



## Fair Work (Registered Organisations, (Reporting guidelines for the purposes of section 253 – sixth edition), Instrument, 2024

### EXPLANATORY STATEMENT

(issued by the authority of the General Manager of the Fair Work Commission (the General Manager))

#### Authority

Subsection 255(1) of the *Fair Work (Registered Organisations) Act 2009* (the Act) authorises the General Manager to issue reporting guidelines for the purpose of section 253 and 270.

Under subsection 255(2) of the Act, the reporting guidelines for the purposes of section 253 must provide:

- (a) the manner in which reporting units must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deduction of membership subscriptions; and
- (b) the manner in which reporting units must disclose the total amount of legal costs and other expenses related to litigation or other legal matters paid by the reporting unit during a financial year; and
- (c) details of any information required for the purposes of subparagraph 253(2)(b)(ii) (information in notes to general purpose financial reports); and
- (d) the form and content of any report or statements that are required for the purposes of paragraph 253(2)(c) (other reports or statements forming part of the general purpose financial reports).

Under subsection 255(2A) of the Act, the reporting guidelines for the purposes of section 253 and 270 must require a report that shows the total expenditure incurred by reporting units during the financial year in relation to each of the following:

- (a) remuneration, and other employment-related costs and expenses, in respect of employees;
- (b) advertising;
- (c) operating costs;
- (d) donations to political parties;
- (e) legal costs.

Under subsection 255(4) the reporting guidelines may also contain such other requirements in relation to the disclosure of information by reporting units as the General Manager considers appropriate.

#### Consultation on the reporting guidelines

Pursuant to section 17 of the *Legislative Instruments Act 2003* (Cth), the General Manager did not undertake a consultation process due to the making of this legislative instrument being machinery in nature and does not substantially alter existing arrangements. On 6 March 2023, following the Registered Organisations Commission's (ROC) abolition, the functions of the ROC transferred to the Fair Work Commission (the Commission), with section 255 of the Act stating that the General Manager must, by legislative instrument, issue reporting guidelines for the purposes of sections 253 and 270. The requirements under the previous section 253 fifth edition reporting guidelines have not changed;

however the sixth edition reporting guidelines make reference to the correct authority, that is, the General Manager and the Commission.

## **Part 1 – Name**

States that the name of the instrument is the Fair Work (Registered Organisations), Reporting guidelines for the purposes of section 253 – sixth edition.

## **Part 2 – Commencement**

States that this instrument commences on the day after the instrument is registered.

## **Part 3 – Authority**

States that this instrument is made under section 255 of the *Fair Work (Registered Organisations) Act 2009*.

## **Part 4 – Definitions**

States that in this instrument *Act* means the *Fair Work (Registered Organisations) Act 2009*.

## **Part 5 – Schedules**

States that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Part 6 – Reporting guidelines for the purposes of section 253 – sixth edition**

### **Application**

Paragraph 1 states that these reporting guidelines apply to all general purpose financial reports (GPFR), including a concise financial report, of a reporting unit as defined in section 242 of the Act except where the General Manager has issued a certificate under subsection 270(1) to the reporting unit for that financial year. Separate reporting guidelines made under section 255 of the Act for purposes of section 270 apply to a GPFR of a reporting unit in relation to the financial year for which a certificate has been issued under subsection 270(1).

Paragraph 2 states that in the event of a conflict between a requirement of these reporting guidelines and a requirement of an Australian Accounting Standard, the requirement of the Standard prevails unless there has been a determination under section 241 of the Act that the Standard or the relevant part of the Standard does not apply in relation to an organisation or a class of organisations.

### **Operative date**

Paragraph 3 states that these reporting guidelines apply to each financial year of a reporting unit that begins on or after commencement.

### **Purpose of reporting guidelines**

Paragraph 4 states that these reporting guidelines apply for the purposes of section 253 of the Act.

