



ROCpod episode 3 – Interview with the Commissioner

Speaker Key

KM	Kristina Menzies
MB	Commissioner Mark Bielecki
AN	Announcer



00:00:14

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.



00:00:33

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

KM Hello and welcome to the third episode of *ROCpod: Talking with the Registered Organisations Commission*. My name is Kristina Menzies, and I am a Senior Adviser in the Education and Reporting Team at the ROC. In today's episode we will talk about the purpose of the ROC.



00:01:01

We will discuss its future priorities, and reflect on the industrial relations sector. To do this, I am joined by the inaugural Commissioner of the Registered Organisations Commission, Mark Bielecki.

The Commissioner is the head of the ROC and has powers under legislation to do a range of things, including the power to conduct investigations. Mark began his five year appointment on 1st May 2017. Commissioner, welcome to *ROCpod*.

**00:01:31**

MB Thanks, Kristina. It's good to be here.

KM Let's start today's episode by looking at your leadership since the commencement of the ROC in May 2017. What are your reflections on the first two years in your role?

MB Thank you for that. I suppose one of the most significant things is that we have had an increase in compliance rates. And one of the things I hoped to achieve in taking on the role was to ensure there was a good level of compliance in this area.

**00:02:00**

We've had an increase from 54%, to 82%, in terms of the financial returns. And in other areas, there's been an increase in compliance as well. That's good not just because of the statistics, but also because it indicates a commitment amongst organisations to do the things they need to do to comply with their obligations under the act. The other thing that I think has been a very good development over those two years is we have invested a lot into the education function of the Commission.

**00:02:34**

There was a small education activity carried out in the predecessor to the Commission, which was the regulatory branch of the Fair Work Commission. But we've taken that very much to the next level, and have invested heavily in all manner of educational tools. We have something just under 200 tools on our website, to help organisations navigate and deal with their obligations under the Act.

**00:02:59**

We've had a very successful programme of face to face workshops, which have run all around the country, and they have proven to be very well received and appreciated by the officers or registered organisations who've come along. That investment, together with several cases, which we might talk about, that we've run, though they've both contributed to that improvement and compliance.

One, because we've had the increase in the education and knowledge. And the other one because organisations can see the courts, see the obligations under the act as important.

**00:03:33**

And with a few key cases we've run, the impact has been one of general deterrence. Overwhelmingly, the vast majority of organisations do or want to do the right thing in relation to not only their legal obligations, but also by their members. And this has been evidenced by an increase in compliance rates over those two plus years that we've been running.

**00:03:59**

KM Great! So, you've obviously brought a wealth of experience with you to the ROC. So, I understand that you have previously been the South Australian Regional Commissioner at ASIC, which is also a Commonwealth conduct regulator. And you also led the Corporations and Corporate Governance Enforcement Team at ASIC. How has your previous professional experience influenced your leadership as the commissioner of the ROC?

MB The time I had at ASIC involved me in a number of areas of that organisation.

**00:04:29**

It's a very big organisation. In particular, you mentioned my leadership of the Corporations and Corporate Governance Team. That team was at the time the largest enforcement team in ASIC. And its focus was, as the name suggests, the conduct of officers in companies. So, there was quite a focus in relation to issues that came to light as to the conduct of various officers. And there was a focus, obviously, on corporate governance standards.

**00:04:59**

At ASIC I ran a number of cases, one of which was a bit of a benchmark in terms of the standards that apply to directors. In that case, the court found that a number of very substantial errors in the financial reports of that company was in part attributable to the fact that the directors didn't exercise enough diligence before they signed the accounts.

So, that time, and I would need to refine my expertise in the area of corporate governance and to look at that from a regulator's point of view.

**00:05:34**

Prior to that, I was in private practice, and in fact would defend directors from actions brought by ASIC. But overall, it was an exposure to a conduct regulator. And, look, I understand not everyone wants their conduct regulated, but the law specifies obligations.

And in a situation where registered organisations have privileges and advantages attached to them, given their status as registered organisation, that also comes with some obligations.

**00:06:02**

And the legislation has charged us to deal with that.

KM And what has been your experience moving from a corporate law environment to the industrial relations sector?



MB That's a good question. To take a step back, I moved from the private sector to ASIC. And when I arrived at ASIC I thought parties were quite passionate about their position in relation to various regulatory issues. But on my arrival at the ROC, I learnt that it was in a patch on the passion that exists in the IR area.



00:06:32

Here, participants are very committed to their positions. And while it's given rise to a more animated environment, effectively, many of the good governance issues that arise in the corporation area, also arise in the registered organisations area, and the industrial area that we look after. And, for example, if you look at directors' duties, they're pretty much mirrored in the RO act, in terms of officers' duties.



