



ROCpod episode 20 – Good governance in practice: Creating a ‘speak up’ culture

The ROCpod was a monthly podcast focussed on the regulation of registered organisations. It shared information, tips and tools for improving compliance with legislative requirements.

The podcast was key part of the Registered Organisations Commission's (ROC) education strategy. The ROC was abolished on 6 March. The Fair Work Commission (the Commission) is now the regulator for registered organisations.

Although processes may change under the Commission, much of the podcast content is still useful.

Email any questions about anything in an episode to regorgs@fwc.gov.au.

Speaker Key

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AN Welcome to ROCpod: Talking with the Registered Organisations Commission. The official podcast of the ROC about the regulation of unions and employer associations. And in this monthly 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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CH Hello and welcome to episode 20 of ROCpod. My name is Caroline Hamilton and I am the ROC's communications advisor. Today's episode is an instalment of our good governance in practice series. We will be talking about how to develop a 'speak up' culture within registered organisations. What I mean by a 'speak up' culture is a safe environment for staff and officers to raise their concerns, and where issues are acknowledged and dealt with appropriately.

We will discuss strategies and provide practical examples for registered organisations to encourage transparent and ethical behaviours. To help me I am joined by Chris Enright. Chris is the ROC Executive Director.

**00:01:20**

CE Hi Caroline. Great to be here. This topic is essential to good governance and I'm happy to help you with today's episode. Having a 'speak up' culture encourages ethical decision-making from officer level right up to senior management. And it's everyone's responsibility to ensure the organisation is run in accordance with its rules and policies.

CH In episode 6 of ROCpod we spoke with Professor AJ Brown of Griffith University. You can go back and listen to that episode if you haven't already. Professor Brown is one of the leading authorities on whistleblowing in Australia. He spoke about the findings of his research into how whistleblower disclosures can be dealt with effectively.

I want to start with a recap of the research because it illustrates the significance of having a 'speak up' culture. Chris, can you explain what a 'speak up' culture is, and why registered organisations should encourage this from the top down.

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CE I think you summed it up in your introduction, Caroline. A 'speak up' culture is about having a safe environment for people to raise their concerns, and with confidence that the matter will be listened to and appropriately dealt with. Early detection, assisted by employees, officers, members and other people connected with the organisation, provides the opportunity for prevention. That's really important. In many ways it's an internal audit process that helps you find issues or concerns within your organisation.

What I took away from the discussion with Professor Brown in episode 6 that you just mentioned, was that not all whistleblowers go public with their complaints or raise concerns to an external regulator like the ROC. The ROC has a whistleblower scheme, but we know that only a small number of issues are raised directly with us. The research says the majority of whistleblowing occurs within organisations. And we know that matters can be resolved effectively by organisations themselves, provided they have good practices in place.

CH That's really interesting, particularly given the media coverage of this area would make us believe that whistleblowing is always a public issue.

CE Yes, well we know that's not often the case and in fact it's not even usually the case. Most whistleblowers will try and raise a matter internally first. And there are advantages for registered organisations to develop a 'speak up' culture so that people continue to raise their concerns in that sort of way. Creating an environment where people can safely raise their concerns, where they feel acknowledged and confident that the issue will be addressed appropriately, builds trust and reassures people who might otherwise feel uncomfortable about coming forward. It's also really good for morale in the organisation. Uncovering potential misconduct and not only



misconduct, but, I'll talk about a bit later, opportunities for improvement and taking appropriate action can also prevent the issue from escalating into a bigger one – it can prevent litigation arising from non-compliance for example. Which is also, obviously, good for your bottom line.

And if you raise your concerns with your organisation, when you could have made a protected disclosure with an external regulator like the ROC, it is important that you're aware that the same protections apply against reprisals as would be as if you reported them directly to the ROC.



