



ROCpod episode 5 – Dual registration

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

MG	MaryAnne Guina
JF	Joanne Fenwick
BS	Bill Steenson
AN	Announcer

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

MG Welcome everyone to ROCpod Episode Five, which today will be about the issue of dual registration. Before we get into that in any detail, some introductions. I am MaryAnne Guina, Principal Adviser of the compliance and investigations team.



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MG And with me today, Joanne Fenwick, who is an accountant in our financial specialist team.



JF Hello

MG And Bill Steenson, who is the principal lawyer in the compliance and investigations team.

BS Hello.

MG The reason we're having a discussion about dual registration is that many officers are unaware they are governing two different entities with distinctly different obligations and responsibilities. This issue of dual registration, it often confuses and confounds people. What exactly does it mean? Bill, could you give us an overview and a bit of history on that?



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BS Sure. The federal industrial relations system has been around since 1904 with the Conciliation and Arbitration Act. What it did is it allowed for federal registration of unions and employer associations. But certainly both of those types of organisations have existed before that, and indeed, most states have been regulating the activities of unions, for example, since the 1880s or thereabouts. We've got organisations that were registered with us.



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BS Some of the very first organisations registered in 1905 had existed and had been regulated by the states, since, in some cases more than 20 years before that. Someone who's registered with the New South Wales state system would be able to represent members and have agreements registered with the New South Wales Industrial Relations Commission. That same body may have members in both state government employment, for example, and be covered by the state system and in the federal sector as well, and so needs to be registered in both.



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BS What that then means day to day is another thing, and that's one of the reasons why we're doing the podcast.

MG To summarise, Bill, organisations of employees and employers can decide and indeed have often decided to register at both the state and federal level. This can be historical due to the fact the state registered association commenced initially and federal registration was undertaken at a later time. The registration decision is determined by that organisation based on how they believe they can best represent their members.



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MG And in relation to that, the distinction between the entities can be quite difficult, and it often has repercussions in the financial arena. Joanne, can you tell us what some of those may be?

JF All organisations and their branches have financial reporting responsibilities. And each of the branches need to prepare a financial report each financial year. With the association with the state, for those that have a state registered organisation as well, they will also have financial reporting responsibilities, but under their individual act of that state.



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JF Now, those financial reporting responsibilities are not the same. A lot of them have different timeframes and different requirements. And also, one of the things to note is that these two entities, even though they may appear to be the same, are actually separate legal entities as well. And it is therefore, really important to be able to identify clearly those financial transactions that belong to the state entity and those that belong to the federal entity.



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JF One thing that we do find, though, is that for a lot of people, they are actually unclear about that. And a lot of the time, the state registered entity and the federally registered entity act as one. That would mean that they may only have one financial system. They also might be recording all of their financial transactions as one and not separating anything under the state or the federal, which then can create confusion when preparing these two separate sets of financial statements.



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JF It is something that everyone needs to be really mindful of.

MG The take-home message here, Joanne, is that state organisations and their counterpart branch of the federally registered organisation must keep distinctly separate financial records. It may sound a little strange that a body could operate as a single entity when it actually has two separate entities to its name. But to go back to what you just said, they often exist as one, so therefore, the officers will be the same for both bodies.



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MG And it will be the case that they don't realise or don't really turn their mind to the issue of what entity are they operating under at any point in time when they make a decision.

JF Yes, that's absolutely right. A lot of the time when they are the secretary of the state



registered entity, they become the secretary of the federally registered organisation as well. That can also go down to the employees of the organisation. They actually may be employed under the state, not realising that there's a separate federal entity as well.



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JF Because they just say it looks and feels and they do the same type of work for both and don't realise that there is that distinction, which does then create this issue. It is really important, though, for all of the officers and all of the employees as well, every time that they are making a decision, that they know what we would always say what hat they've got on. Do they have their state hat on or do they have their federal hat on? And it's really important that a conscious decision is made and that things are recorded appropriately.



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BS And there are times when there are giveaways for that. It may well be that it looks and feels each day like it's all one and the same thing, but there will be or there should be things like a service agreement. For example, if the state entity employs everyone but is doing the work for both, there will be some sort of arrangement whereby that's set out, that's explained if there are fees that have to be paid for, those sort of things that that appears. Some other giveaways you find are things like capitation fees or affiliation fees that people might mentally be looking at it as one organisation.



