



ROCpod episode 27 – Good governance in practice: Building trust through transparency

Speaker Key

AN	Unidentified announcer
AO	Andrea O'Halloran
DV	David Vale

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AO Hello and welcome back to ROCpod. My name is Andrea O'Halloran and I'm a Senior Adviser in the Compliance and Investigations Team at the ROC. This episode is another in our Good Governance in Practice series. We'll be talking about transparency in registered organisations and the practical steps you can take to improve transparency.

The compliance requirements of registered organisations are set out in the Fair Work (Registered Organisations) Act 2009 – or as we call it, the RO Act for short. The requirements are designed to promote a culture of transparency and accountability. Lodgements like financial reports and annual returns are published online for anybody, that's members and the public alike to see.

But what does it mean to 'be transparent', and how can record keeping and decision-making procedures promote transparency? In today's episode we'll share examples of how transparent practices lead to better outcomes for members.

For today's discussion, I'm joined by David Vale. David is the Principal Adviser in the ROC's Administration and Lodgements Team. Thanks for joining me David.

DV You're welcome Andrea.



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AO David, you're involved in assessing documents that are lodged with the ROC. Why is transparency relevant to the compliance activities of organisations?

DV Well, when I assess documents lodged by registered organisations, one of the features I notice is when there is clear reporting of information. I imagine you would do the same, Andrea. After all, registered organisations exist for the benefit of members, and those members deserve to know how their organisation is being run. Like *who* is responsible for the management of the organisation, *what* financial decisions are being made, and what are the outcomes of these decisions.

Part of the purpose of the RO Act is to encourage members of organisations to participate in their organisation and to promote a high standard of accountability. To achieve this, organisations must be transparent in their practices, including when they report information to their members.

AO Yeah but transparency doesn't mean everything is shared with everybody, all the time... you need to respect the privacy of individuals too I imagine. So it's a balancing act between sharing information and protecting privacy.

So David, what does it mean for an organisation to be transparent? What does it actually look like?



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DV Well Andrea, a registered organisation is transparent when it lets people like members and office-holders see and understand how the organisation is run. It's not *everything* about the organisation – but we'll be focussing on matters like essential policies, the financial management of the organisation, how decisions are made and the identity of the people responsible for making them. Sharing this kind of information can help build trust.

In a transparent organisation, information is reliable and access to it is simple, it is set out in plain English – you don't have to jump through hoops to find out about how the organisation is run. Financial transactions aren't hidden behind vague labels in a financial report or behind passwords on a website... These are some of the issues we're hearing that people in registered organisations are concerned with.

AO Before we talk about examples of transparent practices, I want to talk about accountability. So transparency often goes hand-in-hand with accountability. What is the relationship do you think between transparency and accountability?

DV You're right, the two principles are closely linked. To put it simply, transparency leads to accountability.



People rise to the occasion when they know there's an audience. They want to be seen to be doing the right thing. So, open access to a financial report can encourage the committee of management to make financial decisions that are consistent with members' expectations. If they're not, members can choose to hold the committee accountable in the next election.



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AO And of course members can find out who sits on the committee of management of their organisation by downloading the annual return from the ROC website. The annual return includes a list of the organisation or branches current office-holders.

DV Yes, that's correct and it also includes any recent notifications of changes to office holders.

But as you said, transparency doesn't mean all information is publicly available. For example, registered organisations must report the number of members they have in their annual return. They don't identify who their members are by name – that's not required by the legislation, and it's private and sensitive information. So it's important that organisations properly protect this kind of information.

AO We've already mentioned a few examples of how lodging compliance documents promote transparency in organisations. For example, the annual return includes information about organisation elections, which are scheduled in the current year, which may encourage some members to participate in the organisation by nominating for election.

But how do we know compliance requirements like the annual return have a tangible effect on transparency in registered organisations?

DV Well, the ROC publishes many of the documents lodged with us on our website. There is a page for every registered organisation, and years of records are available to the public, many going back some 20 years or so. So lodgements like financial reports, annual returns and elections can be viewed by anyone at any time.

We know these records are among the most popular documents downloaded from our website. Transparency keeps people engaged, and this is a positive factor for organisations to retain and grow their membership base.

