



Compliance update: How consistent record keeping can help you succeed

The Fair Work Commission (Commission) acknowledges registered organisations' overall improvement in record keeping practices in recent years which now enables them to better meet the expectations and needs of their members and the legislative framework.

At the same time however, we continue to see regular and avoidable non-compliance with the record keeping requirements of the *Fair Work (Registered Organisations) Act 2009* (the RO Act). We have observed multiple examples where meeting and financial records haven't been prepared to the expected standard, including agendas and minutes lacking the required detail. We know that these deficiencies can be remedied and we want organisations to succeed at improving them.

The purpose of this update is to raise awareness about the importance of record keeping and provide strategies which will help registered organisations to achieve higher levels of compliance.

Keeping detailed, accessible records is fundamental to good governance in registered organisations because it promotes transparency and accountability to members. The legal requirements relating to records must be reinforced by the rules and policies of organisations and a compliance culture, which should also impose expectations around how records are to be managed.



Keeping good records saves time and resources

Keeping records creates efficiency and is vital to managing the financial and other risks encountered by all registered organisations. Good quality records can protect the organisation and its officers.



Documents such as meeting agendas and minutes, receipts and invoices, and disclosures about material personal interests can be evidence in an investigation. They can be utilised to defend officers if decisions come under scrutiny.

The Commission has quickly resolved several whistleblower matters and inquiries with good quality records provided by organisations and branches.

The RO Act recognises that record keeping is important and requires that every organisation keep certain records, including:

- a register of members of the registered organisation and branches, and a copy of the register as it stood on 31 December each year (kept for 7 years)
- a list of the offices and the people holding offices in the organisation and in branches
- elections that must be held during the calendar year and a copy of the register of members as it stood on the day that the roll of voters closed for a ballot for an election
- information about branches of the organisation and their addresses
- financial records, which must be kept for seven years
- a minute book containing minutes of committee of management meetings
- officer and related party disclosures.

Federally registered organisations are expected to comply with the RO Act and their rules in relation to the keeping of records.

In the table below we've described recent examples of non-compliance with respect to record keeping, and the potential consequences that can result from them.



Case study examples	The issues
<p>Minutes of meetings should be clear, complete, and accurate</p> <p>The minutes of meetings may protect you when decisions are later challenged. We've encountered several instances where the minutes of meetings were unable to substantiate information provided by an organisation in an inquiry or investigation because they were not properly recorded or weren't retained.</p> <p>We have seen examples where minutes were:</p> <ul style="list-style-type: none"> not kept at all, in breach of the rules of the organisation and the RO Act too brief and missing critical information including the names of attendees, the outcome of resolutions and information about material personal interest disclosures (and whether officers with personal interests abstained from voting) not stored properly and therefore not able to be quickly retrieved, or at all. 	<p>Potential breaches of:</p> <ul style="list-style-type: none"> the rules of the registered organisation the requirement to record disclosures of material personal interests (section 293C(6)) the requirement not to participate in decision making where an officer has a material personal interest (section 293F).
<p>Records must make it clear what decisions were made, who made them, and on what authority</p> <p>Each organisation's rules set out the powers and duties of each officer and collective body (e.g. the committee of management). For example, who can enter into contracts, make donations using the organisation's funds, or buy and sell property on behalf of the organisation.</p> <p>We have seen examples where:</p> <ul style="list-style-type: none"> officers have made decisions about matters that are not in their power (under the rules) <p>decisions to spend funds were made by a committee that only had the power to provide advice.</p>	<p>Potential breaches by the individual of:</p> <ul style="list-style-type: none"> officers' duties under section 285 ('care and diligence'), section 286 ('good faith and proper purpose') and section 287 ('not to misuse position') the rules of the organisation relating to financial management.



