



ROCpod episode 40 – A chat with the Commissioner about contemporary good governance

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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MB	Mark Bielecki

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. Don't forget to subscribe and see how ROCpod can help you and your organisation.

CE Welcome to ROCpod. My name's Chris Enright and I'm the Executive Director here at the ROC. In this month's episode we will be discussing good governance in registered organisations and I'm joined by Commissioner Mark Bielecki. Together we'll be looking at what are the elements of good governance, some real-world examples where a lack of governance measures have resulted in issues for organisations and what the ROC has been doing in this space to help.

So welcome, Mark.

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MB Thanks, Chris. Good governance is a subject that I'm very passionate about. It's something that I've been pursuing here at the ROC since our inception on the 1st of May 2017 and I'm very happy to be talking about that with you today.

CE Okay. So first things first. We've had this episode of ROCpod scheduled since we published our national education strategy and at the time of recording in November 2022 there are some potential legislative changes before the Parliament that may affect the regulation of registered organisations. So, in this episode we'll also touch on a new Bill which is before the parliament called the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*, which contains proposed amendments to our Act, the *Fair Work Registered Organisations Act 2009*, and we colloquially refer to it as the RO Act.

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You may have heard media reports that the ROC is being abolished under this new Bill, but practically speaking, the Bill does not abolish the ROC's functions. The Bill transfers the ROC's functions to the Fair Work Commission. What this means for registered organisations is that they will continue to have the same compliance obligations as they currently do now. And it's unclear if and when a transition might take place and because of that lack of clarity, it's business as usual at the ROC.

We will continue to help registered organisations with their compliance and embed a culture of good governance. Both the ROC and the new regulator will communicate with registered organisations to let them know if they need to do anything different, for example, lodge documents at a new email or postal address. Organisations still have an obligation to get all their lodgements currently in with the ROC and so next month's podcast will help you understand all the relevant compliance details and how to meet them.

MB Chris, I also note that the new Bill has introduced some additional tools to enable the regulator to issue infringement notices. They might be used for lesser contraventions of the Act. Just to put some context around this, up until here, while we've been seeking these kinds of tools since May 2019, we haven't had them. So, our options have been quite limited to either assist organisations or to, in serious cases, take a court case in the Federal Court.

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So, the introduction of the ability to issue infringement notices will be of great assistance and there will also be a power to enable the regulator to accept enforceable undertakings and that basically means that a party who is found to be in contravention and cooperates with the regulator will enter into an undertaking to do



the right thing and, if they don't, that undertaking can be enforced in a court. And if they do, there'll be nothing further to be done other than the monitoring of that compliance.

And also the Bill interestingly introduces a further objective for the regulator, which is to embed a culture of good governance in organisations, and this is something we've been very focused on, as I mentioned. And over the past five and a half years, this has been a particular passion of mine and a focus of the ROC and it's interesting actually that those tools we've created on good governance are amongst the most popular in our kit. It's certainly a very interesting time in this area.

CE That's right, Mark, and we've seen the focus on good governance pay off over that time with increased rates of compliance. This is something that we as the regulator are quite proud of and organisations should also be proud of too.



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MB Chris, the ROC has achieved a number of things over the time that it's been regulating in this area. We've already talked about the focus on good governance but also the ROC has met or exceeded its KPIs since its inception, which I credit to the terrific staff at the ROC for that. And we have run some cases, as you would know, and those cases have been very effective in clarifying how some of the provisions of the RO Act apply and that in turn has enabled organisations to guide or modify their activities to comply with the lessons that come from those cases. And that's not just for the organisations that were in the cases but all organisations.

The ROC has achieved lots of other things. It turns over requests for elections very quickly now. I think the figure is down to just a number of days. We've provided an education strategy that's published ahead of the financial year every year for five years now and that has enabled organisations to plan their learning activities around what the ROC does. Our podcast programme has been very popular. We've had almost 6,500 downloads of that.