Paragraph 5 states that under subsection 253(1) of the Act a reporting unit is required to have a GPFR prepared. The GPFR must be prepared in accordance with the Australian Accounting Standards. These reporting guidelines prescribe disclosure requirements in addition to those prescribed by Australian Accounting Standards having in mind the nature of organisations registered under the Act.

Paragraph 6 states that the disclosure requirements prescribed by these reporting guidelines are directed towards providing members of a reporting unit with information to enable them to gauge the performance of the committee of management and other holders of office in relation to the financial management of the reporting unit. In addition, the reporting guidelines seek to improve the quality of information available to users of the GPFR about the reporting unit's economic support of, or economic dependency on, other reporting units of the organisation and other entities.

### **General requirements for presentation and disclosures in GPFR**

Paragraph 7 states that it is a requirement that all reporting units apply the Tier 1 reporting requirements as per the Australian Accounting Standard *AASB1053 Application for Tiers of Australian Accounting Standards*.

Paragraph 8 states that the reporting unit must disclose in the notes to the financial statements the notice required by subsection 272(5) of the Act drawing attention to subsections (1), (2) and (3) of section 272 and setting out those subsections.

Paragraph 9 states that where a reporting unit's ability to continue as a going concern is reliant on the agreed financial support of another reporting unit(s) this must be disclosed in the notes to the financial statement. The reporting unit must disclose:

- (a) the name of the reporting unit(s) from which the agreed financial support may be derived; and
- (b) the terms and conditions attached to this agreed financial support.

Paragraph 10 states that where a reporting unit has agreed to provide financial support to ensure another reporting unit(s) has the ability to continue as a going concern this must be disclosed in the notes to the financial statement. The reporting unit must disclose:

- (a) the name of the reporting unit(s) to which the agreed financial support is directed;
- (b) the terms and conditions attached to this agreed financial support.

Paragraph 11 states that where a reporting unit acquires an asset or a liability during the financial year as a result of:

- (a) an amalgamation under Part 2 of Chapter 3, of the Act in which the organisation (of which the reporting unit form part) was the amalgamated organisation; or
- (b) a restructure of the branches of the organisation; or
- (c) a determination by the General Manager under subsection 245(1) of the Act of an alternative reporting structure for the organisation; or
- (d) a revocation by the General Manager under subsection 249(1) of the Act of a certificate issued to an organisation under subsection 245(1),

the reporting unit must disclose in the notes to the financial statements in respect of each such asset or class of assets or each such liability or class of liabilities:

- (e) date acquired;
- (f) description; and
- (g) name of the entity (including a reporting unit of the organisation or that of another organisation) from which it was acquired.

## Statement of comprehensive income

### Revenue

Paragraph 12 states that the total amounts for the following items of revenue must be disclosed by the reporting unit in the notes to the financial statements, unless already disclosed on the face of the statement of comprehensive income in accordance with Australian Accounting Standards:

- (a) membership subscriptions (i.e. fees in respect of membership of the organisation);
- (b) where the reporting unit receive capitation fees (or equivalent terminology referred to in the organisations rules e.g. sustentation fees) or any other revenue amount from another reporting unit:
  - (i) the description of each item of revenue;
  - (ii) the amount from each reporting unit; and
  - (iii) the name of each such reporting unit;

Note: when a disclosure under this item overlaps with the requirements of *AASB 124 Related Party Disclosures* this information only needs to be included once in the Notes to the financial statements.

- (c) where compulsory levies or voluntary contributions (including whip rounds) are raised from the members for the furtherance of a particular purpose:
  - (i) a brief description of the purpose of each such levy or appeal; and
  - (ii) the amount;
- (d) donations or grants (other than voluntary contributions referred to in subparagraph (c)); and
- (e) any revenue derived from undertaking recovery of wages activity.