The ROC also receives complaints from whistleblowers, and they are sometimes about information contained in lodgements such as financial reports (or even information that's not in there but should be...). We know that members are not only downloading compliance documents, but thinking critically about what the information means to their organisation or branch.



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AO You've mentioned some of the documents that organisations are required to lodge with the ROC. And these are just a few examples of how the RO Act promotes transparency. But we know good governance requires more than just the lodgement of compliance documents.

David can you share with us how a registered organisation can promote a transparent culture?

DV Yes one common complaint we hear from office-holders is around restrictions placed on documents for meetings ... materials like the agenda and preparation documents that help support decision-making. Transparency can absolutely lead to better outcomes.

One practical step is for the committee of management to provide copies of documents before a meeting (and with sufficient time) to allow officers to read them and think about the relevant issues. This promotes discussion and debate, which I think can only be a good thing for democratic decision-making.

It can also make it easier to identify conflicts of interest too, which is something organisations should manage carefully.

AO You've just mentioned conflicts of interest. Another way to promote transparency is through record keeping procedures. For example, by keeping a disclosure register for organisational branch officers to register any material personal interests that they have and for organisations or branches to register any related party payments or payments to a declared person or body that may have been made in that financial year. So how can record-keeping procedures contribute to transparency?

DV Well by keeping records can help organisations stay on top of compliance obligations.

One example is the officer and related party disclosure statement (or 'the ORP statement'). Preparing an accurate ORP statement requires office-holders to make full and timely disclosures throughout the year about matters like material personal interests.

Having processes like reminder emails, protocols and forms can help officers to remember to make disclosures, and to make them on time. You can also have a person responsible for chasing them up, monitoring them and creating a register. When it's time for your organisation or branch to prepare the ORP statement, you can be confident that its reporting all of the required transactions.

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- AO** David I've heard about organisations having similar record-keeping procedures for the recording of minutes of their meetings. Organisations must keep a minute of meetings book or register. The minutes need to include sufficient and clear information so that they accurately describe the issues that are discussed and the decisions that are made in a meeting. In a transparent organisation, the meeting minutes should also be accessible to office holders and to members, so they know where they are located and how they can access them.
- DV** Yes good minutes can also defend against allegations of conflicts of interests. If an officer has excused themselves from a meeting because the decision affects them personally, this should be recorded in the minutes. Later on, if allegations are made about conflicts of interest, people can refer to the minutes and see that the officer in question was not involved in the decision. If the minutes are easily available to officers and members, these kinds of allegations can even be prevented altogether!
- AO** Okay, so let's now focus on financial transparency. In a general sense what does this mean?
- DV** Well if we consider that transparency is about visible and accessible information, financial transparency includes timely, meaningful and reliable disclosures about an entities financial performance. It's about being transparent about the entities financial performance even if it's not in a strong financial position, and not actively hiding anything.
- AO** So making available an audited financial report to members of an organisation is one way of doing this?
- DV** Yes, absolutely...members having free and full access to the organisations financial report in a timely way is a great opportunity for members to see and understand how the organisation operates, its activities, any interactions with related parties and its overall financial viability. However, there are also other elements that should be in place to help an organisation be transparent.

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- AO** Okay so what are some of those other elements an organisation needs to have in place?
- DV** Well, to be accountable and transparent, an organisation will need to have systems for recording and reporting on financial transactions. This would also include embedding financial policies and procedures into daily, weekly and monthly activities like ensuring expenditure approval processes are followed. Another example is making sure that credit card statements are reconciled at the end of the month.



AO Now the misuse of credit cards, I think, is an emerging issue, David, that we've seen. And we've seen examples of this in some of our recent investigations and in whistleblower complaints we have received.

Can you share with us some of the issues the ROC has uncovered with credit card use?

DV Well, one issue we've been looking at is the enforcement of expenditure or credit card policies in organisations. All organisations must have these policies – it's a requirement under our legislation.

But we are hearing concerns about how some organisations and branches apply and enforce their policies. For example the policy may include an approval process before purchases can be made and a monthly reconciliation process, where payments are checked by another person to make sure that everything is above board.

