



RO POD episode 53 – How we regulate

Speaker Key

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AN: Welcome to RO pod: Talking about governance of registered organisations with the Registered Organisation Services branch at the Fair Work Commission, the official podcast about the regulation of unions and employer associations. In this 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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CD: Hello and welcome to RO pod. I'm Caleb Devine, and I'm a Senior Lawyer in the Legal and Rules team of the Fair Work Commission's Registered Organisations Services Branch. In today's episode we will be talking about the Commission's approach to regulating registered organisations, and some key changes to the regulation of employer associations and unions. A central part of the changes in approach stems from the recent release of the General Manager's Compliance and Enforcement



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Policy, and here to discuss this with me today is the Executive Director of ROSB and delegate of the General Manager, Chris Enright. Welcome Chris.

CE: Hi Caleb, thanks for having me on.



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CD: No problem Chris. There's obviously been a lot of changes recently to the regulatory framework of registered organisations - and both organisations themselves and the Commission as the regulator have had to adapt and evolve. Can you take us through the current role we play in administering the *Fair Work (Registered Organisations) Act 2009* - or the 'RO Act' as it's commonly referred to?

CE: Sure Caleb, I'd be happy to. So, first thing is, let me summarise the functions we have under the RO Act. So, the first one, promoting efficient management of organisations and high standards of accountability of organisations and their officers to their members. The second one, promoting compliance with the financial reporting and accountability requirements of the RO Act. Third one, providing education, assistance and advice to registered organisations and their members, and fourthly, monitoring acts and practices to ensure they comply with the provisions of the RO Act and providing for the democratic functioning and control of organisation. And lastly, but by no means leastly, seeking to embed within organisations a culture of good governance and voluntary compliance.



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CD: Thanks Chris. The last points you mentioned there are more recent additions and weren't historically part of the General Manager of the Fair Work Commission's functions – although it should be said that many of the functions of regulating registered organisations have been administered in various forms by the Commonwealth for the best part of 120 years.

CE: Yeah, well that's actually right Caleb. There is nothing really new about the regulation of registered organisations, and in fact it's been around since not long after Federation, going back to about 1904. But look, like most things, requirements, standards and reporting obligations have changed along the way to remain consistent with the expectations of the broader community, government and



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particularly of members of registered organisations who are, of course, really interested in how their money is being spent. So, in the past decade for example, there's been a new whistleblower scheme introduced, a registered auditors regime and other expectations that have come along with changes in the legislation.

So, different institutions have been responsible for the functions over that period of time, and it changed again recently, as I have indicated, with the functions being transferred to the General Manager of the Fair Work Commission from the former Registered Organisations Commission, or the ROC, with was last year in 2023.



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CD: Thanks Chris. I would like to talk briefly about the registration of registered organisations. Clearly there are a number of benefits that come along with registration under the RO Act, but there are also obligations registered organisations and their officers must comply with.

CE: Yes, of course Caleb. Several of the regulatory requirements such as those relating to elections and the lodging of financial reports have been around a long time, and for really good reason. The Australian Electoral Commission, or the AEC, as people refer to it as, conducts elections for the thousands of office holders who perform a range of important roles in registered organisations at no cost to those organisations, but our regulatory role is to make decisions relating to which elections are due in accordance with the rules of each particular organisation.

So it's relevant to recognise here that registered organisations are an important part of our industrial relations landscape with a key role to play. They're important contributors to our economic prosperity as well as to social justice issues. So, these are membership organisations and they must act in the best interests of their members and be accountable to their members. So that underpins a lot of the legislative requirements in the RO Act and it also underpins our approach to regulation in this area. In everything we do, we try to look through the lens of what a member of any particular organisation would expect and what their interests are.

Another reason is that organisations are accorded a number of benefits upon being registered, and that includes being tax exempt, for example. So if they comply with the relevant taxation provisions,



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they don't pay income tax and they're accorded corporate identity which gives them perpetual succession.

They also have the ability to solely represent their members and relevant people in industries they're concerned with in the Fair Work Commission's Tribunal. Also, as part of their corporate identity, they can own property and assets and have the benefit of being able to sue and be sued. So, when you think about it, there are quite a number of benefits that are afforded to an organisation when it's registered.

So, turning back to the legislative scheme, part of that legislative requirement is to recognise that with the privileges that I have talked about, there comes obligations. And in fact, there was an observation made to that effect by the Full Court in a decision in the TWU matter in 2018. So it's not just our view of the world, or our view of things. It's a view that's been endorsed by the Federal Court.

