



ROCpod episode 36 – ROC Inquiries and investigations

Speaker Key

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CH Hello and welcome to *ROCpod*. My name is Caroline Hamilton and I'm the Senior Communications Adviser at the ROC. Today's episode is about ROC inquiries and investigations. Here at the ROC we use various tools to promote and enforce compliance in registered organisations – and this includes, in certain circumstances, inquiries and investigations.

But what happens during an inquiry or in an investigation? Who from the ROC is involved? How does the ROC engage with organisations and branches, and how can organisations help to support a positive outcome?

To answer these questions (and more!) I am joined by the ROC's Executive Director, Chris Enright. Welcome Chris.

CE Hello Caroline, and thanks very much for having me on.



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CH So before we talk about today's topic, Chris, I think it's important to give our listeners some context.

The ROC is a small commission of about 30 staff who operate across three streams; Education and Reporting, Financial Reporting and Analysis; and Compliance and Investigation. It is essential that the ROC's staff work closely as a team, and in fact they regularly perform roles across more than one stream, often using the same data



from our single case management system for different purposes. It makes us a more efficient and effective, data driven regulator.

- CE** Absolutely, Caroline. The efficiencies are important because we regulate federally registered organisations which have more than 2 million members and annually collect around \$1.8 billion of members' money while owning or controlling around \$3.3 billion in assets.



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- CH** The ROC works with organisations to deliver a range of tools, guidance and advice to educate and help them comply with their obligations. We publish financial reports and other information so that members know where and how their money is being spent and other stakeholders can be informed about an organisation's performance and compliance.

It is, however, a complicated operating environment and sometimes we see non-compliance emerging. So what approach does the ROC take to any non-compliance, Chris?

- CE** Well our first approach in most cases is to work with registered organisations to remediate non-compliance, but in an exceptionally limited number of cases and for a range of reasons, our measured approach requires us to conduct inquiries and investigations.



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- CH** So most instances of non-compliance are resolved through direct engagement with organisations. What does that look like?

- CE** You mentioned our extensive and evolving range of education tools and resources to prevent non-compliance in the first place – that's one major component of it. But preventing non-compliance is just an everyday part of our operating environment and the work that we do. We actually pride ourselves on being available to help organisations when they fall into non-compliance or if they have questions about their obligations.

so when we detect an issue, in most cases the first thing we'll do is to engage the organisation constructively to fix it. For example, when our financial reporting team identifies that something isn't quite right in a financial report, they'll get in touch with the relevant reporting unit. So we've been raising awareness for the past couple of years about changes to some key Australian Accounting Standards that affect financial reports – however we've seen some non-compliance with the disclosure requirements relating to those Australian Accounting Standards in the financial reports lodged with a financial year ending in 2021. So we're out there working with reporting units to fix that.



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- CH** So the solution may be as straight forward as the ROC raising the breach with the organisation and arranging for the lodgement of some extra data. This way members



of the organisation can have the information they need to see how their money is being spent.

CE Yes, look that's really where the alignment of our teams works best. So the Financial Analysis team will work with our compliance staff to ensure how best to deal with individual non compliance and, if it's a broader or systemic problem, they'll work with our education team to raise awareness of the issue more universally. And as I said earlier, in most cases this involves engagement and providing advice about how to co-operatively remediate the issue, but it could be we also need to issue a compliance update so all organisations can learn from the issues, or including it as a new example in a fact sheet, which is something we do quite regularly

CH Or giving it a mention in a podcast like today!

CE That's exactly right, Caroline!



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CH We find that a collaborative approach can prevent small issues from becoming big ones ...

CE We encourage all organisations to engage with us at the earliest possible stage.

And we'll always let the circumstances guide our response.

Is the non-compliance likely to continue? What efforts have the organisation taken themselves to fix it? How serious is the breach? And so that we are reasonably consistent, what approach have we taken in previous similar matter? These are just some of the factors that are likely to influence the next steps.

CH So generally only in serious, recurring, systemic or deliberate instances of suspected non-compliance will the ROC open an inquiry or investigation to help us gather more information ... A really important outcome from this is transparency for members. We want members to have transparency into how we are dealing and working with their organisations so they can be fully informed about relevant issues

CE Yes, that's right, Caroline. We see indicators of statutory breaches and non-compliance just about every day, involving a range of matters, including record-keeping, elections and things like financial reporting.

But at the time of this recording, we only have 2 open inquiries and 3 investigations. So to put that in perspective, we regulate the financial reporting of about 280 reporting units and we receive over 380 Officer and Related Party Statements and we make arrangements for more than 200 elections every year. On average, the ROC receives around 1700 lodgements every year. So, enforcement is a tool used only where it is considered necessary to look more closely at suspected serious cases of non-compliance.



