



ROCpod episode 38 – Managing related parties

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

AN	Unidentified announcer
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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 *ROCpod*. My name is Caroline Hamilton and I'm the Senior Communications Adviser here at the ROC. Today's podcast is an instalment in our good governance in practice series, and we'll be talking about how to manage related parties. I'm joined today by Declan Clifford and he's a Senior Adviser in the Education Team at the ROC.

DC Hello, Caroline. I'm happy to help.



CH Fantastic. Now before we get into how to manage related parties, let's briefly cover what a related party is. It can get quite technical, and if you haven't listened to episode 26 of ROCpod – 'Do you know who your related parties are?' you could pause this episode and take a listen to it first. Episode 26 is a detailed discussion about the definitions, and the legal and accounting requirements. But, of course, remember to return to listen to this episode for your practical tips!

Declan, can you briefly explain what a related party is, in the context of a registered organisation?



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DC Sure, Caroline.

In summary, a related party is a person or an entity, that has links with an organisation, who could be able to influence the decision-making of the organisation or benefit from it.

So a related party can be a person. For example, an officer of your organisation, or even a relative of an officer. It can also be a company – perhaps an officer owns and runs a business. That business is a related party of the organisation.

All registered organisations will have related parties – regardless of their size and structure. So managing related parties is something that all organisations must deal with.



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CH You'll find two similar but slightly different related party definitions in the Australian Accounting Standards, and the *Fair Work (Registered Organisations) Act* (we call this the 'RO Act' for short). But that's an excellent summary, Declan.

Why is it important that organisations identify and manage related parties?

DC Decision-making involving related parties can raise issues around conflicts of interest.

Pre-existing relationships can, in some instances, benefit organisations (provided the right steps are taken to approve transactions that involve them). But there's also a risk that there can be inadequate scrutiny over transactions with a related party due to the pre-existing relationship. And this can result in transactions taking place that are not in the interest of the organisation and may in fact be detrimental to it. So managing related parties, through proper approvals, policies and procedures, can reduce the risk that transactions are not in the interest of the organisation.



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- CH** There are also some compliance obligations that require organisations to identify related party transactions, aren't there?
- DC** Yes, that's right Caroline. Organisations and branches are required to identify related party transactions in their financial reports **and** in their officer and related party disclosure statement.
- CH** Managing related parties is essential to the good governance of the organisation, including transparent and ethical decision-making.

So Declan, let's now go straight to the heart of today's episode: How can organisations manage related parties?



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- DC** There are several things that registered organisations, branches and officers should do.
- First things first – officers must **disclose** related party transactions. It's an obvious point, but organisations can't manage what they don't know.
- Officers have an obligation to disclose payments from related parties that are connected to their duties as an officer.
- CH** If I'm an officer, Declan, how do I know that the person paying me is related to the organisation?
- DC** That's a great question and our first practical tip relates to maintaining an easy to access, **and search**, register of your organisation's related parties. Just like an organisation can't manage what they don't know, officers won't report payments if they don't know they're dealing with a related party. But you also have to train officers to routinely check the register or have a process where official engagements are checked as they're booked – remember, they're only disclosing payments that **relate** to their officer duties.



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- CH** Some officers must disclose more than payments though?
- DC** Yes, if they exercise financial management duties, they must also report to their organisation any material personal interests. And remember, anyone who is a member of the Committee of Management has financial management duties, this doesn't just apply to officers such as the Treasurer.
- CH** That's a good point – organisations rely on the transparent behaviours of their officers so that they can then be transparent to members.



Declan, what do you mean by a 'material personal interest'?

DC The concept of 'material personal interest' is not specifically defined by our legislation, the RO Act. But it is a well-known concept in Corporations Law.

At the heart of it is the idea that people who hold a position of trust (for example, an officer on the Committee of Management) must not promote their personal interest where there is a real and substantial conflict with the organisation.

Officers should think about whether an interest they have personally affects them or someone they know, or whether a connection may be close or important enough to influence them. Or, could the interest give rise to a real and sensible possibility of a conflict of interest? And by that we mean, could someone outside reasonably think the officer might be being influenced. If an officer thinks the answer is YES to these matters, it's likely that they have a material personal interest to disclose to their organisation.



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CH So can you walk us through an example of that Declan?

DC Sure.

Let's say you're on the Committee of Management and your organisation is considering the appointment of a new organiser. One candidate for the role is your sister, who is an experienced organiser. And you think your sister is the best of the candidates on merit and should be appointed to the role. But, as your relationship could be seen as influencing your decision, you must disclose your relationship to your organisation's Committee of Management as a material personal interest.

CH So is it enough to disclose, or are there further steps the organisation can take to make sure the relationship doesn't influence, or appear to influence, the appointment?

DC Yes, there are other steps to be taken. The RO Act also provides restrictions on officers with material personal interests from being present during discussions and from taking part in the decision-making process. There are some limited circumstances where participation is allowed, providing even more risk mitigation steps are followed.

But organisations obviously can't manage potential conflicts of interest if they don't know that officers hold the interest in the first place! So it all starts with being transparent and with officers disclosing information when they're required to – and also organisations having systems in place for disclosures to be made and for officers to be reminded of the need to disclose. This allows organisations and branches to receive disclosures and consider how to appropriately manage them. The approach won't always be the same, and organisations should think about what works best for them.

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CH So, we've suggested one way for organisations to make sure that officers know who the **organisation's** related parties are, but how do organisations make sure that 1. Officers understand who **their** related parties are, and 2. Officers are thinking about their disclosure obligations at the right time?

DC Well, there are a few steps, Caroline.

Organisations need to make sure they're providing information and training to officers about disclosure requirements.