If you have a policy that says the credit card statements are checked each month and approvals must be obtained, you should follow through and ensure these procedures are followed. Often the issues we see with credit cards are not just about a single transaction or a few transactions, there are dozens of them over many months. Proper checking can identify these issues and it encourages trust between officers and members. It can also lead to meaningful and reliable disclosures about an entity's financial performance.



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AO So that's a good point. Financial record-keeping procedures are great – they promote transparency – but if procedures aren't followed and policies aren't enforced, organisations face the risk of running into governance issues.

The misuse of organisational branch money is an obvious risk, but there could be others, like breaches of the legislation and reputational risks.

So what are the risks to an organisation if financial decision-making practices are not transparent? Do you have any real-life examples you can share with us David?

DV We've had it reported to us that an organisation's expenditure policy wasn't being followed. The written policy said that officers must not use their corporate credit card for personal use. It also outlined governance procedures around the review of credit card statements, the keeping of receipts, and how to repay money that's been incorrectly charged to the card.

AO So the policy was well written, and it said all the right things?

DV Yes that's right, but policies and procedures aren't effective if there isn't a culture of compliance with them. Having a procedure document that says something will be done in a certain way, doesn't mean it will be.



The complaint alleged that the policy wasn't consistently enforced and the procedures that were designed to create transparency were mostly ignored. Credit card statements were apparently taken at face value and checking was rarely done. It was left to the individual to highlight their own breaches.

Now, this report raises a whole number of risks for not just the organisation, but officers as well.



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AO So can you start with the legal risks for officeholders and registered organisations? I mean, what can happen if an officer isn't transparent in their record-keeping and financial decision making?

DV Well, in this matter there were potential breaches of internal policies and the rules of the organisation. Misusing an organisation's credit card can also be a breach of the officers' duties under the RO Act – like the duty to act with good faith and for a proper purpose. A committee of management can also be responsible for failing to implement governance practices. These breaches of duties are civil penalty provisions, and we've seen some serious financial penalties awarded by the Courts for financial misconduct. We've also seen some recent examples of criminal penalties for this kind of behaviour.

AO And there are also reputational risks, aren't there?

DV Yes. It's embarrassing for an organisation to have their name up in lights for poor behaviour. Similarly, for office-holders and employees.

Organisations want to avoid negative publicity, because it means their members and the community may not see them in a favourable light. We know the consistent enforcement of policies and procedures and other good governance practices can help to avoid reputational damage.

AO Overcoming these risks can be hard work too. It can take a long time for organisations to re-gain trust from members when they've had an issue. Not to mention how expensive they can be to work through. So in some instances you might need to seek legal and accounting advice, and maybe an internal investigation to identify and resolve the issues might need to occur.

DV Yes and that's on top of any possible civil penalties the organisation might have to pay. Remember that's all members' money too. And this type of issue is one that members might resign their membership over.

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AO So there's three sides to this issue, you should have the policies AND you have to comply with them AND then enforce them.

So David, are there any other transparency issues that have been reported to the ROC?

DV We have also seen issues around the disposals of assets, for example the transfer and selling of property or motor vehicles.

We've seen an example where an elected officer holder gifted cars belonging to the organisation to departing officials, without getting the required approvals of the committee of management.

In last month's episode of ROCpod about related parties, we discussed the requirements under the Australian Accounting Standards for the disclosure of related party transactions within financial reports. This issue is an example of a transaction that could potentially fall under the disclosure requirements and need to be included in the organisation or branches full financial report.

AO But I have to say – just because certain information is reported publicly or a collective decision is made it doesn't actually make the decision or action okay, does it?

DV That's right a group of people could do the wrong thing together. So it's important for organisations to have governance procedures, with levels of oversight along with public reporting requirements, to reduce the risk of misconduct.

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AO An allegations about the below-value disposal of vehicles raises serious issues involving breaches of civil penalty provisions of the RO Act. So if you want more information about this, you can download a compliance update we've released on this topic. The compliance update highlights the issues we've identified and encourages leaders of organisations to review their practices.

We'll provide a link to it on the podcast page of our website.