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CH The 3 open investigations have been commenced under section 331 of the Fair Work (Registered Organisations Act) – or as we call it, the RO Act for short. But it's important to distinguish a section 331 investigation from a whistleblower investigation. They're different, aren't they Chris?



CE Yes, look some people sometimes assume that they're the same thing, but they're not.

Whistleblower investigations arise when we receive information from people associated with an organisation, and in many cases we have a statutory obligation to investigate those concerns within a short timeframe. In a whistleblower investigation the ROC doesn't have the same powers to compel people to produce documents or answer questions as it does in a section 331 investigation – we rely heavily on the co-operation of officers and organisations and others.

So whistleblower investigations are run differently...you can think about them as a fact-finding exercise where we try to establish whether or not there may have been a breach that needs to be looked into further.



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CH So do whistleblower investigations happen more frequently than investigations under section 331?

CE Yes they do. We have received about 270 whistleblower matters since the whistleblower scheme began in 2017, and about 50 of them have resulted in the ROC taking further action. So this can include or has included a range of things – from organisations implementing internal changes to their policies and processes through to the ROC commencing an investigation under s 331. So whistleblower investigations are a large part of what our compliance team does, with great support from our financial team, but they're very different to our formal investigations where we have what are known as compulsory powers.

CH In this episode we'll be talking about investigations under s 331 of the RO Act. If you want to know more about whistleblower investigations you can go back and listen to episode 30 of *ROCpod*, which covered what organisations can expect from a whistleblower investigation.

CE Yes and to get back to the topic of the ROC's current and finalised inquiries and investigations, I also want to let our listeners know that we publish the entire list of them on our website for transparency.



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CH Thanks Chris, we'll post the link on the webpage of this podcast on the ROC website.

So the ROC has the power to commence an inquiry under section 330 and an investigation under section 331 of the RO Act. Can you explain to us how an inquiry is different to an investigation?

CE The main difference between these lies in the ROC's power to compel information. Our inquiries rely on voluntary cooperation from people and from their organisations. We have positive and productive working relationships with the vast majority of organisations, and because of that, in most instances, inquiries are able to be resolved quickly and efficiently.

That may be considered an advantage by organisations. Organisations that co-operate and share information in inquiries, and investigations, support the ROC to



reach a quick resolution and our aim in reaching out may be simply to get clarification.

So many matters have resolved quickly when records and other information are submitted voluntarily, especially where the organisation has been part of identifying the concerns. We also share our experience of best practice, so organisations can improve their internal processes and reduce the risk of further complaints.



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- CH** Some people, for a variety of reasons, may be reluctant to engage with the regulator. Can you explain some of the limitations of an inquiry?
- CE** Well largely the ROC is limited in an inquiry to obtaining information from any complainants and the organisation itself or from cooperative officers or employees. Third party entities that may have relevant information may be reluctant or even prevented from cooperating because of privacy, confidentiality or even other contractual or legal restrictions.
- CH** So in an investigation, unlike an inquiry, the ROC *can* compel information to be produced. How does the ROC use this power?
- CE** Yes, look the ROC has compulsory information-gathering powers that can be used when we start an investigation under s 331 of the RO Act. While a s 331 investigation allows the ROC to use these compulsory powers, the ROC can only commence a s 331 investigation if the Commissioner or his delegate are satisfied that there are reasonable grounds to do so. So once that threshold is met, there are more powers available to the ROC to obtain relevant information.



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- CH** Can you explain what some of these investigation powers are?
- CE** The ROC can compel an organisation to provide us with documents, or require a person to attend an interview to answer questions. This can be useful to enable the ROC to gather information from third parties and individuals, and assists in the small number of cases where people and organisations (for whatever reason) are reluctant or hesitant to voluntarily engage with us.
- At the end of the day, it's about getting to the bottom of the issue. Our approach is to follow where the evidence takes us.
- CH** Are there any other circumstances in which the ROC will commence an investigation?
- CE** Yes, look we've mentioned s 331 which is the most common type of investigation we conduct, where we're satisfied that there are reasonable grounds for an investigation. But in some circumstances, the ROC **must** investigate the matter, that could include:
- where an auditor of a reporting unit provides a 'qualified' auditors report that raises non-trivial issues, or
 - where an investigation arises from a request by 250 members or 5% of the membership, or



- in some circumstances where there is a referral to the ROC from the Fair Work Commission.

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CH You've spoken about the benefits of constructively engaging with the ROC. I'm aware of one very lengthy matter that could have been resolved in a matter of weeks. However, with the absence of co-operation by the organisation resulted in an investigation that was drawn out over several years – something that organisations and the ROC want to avoid, for obvious reasons!

Okay, let's now take a closer look at how inquiries and investigations are run, and we'll do this through some examples.