We have also found that financial report compliance has increased subject to one exception where there's been some changes to the Australian Accounting Standards. The number of annual reports lodged on time are at 100% at the moment and the number of ORPs that are lodged on time are at just under 100%. So, we have been hard-working.



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We also have programmes that enable us to assist you, the ROC to You programme, and stakeholders have found that they just need to call us, and they can get an expert to help them with any problems they have. So, as I mentioned before, our focus on education and embedding culture of good governance in organisations has



been one of our greatest achievements and that's the topic that we're here to discuss today, Chris.

CE Well, for listeners new to the area, governance includes systems which monitor and control how organisations run, and good governance processes help to manage risks and hold people accountable. You will all know that registered organisations have a responsibility to their members and not least of all because they are managing their members' money. And in the registered organisations area, that's a very significant amount.

For example, we know that registered organisations collectively collect about \$1.6 billion a year in revenue and own or control about \$3.5 billion in assets. So that's a very substantial amount of both revenue and assets being managed on behalf of members and so good governance is ultimately about protecting and preserving the interests of members of registered organisations.

MB That's right, Chris. And in fact, with our focus on educating organisations about good contemporary governance, we've seen consistent increases in compliance rates since the commencement of the ROC. One example of this is in relation to the requirement to lodge officer and related party disclosure statements. In the 18-19 year, 92% of those were lodged on time compared to just under 100% in the 21-22 year. It was actually 99.7%. So that's an increase of over 8%. On a practical level, these increases in compliance signal to me that there have been some real improvements in the governance practices of registered organisations.



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And one of the ways we've sought to improve compliance is through our education tools and resources. We've developed what I describe as an encyclopaedic set of tools and resources on every compliance topic to help organisations with their obligations. These tools have been adapted into a variety of learning formats to suit different learning styles because we all learn differently of course. So, we have fact sheets. We have guides. There are the podcasts that I've mentioned, e-learning modules, webinars and masterclasses.

I'm very happy to report that our stakeholders consistently report to us via our surveys that these tools really help them to comply and that our team is very friendly, knowledgeable, and approachable, something of which I'm very proud. And so this directly translates into benefits for over 2 million members of registered organisations and that's a significant outcome.

CE That's right. Our compliance approach starts with practical education resources and when you listen to our good governance podcast, for example, you should walk away with steps that you can take immediately and use immediately.



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When we talk about good governance, I'd be interested in your take on that, Commissioner. For example, and for our listeners, what exactly are the components of good governance in the context of registered organisations? Because there are no defined good governance frameworks or rules that are laid down for organisations. So how do organisations know if they're getting it right?

MB Chris, there are several key features of contemporary good governance that would apply to registered organisations. It's impossible to recite all the rules that might apply. It's actually a cultural thing that happens within organisations that they adopt a good governance mindset, but some features include disclosing interests and managing related parties.

So by that, I mean that all officers need to disclose remuneration they receive from boards or related parties of the organisation. Officers shouldn't take part in decisions involving their related parties. They should disclose their conflict or potential conflict of interest and excuse themselves from any decision-making. This is quite a fundamental requirement. The organisation should also disclose any related party transactions on the ORP statement. Officers with financial management duties also need to disclose material personal interests. Those are interests that relate to the affairs of the organisation or branch.



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Now, a great tip, I think, for organisations is to have disclosures as a regular standing item on the agenda of meetings right at the front and that means that everyone will be thinking about whether there's anything they need to declare before the meeting gets underway and everyone then has an opportunity to raise their relevant interests. Really, it's ultimately about being transparent and accountable. We're not trying to suggest that people won't have conflicting interests. This is really about how they're managed.

CE You've talked about some very relevant features around good governance there, Mark, but we know in the role of a regulator we often see that there are opportunities for improvement. For example, we see a range of issues appearing before us.

