



ROCpod episode 18 – Working together to assist registered organisations

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KM Hello and welcome to the first episode of ROCpod for 2021. My name is Kristina Menzies and I am a Senior Adviser in the Education and Reporting Team at the ROC. Today's episode is about how we collaborate with other agencies to help registered organisations comply with their requirements.

The ROC is responsible for regulating the conduct of unions and employer associations. We help organisations comply through education, advice and assistance, and when required we take enforcement action.

The Fair Work (Registered Organisations) Act (or the RO Act) gives the ROC functions over a whole range of matters.

While we are an independent agency, we do not work alone. To support our efforts to help registered organisations, the ROC collaborates with other government agencies, including the Fair Work Commission, the Australian Electoral Commission and the Fair Work Ombudsman.



In today's episode, I will be speaking with my colleagues about these partnerships. They will share how our work with other agencies contributes to helping organisations achieve voluntary compliance.

First, I am joined by Sam Gallichio. Sam is an Adviser in our Education and Reporting Team.

Thanks for joining me, Sam



00:02:00

SG You're welcome, Kristina, it's great to be back on board for 2021. Glad to be talking to you about this today, it's a really important topic. There's a number of areas the ROC regulates where we do work quite closely with these other, much larger, agencies. Many people don't realise how small an organisation we are – we only have about 28 staff members... compared to say the Fair Work Commission with around 300 staff or the Fair Work Ombudsman has more than 700 staff. But like you said, the RO Act gives each agency a different role to play, so today we'll be talking about when (and why) a registered organisation might need to deal with multiple agencies and how we help you with that.



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KM I want to talk about the work of the ROC and the Fair Work Commission (or the FWC, as we'll call it). Prior to the creation of the ROC in 2017, some of the work that we do now was done by the Regulatory Compliance Branch of the FWC. Several staff (including yourself!) came across from the FWC to work at the ROC, and you brought your knowledge and expertise with you. The functions of both agencies present opportunities for collaboration – don't they?

SG Yes, both the ROC and the FWC provide assistance to registered organisations. The ROC handles matters like financial reporting, elections, disclosure statements and compliance of organisations and their officers as well as/including investigations. The FWC does other work with registered organisations, dealing with applications for registration, amalgamations and about the structure of an organisation, rules (including alterations and eligibility rules), as well as right of entry permits. So on the whole registered organisations interact with both the ROC and the FWC about a range of different matters.



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KM So the ROC can't certify changes to the rules of organisations ...the FWC does that. Same with deregistering or amalgamating an organisation. If you have questions about those processes, you need to speak with the FWC, as they make the necessary decisions.



But, if organisations want to change their rules, we can help in the planning process, can't we?

SG Yes, the ROC offers a service of tailored advice and assistance to registered organisations. Organisations who are thinking about changing their rules can get in contact with the ROC to discuss how the proposed changes could impact on their compliance, elections or how they operate.

For example, if your organisation is drafting a rule change about its financial reporting process you can check in with us to discuss whether the proposed changes will help you meet financial reporting responsibilities under the RO Act.

Or the ROC might recommend a change to help you to more easily comply. You can then go through the process of getting your organisation to agree to the proposed changes and lodge them with the FWC. The FWC will then check to ensure that the rule alteration is doesn't conflict with the RO Act, isn't unreasonable or discriminatory, and has gone through the correct alteration process.

KM What about rule changes around restructuring or the amalgamation of organisations?

SG The ROC has had discussions with organisations before they have restructured or amalgamated about their proposed rules and new structure. We've found it useful to be part of discussions in the planning phase as it really helps when it comes to mapping out what things such as elections and financial reporting will look like under the new structure, and making sure that the changeover from one structure to another occurs as smoothly as possible.



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KM We know of one organisation who read about the 5% rule for financial reporting in the ROC's quarterly newsletter. This prompted the organisation to then get in contact with the FWC to change their rules to include a 5% rule to assist with their financial reporting.

Sam, can you perhaps tell us more about this?

SG For those who don't know what the 5% rule is ...some organisations have a rule which allows for a certain percentage of members to call for a general meeting of members to consider the audited financial report. Under the RO Act, this percentage cannot be more than 5%. And one benefit of having this rule is that it helps streamline the financial reporting process – and allows the financial report to be dealt with entirely by the committee of management, and for the audited financial reports to be provided to members within 5 months of the end of the financial year. The safeguard in this process, if I can call it that, is that a relatively small percentage of members can still call for a general meeting to consider the financial reports.



