



ROCpod episode 42 – You’ve identified non-compliance ... what’s next?

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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CB Hello and welcome to *ROCpod*. My name's Catherine Bebbington and I'm the Principal Adviser in the Education and Reporting team at the ROC. In this episode we will be talking about the steps that registered organisations should take when they identify non-compliance and how organisations can work with the regulator to resolve these issues. To help me explore this topic I'm joined by MaryAnne Guina. MaryAnne



is a Senior Lawyer and Principal Adviser in the Compliance and Protected Disclosures Team. Thank you for joining me, MaryAnne.

MG My pleasure Catherine. Indeed, this is an interesting topic. As the regulator, we observe and recognise that the vast majority of organisations we work with want to comply with their legislative obligations and they take steps to do just that. However, mistakes and non-compliance do happen and that's why it's helpful to have this discussion of what to do if non-compliance is identified within an organisation.

CB Absolutely. If you are new to this space, registered organisations have a range of compliance obligations under the *Fair Work (Registered Organisations) Act 2009* (we call this the RO Act).



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MG That's right. We spoke comprehensively about many of these requirements in our last episode so if you're looking for an in-depth discussion on your organisation's compliance obligations, I'd recommend listening to the December podcast.

CB Today we're going to focus on what to do if you've found non-compliance and essentially it can be summarised into a few key points – the first one is – don't panic. If you've made a mistake, found an issue or discovered something more serious like fraud, there are a number of steps you can take to start addressing the problem. The second key point is communicate. Tell the right people in your organisation and then reach out to us, as the regulator, to discuss next steps.

We're going to work through this in a series of examples. So MaryAnne, let's start with a common type of non-compliance. What happens if I realise I left something off a document, say a notification of change, a loans, grants, or donations statement, an officer and related party statement or even prescribed information?

MG Well, as you mentioned, there is no need to panic. This type of non-compliance does happen. Most lodged documents are signed by a responsible officer so you should notify that officer about the information that has been left off the form, because they're the one who signed it. Then you can draft up a compliant version with all the information included and have that responsible officer sign and date the revised version and then lodge it with us.

If your previous lodgement was a week or more ago or it's going to take a few days to get the information together and have the document re-signed, you should call us to let us know of the error, the steps you are taking to overcome it and when we can expect to receive it. That'll ensure we're not processing the incomplete or incorrect earlier lodgement. Elections, in particular, start to be assessed by an action officer very soon after lodgement and can be quite time intensive.

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CB So can I have it back dated or just mark up the same form with the change?

MG No, absolutely not. This is a new document, with a new signature and the correct date is the date that the new document is signed. If you want to draw our attention to the difference between your first and subsequently lodged document you certainly can, this might help us process it faster in circumstances where we have already started processing the first one. Again, if you have any questions call and you'll be connected with the action officer allocated to your matter. It's also important that you make it clear it is a replacing document, so we know not to process it as a new lodgement and, for example, start arranging a second election.

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CB That's a great start, MaryAnne, but it's important to realise not all documents can just be fixed. Some things we deal with are more complicated if the information isn't correct.

MG Like General Purpose Financial Reports.

CB Exactly, if you realise that something has been left out of your GPFR, call us and speak to our specialist financial reporting team. Some changes will require the entire document to be re-audited. Other changes, particularly changes to past reports, can sometimes be done as a correction in the next year's financial report. But there are rules and procedures about how to do it and our financial reporting specialists can walk you through getting all those technicalities correct.

MG Again, it's a case of letting the relevant people in your organisation know, in this case, that'll be your committee of management, and then reaching out to us. Another type of non-compliance is when documents aren't lodged on time. Particularly in the financial reporting space. There are lots of resources to help you work out when something is due.

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CB I'm a big fan of the compliance calculator, myself. It's available on our website.