One of the things I often talk about, and I often like to stress, because I think it's critical to note, is that most organisations are run by very competent officers who are eager to do the right thing, act in good faith and in the best interests of their members. The number of organisations complying with the regulatory regime clearly demonstrates this attitude. But from time to time, some officers might not act in accordance with the RO Act or in the best interests of their members and that might be for any number of reasons. In those circumstances and particularly where the conduct is deliberate or opportunistic, we will take a very different approach and in fact, we do that because we have an obligation to take action. And so, over time, that's led to a small number of enforcement actions, particularly over the last ten years.



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CD: So while the regulatory framework of registered organisations has been around for a long time, the approach to requiring compliance with the legislation and its requirements has evolved significantly. As the regulator, when we do come across potential instances of non-compliance, what is our approach?

CE: Great question Caleb, thank you. The first thing to say is that because the regulatory framework can be complex and in some cases open to interpretation, we often see examples of non-compliance but our



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approach will always depend on the nature of the non-compliance, whether it's intentional, inadvertent, serious or something less than that.

So, when it's inadvertent and less serious, the words both the General Manager and I continually use are collaboration and shared responsibilities. We collaborate with organisations to achieve compliance to the extent that's possible because we believe they and the regulator have a shared responsibility to their members. If the RO Act says you're required to lodge something by a particular date and you haven't been able to do that, which is a very common occurrence, you're never going to be able to achieve that, because the time frame has already passed.

But we will support and work with you and organisations as we do, day in, day out, to achieve as close to compliance as possible and increase the likelihood that you will have the tools, support and knowledge to achieve compliance the next time. So, as I mentioned, we understand that the vast majority of organisations and their members and their officers try and comply, and we continue to support them and provide them with the tools to do that. It's just in those very few cases where things have not gone according to the Act and non-compliance has been so significant that we've had to bring proceedings, but they're overwhelmingly in the minority.

So early engagement in relation to specific concerns of non-compliance is the first step in creating a solution, whether that's through education or voluntary remediation or use of compliance tools. It's all aimed at working together to achieve a suitable outcome and avoiding escalation, and this occurs most effectively with a pro-active approach and co-operation from the affected registered organisation.



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- CD:** As a testament to that I know not only has a lot of work from ROSB staff and the General Manager gone into the Compliance and Enforcement Policy, but there has also been wider consultation with stakeholders, including registered organisations themselves as well as peak bodies.
- CE:** Well look, we think Caleb, that the consultative process is as robust and comprehensive now as it's ever been. This has been a high priority, since the regulatory functions came back to the Commission and even more so since the recommendations of the RO review were published. So, we have



particularly two key consultative bodies, the Registered Organisations Advisory Committee, that the General Manager chairs and the Compliance Practitioners' Reference Group, which I chair. Two really key consultative bodies that have been particularly helpful in our area. So, we think it was really important that we get the policy right and an Interim Compliance and Enforcement Policy was produced to give us the time to do that.



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CD: So that's some background into the Compliance and Enforcement Policy, but what is the aim of the policy, and what are some of its key components?

CE: So let me just summarise a couple of those. So, the policy sets out how the General Manager and staff of the ROSB, the Registered Organisations Services Branch, undertake compliance and enforcement activities and his approach to non-compliance. There are a range of enforcement tools now available, enforceable undertakings, infringement notices and rectification notices. Some of those were not available prior to March of 2023. As I've indicated already civil penalty litigation is available, but of course it's only used as a last resort for serious, systemic, egregious instances of non-compliance. So, our expectations of registered organisations include transparency, honesty and co-operation, this includes self-reporting non-compliance or misconduct and voluntarily assisting in any assessment, inquiry or investigation.



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CD: So that's what we expect from registered organisations, but what can registered organisations expect from us?

CE: Well the General Manager has been very clear, Caleb, that his approach to regulation is based on co-operation and working closely together to promote cultures of continuous voluntary compliance within registered organisations.

What that means is that we will listen carefully to feedback, routinely engage with stakeholders, and gather knowledge from our daily interactions with registered organisations to help ensure that our



education, advice and assistance services are meeting the evolving and often individual needs of registered organisations.

So, endeavouring to create a positive regulatory culture that promotes and encourages voluntary compliance, and evidence-based approach to suspected non-compliance is key. We take a risk-based approach to determine the appropriate and proportionate regulatory response to non-compliance and we also to ensure that we are accountable and transparent in the work that we do. It's really important to me, and not just with registered organisations, but in the way we report to government, the way we let the community and other stakeholders know what it is we're doing.



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CD: Thanks Chris. You mentioned tools, and while people usually hear that and may instinctively think “enforcement tools”, they are by no means our only or even primary tools when it comes to our approach to regulation.

