



RO POD episode 45 – compliance update with the Executive Director

Speaker Key

AN	Unidentified announcer
CH	Caroline Hamilton
CE	Chris Enright

AN Welcome to RO pod: Talking about governance of registered organisations with the Registered Organisations Governance and Advice Branch at the Fair Work Commission. The official podcast about the regulation of unions and employer associations. 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 RO Pod. My name is Caroline Hamilton and I'm a senior advisor with the Registered Organisations Governance and Advice Branch here at the Commission. I'm joined today by Chris Enright, who is the Executive Director of the Branch. We're going to talk about current compliance and regulatory issues for registered organisations and their branches. Welcome, Chris!

CE Thank you, Caroline, it's great to be here!



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CH As our listeners may be aware, the staff in the branch were transferred to the Commission following the abolition of the Registered Organisations Commission. From 6 March 2023, *The Secure Jobs Better Pay Act* transferred the functions of the former Registered Organisations Commissioner to the General Manager of the Fair Work Commission. How has that process gone, Chris?

CE Well I'm pleased to say that it has gone very well! The transfer has been quite seamless and it is very much business as usual for our team here in the Registered Organisations Governance and Advice Branch. As part of the move, we transferred the case management system the ROC used across to this Commission and all the data was migrated.

What this means for registered organisations is that all the matters that staff were dealing with at the ROC were transferred across to the Commission. So if you have an ongoing matter, you will be talking to the same subject matter expert who is familiar with your matter as before, and they should have all the information they need to keep working on it.

The most important difference people should be mindful of is that some of our contact details have changed.



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CH That's right Chris. If you are contacting one of our team via email it is important to check that you are emailing us at addresses that end with **f w c dot gov dot a u**. If you've got people saved in your email address book, for example, with an old ROC address, you should delete or update those, as they are no longer forwarding to us.

The branch's main account for lodgements and enquiries is regorgs@fwc.gov.au – that's **r e g o r g s @ f w c . g o v . a u**. Our website content is now available at www.fwc.gov.au. And if people are sending us documents in the post, those should now be sent to **GPO BOX 1994, Melbourne, Victoria, 3001**.

Our telephone number has **NOT** changed! You can continue to call us on **1300 341 665** between 9am and 5pm Australian Eastern Standard Time, Monday to Friday.



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Registered organisations recently had to lodge their annual returns of information by 31 March as required by the *Fair Work (Registered Organisations) Act 2009* – or as we refer to it, the RO Act. Annual Returns fell due shortly after the transfer of the powers and functions under the RO Act to the Commission. How did they go, Chris?



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CE Well it was very successful Caroline! The transfer of the regulatory powers to the Commission didn't change the ongoing compliance obligations of registered organisations under the RO Act. Annual returns had to be lodged with the Commission this year as the new regulator.

All 95 of Australia's federally registered organisations voluntarily lodged their annual returns on time. Which represents a 100% compliance rate.

Every registered organisation understood the need to not only lodge on time, but where to lodge – even those organisations that are looking to amalgamate or deregister, they also complied. So, I've got to say, this is a positive first milestone after the transfer of the functions to the Commission only a few weeks earlier.

We want organisations to succeed and we want to acknowledge them when they succeed. I can recall, it wasn't that long ago, we had a really high compliance rate in relation to officer and related party statements and we went out publicly and thanked organisations for that and we'll continue to do that, because as I say, we certainly want organisations to comply and meet their obligations under the RO Act.

CH And now all organisations **MUST** lodge their notifications of change with the Commission.

CE Well that's exactly right.



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CH Prior to 2017, the General Manager of the Fair Work Commission was responsible for regulating registered organisations. Does this mean things will be going back to being the way they were before the ROC?



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CE First of all, it's important to point out that there has been a federal system for regulating and registering employee and employer organisations in Australia for almost 120 years. Different institutions have been responsible for the regulatory functions over the years, and yes it did sit with the General Manager of the Commission prior to the ROC being established. So, change in this space is nothing new for registered organisations.

There will be some differences this time around. For example, the ROC was given broader regulatory powers by the government than those that had been in place at the Commission. This included, for example, the registration of auditors, mandatory officer and organisation disclosures, stronger powers for the regulator to gather information and a substantially expanded whistleblower scheme.