MG Yes, it is a good tool for identifying your own deadlines. Sometimes you may realise after the fact that a document has been lodged late. But often, you may realise before you even lodge that you may not be able to meet the timeframes in the legislation. Let's say, you cannot get enough people for a quorum at the committee of management meeting to consider your financial statements, or, your auditor has found something that requires more work and, therefore more time, before they sign



the Auditor's Report, or it's taking you longer than you expected to gather all the evidence for your big quadrennial election or maybe that your new officers can't all be booked into training in time to meet the six months deadline in the RO Act... all of these are examples where you might not be able to meet the deadline.

CB And they're great examples, MaryAnne, because in those cases you probably do realise you're going to be late before you miss the deadline, before you are non-compliant. In these situations, we always say to contact us as early as you can, don't wait until you're ready to lodge and already late... the minute you realise you might be late with your lodgement start contacting us.

MG That's exactly right, Catherine. We can walk you through whether an extension of time for things like your election or financial report could assist you to remain compliant. Alternatively, officer training could be helped with exemptions (if people qualify for them), or we can provide assistance with your documents to help you meet the deadlines. Staying compliant is a far better option for your organisation than falling into non-compliance and trying to address it later.



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CB It certainly is, but what... what if I realise it's already late just before I lodge it? What should I do then?

MG Communicate. Let the officer know who is responsible for signing the document know and assess why the deadline was completely missed. Was it a problem with the processes you use to complete the document? Did it take you longer than you expected to get the information? Or was it an issue with the systems that track the deadlines within your organisation?.

It's also advisable to provide us with your assessment of why it's late when you lodge. That information can be included in a cover letter or within the lodgement email.

CB Now that's a great point. It's important to remember that while we do send reminders for some of your obligations, like annual returns or ORP statements, your organisation is ultimately responsible for complying with the law – for knowing when things are due and making sure they are done on time.

After you have assessed what happened, the next thing to consider is how can you prevent it happening again. When you become non-compliant or have a near miss – you really should take the time to sit down and consider what caused it. As the regulator, we may investigate why the deadline was missed and being able to say you've considered that, XYZ happened and you've taken the following steps to prevent it happening again is a good strategy to mitigate any further consequences.

MaryAnne – what kind of strategies have we suggested when people are late to ensure they avoid non-compliance again?

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MG Well, besides the diary and systems issues previously outlined, it could be someone has been unexpectedly off sick or on extended leave – in those cases consider processes around handovers or ensuring multiple people have visibility over the key deadlines. It shouldn't be left vulnerable to a single point of failure.

Maybe there was a breakdown in communication between a branch and the national office, not sharing information around things like casual vacancies being filled is an example here – consider do you need reminders or shared folders, or a routine schedule of meet ups. There are also increasingly automated solutions for sharing information.

Sometimes we see issues where everyone thought someone else had lodged the document – in this case having a chain (of say 2-3 people) responsible from start to finish for the documents and their lodgement is a way to prevent that confusion.

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CB That's really helpful if the document was late, or almost late, but, MaryAnne, what about our earlier example of information left out of a document. Are there any things we should examine there?

MG Well, you also need to consider what is the information that was left off. Let's say you've left a related party transaction off your ORP statement. You should consider whether that information has been overlooked in any of your other processes. Are the people attached to that particular interest or transaction giving proper notification to meetings of the committee as required, are they making sure they aren't making decisions that could be influenced by that interest and is the declaration of interest appearing in the relevant minutes. These are all things that you may be asked about, especially if you have left something out of the records on your first lodgement.

CB And they're certainly things that the regulator would look more favourably on if you've taken the initiative and could tell us you'd already addressed them even as you're notifying us of the correction to the document. So, some non-compliance raises red flags about a number of concerns all attached to the one thing.

MG That's exactly right, and we will look at them holistically and will consider the steps you're taking when determining our future action.

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CB What about bigger issues of non-compliance, MaryAnne? What about incorrect credit card spending, which we've raised in a number of our education materials of late, or even actual fraud or theft? What do I do if I find something like that?



MG This is where it's important to listen to our 'speak up culture' episodes, because systemic or widespread issues, or issues with fraud, need to be able to be raised in an internal environment where people believe their concerns will be taken seriously. A strong speak up culture is also good insurance against systemic, long-term fraud, and gives you a far better chance of discovering it.

