



Fair Work  
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Compliance Update CL 007 | 21 July 2023



# Compliance update: Legal fees

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The Registered Organisations Services Branch (ROSB) of the Fair Work Commission has dealt with a range of concerns about spending on legal fees by registered organisations. Some of these have been raised with us (including through whistleblower disclosures) and others have been identified through compliance work done by ROSB staff.

**The purpose of this update is to raise awareness about issues related to legal fees, share real-life examples and provide practical tips for registered organisations, their officers and members, to promote high levels of compliance in this area.**

Registered organisations sometimes require legal advice or representation in legal proceedings, including advice on the organisation's rules, industrial disputes involving the organisation and its members, and court proceedings. While some organisations have in-house legal staff, not all do, and sometimes specialist legal advice or representation is required.

When spending funds, including on legal fees, registered organisations must do so in accordance with their objects which are set out in their rules. The rules of an organisation will often specify when assistance such as the payment of legal fees can be granted, who it may be granted to and the process for authorising expenditure.



### Ensure that legal spending is properly authorised

Officers of an organisation have a duty under the *Fair Work (Registered Organisations) Act 2009* (RO Act) to act with care and diligence in relation to financial management and governance. This includes complying with rules about who is authorised to spend money and any particular limits imposed by the organisation's rules or policies.

If the rules of an organisation provide that a particular body (e.g. the Committee of Management) has the authority to approve the payment of legal fees, ensure this process occurs as set out in the rules.

Officers also have duties to act in good faith and for a proper purpose, and not to use their position, or information available to them, to gain an improper advantage for themselves or others, or to cause financial detriment to the organisation.

In the table below we've described recent examples of issues relating to the payment of legal fees that have been raised with us and practical tips for organisations.

Cases study examples	The issues
<p><b>Paying for an officer's personal legal expenses will be considered a related party transaction and needs to be disclosed</b></p> <p>The ROSB has received disclosures about organisations' paying legal fees for its officers in relation to various personal matters, including superannuation entitlements, assault charges and internal disciplinary proceedings.</p>	<p>If the legal fees don't relate to the officer's role, and are for personal matters, the payment of the fees for the officer will be considered a related party transaction.</p> <p>The RO Act defines each officer as a 'related party' of the organisation. Related party transactions, including the payment of personal legal fees for an officer, need to be declared.</p>



Cases study examples	The issues
	<p>This should be done in both the financial report (under the related party/key management personnel notes) and in the officer and related party disclosure statement (ORP statement), both of which must be lodged each year with the ROSB.</p>
<p><b>Don't take part in decisions involving yourself</b></p> <p>In another matter, an organisation funded legal representation for its president when an employee commenced legal proceedings against both the organisation and the officer.</p>	<p>Officers of an organisation should not take part in decisions in which they have a material personal interest – for example, a decision about paying for their own legal fees (even when the fees are in connection with their officer role).</p> <p>Section 293F of the RO Act makes it clear that if you have a material personal interest in a matter, the default position is that you don't participate in those decisions.</p> <p>In the interests of transparency, the minutes of the Committee of Management meeting should record that the officer did not take part in the decision in relation to the payment of their own legal fees.</p>
<p><b>If the payment is made as a loan, grant or donation, declare it on the LGD statement</b></p> <p>The ROSB also received a whistleblower disclosure that an organisation paid an employee's legal fees as a lump sum and that</p>	<p>If the payment is made on the basis that some or all of it will need to be repaid, or it is made as a grant or donation then the organisation must comply with the requirements in the RO Act about loans, grants and donations.</p>



Cases study examples	The issues
<p>the employee repaid the amount through salary deductions.</p>	<p>Section 149 of the RO Act states that only a Committee of Management can approve loans, grants and donations above \$1000.</p> <p>If the payment is over \$1000, the organisation must also declare it on the loans, grants and donations statement (LGD statement) that needs to be lodged with the ROSB within 90 days from the end of the organisation's financial year.</p>
<p><b>Members are not automatically entitled to have their legal fees paid. Check what your rules says about when legal fees can be paid</b></p> <p>The ROSB has identified a range of instances where organisations' have paid the legal fees of members.</p> <p>In one matter, a member brought proceedings on behalf of the organisation.</p> <p>In another matter, the organisation funded the fees of one member in personal legal proceedings against a person (another member) whose legal fees the organisation did not fund.</p>	<p>An organisation or branch will usually have the discretion to choose whether to fund all, some or none of the legal fees of a member – or of some members and not others.</p> <p>It is important to understand what your rules say about when legal fees can be paid for a member, who can authorise the payment and the process for the approval of the payment.</p> <p>And if the person whose legal fees are being funded is on the Committee, they must not participate in the discussion or decision making.</p>



### Keep detailed records about decisions to pay legal fees

Proper decision making and good record keeping can protect registered organisations, its officers and its members and is essential for good governance.

When making decisions about the payment of legal fees, the minutes of the Committee of Management meeting should record:

- any material personal interests declared by officers in relation to the payment of legal fees
- how those interests were managed (e.g. the officer did not participate in the decision to pay their own legal fees)
- if there are specific amounts or limits approved
- any conditions put on the payment.

A registered organisation must ensure that it complies with the RO Act and its own rules when spending funds on legal fees. It can achieve this by:

- Ensuring that officers are aware of **what the rules say** about legal assistance and when it can be paid.
- Understanding **who is authorised** to approve what types of expenditure.
- **Keeping detailed records about decisions** – if there are specific amounts or limits approved or conditions put on the payment, then these should be clearly recorded, as should any personal interests and how they are managed.
- **Promoting transparency**, e.g. by declaring personal legal fees as related party payments in financial reports and ORP statements and declaring any payments over \$1000 made as loans on the LGD statement.

It is likely that if the current trend continues, the ROSB will be required to continue to investigate allegations about payment of legal fees. We will take steps to promote high levels of compliance with the requirements



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and provide guidance and support to officers and registered organisations, as well as taking steps to remedy non-compliance.

## Further resources



[Disclosure obligations of officers guidance note](#)

[Disclosure obligations of organisations and branches guidance note](#)

[E-Learning Centre Officer and related party disclosure statement module](#)

[Loans, grants and donations fact sheet](#)

[RO pod episode 11 - Good governance in practice: record keeping and decision making](#)

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

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This compliance update is not intended to be comprehensive. It is designed to assist in gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.