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- CH** So how can organisations develop a 'speak up' culture? Like the other topics we have focused on in our good governance in practice series, we know that good culture doesn't just happen spontaneously. It takes leadership. And there are steps that can be put in place to work towards best practice.
- CE** You're right Caroline, there isn't a single solution when it comes to building culture. But there are actions, many of them and many we've seen carried out by registered organisations, which can encourage ethical behaviours.
- CH** Let's start with informal disclosures. A person just casually pointing out that something isn't right. So, what steps can an organisation take to encourage a 'speak up' culture in this type of circumstance.
- CE** Look you're starting with an important point, Caroline. And the good part about it is, the way I look at it is, it's absolutely free. Lots of whistleblowers and lots of disclosures were probably raised as little issues along the way. And how the organisation responds to those can help influence whether they're being made AT ALL or whether they're being reported externally. This is all about attitude and training. When someone raises an issue, however small, you really have to think about celebrating that because if every time someone points out a problem – senior leaders argue, or dismiss or put down the issue – people are going to stop feeling like it's a safe space to raise their concerns. I know this is a hard one, but we can't be our best selves and our best organisations without constructive feedback.

For whistleblowers to feel safe and encouraged their leaders must genuinely listen to the concerns, evaluate them and speak positively about them being raised. If leaders aren't open to people raising issues, or even worse are openly hostile to it, there isn't going to be a 'speak up' culture. When senior leaders show genuine interest and support it also shows the organisation takes the behaviour seriously and models it to all officers and employees.

This has even appeared in our own cases, for instance in one of our cases, in particular that focused on a secretary in a branch the court said that: [that secretary] held the most senior office within that branch. And if anybody, he should have been setting an exemplary standard of behaviour...'

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- CH** So that's attitude and it needs to be modelled from the top. So let's start with processes for dealing with misconduct. How can a whistleblower policy contribute to a 'speak up' culture?
- CE** Look it's really important that people know what to do when they identify that something isn't right. Turning a blind eye won't make undesirable things go away. We know that and we've seen that. We've got summaries of cases from the Federal Court on our website, and some of them illustrate what can happen when misconduct is ignored or undetected.

A whistleblower policy can establish important ground rules for how the organisation will deal with a complaint. For example, how can you raise an issue with management or your human resource in your organisation? What happens next ... how will the matter be investigated, and how will the organisation deal with reprisals if there are any? These are all really basic issues and putting them into a policy can elevate their importance and build trust that the organisation is equipped to handle these kinds of matters. It provides a real sense of confidence.

But I want to repeat a point that Professor Brown made earlier in his ROCpod 6, in the episode, because it's important. It's all well and good to have a whistleblower policy, but it's another thing to make people aware of it and ensure that it relates actually to what happens on the ground and by that I mean, how it's implemented, as promised by the policy itself. People won't speak up if they don't feel safe, so it's really important for organisations to train their staff in policy and procedure and be seen to be actively carrying it out as promised.

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- CH** Absolutely I agree, it's not enough just to have a policy, you need to make people aware of it. And we've previously spoken about educating officers and new staff on organisation policies, that was back in in episode 15 of ROCpod. Offering refresher training so behaviours are imbedded in the organisation's culture. And anyone can go back and listen to that podcast about officer induction.

If your registered organisation has a whistleblower policy, you can build a culture with new people in the organisation through your induction programs. This could include training, or a manual, or both, which informs people about the organisation's expected standards, including speaking up about misconduct.

But Chris, what can an organisation do if they don't have a policy, but they are interested in developing one?

- CE** Yeah, we've thought a lot about this, so as a starting point, the ROC has published several tools to assist registered organisations with handling internal whistleblowing



matters. They were developed for organisations and are especially helpful for small or new organisations which don't have published or established processes in place. For example, there's a template whistleblower policy on our website which provides a basic framework for an organisation to build on.

In addition to that we've got two guidance notes, that we'll attach to our website relevant to this episode of ROCpod. One's called 'A guide for registered organisations receiving reports of disclosable conduct' and the other one's 'A designated officials or managers guide to handling matters within registered organisations'. So if your organisation or your branch doesn't have a whistleblower policy or you're unsure how you should deal with a whistleblower disclosure, both guidance notes might be a useful starting point for you, and we hope that you will take advantage of those resources from our website.

CH That's excellent advice, Chris and those are great resources. Now moving to hands on tips for managers. Can you share with us a few best-practice tips for someone like a manager who is responsible for handling an internal disclosure?

CE Yeah, great. Well look it's probably going to be a manager who's involved in these things or people in managerial roles is often the case, but not always, but often. And we've already spoken about following your organisation's policy, if you've already got one. And considering how your organisation's rules, which may also outline how to handle these matters. So, for registered organisations their rules can be really important in this regard.