Organisations that don't have a 5% rule must have a meeting of their committee of management, followed by arrangements for the auditor to prepare the auditor's report. The organisation must then give their members a copy of the report at least 21 days before presenting the full report to a second meeting, a general meeting of members that every member is entitled to attend.

And the 5% rule can make financial reporting a quicker process, potentially even allowing a meeting of the committee of management, the auditor's report and the second meeting of the committee to deal with the audited financial reports to occur on the same day!



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KM: So the ROC published information about the 5% rule in one of our education materials, didn't we?

SG Yes, a senior leader of an organisation read about the streamlined process of the 5% rule in one of our quarterly newsletters. They got in touch with our financial reporting team, and after discussing how it works and the benefits of the rule, they advised us that they wanted to change their rules to include a 5% rule for their financial reporting process going forward. So, the ROC referred the organisation to the FWC, and then the FWC assisted them through the standard rule altering process.



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KM And when rule changes are lodged by organisations or are certified by the FWC, how important is communication between the two agencies?

SG It really is an essential aspect of the process, especially if the change is about an organisation's name or an alteration to their structure or even the timing of a scheduled election. For example, several organisations have had rule changes recently in response to issues that have arisen as a result of the COVID-19 pandemic. Some of those are straightforward, for instances allowing for meetings to be held by technological means. Other election-related changes are something that will be discussed later in the podcast.

Now, the ROC publishes all sorts of documents about registered organisations on its website, like election decisions and disclosure statements. When registered organisations change their name, or are registered or de-registered, the notifications we regularly receive from the FWC (in addition to notifications of change from organisations) help us keep our records current. This in turn helps registered organisations and their members to locate documents on our website.

KM But the organisation may need to tell us too?



SG Absolutely. If the name of the organisation changes or there are new officer roles created or abolished, changes to office-holders, branches or to any of the other information in the Annual Return, the organisation needs to update their records and then notify the ROC of that change within 35 days of the change taking effect. While the information from the FWC may sometimes tell us some of these things too – that doesn't replace the organisation's obligation to notify the ROC of all the changes.



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KM Back to the FWC, why is finding out about changes to scheduled elections important?

SG Well the short answer is that every organisations' rules set out what officers they have, when they are to be elected and for what term, who elects them and how they are elected. The RO Act requires each organisation to lodge prescribed information (commonly referred to as PI) seeking an election in accordance with its rules.

The ROC also has an election alert program which is designed to remind organisations by letter a few months before a scheduled election is due that their PI will be due soon. This is to assist organisations achieving voluntary compliance. The information in those letters are taken from our records, which contain information about when elections are due under organisations' rules.

When the FWC certifies rule changes that vary when a scheduled election is to take place or what officers are to be elected, the ROC uses information from the FWC to update its records. Sharing information like this means that our election alert program can continue to provide helpful reminders to registered organisations about their upcoming election lodgments.



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KM What should an organisation do if they think the information in their courtesy reminder letter is incorrect?

SG They should let us know so that we can update our records. But always remember, while the letters are designed to help remind an organisation of upcoming obligations, good governance includes being familiar with your own organisation's rules, knowing what requirements are due when, and having processes in place to be ready for them.

And, of course, if you get a reminder letter about something you've already lodged, please get in contact with us to confirm that we've received it and are working on it.

KM Thank you for your time, Sam. These services have been set up to help organisations, and some people might not know that they are available.



Another agency that the ROC works with is the Australian Electoral Commission (or the 'AEC'). Both the ROC and the AEC play a role in assisting the running of registered organisations by filling their office-bearer roles through elections. To help me explain who does what in the election space, I have with me Bill Steenson. Bill leads the ROC's Compliance and Protected Disclosures Team.



00:13:15

BS Hi, Kristina.

KM Thank you for joining me today. Can you give us a brief summary of the elections process?

BS Sure. Most registered organisations and their branches have their elections conducted by the AEC, following decisions issued by the ROC making arrangements for those elections to be conducted. A small number of organisations and branches hold an exemption, which allows them to conduct some or all of their own elections. But most will need to engage with the ROC and the AEC to organise for their election to be run.

For elections conducted by the AEC, the process starts with the organisation or branch requesting an election by lodging their prescribed information with the ROC. We call this P.I. for short.

KM I spoke with Sam earlier, and he mentioned the elections alert program, and how this reminds organisations to lodge their PI on time.