All of these functions now sit with the General Manager for the first time.

But In addition to that, there are some expanded functions and additional powers that have been provided to the General Manager which we'll touch on soon. And it is important to emphasise that the General Manager's role is independent of the Commission's Tribunal functions.



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CH As I understand, when the ROC commenced, the General Manager still had some responsibilities for registered organisations that remained with the Commission. Does this mean the functions and responsibilities are all together again?

CE For the past six years there were two different Commissions with responsibilities for registered organisations. The ROC's purpose, as the regulator, was to promote the efficient management and high standards of accountability of registered organisations and their compliance with the financial reporting and accountability requirements of the RO Act.

The Fair Work Commission or the General Manager was responsible for registration, deregistration and amalgamations, approving rule changes, the determination of reporting units issuing permits, as well as disputes and appeals.



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Now all the responsibilities for registered organisations are back in the same organisation again, which will make it much easier for our two areas to work together, share information and provide better outcomes for registered organisations.



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CH Can registered organisations expect further changes to their regulation?

CE Well, the General Manager, Murray Furlong, has taken steps to facilitate independent reviewers to consult with registered organisations about a range of matters, including identifying tools or products to assist them to develop and embed good governance cultures.

Murray has been engaging with peak bodies, and two former Members of the Commission have been appointed to conduct the review. They'll be engaging with every registered organisation seeking input to get insights and feedback. Organisations don't need to do anything – someone will be in touch if they haven't already. Those two former tribunal members are Jonathan Hamberger and Anna Booth.



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CH Can you tell us more about the sorts of things are they reviewing?

CE It's a broad range of things. As I said, they're looking to identify if there are tools or products that could be provided to help organisations develop good governance and promote democratic functioning. They're also examining if service delivery can be improved, and that's things like whether there are ways to reduce red tape and regulatory burden, by providing ways for digital lodgements for example. The consultants will also identify if there are any barriers, including within the broader regulatory framework.

They'll be assisting to establish the 2023-2025 education, advice and assistance strategy that's tailored to stakeholder priorities and a new compliance and enforcement policy.

Once the review is completed, the General Manager will consider any recommendations and will look to implement what is appropriate. And of course, we'll keep registered organisations informed about any changes that are made that will affect them.



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CH You mentioned they'll be looking at a compliance and enforcement policy, what does that mean?

CE Well the Commission wants to design a contemporary and best practice compliance and enforcement policy. This includes producing a new framework and establishing criteria around the Commission's new enforcement powers.

So as I mentioned before, the General Manager has been given more enforcement options under the RO Act. Which includes enforceable undertakings and infringement notices. And so a new compliance policy is needed to look at how these things will work in practice. And so the Commission can be transparent about that.

CH What happens in the meantime while the compliance policy is being developed?

CE Well it's really important, Caroline. So we've published an interim compliance policy on the Commission's website. This sets out the General Manager's approach to promoting and monitoring compliance and the use of enforcement tools and activities. And so for consistency it reflects a continuation of the approach that was taken by the previous regulator.



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CH What has happened to the investigations and inquiries that were in progress at the ROC? Have they been continued at the Commission?

CE All of the ongoing inquiries and investigations have been transferred to the General Manager of the Fair Work Commission. There are also two Federal Court cases that have been transferred and are continuing.

So it's important to understand that any conduct that occurred prior to the transfer of the functions to the Commission can still be subject to an inquiry, an investigation or indeed any court proceedings.

The RO Act empowers the General Manager to do all of those things.

CH And speaking of compliance, Chris, what have you been seeing in the compliance space lately that registered organisations need to be aware of?



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CE We've recently had a few different whistleblower disclosures relating to transparency and making adequate disclosures to members and to the regulator.

The RO Act requires that officers, branches and organisations make disclosures to protect the integrity of decisions that are made in registered organisations. This includes things like remuneration and non-cash benefits as well as payments to related parties and declared persons or bodies. The RO Act sets out when these disclosures must occur, how they're made and who they're made to. And these disclosures are separate and in addition to any scheme that may be in the organisation's rules.