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CH There is a requirement under s 293 K of the RO Act for officers that exercise financial management duties to complete training within 6 months of taking office (or get an exemption), and the training includes modules about disclosure requirements.

DC That's right. The mandatory financial management training is a great starting point, but best practice requires more than that.

Some organisations provide annual refresher training for officers, which can be an effective way to remind them about the disclosure requirements.

Another approach is to have an induction program separate from the mandatory training, which includes information for officers about what they must disclose to whom and when.

It can also be as simple as having a standing item for all meetings, asking – whether there's anything that needs to be disclosed or anything that's changed.

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CH There are also resources on our website about related parties and the disclosure of material personal interests. I recommend reading the guidance notes and accessing the digital classroom which will give you some practical examples and point you to other helpful resources. We've produced them in plain English, with as little jargon and technical language as possible.

Ok, so the first step is to provide training and education to officers – and what else can organisations do?

DC It's also important to make it simple and convenient for officers to disclose any interests.



CH So how can organisations do this? Do you have any ideas you can share with us, or examples?

DC A good place to start is to have a related parties policy, with disclosure procedures for the organisation. Policies and procedures can be a great way to set expectations about how things must be done in an organisation, and they must then be complied with in the same spirit that they're written.



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CH And what are some of the issues that can be covered in a policy?

DC A related party policy can explain the organisation or branch's governance arrangements for dealing with related party transactions. It's likely to provide a procedure that officers and employees must follow.

For example, a policy might require related party transactions to be recorded in a register. And then it might set out instructions around how to fill it in and who can access it.

A policy is also likely to set out who is a related party, giving you another opportunity to inform your officers about what related parties are and how information about them must be reported within the organisation.

A policy can also set out the actions that will be taken by the organisation if officers fail to make disclosures when they should have – and this is separate to the civil penalties under the RO Act. Following through on consequences can strengthen a culture of compliance in organisations.



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CH So you mentioned a disclosure register. What is a disclosure register and can you explain the benefits of having one?

DC So through a disclosure register, officers can clearly and securely tell their organisation or branch about transactions that concern their related parties.

So it's a good thing to have for a number of reasons: a register provides evidence that officers have met their disclosure requirements. It's also a handy reference document for the organisation to avoid conflicts of interest and respond to any concerns raised. And it provides necessary information for preparing financial reports and the ORP statement. It can actually make compliance easier!



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CH Organisations will have internal procedures to suit their unique governance structures. But what are some of the features of a disclosure register?



DC So I'll start with the obvious details – the full name of the related party, so they are easily identifiable. For example, the name of the company, or the name of the person.

I'd also expect a short description of the nature of the relationship between the officer and the related party. So for example, 'the Branch Secretary, John Smith, is a director of the related party company'.

It's also important to have a clear description of the transaction, including the amount and the relevant date. An example of a description you might enter on the register is: 'The branch entered into the contract with the company on 1 January 2022 to upgrade the Branch's website. The contract was entered into under standard commercial terms and conditions following a competitive tender process'.

And I think it's also a good idea to include details around the internal governance of the transaction. To continue with my example, you might also include something like the following detail on the register: 'The committee of management approved the transaction after reviewing two other quotes from other website development companies. The Secretary declared their interest on X date and wasn't involved in the decision-making process.'

If you record information of this nature on a central register, you're being transparent about relationships and providing the organisation with an opportunity to mitigate their potential influence.



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CH That's an excellent example, and I can see how having a register would be a fantastic resource for auditors at the end of the financial year, and for the person responsible for drafting the ORP statement.

So what about meeting practices, Declan? You mentioned the standing item. We know that having sound governance procedures can make a real difference to a culture of good financial management in an organisation.

What else can organisations do to encourage officers to make any necessary disclosures at meetings? After all, meetings are the critical point when decisions such as big purchases are voted on.

DC That's right Caroline. As we've talked about through the episode, organisations can encourage officers to make disclosures at meetings by having clear internal related party and disclosure policies, conducting annual refresher training to keep these obligations front of mind and establishing, and frequently communicating to officers about, their internal disclosure register. All of these steps help to create a culture a transparency within the organisation which encourages officers to make necessary disclosures.



Now if an organisation or branch receives a disclosure of a material personal interest from an officer during the meeting it must record it in the minutes of the meeting of the Committee of Management. Or if the disclosure was made between meetings it must be recorded in the minutes of the first meeting that followed that. And if an officer has previously made a standing disclosure of an interest, it's helpful to mention it again at the time that the issue is considered at the Committee of Management meeting.

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- CH** Meetings are also a great way of reinforcing that culture of compliance and transparency, if junior or new officers are routinely seeing senior officers making disclosures, it encourages that behaviour. It also acts as a reminder of the kind of interests that might be relevant.
- DC** It sure does. Culture is essential for driving compliance.
- CH** So any last ideas, Declan?
- DC** One last one – you might also consider using a specific disclosure form for each decision. When you're about to make a decision on signing a big contract or hiring someone you could have a form to hand around to the involved officers that acts as a prompt, checking if they or their relatives have involvement with any of the companies, applicants, key employees or financial interests like shares. It acts as a prompt and can be kept on the record even if they're all 'no'.

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- CH** That does make sense. Thank you so much for joining me on *ROCpod* this month, Declan. This has been a very helpful discussion about how organisations can manage related parties and it answered some common questions.
- DC** You're welcome, Caroline. I remind our listeners that the ROC is a small agency, and when you get in touch with us you'll often find that we'll answer your question on the spot. If you have further questions about the work we do, please don't hesitate to reach out to us.
- CH** Please join us again next month for a nother episode of *ROCpod*. We'll be back with an instalment of our good governance in practice series where we'll focus on what an effective expenditure policy looks like within an organisation.

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