<p>Records must be accessible to those who are entitled to access them</p> <p>Meeting agendas and other related documents must be made available to <u>all</u> officers who are entitled to attend a meeting.</p> <p>A member of a committee of management told us that they were expected to make decisions about financial management, including the annual financial report, but they could not do so because they weren't provided with enough information to make an informed decision.</p> <p>As records may sometimes contain sensitive information, it is also important that they are restricted to people who have the authority and a need to access them (unless there is a legal requirement to do otherwise – for example, any member of an organisation is entitled to view the register of members).</p>	<p>Organisations must comply with the requirements of:</p> <ul style="list-style-type: none">• section 236 – access to the register of members• section 265 – members must be given access to audited financial statements before they are lodged with the ROC• section 272 – access to information about certain types of payments and transactions• section 285 – officers must exercise care and diligence.
<p>Records must clearly distinguish between expenditure for personal and business use</p> <p>A registered auditor identified in an auditor's report that they were unable to obtain sufficient evidence that all credit card expenses in the financial year were incurred solely for business purposes.</p> <p>An investigation found:</p> <ul style="list-style-type: none">• the branch did not have appropriate expenditure policies to set firm boundaries around the use of branch funds, despite the organisations' rules requiring them• a senior office-holder used their branch credit card for personal use, and they often did not keep records.	<p>Potential breaches by the individual of:</p> <ul style="list-style-type: none">• the rules of the organisation relating to financial management• officers' duties under section 285 ('care and diligence'), section 286 ('good faith and proper purpose') and section 287 ('not to misuse position'). <p>Internal controls are essential. Credit card expenditure should be acquitted each month against invoices and approved by another senior officer.</p>



Be aware of your responsibilities under your rules

Organisation and branch rules describe the responsibilities of officers and will usually include the record keeping responsibilities of senior office-holders. This facilitates accountability. For example, the rules may require the President to chair meetings and the Secretary to take the minutes and ensure they are properly retained.

Registered organisations, branches and their officers must be aware of their record keeping responsibilities and comply with them. Check your rules as ignorance is not an excuse.

Additional information is available in [Commission fact sheets and other guidance material](#).

You can promote good record keeping in your registered organisation and branches through the following practices:

- **Having a records management system** can protect the integrity of documents and support efficient access when they're required. An electronic system, with the ability to 'back up' data, should be strengthened with policies and procedures to maintain consistency and safeguard confidential and sensitive information.
- **Creating templates** can set expectations about how documents are to be recorded, and the level of detail that must be included in them. Records must be able to be understood by people other than the person who has recorded them, including members as well as people external to the organisation such as auditors, regulators and law enforcement. The Commission provides a [range of templates](#) related to record keeping requirements, including annual returns, notifications of change and officer and related party disclosure statements. Organisations that use our templates are more likely to achieve compliance with the requirements.
- **Having internal controls**, including the regular internal audit of record keeping practices, is essential to prevent irregularities, identify problems and ensure that appropriate corrective action is taken.



Fair Work
Commission

- **Consensus and consistency between the national office and any branches** about how records are kept and maintained. Many branches seem to operate, in practice, as autonomous bodies and maintain their own records (including information about officers and the register of members), which they then share with the national office for the purpose of preparing lodgements including the annual return.
- It is ultimately up to the organisation how they operate in a way that supports compliance with their legal requirements. However, we strongly recommend that registered organisations with branches develop consistent record keeping procedures across the organisation. As the legal entity representing the registered organisation, the national office of a registered organisation may incur penalties relating to record keeping breaches which have occurred in branches.

Strategies for building a sound record keeping culture include:

- ensuring records are suitably detailed, for instance minutes should include the decisions made, dissenting opinions, material personal interest disclosures and who abstained, and actions that have been taken
- making available the organisation's policies and procedures, and providing records management training as part of officer and employee induction
- executive office-holders including the Secretary visibly setting the expectations around record keeping in committee meetings
- providing simple access to the register of interests so that officers can record their interests, update them, and review interests that are declared by other officers.

Our experience tells us that organisations who use these strategies will continue to improve their record keeping practices to better meet the expectations and needs of their members and the legislative framework.

The Commission will continue promoting high levels of compliance by providing practical assistance and support to officers, registered organisations and their branches.



Fair Work
Commission

Further resources



Case studies

Below are some examples of non-compliance relating to record keeping. Read our plain language case summaries online.

[Registered Organisations Commissioner v Australian Workers' Union \(no 2\) \[2020\] FCA 1148](#)

[Registered Organisations Commissioner v Transport Workers' Union of Australia \[2018\] FCA 32 and \[2018\] FCAFC 203](#)

[Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia \[2020\] FCA 96 and \[2020\] FCAFC 232](#)

If you require further assistance regarding the information in this fact sheet, please contact the Commission at regorgs@fwc.gov.au or call us on 1300 341 665.