### Expense

Paragraph 13 states that the total amounts for the following items of expense must be disclosed by the reporting unit in the notes to the financial statements, unless already disclosed on the face of the statement of comprehensive income in accordance with Australian Accounting Standards:

- (a) amounts paid to employers making payroll deductions of membership subscriptions;
- (b) where the reporting unit has paid a capitation fee (or equivalent terminology referred to in the organisations rules e.g. sustentation fees) or any other expense to another reporting unit:
  - (i) the description of each item of expenditure;
  - (ii) the amount paid to each reporting unit; and
  - (iii) the name of each such reporting unit;

Note: when a disclosure under this item overlaps with the requirements of *AASB 124 Related Party Disclosures* this information only needs to be included once in the Notes to the financial statements.

- (c) where fees/periodic subscriptions are paid in respect of its affiliation to any political party, any federation, congress, council or group of organisations, or any international body having an interest in industrial matters:
  - (i) the amount paid to each entity; and

- (ii) the name of each entity to which monies were paid;
- (d) where compulsory levies have been imposed on the reporting unit by another reporting unit or other entity, for each such levy:
- (i) a brief description of purpose;
  - (ii) the amount; and
  - (iii) the name of the other reporting unit or entity imposing the levy;
- (e) where grants or donations have been paid:
- (i) the total amount paid in grants that were \$1,000 or less;
  - (ii) the total amount paid in grants that exceeded \$1,000;
  - (iii) the total amount paid in donations that were \$1,000 or less; and
  - (iv) the total amount paid in donations that exceeded \$1,000;

Grants and donations that exceed \$1,000 must be separately disclosed in a statement and lodged with the Fair Work Commission as per section 237 of the Act.<sup>1</sup>

- (f) employee expenses related to holders of office of the reporting unit by each of the following categories:
- (i) wages and salaries;
  - (ii) superannuation;
  - (iii) leave and other entitlements;
  - (iv) separation and redundancy; and
  - (v) other employee expenses (specify if material);
- (g) employee expenses related to employees (other than holders of offices) of the reporting unit by each of the following categories:
- (i) wages and salaries;
  - (ii) superannuation;
  - (iii) leave and other entitlements;
  - (iv) separation and redundancy; and
  - (v) other employee expenses (specify if material);
- (h) fees and/or allowances (excluding any employee expenses already included in an amount referred to in subparagraphs (f) or (g) of this paragraph) paid to persons in respect of their attendances as representatives of the reporting unit at conferences or other meetings;
- (i) expenses (other than expenses included in an amount referred to elsewhere in this paragraph) incurred in connection with holding meetings, as required under the rules of the organisation, which the reporting unit was wholly or partly responsible;

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<sup>1</sup> Civil penalty provisions apply.

(j) legal costs and other expenses related to:

- (i) litigation; and
- (ii) other legal costs;

(k) penalties imposed on the organisation under the Act and the *Fair Work Act*.

### **Statement of financial position**

Paragraph 14 states that where an item is disclosed on the face of the statement of financial position as:

- (a) a receivable; or
- (b) a payable; and
- (c) the item has been derived as a result of one or more transactions and/or other past events with another reporting unit of the organisation,

the following additional disclosures must be made in the notes to the financial statements about the item:

- (d) the name of the other reporting unit; and
- (e) the amount attributable to the other reporting unit.

### **Liabilities**

Paragraph 15 states that the balances for the following items must be disclosed in the notes to the financial statements or on the face of the statement of financial position, in accordance with Australian Accounting Standards:

- (a) payables to employers for making payroll deductions of membership subscriptions;
- (b) payables in respect of legal costs and other expenses related to:
  - (i) litigation; and
  - (ii) other legal costs;
- (c) employee provisions in respect of holders of offices in the reporting unit by:
  - (i) annual leave;
  - (ii) long service leave;
  - (iii) separation and redundancy;
  - (iv) other employee provisions; and
- (d) employee provisions in respect of employees (other than holders of offices) of the reporting unit by:
  - (i) annual leave;
  - (ii) long service leave;
  - (iii) separation and redundancy; and
  - (iv) other employee provisions.