CE: I enjoy talking about the importance of education and assistance and advice that we provide Caleb, because a focus on information sharing and engagement assists the General Manager and the staff of my branch to work with registered organisations to identify barriers to compliance, streamline processes, and educate and empower registered organisations to drive their own good governance practices, which are only for the benefit of their members.

So the staff at the ROSB are available and most importantly very accessible to those that seek help. One of the things I'm really proud about is that people can ring up, stakeholders can engage with us directly and speak to people, speak to subject matter experts who can help them with their enquiries. It's just something that I see every day and that I'm particularly proud about.



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CD: From my perspective, I think it's very important to highlight that the Compliance and Enforcement Policy also talks about the common interests of registered organisations and us as the regulator. At the heart of this is enhancing organisations' democratic functioning and enabling high levels of compliance, transparency and accountability of registered organisations to their members.



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CE: Sure Caleb. It's been a longstanding objective of the statutory regime and therefore by the regulator to encourage democratic control of organisations and full participation via their members in the affairs of their organisation.

So I've already said, but I want to reiterate, we are a member-focused regulator and we will work with organisations looking through the eyes of their members to achieve things. So when we look at things, particularly all of our regulatory activities, it's through that lens. So if a compliance issue emerges, we say, "well, what would members of that particular organisation think about this"? After all, organisations are funded by and are spending their members' money.

So, as the regulator, we will publish things and we go to great lengths to make our own activities transparent, but also we go to great lengths to keep it transparent on behalf of organisations. So what does that mean? Well, when we have an investigation or an inquiry, we'll put it on our website so that people know what's going on. That's particularly for the members of that organisation. When we receive a notification of change to office holders, for example, that is also published so members know what's going on and who are the officers who are representing them. Organisations can expect that they won't get any surprises from us.

So really, we want to continue to engage with organisations as much as possible to achieve compliance, but we have to think about our processes that are in place and the culture of organisations so we can achieve high standards of accountability to members.



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CD: Thanks Chris, before we wrap up, did you have any other points you'd like to add?

CE: Look, I think an important message to take away is that we are very focused on supporting organisations. I'm very pleased to say that compliance rates have significantly increased in all areas over the past decade, even with all the transformations that have occurred. This is obviously in part, I think, due to organisations learning more and fulfilling their compliance obligations.

Let me say this, the new Compliance and Enforcement Policy is not something to be at all concerned about. It's something actually we hope that registered organisations will embrace because it demonstrates how registered organisations can collaborate and co-operate with the regulator in order



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to achieve high levels of voluntary compliance. So we're looking forward to how this policy is going to be exercised and used in the coming years.

As I've talked about we have a lot of educational resources. We've delivered our first in-person face-to-face education sessions since before the pandemic in Melbourne and in Sydney this year. In Melbourne and Sydney we had guest presenters from both unions and employer associations sharing what 'good compliance' with the regulatory scheme looks like in their organisations. In Melbourne our presenters were from the CFMEU and the Ai Group and in Sydney they were from the Rail, Tram and Bus Union and the Australasian Convenience and Petroleum Marketers Association.

It was really great to hear the common themes from those presenters. All of them highly value the tools and education products available from the Commission and all of them encouraged other organisations to use our tools and products to achieve compliance. The really strong theme that emerged from each presentation was that good compliance cultures are essential for organisations to meet the expectations of their members and that registered organisations and the Commission need to continue working together in an environment based on trust.

We'll be delivering further sessions in Brisbane, Adelaide and Perth before the end of the year, so please keep an eye out for details about those.



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The other thing I'd like to mention is we're also hard at work on our Model Rules project to make the process of creating or amending rules in registered organisations simpler and more efficient. And we've been streamlining the Right of Entry application processes as well. These are all examples of how we as the regulator want to work with organisations, and are working with organisations, to make it easier for those organisations to perform the compliance work they're required to do, so that they can get on with their core functions of serving their members.

So Caleb, finally, on behalf of the General Manager I would like to take the opportunity now just to thank organisations and their officers for all of their efforts in achieving high levels of voluntary compliance. I also want to thank them for their input and feedback and encourage them to continue working with us, because we want to continue working with them.



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If you would like to see the new Compliance and Enforcement Policy, you can find it by going to our website, f-w-c.gov.au. From there, select the tab that says 'registered organisations', and then the box that is headed 'Inquiries, investigation and litigation.' You'll find it on that page.

And further to that you can engage with us by calling our number on 1300 341 665, or by emailing us at regorgs@fwc.gov.au. You can also stay up-to-date with our most recent news, tools and resources by signing up to our [subscription service](#).

Thanks again for your time today Chris, and for sharing your knowledge with us.

CE: Thanks Caleb, it's been my pleasure and I appreciate you having me on.

CD: Please tune in to our next episode of RO pod, which will be released in August.



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