We've seen instances where an investigation has immediately followed an inquiry, but this isn't always the case. Suspected non-compliance can lead directly to an investigation.

CE Sure, Caroline. Where do you want to start?

**00:12:56**

CH Let's start with the potential triggers of an inquiry or investigation.

You've said, that the ROC must be satisfied that there are reasonable grounds for commencing an investigation into the breach of a civil penalty provision of the RO Act, or that a reporting unit hasn't complied with its rules about financial management or financial reporting obligations.

How does the ROC get information in the first place about the kind of non-compliance that may lead to an inquiry or investigation?

CE Look we get our information from a range of sources Caroline ...

Firstly, the ROC very often detects statutory breaches and non-compliance through the analysis and assessment of the documents that are lodged with us. This is where the alignment of our teams working closely together is vital for us. It enables us to determine when it's appropriate to deal with the vast majority of matters with the sorts of engagement and advice that I've talked about earlier.

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CH Can you explain what you mean by the word 'documents'. Are you referring to lodgements that are made with the ROC such as financial reports and annual returns?

CE Yes look that's right. The RO Act requires organisations lodge a range of financial and other documents with us and before we publish them on our website, we'll do a check to make sure they comply with the mandatory requirements.

CH And this is where our online checklists can help organisations, isn't it?

CE Yes it is. We're really strong on this.



We publish checklists on our website so that organisations can use to see the steps we take to check whether their lodgements are compliant. We encourage organisations to do a comparison between the checklists and their own documents before they lodge them with us.



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CH That seems like a very simple and practical step to take.

But we also see many inadvertent or accidental and one-off examples of non-compliance which are unlikely to escalate to an inquiry or an investigation, unless a very serious breach has taken place.

Do you have an example where a lodgement has revealed possible serious non-compliance?

CE Look in one case, we had a reporting unit lodge a financial report with us. Its auditor provided a qualified report, which found that the audit was unable to verify that all of the credit card expenses, which were included as business expenses in the financial statements were made solely for business purposes. So that's an example of one of those cases I mentioned earlier where we were required to undertake an investigation.

So the investigation relied both our compliance and finance teams and once we were done, the education team released a compliance update on credit card use to help other organisations benefit from the investigation.

So there are many other examples of serious non-compliance we've discovered over the years. For instance our analysis of lodged documents in a number of cases demonstrated that membership numbers were being grossly over reported, in another case elections weren't being conducted for a significant number of years and even in other cases financial reports were being provided to members years after the relevant financial timeframes.



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CH So some ROC investigations have found evidence of serious contraventions of the RO Act or breaches of organisations' rules?

CE Yes, well look that's right, although even after we find serious contraventions, the outcomes of ROC investigations actually cover the spectrum - from identifying the contraventions without taking further action, all the way to a small number of court cases for contraventions either by an organisation or an office holder.

Let me demonstrate what that looks like. Last week for example, I wrote to a Branch of a union which had recently published a newsletter telling its members its financial report was about to be provided to them. Unfortunately, right after publishing that newsletter, the Branch then contravened a range of RO Act provisions because its financial report had not been examined or approved by the CoM, as well as not having been provided to its members or lodged with the ROC within the required statutory timeframes. So in my letter I pointed out to the Branch that telling its members one thing and then breaching the Act by doing another was not an example of good governance. But rather than taking enforcement action, we are continuing to



work with the Branch to ensure its members have the financial information they need and we will monitor how things go with the next financial report.

So we prefer that type of approach rather than bringing civil proceedings because our experience is that most people and organisations will work diligently to improve their governance processes and transparency for their members when we can show them what ‘good governance’ actually looks like.

That’s the reason that at the time of this recording, even though we regularly see many contraventions of the Act, the ROC has only one matter before the courts. And that particular matter concerns alleged breaches of an office holders’ duties relating to financial administration and credit card use.



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CH So what is the ROC trying to achieve by conducting investigations and inquiries?

CE Our first goal is to provide transparency to the members of registered organisations so that they have the best information about whether their money is being appropriately spent. All of our efforts are directed towards proper governance and accountability for the benefit of members and even our enforcement efforts are focused on those goals.

So organisations must ensure that funds are used for a proper purpose and for the benefit of their members. Without a strong governance framework, it’s easier for financial misconduct to take place.

CH What can organisations learn from previous investigations? Can you identify anything they can take away to strengthen their governance?

CE Yes look it goes back to making sure your organisation has a strong focus on good governance. Rules aren’t enough to be setting your governance framework. Organisations and branches must have expenditure policies and procedures that are followed. And checks and balances to prevent and detect financial misconduct are also necessary.