There are some in terms of accountability. We've seen examples of some officeholders involved in the employment of close relatives, for example, without accountability processes. We've seen credit card use for personal expenses which has in many cases been unauthorised. We've seen quite a few allegations of the use of resources to assist candidates in elections over other candidates and also allegations about members involved or officers involved in increasing salaries and entitlements for people with whom they might be having relationships with at the time without disclosing those relationships in a transparent way.

So, whilst those features you've talked about, governance, Mark, are very important, there can be issues around how governance is practiced and that's part of the role of the regulator.



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MB And indeed, Chris, of course that's why we provide so many materials to enable officers and others to sharpen up their skills in this area. There's another important aspect of good governance and that's ensuring that leaders of registered organisations have appropriate financial training. And, as you've mentioned already, we're talking about vast amounts of money when it's pooled amongst all organisations and it's important that those leaders are properly inducted into the organisation.

So, without training or a proper induction, officers are unlikely to have the knowledge and skills to make proper decisions and lead their organisations and they owe it to their members to make sure that they do have those skills. Officers of registered organisations with financial management duties are required under the legislation to undertake approved training within six months of taking up office. In 2019, in fact, as you'll remember, Chris, we undertook a voluntary audit of compliance with this particular requirement. And while we found that some organisations were found to be non-compliant, of those, 94% have agreed to a remediation plan, which is a very high percentage of intended compliance.



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CE So the financial training audit is a great example, Mark, of where the ROC has worked with organisations to promote compliance and good governance because without the audit, the organisations themselves and the ROC as a regulator might not have identified that training wasn't being completed by officers in organisations and that resulted in problems for the organisation down the line.

So, another core feature of good governance is inducting new officers in making them aware of the duties that they owe. Officers with financial management duties owe general duties under the RO Act including care and diligence, good faith and proper purpose, not to misuse info, or not to misuse their position as officers in registered organisations. And again, as the regulator, we'll often see the other side of those obligations.

In one case, an officer of an organisation used the organisation's funds to make personal purchases and attempted to conceal the nature of those purchases. And the officer was later found to have contravened the duty to act with good faith and a proper purpose by directing staff to record personal purchases incorrectly as meeting expenses or telephone conferences and things of that kind. The court found the officer or the former officer had an obligation to correctly record the nature of those payments and because of that conduct, had breached their duties. That court action and other similar court actions uphold the need for officers to meet the standards that are set out in the RO Act.

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When the ROC takes enforcement action, we are doing it to assist registered organisations and it better serves members' interests and, just as importantly, helps to protect members.

MB Another important area of governance is ensuring that the committee of management is effective and well run. That committee makes important decisions on behalf of the organisation including in relation to finance, members' money in effect, and the overall strategy of the organisation.

Some things that those committees should have regard to is the need to hold regular meetings. We talk about having declaration of interests at the beginning of the agenda, the distribution of materials ahead of the meeting, and that the members of the committee actually do consider that material before they come to the meeting, encouraging questions and debate during the meeting, and keeping good minutes of their deliberations. And in fact, we have some other education materials that deal with the keeping of minutes.

So ultimately, it's all about really having some very good housekeeping arrangements in place as to how the committee is run, which will be of benefit to the committee of course and to the members and will be good for officers should any dispute about what might have happened at a particular meeting come up afterwards.

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CE So the team here at the ROC and myself included are almost on a daily basis engaging with officers at registered organisations who represent those committees of management that you're talking about and we know that the committees of management should always consider the level of risk when making decisions. Extra care and diligence should be taken by the committee of management when the decision involves a higher level of risk.

Officers on the committee of management should seek independent advice and assistance from experts on complex matters like their financial reports, although even in seeking expert assistance or advice from others, officers in organisations must turn their own mind to the matters being considered and not rely on the external advice or other members of the committee of management. Each officer has an individual responsibility to turn their minds to the interests of the organisation and interests of their members.