If you discover fraud or theft, you absolutely can reach out to us because we have a lot of experience working with organisations to investigate and correct issues. Rather than trying to puzzle next steps out by yourself, we can give you some ideas. It might be you need to go to the police or provide training to your officers and employees or even hire an accountant to investigate your finances, internal systems and processes.



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CB It's worth noting though MaryAnne, that the purpose of the yearly audit of your general purpose financial reports is not to detect fraud. So this type of audit would have a different purpose and potentially be undertaken by a different accountant.

MG That's right, Catherine, depending on the issue, such an audit may involve a forensic accountant or a forensic IT consultant. If an organisation approaches us when they have a significant issue it means we can either work with them to resolve the issue, provide advice and guidance or we can simply keep in touch with them during their own internal investigations.

CB That's really important, especially because the RO Act has a whistleblower jurisdiction, so many of these issues can be reported to us directly by individual officers, members or employees of the organisation. If we are already aware of your concerns, have discussed with you your plan for investigating the matter and are being kept informed of your findings, these are all relevant to whether we need to undertake an investigation or not.

MG We always encourage genuine attempts to resolve matters internally, and yes, there have been instances where significant issues were well investigated and dealt with internally by the organisation, for example, to recover lost funds or upgrade systems and internal processes, that we didn't need to open our own investigation or commence litigation.



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CB This is also where it is important to look backwards and forwards. The best type of investigation into non-compliance, no matter what the level of seriousness – be it routinely failing to lodge NOCs, leaving a loan out of your LGD statement or an officer taking funds – has three aspects and they can be summarised with these questions:



1. What happened and how?
2. Can we fix what happened?
3. What can we do to avoid it happening in the future?

MG That's right, as we discussed earlier, doing things like keeping an annual planner or calendar showing key compliance dates to prevent missed deadlines into the future. Showing you've changed or updated your systems to keep better records and track information so things aren't left out. And in the case of things like theft and fraud, it will often include a significant review of all your policies and procedures and educating officers and employees within your organisation about their existence, how they work and what is, and isn't, permitted.



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CB Exactly! And, as the regulator, we are happy to help with that review too, we can provide you advice on what is best practice for your policies, delegations, and your procedures. We can give you information on whether what you are considering is consistent with your rules and other legal obligations.

MG An organisation that voluntarily comes to the regulator about self-identified fraud with a plan to investigate it, including the steps necessary to recover any lost funds, and undertake a review of processes to minimise the risk of it happening again is going to be taken seriously. It's invariably better if the regulator is working with you as part of this process.

CB We have in fact gone through this exact process with a number of organisations, and it has allowed this type of misconduct to be discovered, addressed and rectified by the organisation taking the initiative, rather than further investigations or litigation by us.

But it is important to remember that if the behaviour is significant, ongoing, systemic, or intentional non-compliance there may be other reasons for the regulator to investigate and those decisions are always made on a case-by-case basis. But if you come forward to us at an early stage, it is a conversation that you can contribute to, rather than one that takes place following a series of serious whistleblower allegations because the issues haven't been addressed.

MG If we do decide to start an inquiry or investigation, we certainly still encourage you to work with us. It can cut the time of any inquiry or investigation, reduce the resources needed by both your organisation and us as the regulator and can contribute to a better outcome for the organisation if it goes to litigation.



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- CB** Under the recent amendments to the legislation, the regulator will also have powers to issue infringement notices or to enter into enforceable undertakings with organisations as other means of addressing non-compliance. Working with us at an early stage to identify non-compliance and then take steps to prevent it into the future may assist an organisation with obtaining the best possible outcome.
- MG** That's right Catherine. As we've said in today's episode, when you identify non-compliance the best thing is to contact us as soon as possible and talk through the issue.
- CB** Thanks for joining me on this month's episode MaryAnne, this has been a really valuable discussion on what organisations can do when they anticipate they will become non-compliant or have identified non-compliance.
- MG** Very happy for the opportunity Catherine.
- CB** Thank you for tuning into the podcast this month. We will be back next month with a new episode on effective minute-taking in meetings.



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