



Quarterly newsletter

ISSUE 11 | FEBRUARY 2020

Register now for our next NSW workshop

Our first education workshop for 2020 will be held on 26 March in Parramatta NSW at the Parkroyal Hotel.

The program has been shaped by feedback we've received at previous workshops and will include interactive sessions on financial reporting, annual returns and notifications of change, governance and lessons from court decisions. Attendees will also hear from leaders of registered organisations who will share insights into their experiences of engaging with the ROC and achieving compliance.

At this workshop we are also offering attendees the opportunity to book an appointment with a ROC subject matter expert to obtain tailored advice (there are limited spots so don't delay!).

[Click here](#) for the full agenda or [here](#) to complete the registration form.



High level of ORP compliance

Registered organisations and their branches with a financial year ending on 30 June 2019 have achieved a high voluntary compliance rate – 99 per cent – in the on-time lodging of their ORP statements with the ROC by 31 December 2019. This is up from 91 per cent for the same period last year.

ORP statements provide important information about remuneration received by the top five-ranked officers of organisations and branches, including remuneration received by officers from a board or a related party of the organisation. Certain payments made by organisations and branches to related persons or bodies are also required to be disclosed.



The ROC is particularly pleased with this result as the legislative requirement for organisations and their branches to lodge ORP statements only came into effect in the 2018-19 financial year, and organisations are still becoming familiar with the statements.



Below-value disposal of motor vehicles

In three separate and unrelated protected disclosures received by the Registered Organisations Commission in recent months, a consistent theme has related to the transfer of used motor vehicles belonging to registered organisations to their employees, officials or third parties at below market value.

In these circumstances it is timely to highlight the theme of the disclosures, their potential consequences and the ROC's compliance and enforcement role.

The ROC has published a [compliance update](#) which explains the emerging issue relating to the disposal of motor vehicles. The ROC recommends that organisations review their practices, policies and procedures relating to the disposal of vehicles to ensure high standards of governance and accountability.



Spotlight on Federal Court decision: Registered Organisations Commission v Australian Workers' Union

In November 2019, the Federal Court ordered the former Victorian Branch Secretary of the Australian Workers' Union, Mr Cesar Melhem, to pay \$20,590 in civil penalties as a result of multiple serious contraventions of the Fair Work (Registered Organisations) Act 2009 (the RO Act).

The contraventions related to the AWU's failure to keep an accurate register of members during the period from 2008 to 2013, which covered most of the period Mr Melhem was Victorian Branch Secretary.

The declarations and penalties related to three contraventions of the RO Act by Mr Melhem for failing to exercise his powers and discharge his duties in good faith in what he believed to be in the best interests of the organisation, and five contraventions of the RO Act by Mr Melhem for failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were in Mr Melhem's position.

Mr Melhem admitted the contraventions in a penalty hearing in September 2019.

In the judgment, Justice Mortimer noted the conduct involved the addition of 730 people added to the AWU's register in substantial non-compliance with the AWU's rules, and involved the AWU receiving \$488,007 from employers or associations which the AWU improperly accounted for as membership fees.

This case is a reminder that the duties placed on officers under the RO Act are central to good organisational governance and the effective operation of registered organisations. Officers of registered organisations are responsible for ensuring that their organisations comply with their rules and obligations under the RO Act. Officers have personal obligations to uphold their duties and can be penalised by the Court should they fail to do so.

Since the time of the conduct engaged in by Mr Melhem, the maximum penalty available in respect of similar types of conduct has increased significantly.

Further information on the judgement can be found [here](#).

Changes to our website

We have recently made improvements to our website to make it easier for visitors to find information.

The enhancements include:

- A new 'tools and resources' tab on the front page. Fact sheets, templates and other resources are now separated by subject matter to help you find documents quickly.
- One-click access to ROC's news and media from the front page.
- A 'new content' segment for our email subscribers.
- Plain language summaries of recent court decisions.



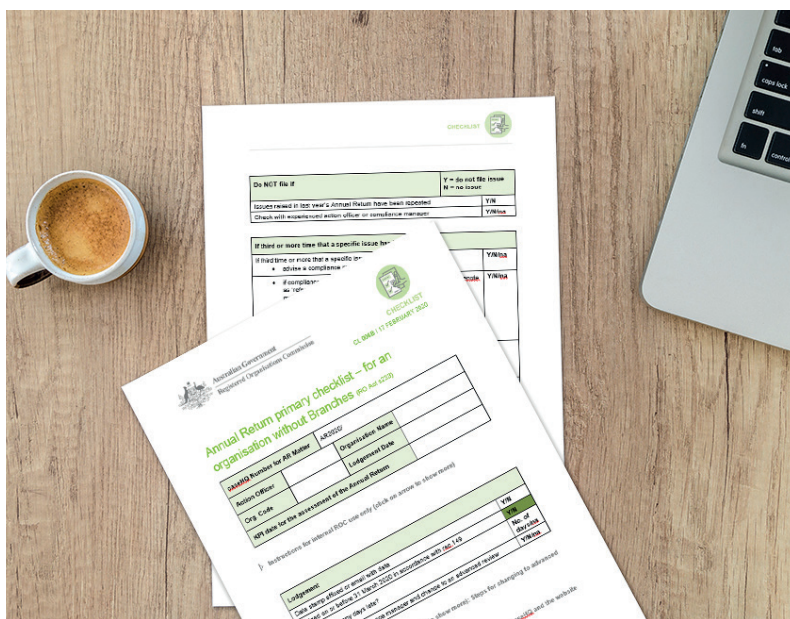
We held a consultation session with stakeholders in January (pictured) who gave us valuable feedback about the website and other resources.



