply for an extension of time of up to one month to hold their general meeting of members, or if they have a 5% rule, provide members with a copy of the full report. But it's important to note that an application of this kind under subsection 265(5) must be made in advance of those statutory deadlines, and not when lodging the full report with the Commission.

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**SG:** So that's a summary of the financial reporting process, now we'll have a look at some of the emerging trends we've seen when assessing the 2023 financial reports. While we've seen an increase in compliance over recent years, there's still a few areas that need improvement.

**KN:** Yeah, and we've just discussed the timeframes, which is almost always the most common compliance issue organisations have, and this year there was no exception. In particular, it's the final hurdle of step 6 that I mentioned is the one most often not met, which is lodging the financial report with the

Commission within 14 days of the second meeting. This year we had quite a range in timeframes which varied from one day late to 68 days late.

Sam, do we have any tools available that might help organisations complying with the requirement to lodge within 14 days and their overall planning?

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**SG:** We have a really handy resource on our website. Our compliance calculator allows organisations to enter their proposed meeting dates, which can then be customised whether you provide your financial report to members at a general meeting, or to a second committee of management meeting. And that not only gives you the due date, but it helps you keep track of what you should be doing through every step of the process. And it's not just limited to financial reporting though, it can assist you with planning and lodging other documents with the Commission, such as notifications of change to officers and prescribed information for elections.

**KN:** And the compliance calculator is available under the 'Running a registered organisation' tab on our website and can be found in the 'Tools and templates' section. Getting back to what we've seen in the most recently lodged financial reports, what other traps should organisations be looking to avoid?

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**SG:** Well, the reporting of employee provisions separately for office holders and for employees who aren't office holders is somewhere reporting units have tripped up. The reporting guidelines require that these categories are separated into annual leave, long service leave, separation and redundancy and lastly other employee provisions. Even if the reporting unit doesn't have any provisions for these categories, they still must be disclosed as 'nil'.

**KN:** We also see a lot of repeated issues from previous years, don't we?

**SG:** Yes we do. And from what we've gauged, these seem to occur when reporting units do not refer back to the previous year's filing letter that the Commission sent and update their financial reporting

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template accordingly. If we have found non-compliance issues, the Commission includes them in its filing letter which is sent to every reporting unit – and their auditor – following our assessment of the lodged financial report. We recommend that every reporting unit refers to the Commission's previous years filing letter before they commence its financial reporting process to ensure those non-compliance issues are remedied.

Though a new issue we saw this year came about as are result of the transfer of regulatory functions to the Commission in early 2023. Several financial reports referenced the Registered Organisations Commission, or Commissioner, instead of the Fair Work Commission and the General Manager.

**KN:** Those repeated issues can be a real problem too as they can often prevent the financial report from being filed, and lead to the reporting unit needing to prepare an amended financial report and start the process from scratch, as we discussed previously.

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**SG:** Yes and that's obviously something that both reporting units and us as the regulator wish to avoid. It can be caused by other issues too. A problem we find fairly frequently is one or more documents missing from the full report, and most commonly it's the section 255(2A) report that we touched on earlier. In a similar vain to that we saw documents being lodged that weren't signed, and it's usually the auditor's report, and that's required to be signed and dated prior to the full report being provided to members.

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**KN:** So Sam, from what we've identified so far in terms of problems, they've been issues with complying with the RO Act and the reporting guidelines. What issues have we seen from the 2023 reports in complying with the Australian Accounting Standards?

**SG:** Most of the emerging issues have been related to the 'control' of the reporting unit over other entities, or subsidiaries. Some reporting units declared that they had control over another entity, but didn't prepare consolidated accounts that reflect the control as required by the Australian Accounting Standards. We also saw instances where a financial report suggested an interest in another entity, but there was no disclosure about significant judgements and assumptions in assessing if control does or does not exist. There were also some examples where financial transactions of another entity were disclosed as if they were the transactions of the parent entity.

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**KN:** And so, with all that considered, what was the compliance level among financial reports in 2023?

**SG:** Just over 74% of financial reports for financial years ending in 2023 were assessed as compliant. The compliance rates are based on the items included in the Commission's primary review checklist. That is the reporting unit has satisfied the financial reporting timelines, lodged all the required documents and complied with some of the disclosure requirements under the RO Act, the Australian Accounting Standards and the General Manager's reporting guidelines, so that's a great result, but there's still room for improvement.

**KN:** And how does that figure compare to previous years?

**SG:** It's almost identical to last year's figure, however the year prior to that in 2021 was just under 70%. But if we go back to 2015, that figure was 54%, so there has been a big increase over the past decade, and organisations should be commended for that.

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**KN:** For our listeners, what are some of things that can be done to avoid compliance issues in their financial reports in the future?

**SG:** Well, in addition to using our compliance calculator which we've spoken about, using our model financial statements is a great way to make sure you've covered off the requirements. They're released each year so you know that any changes are included. I'd also encourage our listeners to contact our Financial Analysis team about any concerns they may have around financial reporting and

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doing this as early as possible, as they can guide you and even review a draft of your financial report to ensure any errors are caught.

**KN:** Yes, we are more than happy to help organisations with their drafts to ensure a smooth process and raise any potential problems in advance. Likewise, if you are having difficulties with any of your documents that need to be lodged, or need to speak to one of our subject matter experts, you can contact us by calling 1300 341 665, or by emailing us at regorgs@fwc.gov.au.

**SG:** Thanks for your time today Kylie, and for sharing your knowledge of financial reporting with us.

**KN:** It's been my pleasure, Sam.

**SG:** Please join us in October for our next episode of RO pod.

**00:19:11**

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