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BS But if you've got this state registered body and it's paying affiliation fees or it's paying capitation fees to a federal entity, then that tends to be a giveaway that it is actually also a branch of the federal body.

MG Yes, important points, indeed, Bill. If you have a state association and a counterpart federal branch, make sure you have a service agreement that clearly sets out the services and functions between the state and federal entities.



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MG And another point I just want to bring up that was loosely referred to before, is when we're talking about the distinction between state and federal entities, this does not apply within Victoria or the territories. Victoria referred its industrial relations laws to the Commonwealth in 1996. And since that time it's just been a single system, and the territories obviously have always just been under the Commonwealth system. When we're talking about this, have we got some examples? I can think of one that probably helps to paint the picture for the listeners as to how this can work on a day



to day basis, the problems that can arise.



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MG And the example that I can readily recall involved a state organisation and its federal counterpart. And the state organisation decided they would amalgamate with another state organisation, which had a different federal counterpart. And unbeknownst to the state organisation's federal counterpart, it went forward with the amalgamation with the other state entity, and therefore became part of a different federal counterpart.



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MG And what it had before its amalgamation, it had maintained the complete register for the federal state branch as part of its state duties, and it also contained all the assets and the income. At the time that it amalgamated, all the officers resigned, so therefore, there was no body functioning in the federal organisation. And the income that amounted to approximately 40% of the overall income to the federal body ceased. And at the same time the federal body had no record of the membership that it had lost from the state organisation, so it left them in quite a powerless state.



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MG Have we got other examples, Bill?

BS One of the other ones, certainly, I find is that it goes on from what you were saying a moment ago, MaryAnne, where you've got multiple bodies that are being treated as one. You might have an industry association and a registered organisation, and some other organisation or lobby group, for example, which are all actually separate bodies with separate functions. But because they're treated as one because everyone's in the same office and then all of this has some overlap, then it's regarded as a single one.



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BS And it's certainly something that we see is quite common, for example, in employer organisations. And this may well go along quite smoothly and then something happens. There may be a dispute between the organisations, there may be financial issues with one of the organisations, and then all of a sudden the question becomes, whose assets are they? Who owes the money? Where does this all go? And so when those critical points come, we have to look at the issue. The same with employee organisations, does the money belong to the state association?



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BS Does it belong to the federal branch? And there are times when it's just not clear. And it really should be.



JF Yes. One of the big things following on from that is that, as Bill was talking about who owns these assets and liabilities, and that can actually be a really confusing issue and also really hard to trace back to actually who does really own them. We have situations where a lot of the time the name of the state body and the federal body are fairly similar or exactly the same.



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JF And that's when it can become really confusing to go back and actually work out who actually owned that asset and who has the responsibilities for that asset as well. And therefore, where it should be appearing, within whose financial or which set of financial statements it should be appearing in. One of the other things that we do see too is that we have examples of when an organisation has actually just prepared one set of financial statements, and they lodge those statements with us. Then they actually change the name on the document, and then lodge it with their state counterpart claiming that it's actually the state entity's.



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BS And so there you've got things like saying, if there are genuine interactions between them all, don't have a situation where you're saying, every transaction happened on 30th June, for example. It has to be something that is a genuine reflection of what actually happens.

JF And a key thing to look at is also with the rules of the organisation as well. Normally as a minimum especially within the federal entities, is that there will be a requirement that they collect membership subscriptions and that they also pay a capitation fee to the national office.



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JF Now there is obviously situations, and it probably happens more than less is that the actual state body will be the one that's actually collecting membership subscriptions. And they're actually the ones that are physically paying the capitation fee to the national office. And that's normally because the federal branch actually doesn't even own a bank account, so there is actually no movement of money in and out because they physically can't do it. Now, that situation is perfectly fine.



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JF But it has to make sure, though, that the rules actually allow for that to happen, that the rules actually allow that this independent or this third party to be able to collect



those membership subscriptions, and to be able to pay those capitation fees over. It's always really important to look at the rules and ensure that the rules are actually allowing for that to happen. There's a lot of great examples of people that have set the rules up that way and it operates really effectively.

MG Yes, federal membership fees can be collected by the state association, unless the federal rules specify a different process.



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MG Just to go back. In terms of how do members become members of both the state organisation and the federal counterpart, it is primarily the case that a membership of the state organisation will automatically give you membership of the federal counterparts' state branch. And that is usually in the fine print of the application form. And just when we're talking about examples.