## Statement of changes in equity

Paragraph 16 states that the balances for the following items must be disclosed in the notes to the financial statements or on the face of the statement of financial position or statement of changes in equity in accordance with Australian Accounting Standards:

- (a) each fund or account operating:
  - (i) in respect of compulsory levies raised or voluntary contributions collected; or
  - (ii) that is required by the rules of the organisation including the rules of a branch of the organisation;
- (b) in respect of any transfers to and/or withdrawals from any fund or account mentioned in a) above;
  - (i) the name of the fund, account or controlled entity;
  - (ii) the amount transferred or withdrawn;
- (c) where monies from a fund or account mentioned in a) above have been invested in any asset(s):
  - (i) the name of the fund or account from which the monies were invested; and
  - (ii) the value of those asset(s); and
- (d) the balance of the general fund.

## Statement of cash flows

Paragraph 17 states that where another reporting unit and/or controlled entity of the organisation is the source of a cash inflow or the application of a cash outflow, such cash flow should be separately disclosed either in the cash flow statement or in the notes to the financial statements and show the name of the other reporting unit and/or controlled entity concerned.

## Additional reporting requirements

Paragraph 18 states that where a reporting unit's financial affairs are administered by another entity, the reporting unit must disclose in a separate note in the GPFR a detailed breakdown of all services provided and/or expenses incurred. This will also include:

- (a) the name of the other entity;
- (b) the terms and conditions of the arrangement;
- (c) a narrative description as to the nature of the expenses and/or consultancy services provided.

Such disclosure shall be in accordance with the disclosure requirements of the Australian Accounting Standards, the Act and these reporting guidelines.

Paragraph 19 states that any payments made during the reporting period to a former related party of the reporting unit, where the liability was incurred during the period in which a related party relationship existed, must be disclosed under the related party transaction note in the GPFR as though the related party relationship existed at the date of payment.<sup>2</sup>

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<sup>2</sup> For example, payments of employment entitlements to former officers of the reporting unit would fall within this category.

Paragraph 20 states that all the activities described within items 9 – 19 of these reporting guidelines must be disclosed in the GPFR. If any of the activities have not occurred in the reporting period, a statement to this effect must be included either in the financial statements, the notes or in the officer's declaration statement.

### **Report required under subsection 255(2A)**

Paragraph 21 states that subsection 255(2A) of the Act requires a reporting unit to prepare a separate report that shows the total expenditure incurred by the reporting unit during the financial year in relation to each of the following:

- (a) remuneration, and other employment-related costs and expenses, in respect of employees;
- (b) advertising;
- (c) operating costs;
- (d) donations to political parties;
- (e) legal costs.

Paragraph 22 states that the Act allows for this total expenditure to be shown in diagrammatic form however it is not compulsory to present this information in diagrammatic form and is at the discretion of the reporting unit on how to present this information in the report. The information is only required to be reported in one format that is, in either a descriptive form or a diagrammatic form.

### **Operating report**

Paragraph 23 states that the General Manager considers it best practice that the operating report:

- (a) be signed by identified officer(s) of the reporting unit whose name(s) are clearly printed; and
- (b) be dated by each officer who has signed the report as at the date on which the officer signs the report.

### **Committee of management statement**

Paragraph 24 states that for the purposes of paragraph 253(2)(c) of the Act, the reporting unit must prepare a committee of management statement containing declarations by the committee of management in relation to the GPFR.

Paragraph 25 states that the committee of management statement must include declarations by the committee of management as to whether in their opinion:

- (a) the financial statements and notes comply with the Australian Accounting Standards;
- (b) the financial statements and notes comply with the reporting guidelines of the General Manager;
- (c) the financial statements and notes give a true and fair view of the financial performance, financial position and cash flows of the reporting unit for the financial year to which they relate;
- (d) there are reasonable grounds to believe that the reporting unit will be able to pay its debts as and when they become due and payable;
- (e) during the financial year to which the GPFR relates and since the end of that year:
  - (i) meetings of the committee of management were held in accordance with the rules of the organisation including the rules of a branch concerned; and