So we've had some whistleblower complaints that officers have been misleading or ambiguous when disclosing their conflicts of interest and sharing information about any benefit they may receive from a particular decision – or just not providing enough information about those interests and benefits.

All officers and employees of registered organisations are entrusted by members to make decisions that are in members' best interests, and in the best interests of the organisation. The RO Act requires officers to act with care and diligence and in good faith. And this means they shouldn't misuse their position or the information available to them to gain an advantage for themselves or others.

A failure to comply with these duties can make a person liable for civil penalties. And where there's reckless or intentional dishonesty involved, a person may even be liable for criminal penalties which can include substantial fines and even imprisonment.



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CH The duties of officers are central to good governance and the effectiveness of organisations and branches. We explore this topic in depth in episode 25: 'Good Governance in Practice: the duties of officers'. And it's really is worth going back and having a listen to that one.

Chris, I understand there are other issues surrounding officers' duties that are forming a trend in our whistleblower matters?



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CE Yes there are, Caroline. Another scenario we're seeing in whistleblower complaints involves the breakdown of communication between an organisation's paid officers or employees and the volunteer officers on the committee of management. The volunteer officers rely on the paid officer or employees to provide them with information they need to make informed decisions and carry out their duties with care and diligence.

In some cases, the paid officer may have withheld or not fully disclosed information about expenditure that requires approval from the Committee of Management. In these cases, the paid officer's actions can amount to a breach of their legal obligations.

So when someone doesn't disclose relevant information – and particularly when it involves financial management or decision making – they're putting themselves and others at risk of breaches of the RO Act. It's expected that officers will seek information and ask questions, which is a necessary part of their duty of care and diligence, and they're entitled to be given that information.

I want to emphasise that full time paid officers and employees of organisations should consider the voluntary officers' perspective. Volunteers aren't seeing the same level of day-to-day information and need to be fully informed to make decisions. I've got to say in our experience, that overwhelmingly that occurs, but there are some occasions that we're seeing where it might not be the case.



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CH We released a Compliance Update on our website last month: "Current issues with disclosures and benefits" which has more details about this. I also noticed in the compliance update that the Registered Organisations Governance and Compliance Branch is examining officer and related party disclosure statements and making enquiries with organisations as a result?

CE Well among other things, the officer and related party disclosure statement that organisations and branches lodge with the regulator requires them to disclose some payments made by the organisation or branch to related parties, and payments made by the organisation or branch to declared persons or bodies.



But it isn't enough simply disclose these transactions in the ORP statement. Section 293F of the RO Act restricts officers from being involved in decision making processes when they have a material interest. They must disclose the interest to their organisation and remove themselves from participating in the decision-making process.

So we've recently written to several organisations, after examining their ORP statements, if they disclosed there were payments made to an officer or an officer had a material personal interest. This has included payments to businesses owned by family members of officers and contracts with entities where an officer could potentially benefit from the transactions.



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CH What should organisations do to ensure they're complying with these obligations, Chris?

CE Well organisations should document any decisions that involve conflicts of interest. Minutes of meetings, for example, should record when a disclosure was made and whether the officer removed themselves from participating in the discussion and the decision making.

So this is the sort of information that we look at during inquiries, investigations and when assessing whistleblower complaints and we routinely inspect those types of records.

CH Organisations that keep good records can easily show what happened, and why. Episode 33 "Managing Conflicts of Interest" provides more insights into this. And episode 26 "Do you know who your related parties are?" helps you to identify who is a related party for your ORP statement.

Chris is there anything else that the branch and the Commission will be focusing on to help registered organisations to comply?



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CE Well our goal Caroline, is to see organisations working successfully. The General Manager has a new function to embed a culture of good governance and voluntary compliance with the law within organisations. So, that was work we were previously doing at the ROC, but it's in the RO Act now and it just emphasises the importance of getting the governance structures right within organisations so that



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compliance can be more easily achieved. We'll be looking at doing more in this space and we'll certainly be keeping people posted on that.

CH Thank you Chris.

CE Thanks, Caroline. It's always great to appear on the podcast to talk about the work that is clearly of great interest to us and registered organisations.

CH Don't forget to join us next month for the next instalment of RO Pod: we'll be looking at current issues we're seeing with elections that registered organisations need to be aware of.



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