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MG We've had a recent example of a national organisation that has just recently discovered that a particular branch had previously had an application form that had, when you join us, you automatically get membership of the federal counterpart. But somewhere along the line, the form had changed and dropped off that line. Now they have the issue about how many members do they actually have because they don't know when the change was made, so they're not sure how many years back they have to go and also how many members have joined in that period, intervening period that are not actually members of the federal branch.



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MG There's a lot of nuances that you have to take care of when you're looking at this distinction. Also, as mentioned earlier, the state association can collect membership fees on behalf of its federal counterpart. The state association can also undertake all of the financial affairs of the federal counterpart, as long as the rules allow. Joanne, what are your financial reporting options if this is the case?

JF If you do look at the RO Act, it allows for federal organisations to apply for a certificate, which means that they don't actually need to prepare a separate set of financial statements because the state statements are actually prepared.



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JF They're being prepared in accordance with the state legislation. There's also that option two of the Section 271 where there is no financial affairs, which again means that you don't need to prepare a separate set of financial statements as well.

MG Fair enough.



BS But that's only if they don't have those financial affairs. If say, the federal branch and the state association have their own accounts and do their own thing, then they're not going to qualify under those provisions.



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JF Yes, exactly, right. But if rules of your organisation are set up to say that the state can collect membership subscriptions, pay your capitation fees and that's actually occurring, so it is that there is only really one set of accounts. And that everything keeps flowing through that and it happens to be that the state body is the one that does that, that's when those options under our Act are available, which means that you do not need to prepare a second set of financial statements.



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BS Very different circumstance might be where you've got federal entity and a state entity, and the one makes a loan to the other. They think in their mind that it's the same thing. It's the left hand lending the right hand money. But because they're separate entities, then that can have significant consequences in terms of what they've got to do under our legislation and what they've got to do in terms of that transaction going forward.

JF Yes, that's right. There is the requirement under Section 237 to prepare statement of loans, grants and donations, which identifies any transaction that exceeded \$1,000, either a loan, a grant or a donation.



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JF We do know that you do have these two bodies who do operate independently and do have their own set of financial affairs that they may loan money to each other. Now that needs to be identified in that, and it also needs to be identified within their financial statements as well.

BS And when they come to deal with that loan going forward, for example, when it comes to saying, we choose to waive the requirement that it be repaid.



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BS That's an obligation that the committee members of the registered organisation had, because they're supposed to act in the best interest of their members in just saying, we're going to forgive this because these people are our friends. We're all part of the same cause, is by itself just not going to cut it.

JF That's right. It's because it will need to be appearing in your financial statements. Writing off a loan, some of the loans that we have seen are quite substantial as well. They're not just over \$1,000, they can be a million or more. If the committee is going to say, okay, no, we're not going to request that money back.

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JF That is actually an impact on the overall bottom line of the organisations because they need to write off that million dollars. And officers do need to ensure that they're doing things in the best interest of their members. And there would always be the question mark about effectively writing off \$1 million loan, is that actually in the best interest of their members? It's something to really take into consideration.

BS And in some cases, they even raise the question, was it really a loan in the first place?

JF Yes, exactly, that's right.

MG I think what we can take from all of this today is that there are a few issues that need to be considered in a dual registration situation.

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MG First of all, to recap on what Bill said. Formal arrangements. If you have a state branch and you operate in conjunction with your state association, it would be most prudent to have plenty of record keeping, your service agreement so you can easily point to who is meant to be doing what and when and why. That will also assist you with determining who your assets are owned by so if there's ever any falling out, which may happen, you will know exactly who ends up with what and that'll save a lot of court fees.

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MG And also be conscious of your meetings. Realise that when you're having a meeting you've got to consider, are we sitting here as the state association or are we sitting here as the federal registered branch, and operate accordingly. And at all times, keep your records, it's absolutely essential. Hopefully, today's discussion has been of benefit and enlightening. And we look forward to seeing you again next month for ROCpod Episode Six, which will be about the spotlight on whistleblower disclosures.

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MG Thank you very much for listening. Don't forget to subscribe to ROCpod. It's available to download on Spotify, Apple Podcasts, Google Podcasts, SoundCloud, YouTube, and of course, always available on the ROC website.

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