



ROCpod episode 7 – Demystifying the ORP statement

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

KM	Kristina Menzies
AO	Andrea O'Halloran
DC	Declan Clifford
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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KM Hello and welcome to episode seven of ROCpod, talking with the Registered Organisations Commission. This episode will be about the Officer and Related Party Disclosure Statement. Which is what we often refer to as the ORP Statement.



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KM My name is Kristina Menzies and I'm a Senior Adviser in the Education and Reporting team at the ROC. To join me in our discussion on the ORP statement today, I am joined by Andrea O'Halloran, who is a Senior Adviser in the Compliance and Investigations Team. Welcome Andrea.

AO Thanks Kristina.

KM And we're also joined by Declan Clifford who is the Executive Officer to the Commissioner. Welcome Declan.

DC Thanks Kristina.

KM So, to kick off the discussion today, how about we just briefly outline Declan, why we are talking about the Officer and Related Party Disclosure Statement.



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DC Yes, thanks. Look, the Office and Related Party Disclosure Statement, or the ORP Statement as we'll probably call it throughout the podcast is a relatively new requirement under the RO Act.

And we've received lots of questions from our stakeholders about how to comply with this new requirement. So, we thought this would be extremely valuable just to discuss the issues and common questions we get.



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DC So, I guess a good place to start with the discussion is probably a basic run down of the ORP Statement. Andrea, if you'd mind running us through that?

AO Sure Declan, thank you. The Officer and Related Party Statement is essentially a statement to members of organisations and branches to provide them with information about the top five ranked officers within an organisation or branch according to their relevant remuneration.



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AO And the value of non-cash benefits that those officers may receive as part of their officer duties. It also requires organisations and branches to provide information about payments they may have made to related parties and to declare persons or bodies.

For more information about the meaning of officer within the context of the Registered Organisations Act and your organisation rules, please go back or refer to the ROC podcast number four, in which this concept was discussed in more detail.



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KM So, the purpose of the ORP Statement is to provide transparency to members, isn't it Andrea?

AO That's exactly right Kristina. We do recommend where any information that's required to be disclosed through the Officer and Related Party Statement that as much relevant information and clear transparent information is provided on the statement as possible.



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AO It's also worth noting that if there are actually no disclosures to be made in terms of officers' receipt of actual relevant remuneration or non-cash benefits, that a 'nil' statement is required to be lodged with the Registered Organisations Commission.

KM I think some confusion has arisen in relation to this requirement because there are similarities but also key differences in financial reporting.



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KM I think some organisations and branches have, or may have confused the two requirements, but this is different to financial reporting, isn't it Andrea?

AO Yes, it's a different requirement altogether. Each organisation and branch, whether they've got an exemption from financial reporting or not, are required to lodge an Officer and Related Parties Statement with the Registered Organisations Commission.



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AO Now, as I mentioned earlier the ORP Statement or the Officer and Related Parties Statement might be a 'nil' return statement, but it must be lodged. And it must be lodged within six months of the end of the organisational branch's financial year.

KM Okay, great. So, I just want to briefly touch on the fact that the ROC have developed a template to assist organisations and branches to complete their ORP Statement. This facilitates compliance, this includes all the relevant information that you have mentioned that needs to be included in the statement.



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KM So, we would absolutely recommend that organisations and branches don't reinvent the wheel, and just jump on our website and download that template. On the first table of the template it asks for that first key piece of information around officers' remuneration and their non-cash benefits.

And you will also, if you're familiar with our template, be aware that there is a second table which asks for the disclosure about payments to related parties and declared



persons or bodies.



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KM And as you said, we require a 'nil' statement if there are no disclosures to be made, and that template certainly prompts those statements to be included. And also prompts the correct person to sign the statement as well.

AO That's right, yes.

KM So, that's probably a key message that I want to get across today ... to use the resources that we have provided and made available on our website to facilitate your compliance. Because obviously we know that organisations and branches want to do the right thing and we at the ROC want to assist organisations to do that.

AO Certainly.



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DC Andrea, when you mentioned about relevant remuneration, would you mind just stepping us through what some of the components of relevant remuneration might be?

AO Yes, sure Declan. So, relevant remuneration under the Fair Work (Registered Organisations) Act includes a disclosure of payments made to officers, such as wages, salary they may receive, including superannuation.

It includes things like fees or allowances, leave entitlements such as accrued annual leave, benefits and other entitlements.



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AO It could be something like a gym membership or some form of insurance that may be provided as part of their benefit to do with their officer salary payment.

It also includes honorarium payments paid to officers that are given for services, for example, for attendance at committee meetings. Things like that.

So, they are required to be disclosed as part of the relevant remuneration section of the template statement.



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AO It includes also reimbursements paid to officers or branches, but only insofar as they relate to a benefit received by the officer as part of their remuneration. It would not extend to reimbursements for office related duties as part of their officer role.