MB Chris, there's a case from the corporations world that really illustrates the points that you've just made. The case is called Centro. In fact, it's a case that I ran with an excellent team and it was an officer with ASIC. The reason the case is relevant in our area is that the duties of directors that exist and that were relevant in the Centro



decisions are analogous in many respects to the duties of the officers of registered organisations.



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And in particular, both officers and directors are required to discharge their role with due care and diligence. Like directors, certain officers of organisations are required to read and make declarations in respect of the financial statements of their organisation and the Centro case concerned action taken by ASIC against the directors and the Chief Financial Officer of Centro for breaching directors' duties in relation to their approval of the 2007 financial statements.

And while it might sound like the case is a bit old, the fact is, it's still very illustrative of the current issues that we're talking about. In that case, the directors approved the financial statements with some very significant oversights that the CFO and the directors were otherwise well aware of. ASIC alleged that they'd breached their duties by approving those statements that had substantially understated the short-term liabilities.

The Federal Court found that approving those financial statements meant that the directors failed to discharge their duties with due care and diligence. In the case, the directors ran a defence that they relied on the Chief Financial Officer, on the internal accounting team, on their external auditors, but none of those defences were sufficient. And as you've already mentioned, Chris, the directors had to turn their own mind to whether the accounts were correct or not. And in this case, they obviously didn't because of the errors that were in the approved financials.



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So, directors and, in our context, officers have a collective, non-delegable statutory duty to take reasonable steps to secure compliance with the organisation's financial reporting obligations. And officers are at the apex of the structure of organisations and the management of the organisation and so the legal duty to oversee the overall framework for managing the key non-financial risks should also reflect that.

The case provides a lot of lessons in this area and those, I suppose, could be summarised in the following points. Officers are required to apply an inquiring mind when reading financial statements and understand the affairs of the company. A second point is that the opinion of the external auditor is not to the exclusion of the role of the officer to independently form an opinion on financial statements. And an officer doesn't need to be familiar with every specific accounting standard, but it is reasonable to expect that they should read and question the statements with the knowledge they have by virtue of their position as an officer.

And one of the other defences, interestingly, that the directors ran is that they received every month a huge pack of material filling one or two arch lever folders and



that the information that they omitted to disclose in the accounts was a one-page spreadsheet. The court didn't accept that defence and, in fact, the complexity and volume of information provided to those directors, and any director or officer for that matter, is not an excuse for failing to properly read and understand the financial statements.



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CE Very relevant issues. So in this episode we've discussed just some of the components of good governance including managing related parties, disclosing interests, properly training and inducting officers, and running effective committees.

So, Commissioner, thank you for joining me on today's episode.

MB You're welcome, Chris. As you can probably tell, I can talk about this non-stop, but I've sought in the ROC to assist organisations to better understand their compliance requirements and their obligations to their members, which is why we've had such an extensive focus on education. We've sought to equip organisations to be able to discharge these responsibilities. I mean, it's not fair to hold people to account if they don't have the tools they need to actually do the things in the right way.

Where mistakes have happened, actually more often than not we have assisted organisations to voluntarily remedy those and it's only in the rarest of cases that we've run court cases which have resulted, as I said earlier in this programme, in the clarification of legal provisions and illustrated the type of conduct which falls below the required standard. So, through education, providing tools, providing guidance, and deterring unacceptable behaviour, the ROC has delivered on its objectives as set out in the RO Act. And some 2 million-plus members are better for it.

Thanks, Chris, for inviting me to today's podcast. It's been great to talk about these issues which are really central to organisations' good welfare.



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CE If you want to dive deeper into these topics, we've recently released our Good Governance in Practice guide, which you can access from our website. The guide contains a summary of our information on good governance and all our up-to-date resources on each topic. We also have a whole Good Governance in Practice podcast series available on our website on topics like developing expenditure policies, managing related parties, running committees, managing conflicts of interest, financial decision-making, and building trust through transparency.

So don't forget to tune in to next month's episode of ROCpod, which will be our final episode for the year, on how to not miss important deadlines under the RO Act.



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