However, after you have some details about the complaint, if you're the receiver and before you take it any further, you should really think about whether you are the right person to be handling the issue. Your role might require you to investigate these kinds of matters, but can you objectively deal with the issue? That's a question you should ask yourself. If there is a conflict of interest someone else might need to step in to deal with the matter instead. An example, an obvious example of this, where the matter calls into question your own conduct, in that circumstance it would be more fairly and transparently handled by another person in your organisation.



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CH We spoke in greater detail about conflicts of interest back in Episode 17 of ROCpod. And in that episode we discussed the kinds of conflicts that may arise, and how to manage them, including disclosure requirements and record keeping. You can go back and listen to that episode as well if you haven't already.

So okay, Chris, let's presume someone has the authority to handle the matter, and there's no conflict of interest. What might the investigation look like?

CE Yeah well they'll all be different of course, that's the starting point. And it will depend on the issues raised, and the resolution the person raising them is trying to achieve. That's really important as well. And not surprisingly, different matters will require a



different level of response. So not all issues will need an investigation, with interviews and documentary evidence (unless of course there are serious issues raised). Some matters can be dealt with quickly through a mediation process. If this is the case, you should document the agreed action and outcomes and then carry them out. This is a really important step. So building trust and confidence is essential to developing a 'speak up' culture, because if you don't do what you say you, people will hesitate to speak up next time.

Now they're other resources on our website about this, but keeping records is also very important and that applies for all types of matters, whether they're big or small. The organisation should have a secure management system to maintain confidentiality and store information, which can be called upon later, for example where investigation decisions are challenged.

Where you do need to investigate, developing an investigation plan will help you consider the risks and identify the process, including the sources of evidence you might need to follow up on. An investigation plan should also set out timeframes to keep you accountable for delivering an outcome. So, some people will turn away when they hear the word 'investigation plan' because some people won't know what it actually looks like, so we have developed a template investigation plan to assist organisations through this process, and you absolutely are welcome to download it from our website. But, you should be really careful, for the reasons I talked about earlier, every organisation is different, every organisation has its own rules, etcetera, you should be careful to tailor the template so it's suitable to the rules and procedures in your particular organisation.

- CH** A big issue in all of this is transparency? How does this go towards developing a 'speak up' culture?
- CE** Really important again. And it's about balance. So as we've said, a big part of the 'speak up' culture is trust that the information will be acted on in an appropriate way. Now I can understand how if the information is serious, or personal, that only particular parts of that information might be shared on a need-to-know basis. But that can appear from the outside like someone who spoke up that nothing in relation to what they spoke up about. So it can look like inaction from outside. So you really need to balance sharing action that is taking place and what that action is, with the need to respect the privacy and personal information of individuals. So a really massive driver towards achieving a safe 'speak up' culture, is people SEEING that other people are having their disclosures respected and followed up on, while maintaining that privacy and confidentiality. So that's the balance managers need to take into account or anyone dealing with disclosures.



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- CH** I think that this idea of seeing the culture happen is essential for 'speak up' culture to be in place. So for instance, it's important also to know that bodies of officers can be held responsible for the decisions of that body. If there is a dominant voice that is



driving behaviour then other officers must be empowered to stand up if they disagree with the decisions that are being made.

One of the things about 'speak up' culture is that it needs to be modelled. And where officers and employees see more senior people acting like something is okay or there's no need to report it, they will also start to act like it's okay and there's no need to report it. And this is what we see in some of our cases, haven't we Chris, where lots of people knew what was happening and yet it had become quote unquote "normal".

CE Yeah well that's exactly right, Caroline. There another example that is on our website and involved an organisation which had just stopped holding proper elections for quite a long period, and people were informally added to the committee of management contrary to the Act and what we recognised was that a 'speak up' culture in that organisation at that time might have empowered people to ask whether that was right and whether that was okay and if that had occurred, it's possible that the organisation would have acted to rectify that election issue must earlier than they did and avoided the serious consequences that followed. So that's a really great example of where people informed people sitting around in an organisation who are able to raise issues can really have a positive influence.

CH And I did just want to flag here the concept of anonymity. While you're in the process of setting up a true 'speak up' culture, it's probably worth including the ability for people to raise issues anonymously. Even once you have a flourishing 'speak up' culture it can still be vitally important. Anonymity provides some cover for when there are perceived power imbalances or risk.