So, for example if they happened to have gone out to buy certain office supplies or



what have you, and they seek reimbursement for that. That would not be required to be disclosed in the relevant remuneration section.



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KM What about money in relation to board fees?

AO Certainly, relevant remuneration includes payments made to officers for sitting on boards. And in circumstances where they're sitting on that board because they are a member of the organisation or branch, or they've been nominated for that position by the organisation or branch.

So, any fees paid to the officer in those circumstances must be declared.



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AO So, even in circumstances where the fees may be paid directly from the board, if you like, to the organisational branch and a part of that is remitted back to the officer who is sat on the board that should be declared as part of the relevant remuneration disclosure.

KM And to extend what you're saying there Andrea, I know that a common question we get asked is what happens when that board fee is paid to the officer.



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KM But then the officer does not get to keep that money because there is some sort of arrangement where the officer then pays the money to the organisation or the branch.

How we have answered that is we do believe that needs to be disclosed, because the RO Act does speak payments paid to the officer, and in those circumstances it is paid to the officer, even though the officer did not get to retain it. So, we are suggesting that organisations do disclose in those circumstances.



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KM But that's not to stay the organisation or the branch on the ORP Statement can't qualify that disclosure amount to include the facts that have occurred.

So, for example, Jane did not get to keep \$20,000 because that was then paid to the organisation or the branch. That probably provides a clearer picture and then as we said at the beginning of the episode, we're all for transparency here. That certainly is in line with that.



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AO Yes, certainly. That I think Kristina is the whole purpose of the Officer and Related Party Disclosure Statement, transparency to members. So, if we can make the information as clear as possible.

If that includes a note to be included in the statement to make very clear to members how payment has actually been treated by the organisational branch and what proportion has been retained by the officer.

Because there could be branch policies, or national policies, organisation policies which determine how payments such as those are treated.



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AO So, we just want to ensure and give members some comfort that the organisational branch is following its own policies. Also, I want to mention as part of the relevant remuneration requirement to be disclosed is that payments officers receive from related parties.

So, remuneration they have received from related parties is required to be disclosed as part of the Officer and Related Parties Statement. That forms part of the remuneration section of the disclosure.



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DC Another interesting thing you raised, Andrea, that also get a lot of questions about is the issue of reimbursements and whether they form part of the officer's relevant remuneration. And you flagged this earlier and I just want to touch on this again.

The key question to answer is whether it's going to form part of the relevant remuneration is whether it's related to a reimbursement of an expense of a personal nature, or a business nature.



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DC So, in the example you used of the officer buying stationery on the personal credit card and getting a reimbursement for that, well that's a business-related expense. It's related to the officer's duties so that's not going to form part of that officer's relevant remuneration, the reimbursement for that expense.

But if the reimbursement was for an expense of a more personal nature, so say a gym membership, then the reimbursement for that conveys a personal benefit for the officer.

So, it's likely that's going to fall in the definition of relevant remuneration and should be disclosed as part of the ORP Statement.

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KM As we mentioned at the beginning of this episode, it's a relatively new requirement under the RO Act, and as a result of that it's completely untested judicially by the court. So, there are some grey components of how to interpret particular sections of the Act, and this is one of the reasons why we're doing this podcast today. To flesh out some of those issues.

One of the questions we have received about completing ORP Statements is how to disclose the remuneration of an officer where they are an officer of the national entity and they are also an officer of a branch.

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KM So, as you mentioned Andrea, at the beginning of this episode, the requirement to complete the ORP Statement needs to be completed by both the organisation and it's also a requirement of the branches.

And a person can indeed hold multiple offices and at different levels. So, they can be a branch secretary, for example, but they might also be a federal councillor.

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KM And if the person makes the top five of both of those entities, the question here is, how does their remuneration and non-cash benefits, how are they disclosed?

Are they disclosed in respect of the branch secretary on the branches ORP Statement, and in respect of the federal councillor's office, in the organisations statement? Or the other school of thought is, do their totals needs to be combined and appear on both statements?

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KM Now, this is a question we've had a bit of a think about in reading the words of the RO Act and we don't think it's very clear around what the RO Act requires. And so, we don't think that it is therefore appropriate for us to enforce a strict approach in the absence of judicial clarity.

So, the message here in how we go about to providing guidance to organisations and branches about how to disclose in these circumstances is just for organisations and branches to be really consistent and apply that consistent approach.

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KM So, have that discussion between the organisation and with branches about how you're disclosing where the officers might appear on multiple statements.



If you do apply that consistent approach, then what occurs then is that when read side by side, it becomes clearer around how much that officer has received in that financial year.



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AO As part of the disclosure statement, in the first part of the statement, so where the actual amount of relevant remuneration is a report of the top five ranked officers in either the organisation or branch. Whichever entity is providing the report.