Risk-based assessment of annual returns of information

From 2020, the ROC will take a new risk-based approach to the assessment of annual returns. This is a similar approach to the one we take to the assessment of financial reports and officer and related party disclosure statements, allowing the ROC to effectively manage legislative requirements and use our resources more efficiently to help organisations to comply.

The majority of annual returns will now be given a primary assessment each year. This process will focus on key elements of compliance, including whether the annual return was signed by an appropriate officer and lodged with the ROC on time.



Over a five-year period, every organisation will undergo at least one advanced assessment of its annual return. An advanced assessment is a more comprehensive review and will thoroughly evaluate compliance with the requirements of the RO Act. Any identified patterns of non-compliance may trigger more than one advanced assessment in the five-year period.

We've published our [primary checklist](#) and the [advanced checklist](#) on our website to assist organisations to understand how we assess annual returns.

Annual returns are due to be lodged with the ROC by 31 March.

A final call for the Annual Education Survey 2020

To help us deliver tools and publications that support the compliance work of registered organisations, we are seeking stakeholder feedback via our Annual Education Survey 2020. The results of the survey will influence and inform the ROC's education work over the next 12 months, including the design of our national Education Strategy for the next financial year. The [survey](#) will close at the end of February, so don't miss out on the opportunity to have your say.

Thank you to everybody who has already participated in the survey.



Updated Compliance Policy

The ROC has released its new Compliance and Enforcement Policy. The updated policy is intended to be simpler and easier to understand, and has been reduced in length. The policy also contains a focus on promoting compliance and cooperation with the regulator while also making it clear that in appropriate circumstances we will take enforcement action.

You can read the new policy [here](#).

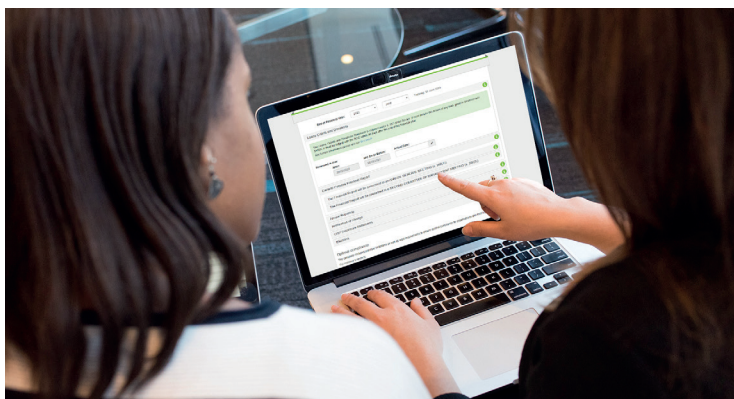


Spotlight on our tools: compliance calculator

The ROC's compliance calculator has been designed to help organisations, their branches, officers and members understand legislative deadlines so they can plan, review and manage compliance.

It provides information on timelines for loans, grants and donations statements, financial reporting, annual returns, officer and related party statements, elections, notifications of change and approved financial training.

The web-based tool provides step-by-step guidance and gives you an indication that something needs to be done, and by when. You can access the compliance calculator [here](#).



Podcasts

Don't miss the most recent episodes in our monthly podcast series, 'ROCpod: talking with the Registered Organisations Commission'.

- **Episode 4:** [Who is an officer?](#)
- **Episode 5:** [Dual registration](#)
- **Episode 6:** [Spotlight on whistleblower disclosures](#)

Our next episode 'Demystifying the ORP statement' will be released on 28 February.

Podcasts are available from our website, [Apple Podcasts](#), [Google Podcasts](#), [SoundCloud](#), [Spotify](#) and [YouTube](#).

Did you know?

Dual registration has been around a long time!

Dual registration is where a group of employers or employees register in both a state jurisdiction as well as the federal jurisdiction. These circumstances have been occurring in industrial associations for more than 100 years, and there are plenty of court cases dealing with disputes over who owns what and what decisions each entity is capable of making.

For example, in 1995 the High Court of Australia considered the dual registration of a federally registered union and a Queensland state union going back to 1917.* The Queensland Branch of the union and the state union were administered as one entity from 1917–1979 but commenced separate operations in 1979. The High Court found that the members of the Queensland Branch were capable of incorporating in the state of Queensland in 1917 and that the state union was entitled to the assets held in Queensland.

The message isn't new: it's in your organisation's and your members' interests to have clear records setting out which entity owns what, even if they are administered as one.

* Re McJannet: Ex parte Minister for Employment, Training and Industrial Relations for the State of Queensland (1995) 184 CLR 620