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CH We discussed the importance of proper financial decision-making in episode 31 of ROCpod – you can go back and listen for best practice tips. You can also refer to our compliance update about the misuse of credit cards, which we released in July 2021 following a number of whistleblower allegations about that issue.

Chris, you said earlier there are several sources of information that may prompt an inquiry or investigation. What are the other sources? Do people report matters directly to the ROC?

CE Yes, look we have spoken about the ROC’s whistleblower jurisdiction which is designed to bring non-compliance issues to our attention and the attention of their organisations. Several of our inquiries and investigations have been triggered by whistleblower disclosures – by officers, members or employees of organisations who have lodged a report with us. Even other entities that the organisation deals with, such as a registered auditor, can make a whistleblower disclosure.

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- CH** Do you have an example where a whistleblower disclosure has resulted in either an inquiry or investigation?
- CE** Sure, I can share an example that resulted in an inquiry. It's a matter that also illustrates how co-operation and engagement can lead to a quick resolution ...
- CH** Excellent ... go ahead.
- CE** Okay, so an officer of a registered organisation made a protected disclosure with the ROC. It was alleged that the organisation breached record-keeping requirements in relation to some members of the organisation. So specifically a whistleblower alleged that ineligible members were added to the organisation's register in the lead up to an election, and that a senior manager had intended to influence the people who nominated for that election.
- CH** So the whistleblower investigation recommended that the ROC commence an inquiry. Is that right?
- CE** Yes, that's right. The ROC decided that more information was needed to find out about the extent of potential non-compliance.

To their credit, the organisation that was subject to the inquiry fully co-operated with the process and they voluntarily provided information, including the documents that we had requested.

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- CH** So what activities formed part of the inquiry? Was it done in writing or did the ROC engage directly with people from the organisation?
- CE** So the organisation provided copies of records following our request and we also interviewed key witnesses and obtained several written statements.
- So the ROC engages with organisations in many ways – we'll write to them, pick up the phone and have a chat or have a meeting. And we'll use appropriate methods that we think are capable of efficiently resolving matters.
- CH** So what was the result of this inquiry? You said earlier that the organisation supported a quick resolution.
- CE** Look the inquiry found that the technical breach of the record-keeping requirements was confined to the single election, and that the organisations' register of members otherwise complied with the requirements. So we identified some issues with how the organisation ran its elections, and following the inquiry the organisation voluntarily applied to have its election exemption revoked (which had previously allowed the organisation to run its own elections).

So considering these factors, the inquiry was closed without any further action taken.

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- CH** That's a great lesson – co-operating with the inquiry process and voluntarily taking action that supports compliance and good governance can lead to a positive result.
- CE** Yes and it doesn't even need to reach that stage. Remember, there are only a small handful of matters that are subject to an inquiry or an investigation, and most non-compliance is resolved at earlier stages.
- CH** The ROC has a Compliance and Enforcement Policy, which is available on our website. The policy provides an overview of how the ROC carries out its compliance and enforcement functions. The policy covers many of the issues we discussed today, including the benefits of cooperating with us, and the transparency of the ROC's compliance activities.

Some of the examples of non-compliance have been reported to us by a third party, for example by a whistleblower. But it's not about 'catching people out'. There are lots of cases where organisations self-report to the ROC. They've identified that they need help, and with a bit of assistance they know they can get back on the right track.

**00:22:43**

- CE** Absolutely Caroline! Helping organisations with compliance is something we do every day. It doesn't make headlines, but I don't think I can emphasise enough how valuable it is for organisations to get in touch if they have questions or have identified potential problems. In just one of many examples like it, I got a phone call yesterday from the National Secretary of a registered organisation to discuss how that organisation was dealing with a serious issue relating to the potential misappropriation of members money. I was really pleased to hear the National Secretary tell me how the organisation had noted and was following the ROC's 'good governance' leadership by proactively focusing on good governance as a minimal standard in dealing with that matter. So we will be continuing to work with the organisation and assist where we can.

Look we talk to organisations in some capacity every day, and because we are a small, niche regulator people can easily speak to a subject matter expert straight away when they get in touch with us. We can provide tailored advice and assistance and we even have our "ROC To You" program where we will meet with organisations to help them with any compliance area they feel they need help with.

But look overall, I hope the message is clear – investigations and inquiries are used in limited circumstances. Most of the ROC's work involves engaging proactively with organisations to fix issues, help them improve governance and prevent non-compliance.

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- CH** Thanks for joining me today, Chris. Your real-life examples are a reminder about how organisations can work with us to promote voluntary compliance, and in many cases, prevent non-compliance from being litigated in the courts.



CE You're absolutely welcome Caroline, it's been a pleasure.

CH So please join us again next month. We'll be shining a spotlight on the ROC's jurisdiction – what is the ROC responsible for, and what is the jurisdiction of other agencies.



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