BS Yes, organisations and branches need to lodge their PI with the ROC at least two months before nominations open. As well as the election alerts encouraging organisations and branches to lodge their P.I on time, we also work with them to help lodge their P.I correctly. Now it's important that all of the required information is correctly included in the P.I. and that it's accurate. This helps the ROC to arrange the election as quickly and efficiently as possible, which is really important if there are specific deadlines in your rules that need to be met.

Now one of the things we have PI templates available on our website. They help organisations complete their P.I correctly. The ROC can also provide help over the phone and by email. We are also more than happy to look at a draft version of the P.I before its due to be lodged, to help with compliance and to just check the organisation has the process right.



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KM What happens when the ROC assesses the prescribed information?



BS Well we check to make sure that an election is due under the rules of the organisation. The information that you in organisations tell us in the P.I helps us to do this. If the Commissioner's Delegate is satisfied that an election is due, then they will issue a decision for the election to be arranged. But there needs to be enough information provided by the organisation in order to reach that conclusion.

Once the ROC issues the election decision, the AEC takes over the process and conducts the election in accordance with the rules of the organisation or branch.

KM So how do the two agencies work together to help organisations with their elections?

BS We are in regular contact with the AEC to discuss the elections process as well as specific elections. Our work in 2020 is a really good example of this. At the beginning of the pandemic, the AEC suspended industrial elections and they did that to protect the health and safety of their staff as well of that of members of registered organisations. Now that decision had an impact on the schedule of elections for many many organisations, and the ROC received lots of enquiries from them. Now maintaining that relationship with the AEC and really good communication helped the ROC to give accurate advice and assistance to organisations both about their upcoming elections and to publish education resources about issues that organisations were confronted with during this period. Now we recognise that organisations rely on two government agencies to carry out their election, and good service delivery from both is important. What it also meant that in a very small number of cases where an election still had to go ahead, that was able to be achieved.

So for example, where it was the organisation's very first AEC-run election or where an organisation had an entirely new structure and had to fill that by election in order for it to actually operate.

Now the other thing to remember is that even though there was a temporary suspension of elections by the AEC, organisations and their branches were still lodging prescribed information with the ROC – and that's because they have a legal requirement to do that if an election is due under their rules.

So, the ROC continued to receive and assess lodgements of PI throughout 2020. And part of this process included ensuring that PI documents were complete and they were actually correct.

And on that note I'd really recommend that if you have anything to do with elections in your organisation (especially if you're preparing and lodging PI), having a listen the online 'election discussions' panel on our website, because it actually walks you through an example PI. That way you'll get a better idea about the key elements that are needed (and need to be accurate) in order for an election to be arranged.

Now when organisations engage with ROC staff and are able to get the details right , it really makes an appreciable difference. Just as an example, in the six months to the end of 2020, ROC staff were able to get the average turnaround time for election



decisions to just under 17 working days from first receiving the information right through to the final decision being issued by the ROC Delegate authorised to issue election decisions. And those decisions ranged from casual vacancies through to really large scheduled elections for organisations that had multiple Branches and Divisions.

So, with another 'plug' for the resources you can access, take a look at our podcast called 'working together for an efficient election' it gives some handy tips on how you can get your election requests dealt with quickly and smoothly.



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KM What kind of information does the AEC and the ROC share?

BS So the ROC sends a copy of the Prescribed Information to the AEC so they've got notice of the upcoming election. They'll usually receive that the same day we receive it from the registered organisation. We also advise the AEC when the ROC issues a decision to arrange an election. And the AEC usually sends us a copy of the declaration of results and the post-election report for those elections, as well as sending it to the organisation. But it's important to repeat, that it's the organisation that must send us notifications of change of office bearers – it's their obligation not anyone else's.

The other thing is that the ROC publishes all of these documents online so officers and members of organisations can access them. So the election decisions, the prescribed information, the post-election reports. Collectively, it's all about helping registered organisations to have their elections conducted as quickly and efficiently as possible, in accordance with their rules and without irregularities.



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KM So, if I'm from a registered organisation and I have a question about my election, who would I ask?

BS Well if the decision hasn't been issued yet, then you talk to the ROC about the election, the prescribed information, any election-related rules that you have and arranging the election. But if your question is about how or when an election will actually going to be run – then that's best asked to the AEC. And so in most cases once we issue our decision, we step back and the AEC runs the election.



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KM Thanks Bill.