Also, for those top five ranked officers where relevant, there has to be a disclosure about relevant non-cash benefits that the officer may have received. So, that's where there is a benefit flowing to the officer in the form of a non-cash benefit.



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AO It's a benefit that they receive as a result, or in connection with their duties as an officer.

KM Andrea, can you provide an example of what a non-cash benefit... What you often see when you're assessing ORP Statements ... what those non-cash benefits might be.

AO So, that can be, Kristina, items such as a motor vehicle, and it's associated running expenses. That's a common one that we see. It could be property or services in any form other than in money.



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AO It can be access to benefits such as childcare, or a form of insurance, it could be income protection insurance, or some form of health insurance, or a membership of a body. It could be a gym membership, it could be some form of healthcare benefit that might be provided.

But it wouldn't include items such as a computer, a mobile phone or any other electronic device which is mainly used for work purposes. So that is not required to be disclosed as part of the relevant non-cash benefits.



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DC So, is the key where it's not required to be listed as a non-cash benefit that is used for work purposes, is that correct?

AO Exactly, yes Declan, that's correct. So, it's where there's the benefit to the office holder as part of their officer package or salary package entitlements.

DC I guess that leads on to the point of how to value a non-cash benefit in some cases. The RO Act is silent on this issue of how to value a non-cash benefit.

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DC And so, what we advise is first, for organisations to look to how much did the benefit actually cost in practice. If that isn't applicable there we would suggest going to looking at the fair market value of this benefit.

We really emphasise a common-sense approach, and as is being picked up by Kristina or Andrea through the podcast, really encouraging transparency. This regime is all about transparency there, so a common-sense valuation.

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DC And of course, with the ORP template as it currently is, there's a note section where you can include notes on how you might have calculated the non-cash benefit. So, you can put that description in there.

And I guess it's also important to remember, when you are putting the amount for the non-cash benefit, as with the relevant remuneration to include the gross amount rather than the net amount.

KM Thanks Declan, I think we can probably now move along to the second part of the ORPs template.

**00:17:02**

KM Which deals with payments to related parties and payments also to declared persons or bodies. Andrea did you want to provide a brief explanation about what is a related party? Because I think that's probably the most common question we get about this part of the ORP Statement.

AO Yes, certainly Kristina. So, a related party for the purposes of the disclosure requirement is broadly set out in section 9b of the Fair Work (Registered Organisations) Act.

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AO The broad inclusive definition of a related party is an entity controlled by an organisation or branch, but it does not include a branch, a sub-branch, a division or sub-division of the organisation. And it does not include a state or territory registered association of which the organisation may be a federal counterpart.

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AO It does include officers of an organisation, it includes spouses of officers including de facto partners, it includes relatives of officers, such as a parent, a stepparent, a child, a stepchild, a grandparent, grandchild, brother, sister of the officer. And it includes



relatives of an officer's spouse. The definition does go on at further length.



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AO But for the purposes of our podcast today, I won't go into the detail of that. But it can be referred to in section 9b of the Act.

KM I think a key message out of this point is that it is different to the definition that's required for the purposes of financial reporting under the Australian Accounting Standards. So, if you are perhaps familiar with that definition, you might also just want to make yourself familiar with this definition and how it's different.



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KM So, along with being familiar with the definition of what a related party is under the RO Act, Declan we probably should also mention that there are exemptions to disclosures that relate to related party payments. Did you want to briefly explain what those are?

DC Yes, absolutely. So, there are a couple of situations where you don't need to disclose a related party payment on your ORP Statement. Now, these include if the related party is an officer and the payment is their remuneration or relates to a reimbursement.



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DC If the payment itself would be a reasonable arm's length transaction. Another example was where the total payments to the related party in a financial year are less than the amount that is prescribed in the Registered Organisations Regulations. And currently that amount is \$5,000.

So, if the total payments are less than that amount for the financial year. Another example is where if the payment is made to a person in their capacity as member of the organisation and it doesn't unfairly discriminate against other members of the organisation.



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DC So, those are just a few examples of where you wouldn't need to disclose the related party payment on the ORP Statement. We've got a complete list in our guidance note with really helpful examples, so I'd highly recommend you look at the guidance note on our website for more information there, and some really in-depth examples.

KM Thanks Declan. So, along with related party payments, the second table also requires disclosure of payments made to declared persons or bodies.



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- KM** And they also need to be disclosed. Andrea, did you want to briefly explain how organisations and branches can facilitate their proper disclosure?
- AO** Sure. Officers of an organisation or branch whose duties include duties that relate to the financial management of the organisation or branch are required to make necessary declarations about any material personal interest that the officer has or acquires that relates to the affairs of the branch or the organisation.