- (ii) the financial affairs of the reporting unit have been managed in accordance with the rules of the organisation including the rules of a branch concerned; and
- (iii) the financial records of the reporting unit have been kept and maintained in accordance with the Act; and
- (iv) where the organisation consists of two or more reporting units, the financial records of the reporting unit have been kept, as far as practicable, in a manner consistent with each of the other reporting units of the organisation; and
- (v) where information has been sought in any request by a member of the reporting unit or the General Manager duly made under section 272 of the Act, that information has been provided to the member or the General Manager; and
- (vi) where any order for inspection of financial records has been made by the Fair Work Commission under section 273 of the Act, there has been compliance.

Paragraph 26 states that the committee of management statement must:

- (a) be made in accordance with such resolution as is passed by the committee of management of the reporting unit in relation to the matters requiring declaration;
- (b) specify the date of passage of the resolution;
- (c) be signed by a designated officer within the meaning of section 243 of the Act; and
- (d) be dated as at the date the designated officer signs the statement.

### **Auditor's statement**

Paragraph 27 states that the auditor's statement required under subsection 257(5) of the Act must include a declaration as to whether in the auditor's opinion the GPFR is presented fairly in accordance with the following:

- (a) the Australian Accounting Standards; and
- (b) any other requirements imposed by these Reporting Guidelines or Part 3 of Chapter 8 of the Act.

Paragraph 28 states that the auditor's statement:

- (a) must include a declaration that either:
  - (i) the auditor is a registered auditor; or
  - (ii) the auditor is a member of a firm where at least one member is a registered auditor; or
  - (iii) the auditor is a member of a company where at least one of whose directors, officers or employees is a registered auditor; and
- (b) must specify the registered auditor's:
  - (i) name; and
  - (ii) registration number.

Paragraph 39 states that the auditor's statement must include a declaration, that as part of the audit of the financial statements, they have concluded that management's use of the going concern basis of accounting in the preparation of the reporting unit's financial statements is appropriate.

## Glossary of terms

Paragraph 30 states that the following terms are used in these reporting guidelines—the meaning of any term defined in the Australian Accounting Standards is not modified by the following glossary:

**amalgamated organisation** has the meaning provided in section 35 of the Act.

**assets** are resources controlled by a reporting unit as a result of past events and from which future economic benefits are expected to flow to the entity.

**Australian Accounting Standards** means the accounting standards issued by the Australian Accounting Standards Board (AASB) or issued by CPA Australia and by The Institute of Chartered Accountants in Australia and adopted by the AASB (section 6 of the Act).

**capitation fees** (also commonly known as sustenance fees or affiliation fees) mean amounts which, under the rules of the organisation or a branch of the organisation, a reporting unit may receive from or pay to another reporting unit of the organisation, calculated in accordance with rules of the organisation or branch for the purpose of ongoing general administrative expenses.

**cash** means cash on hand and demand deposits.

**cash equivalent** means short term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value.

**cash flows** means inflows and outflows of cash and cash equivalents.

**comparatives** mean the corresponding amounts and other disclosures for the preceding financial year presented for comparative purposes as part of the current year's financial report.

**control** means the capacity of an entity to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of another entity so as to enable that other entity to operate with it in achieving the objectives of the controlling entity.

**control (of an entity)** means the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.

**designated officer** is an officer of the reporting unit within the meaning of section 243 of the Act.

**employee benefits** mean all forms of consideration given by the reporting unit in exchange for services rendered by holders of office or employees or for the termination of employment.

**entity** means any legal, administrative, or fiduciary arrangement, organisational structure (including a reporting unit of an organisation) or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.

**equity** means the residual interest in the assets of the reporting unit after deducting all its liabilities.

**expenses** means decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in equity, other than those relating to distribution to equity participants.

**financial records** to the extent that they relate to finances or financial administration include:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a document (section 6 of the Act).

**financial statements** comprise a statement of financial position, a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and any other statement required by the Australian Accounting Standards (paragraph 253(2)(a) of the Act).