CE Yeah look some of the protected disclosures lodged with the ROC since 2017 have been made anonymously. And it's a good way to encourage a disclosure, while you're still developing the 'speak up' culture we're talking about today. But I think it also ties into the other important part of a 'speak up' culture, that people must know that there won't be any retaliation for raising issues.



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CH That's part of the protections under the RO Act, isn't it Chris. Whistleblowers are protected against reprisals?

CE Exactly Caroline, and it's essential for a 'speak up' culture that people trust that there won't be a reprisal – for example they won't be fired, or demoted, or have their pay cut or other opportunities removed. This is particularly difficult if the information was about a direct manager or a colleague, because there can be an awkwardness, but that's different to retaliation. It may be you can consider including some checks against retaliation or reprisals in your whistleblower policy. People have to trust that raising an issue won't be held against them.

So, again in that context I just wanted to mention our experience since 2017, because we've received over 200 whistleblower disclosures and applying rear view



mirror approach to those disclosures and to incidence and issue that have occurred, more often than not, provides the opportunity for continuous learning and improvement.

From our experience, the majority of the times we've looked into a disclosure of any kind we see opportunities for improvement. And often note how things could have been done better. In other words, we learn. And we try to pass those learnings on to organisations. In our experience, organisations and branches who take that type of approach to a 'speak up' culture are far more likely to see the benefits rather than the negatives.



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CH In today's episode of ROCpod we focused on developing a culture within organisations to encourage people to speak up against misconduct. However, there will be some cases where people would prefer to raise the issue with a regulator. For example, you might be unhappy with the way that your issue has been handled within your organisation.

Chris, can you finish today's episode by sharing with us how people can make a protected disclosure with the ROC.

CE Yeah thanks Caroline, you can make a protected disclosure and as I've said we've already had more than 200 of them, by picking up the phone and speaking to a staff member at the ROC, or you can send us an email to regorgs@roc.gov.au. But not all complaints are protected disclosures – they need to be about breaches of the *Fair Work Act*, the *Fair Work (Registered Organisations) Act*, the *Competition and Consumer Act* or be an offence against a Commonwealth law.

A common example of a protected disclosure we receive from people in registered organisations have been about allegations of unlawful conduct during an election. Another is a failure by an officers or an officer to disclose a personal interest, or some other breach of their officers duties. So they're common examples. However an example of an compliant that doesn't fit the criteria is a service related compliant about a registered organisation. So for example, a person paid their membership and the organisation isn't attending their office as much as they want or expect, or the organisation won't send someone out to represent an employer in a bargaining dispute, for example. So they're some examples that won't amount to protected disclosures in the Act. So we can't take those any further. But there are other agencies you can contact to make a disclosure, it's not just the ROC. For example, you could make a protected disclosure with the Fair Work Ombudsman and you could do this or you would do this if this was a breach of the Fair Work Act. Some employees of the Australian Building Construction Commission and the Fair Work Commission can also receive eligible disclosures.

If we receive a disclosure that would be more appropriately handled by another agency, we'll transfer that matter to that other agency. So, all agencies involved in the protected disclosures scheme work together to ensure that disclosures are dealt



with in the time frame set out in the legislation. So as we mentioned earlier disclosures can remain anonymous if they want to, but this can affect how a disclosure is investigated, which is something to keep in mind when you communicate with us.



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CH Thanks for that Chris.

CE You're absolutely welcome Caroline. It's really good to speak about such a vital element of good governance and the more we can talk about it, I think the better off we'll be. Particularly that learning aspect. Organisations who want to continuously improve, the ones we see, they're the ones who get the most benefit out of encouraging disclosures.

CH To summarise today's episode:

Whistleblower matters can be managed internally by registered organisations, and encouraging a 'speak up' culture is part of good governance. If officers, employees and members feel safe and have trust that issues will be appropriately dealt with by the organisation without retaliation, they're more likely to raise it internally instead of staying silent or escalating it to an external regulator.

Chris, thank you for joining me for today's discussion about whistleblower disclosures and how to develop a 'speak up' culture in registered organisations.

CE You're welcome, Caroline it's been my pleasure.

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