David, elections are another area where transparency is essential. We spoke about purpose or the objects of the RO Act, which includes promoting accountability in organisations and encouraging members to participate in the function or governance of their organisation. Another aim of the legislation is to provide for democratic control in organisations. Can you explain how transparency in elections support these objectives?

DV Elections are an opportunity to get involved in your organisation. You can nominate as a candidate in an election, in which case if you're elected you'll have the



opportunity to participate directly or influence decision-making. You can also keep office-holders accountable by casting a vote in an election.

Transparency is essential to ensuring elections are run fairly, and in accordance with the ROC Act and the results are an accurate reflection of the will of members. Following proper process creates confidence, trust and integrity in these results.

AO So when compliance issues are identified, the ROC often provides guidance to organisations about how they can improve practices. Can you share with us some of the tips we've given to organisations about supporting transparency in elections.

DV Yes Andrea. One issue that's come up is about how money and resources are used in election campaigns. It's an offence under the RO Act to allow an organisation's property or resources to be used to promote one candidate over another during an election. For example, people shouldn't have free reign to use work email accounts and vehicles to support the incumbent officer in their campaign for re-election.

Instead, organisations can provide a standard template for informing members about candidates, and it should be clear whose resources will produce it.

We've heard of organisations clearly spelling out the rules around the use of vehicles, phones and equipment for campaigns in policies, but sometimes they're difficult to apply when one of the parties is an incumbent. So you should be transparent about why certain decisions are being made and what information is being shared in journals, websites and other organisation-sponsored channels.



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AO In this episode we've spoken about how different published documents support transparency. After a branch or organisation election has been conducted, the Australian Electoral Commission, or the AEC, will produce a post-election report. Sometimes the AEC will raise concerns in the report about any difficulties or issues that they've encountered during the election process. Can you explain how responses to adverse reports support transparency and integrity of election results?

DV Issues that are raised by the AEC about the conduct of elections should be addressed by the organisation and brought to the attention of its members. They are an opportunity to fix issues and make improvements before the next election.

For example, the report might identify rules that were difficult for to interpret or apply. It's in everyone's interests to have clear rules, as ambiguity can lead to a challenge in the election results.

Post-election reports and responses to them can be published on the organisation's website – it's that simple. And of course the ROC does publish post-election reports on its website. Ignoring them or withholding responses to these reports can raise suspicion about the integrity or the result. If the organisation intends to make changes, like to its rules before the next election, members deserve to know about it.

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AO Let's finish this episode by looking at our own procedures here at the ROC. We like to practice the same good governance principles we promote.

How, David would you say the is ROC a transparent regulator?

DV There are lots of ways we try to lead by example.

As a Commonwealth agency there are some public reporting requirements we must comply with. But we try to do more than the basics.

So for example, we like to make it really clear to organisations how we will assess compliance. One way we do this is by publishing assessment checklists. These are the same documents our officers use to assess and process lodgements like financial reports and ORP statements.

AO And we don't actually have to publish our checklists, do we?

DV No we don't, but we think they're essential to transparency – organisations know how their lodgements will be assessed by the ROC. And we know the checklists support voluntary compliance, which also contributes to transparency in organisations.

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AO The ROC also publishes information about its compliance activities online. For example, on our website you can find a list of current inquiries and investigations, as well as past ones.

Earlier in this episode we spoke about the privacy of individuals – transparency doesn't mean giving the public full access to everything.

How does the ROC actually strike a balance between protecting the privacy of individuals and promoting a transparent culture?

DV Well we deal with sensitive matters (like whistleblower disclosures) and we don't publish information about them in the same way that we do for compliance obligations like financial reports. It's essential to keep confidential information secure.

Sometimes sensitive information is lodged with prescribed information for elections, like a letter of resignation of an officer. Organisations need to lodge this with us because its relevant to an election decision, but we won't generally publish it online.

As a Commonwealth regulator, the ROC is also bound to follow the Privacy Act.

AO Thank you so much for your insights, David. Especially the real examples you've shared today about how officers and leaders can promote transparency in their organisation.



DV You're welcome, Andrea. Thank you for having me.

AO Please join us again next month to hear about the latest compliance issues.

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