**financial support** means financial resources provided to ensure that the provision of the principal activities are possible.

**financial year** in relation to an organisation means the period of 12 months commencing on 1 July in any year, or another period of 12 months as is provided in the rules of the organisation (section 6 of the Act), or a different period in the special circumstances set out in section 240 of the Act.

**general administrative expenses** includes expenses in respect of the office of the reporting unit, and other expenses that arise at the reporting unit level and relate to the reporting unit as a whole.

**general fund** means the equity of the reporting unit other than in relation to any fund operated by the reporting unit for a specific purpose.

**general purpose financial report** has the meaning set out in subsection 253(2) of the Act.

**grant or donation** is taken to have the same meaning as used in section 149 or section 237 of the Act, though it is not limited by amount.

**liabilities** are a present obligation of the reporting unit arising from past events, the settlement of which is expected to result in an outflow from the reporting unit of resources embodying economic benefits.

**membership subscriptions** means and/or includes entrance fees or periodic subscriptions in respect of membership of the organisation.

**notes to the financial statements** comprise notes required by Australian Accounting Standards and information required by the reporting guidelines (paragraph 253(2)(b) of the Act).

**organisation** means an organisation registered under the Act.

**other entity** includes another reporting unit, a state association, a transitionally recognised association, external entity or other controlled entity of the reporting unit.

**payables** are amounts owed by the reporting unit to other entities for goods or services delivered.

**prescribed designated officer** for the purposes of section 268(c) of the Act means:

- (a) the secretary; or
- (b) an officer (i.e. within the meaning of section 9 of the Act) of the organisation (or reporting unit) other than the secretary who is authorised by the organisation or by the rules of the organisation to sign the certificate.

**receivables** are amounts owed to the reporting unit by other entities (including members of the reporting unit) for goods or services delivered (including membership subscriptions).

**recovery of wages activity** means work by the organisation to recover from employer's money due and payable to workers under awards, industrial instruments as prescribed in the *Fair Work Act 2009* and contracts of employment.

**registered auditor** means a person who is registered as an auditor under subsection 255B(2) or (3) of the Act.

**RO Act** means the *Fair Work (Registered Organisations) Act 2009*.

**RO Regulations** means the *Fair Work (Registered Organisations) Regulations 2009*.

**related party** has the meaning set out as per the Australian Accounting Standards.

**reporting unit** has the meaning set out in section 242 of the Act.

**revenue** means the gross inflows of economic benefits during the period arising in the course of ordinary activities of an entity when those inflows result in an increase in equity, other than increases relating to contributions from equity participants.

**rules of an organisation** are the rules that an organisation must have under Chapter 5, Part 2 of the Act.

**whip around** means the collection of monies, whether on one or more occasions and whether voluntary or compulsory, by an officer or member of the reporting unit for the purpose of providing financial support to member(s) of the reporting unit and/or assisting the reporting unit to carry out the registered organisation's objects as set out in its rules.

### **Appendix 1 Officer Declaration Statement**

Appendix 1 provides an example of the officer declaration statement which is referred to in Paragraph 20.

### **Schedule 1 – Repeals**

The schedule states that this instrument repeals the whole of the instrument, *Reporting guidelines for the purposes of section 253 – fifth edition*.

### **Statement of Compatibility with Human Rights**

Prepared in accordance with *Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### **Fair Work (Registered Organisations), Reporting Guidelines for the purposes of section 253 – sixth edition**

The reporting guidelines are compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the reporting guidelines**

The reporting guidelines are directed towards providing members of a reporting unit with information to enable them to gauge the performance of the committee of management and other holders of office in relation to the financial management of the reporting unit. In addition, the reporting guidelines seek to improve the quality of information available to users of the GPFR about the reporting unit's economic support of, or economic dependency on, other reporting units of the organisation and other entities.