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- AO** They are required to do this at a branch or an organisation committee meeting. And it should be recorded in the minutes of that meeting. So, there needs to be in place effective governance processes within the organisational branch which captures this information in the required form and in accordance with the Registered Organisations Act.

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- AO** So, in the Officer and Related Party Disclosure Statement any payments made by the organisation or branch to declared persons or bodies and that information should be placed, as I've said in some form of a register, or some dedicated section, reference section within the organisational branches records so that information can be easily obtained when it comes to preparing the Officer and Related Party Statement.

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- KM** So, what you're saying there Andrea, is that unless there are those proper processes in place to record those sorts of payments, might be erroneously missed when completing the ORP Statement.
- AO** That's correct. It really does underpin the organisations governance processes which feeds directly into the transparent information made available to members through not only a register of that type, where there are declarations of any material personal interest. But through the Officer and Related Party Statement as well.

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- DC** So, it would probably be useful to go back here and recap exactly what declared person or body is. So, essentially it's where an officer of an organisation or branch with financial management duties discloses a material personal interest with relation to a person or body.

And that person or body will then be a declared person or body. So, any payments made to that declared person or body by the organisation will need to be included in their ORP Statement.

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DC So, for example, say we have Chloe who is the President of a registered organisation. And Chloe has financial management duties. She disclosed a material personal interest to the organisation in relation to her catering company.

What that means is that Chloe's catering company is a declared person or body. So, any payments made to the catering company by the organisation will need to be recorded in their ORP Statement. So, to recap you're essentially looking for three things.

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DC A disclosure of a material personal interest by an officer with financial management duties that relates to a person or body.

AO Yes, thanks Declan. Tell me, are there any exceptions that might apply to the requirement to disclose those payments?

DC Yes, thanks Andrea. It's actually a really good question because the exceptions to related party payments that I set out earlier in the podcast won't apply here. So, for example, arm's length transactions to a declared person or body still need to be included in the ORP Statement.

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DC So, those exceptions won't apply to payments to declared persons or bodies. And I'd also like to reinforce your point from earlier Andrea, about the importance of the organisation recording any disclosure of material personal interest in the minutes of the meetings where the disclosure took place. And having that dedicated register for any disclosures.

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DC That's a really effective governance process and practice that will enable the organisation to access the information on payments to declared persons or bodies when it comes time to prepare their ORP Statement.

KM I think that's a great message to end this episode on. Transparency to members. After all that is the intention behind this particular section of the RO Act and the requirement to complete and lodge an ORP Statement. And to provide a copy of those to your members.

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KM Just to provide a really brief summary of today's episode, what we've done is taken you through the requirements under the RO Act to complete and lodge an ORP Statement. Hopefully we have touched on some of the questions that you may have had about how to complete an ORP Statement.

Declan, you mentioned our guidance note so I'd like to point listeners to the fact that we have developed some guidance notes on this particular issue.



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KM And it's something that we have reworked over the last 18 months as we have obtained questions about how the ORP Statement is completed in that real-world sense.

I think we tried to really anticipate some of the questions, but until we got the real-life questions from the people completing the statement it was really difficult to anticipate what those questions might be. So, we've worked really hard to hopefully make sure that that's as practical of guide as it can be.



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KM I also just want to briefly mention that we're moving into a risk-based assessment of ORP Statements, so once organisations and branches had one go at completing their ORP Statement, what we did at the ROC then is as part of our education and compliance role, each of those statements were thoroughly checked. Just because it was the first time that everybody had a go at it.

But now that everyone's had that chance to lodge the statement and discussions with us about their compliance of their first statement, we've now moved into a risk-based assessment of those ORP Statements.



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KM So, what that means is the majority of ORP statements receive a primary review, similar to how we assess our financial reports. And they are sort of the high level, ticking off the high-level things.

So, has the statement been lodged on time, is it signed by an appropriate officer and has a 'nil' statement included where appropriate? And then within that cycle, the five-year cycle, the majority of organisations and branches will receive one advanced assessment.



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KM And that is looking at the full gamut of compliance in this area. So, if you wanted to learn more about that we've got our checklist published online, so you can see at the ROC what we're checking off when we're assessing and then filing the ORP Statements.



And once we file our ORP Statements, the ROC prepares a letter and that goes to organisations and branches. And what we do recommend you do with those letters is obviously to keep it on file and we have them available on our website.



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KM But also, when you're preparing your ORP Statement, to check your last year's filing letter, because if you've made an error in your last year's filing letter, it's a really good opportunity to do better the following year and to correct any of those previous errors that have been made.

So, thanks for joining us today Andrea, Declan.

DC Thank you

AO Thanks

KM And listeners, hopefully this has been of use and helpful. Please join us next month for our next episode of ROCpod which will feature a discussion with the Registered Organisations Commissioner, Mark Bielecki and the ROC's Executive Director Chris Enright.



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AN The ROC is not able to provide legal or accounting advice.

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