The documents Bill has mentioned like the PI templates, the covid-19 resources, election decisions and notifications of change can all be found on our website. We have a dedicated webpage for Elections tools and resources. Decisions that are specific to your organisation can be located from the “Find a Registered Organisations” webpage.

My third and final guest for today’s episode is Carolyn Moloney. Carolyn is an Adviser in the Education and Reporting team at the ROC. She has joined us today to talk about the ROC’s relationship with the Fair Work Ombudsman (or the FWO for short). Welcome, Carolyn.

CM Thanks Kristina.



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KM So, while they share some things (and we’ll talk about shortly), the FWO and the ROC have very different responsibilities. Can you tell us about those differences?

CM Yes, that’s right Krstina. I’m sure we have spoken on this podcast before about the work of the three teams within the ROC... the education and reporting team, the financial reporting team, and compliance and litigation. The ROC is a small agency of about 28 people, and we help registered organisations to comply with legislative requirements under the RO Act.

The FWO is a much bigger agency, it gets its powers and functions from the Fair Work Act. The FWO offers services to workers and employers across Australia and works to ensure compliance with workplace laws in Australia.



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KM So, the FWO and the ROC are independent of each other, but there is a relationship between the two agencies isn’t there?

CM Yes, that’s right. Because the ROC is so small, and largely made up of subject matter experts it gets some corporate support from the FWO. For some reporting obligations to the Commonwealth government, like preparing the Annual Report, the FWO and the ROC join as one entity. ROC staff work in a secure office but in the same building as FWO staff in Sydney and Melbourne. This means that the staff often interact with each other, even though they are doing different work.

And during the covid-19 pandemic, some ROC staff were seconded to the FWO to assist with providing advice and assistance to the employers, employees and the public over the phone and via email, about employment rights and JobKeeper entitlements.



KM But there are some things we both do ...both the FWO and the ROC have responsibilities to respond to whistleblower disclosures. Can you explain how the ROC works with the FWO on whistleblower matters?

CM The RO Act has a whistleblower scheme, which provides protection to eligible people who provide information about conduct in a registered organisation or the conduct of its officers or employees.

Whistleblower complaints under the RO Act can be received by a number of government agencies, including the ROC and the FWO. If the ROC receives a complaint and the conduct is about alleged breaches of the Fair Work Act, the ROC can refer it to the FWO to respond to it. Likewise, if the FWO receives a complaint about the governance of a registered organisation or the conduct of its officers, which would be more appropriately dealt with by the ROC, the FWO will refer it to us to look into.



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KM Why is the whistleblower scheme, and the protections given to whistleblowers so important?

CM Well both the FWO and the ROC, and the other agencies which can receive and investigate whistleblower disclosures, are interested in regulating conduct that may be a breach of Australia's industrial laws. So it's important to promote a 'speak up' culture within organisations, so that potential wrongdoing can be addressed.

Whistleblowers are given protections against reprisals. For example, eligible disclosers are protected against being dismissed from their job or discriminated against because they raised their concerns. The protection against reprisals for whistleblowers encourages people to speak up about their concerns of possible misconduct. Speaking up increases the likelihood that actual or perceived wrongdoing will be identified and addressed.



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KM So if I am a person who has concerns about my organisation or an officer, who would I speak to?

CM That's a great question. You can raise the issue within your organisation, or you can speak to the ROC. If you raise it internally you'll still attract the whistleblower protections if it's about conduct that you could have reported to the ROC. Likewise, you could report it to the FWC, the FWO or to the Australian Building and Construction Commission. All of these agencies can also receive disclosures.

One of the reasons that we work together is to ensure that the whistleblower complaint is referred to the best agency to handle the matter. For instance, as we



mentioned before, you can contact the ROC with a disclosure and if we think that it is best handled by the FWO we would work with them to deal with the matter. And if the disclosure concerns alleged criminal conduct, we can make a referral to the Police.

KM The whistleblower scheme is a good example of how the ROC works with a number of other agencies to regulate conduct in registered organisations. In responding to these issues, the ROC also works alongside the Fair Work Commission, the Australian Competition and Consumer Commission, state regulators and also enforcement agencies.

Thank you for joining us for today's discussion about the ROC's work and how we collaborate with other agencies. In particular, we have focused on the ROC's work with the Fair Work Commission, the Australian Electoral Commission and the Fair Work Ombudsman. And a big thank you to Bill, Sam and Carolyn for their insights.

Please join us again next month for another episode of ROCpod.

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