#### **Human rights implications**

The Bill engages with the following human right:

- The right to freedom of association, including the right to form and join trade unions and the right of trade unions to function freely in Article 22 of the International Covenant on Civil and Political Rights (ICCPR), Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESR) and in the International Labour Organisation (ILO) Convention 87; and

#### The Right to Freedom of Association

The reporting guidelines engage the right to freedom of association and the rights of people to form organisations to represent their industrial interests. The reporting guidelines do not limit the rights set out in Articles 3 and 8 of ILO Convention 87. The reporting guidelines aim to enhance the financial and

accountability obligations of employee and employer organisations registered under the Act to ensure that the fees paid by members of such organisations are used for the purposes intended and that the officers of such organisations use their positions for proper purposes.

Article 22 of the ICCPR provides for express limitations on the right to freedom of association when such limitations are prescribed by law and are necessary in a democratic society in the interests of public order or the protection of the rights and freedoms of others.

Article 8 of the ICESR provides for the right to form and join trade unions and for the right of trade unions to function freely subject to no limitations. However, it expressly provides for limitations prescribed by law which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

The general principles relating to the ability of governments to intervene in the internal affairs of employee or employer organisations in relation to freedom of association were set out by the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) in the 2012 *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*. With regard to the ability of governments to intervene in employee or employer organisations the Committee stated at paragraph 108 (emphasis added):

*Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference which is incompatible with the Convention. Where such provisions are deemed necessary, they should simply establish an overall framework within which the greatest possible autonomy is left to the organizations for their functioning and administration. The Committee considers that **restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations**. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body against any act of this nature by the authorities.*

Paragraph 109 states:

*As the autonomy and financial independence and the protection of the assets and property of organizations are essential elements of the right of organizations to organize their administration in full freedom, any legislative intervention in this respect merits the attention of the Committee. While it accepts legislative requirements that the constitutions of organizations should contain provisions relating to their internal financial administration or which provide for external supervision of financial reports, with a view to ensuring the conditions for honest and effective administration, it considers that other interventions are incompatible with the Convention. For example, the Committee considers that such supervision is compatible with the Convention when it is carried out in the following manner (in all cases, both the substance and the procedure of such verification should be subject to review by the judicial authority, affording every guarantee of impartiality and objectivity):*

- the supervision is limited to the obligation of submitting annual financial reports;*
- verification is carried out because there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association);*
- verification is limited to cases in which a significant number of workers (for example, 10 per cent) call for an investigation of allegations of embezzlement or lodge a complaint.*

Paragraph 110 states

*However, it would be incompatible with the Convention if the law gave the authorities powers of control which go beyond these principles, or which tend to over-regulate matters that should be left to the trade unions themselves and their by-laws. This may take the form of extended control over the financial management of organizations, or legislative provisions which regulate in detail certain aspects of the internal administration of organizations. Examples include provisions which:*

- *establish the minimum contribution of members;*
- *provide for financial supervision of the accounts by the public authorities;*
- *entrust the authorities with extensive powers to regulate the maximum rates of salaries and allowances paid to employees of the trade union;*
- *specify the proportion of union funds that have to be paid to federations;*
- *require that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities;*
- *restrict the freedom of trade unions to invest, manage and use their assets as they wish for normal and legitimate trade union purposes;*
- *empower the administrative authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time; or*
- *intervene in the determination of the use of the assets of the trade union to pay fines or penalties imposed on the organization or on a trade union leader in the performance of her or his duties.*

The requirements which the reporting guidelines place on the right to freedom of association fall within the express permissible limitations in the ICCPR and the ICESCR insofar as they are necessary in the protection of the rights and freedoms of others. Further, the reporting guidelines are permissible insofar as they are prescribed by law, pursue a legitimate objective (protecting the interests of members and guaranteeing the democratic functioning of organisations), are rationally connected to that objective and are no more restrictive than is required to achieve the purpose of the limitation.

## **Conclusion**

The reporting guidelines are compatible with human rights because they do not place any limitation that would be deemed to be unreasonable, unnecessary or disproportionate.