00:07:00

And in some of the recent cases we've had, the judges have liberally borrowed from judgements under the Corporations Act dealing with those directors' duties, and helping them to interpret the officers' duties that apply. But both regulators, ASIC and us, seek to influence and regulate the conduct of our stakeholders. Not everyone enjoys that, but that's the role provided for in the legislation.



00:07:27

Having said that, though, many of the principles that apply to good conduct as a regulator, applied in ASIC and they apply here. And while we are a compact agency, we're very focused on doing the right thing and protecting our independence.

KM And so, you've alluded to the enforcement and the investigation function of the ROC. One of the functions of the ROC is to investigate and take appropriate enforcement action where someone has breached the law. And we earlier discussed your leadership of what at the time was the largest enforcement team at ASIC.



00:08:04

What is the ROC's approach to taking compliance action?

MB The focus is on an evidence based approach. Actually, let me take a step back. There are many matters where we discover a contravention, or a contravention is brought to our attention, where we take no enforcement action at all. We actually spend time assisting the stakeholders and others who are interested in remedying their issues, to remedy them.



00:08:31

And so, the vast majority of matters we deal with, involve us supporting registered organisations and their officers in achieving compliance.

KM And is that where the education function of the ROC fits in?



MB It does. The education function has two primary roles. One is to prevent people failing to comply with the legislation. But also, once they have a problem, to give them the tools they need, to make sure they don't fall awry of the laws again.



00:09:04

But from that very broad base, there are a number of matters then that we consider to be more serious. And of those many hundreds, we have started or commenced actually three actions since the ROC has commenced. It's, in a sense, the tip of the iceberg in terms of our compliance activity. So, those actions are based on evidence, as I say.



00:09:28

And we've taken them in circumstances where there are clear and repeated contraventions. And in most of them, if not all of them, the respondent in the action has admitted all of the allegations. So, most of those have really distilled down to being penalty hearings. But that approach helps to develop the jurisprudence in this area, because judges have been giving commentary on the sections that we're looking at.



00:09:59

And I think nearly in every judgement, the judge or the full court has observed the importance of these laws.

KM Is there also an element of deterrence, that the ROC would highlight the action as against the law ... and so, therefore would take civil proceedings to create a deterrent for other organisations?

MB Yes. If we look at some of the examples of the cases we've brought. In one case, there's been multiple breaches of the obligation to notify of change of officer.



00:10:31

In the case I'm thinking of, it's something in excess of 80 failures to do so. Now, ultimately, that organisation, after two years of trying and correspondence from the regulator, they finally arrived at a system that meant it wasn't failing to notify.

But those failures to notify were very significant. Some were over a year late. And this is important, really, because no one knows which officers are making decisions in the absence of this information.



00:11:01

So, in that circumstance, an obligation that some organisations might have seen as a low level obligation, it will be clear it is an important obligation. In other cases, we've had quite wildly varying membership numbers listed for organisations. In one matter, the register had 20,000 members listed or in excess of 20,000 members, who were



not entitled to be members of the organisation.



00:11:29

And we took action in that circumstance. In another matter, an organisation failed to have elections for over a decade. And that failure of course undermines the democratic principles that are meant to operate in organisations. So, all of those quite serious issues. Those who want to criticise them will say they are, in quotes, paperwork issues. They're not really. These issues go to the democratic functioning of organisations.



00:11:57

And while they involve paper, that label is being used to minimise the importance of these areas. But in fact, they are important.

KM So, where there is non compliance and the ROC doesn't take court action, what is the ROC doing instead?

MB A typical example is where an organisation comes to us and volunteers that it has not been compliant in some particular area. We then work with them to examine the non compliance, and to see if we can help them to solve the problem.



00:12:29

We take a fairly practical approach with this. And to a great extent, we are solutions focused.

KM And how can members of the public, the officers, the employees of registered organisations, find out more about some of the compliance and investigative work that the Registered Organisations Commission are undertaking?

MB There are a lot of ways. Our website is a very rich source of information and materials. We have a subscriber base now in excess of 1,000. Subscribers effectively get first notice of things that change or develop.



00:13:00

We have a quarterly newsletter, which provides updates in relation to recent developments either in the law or at the ROC. Also, beyond that, we have a programme, effectively a national programme of delivering information workshops. Which are actually quite responsive to the requirements of our stakeholders, because we survey those who attend and ask what we might do differently or better.



00:13:27

And we take on those suggestions with each successive workshop. In addition, there's the opportunity for those who would like to get into more detail, to read some of the court decisions that have been handed down, because those decisions make



plain the court's reasoning around the obligations that were at the heart of those court cases. So, there's a lot of ways to get across information. And really, with appropriate application, nothing should be a surprise to anyone. But I get that this is a complicated area.



00:13:58

And it's definitely complex when people are operating in the real world. But I think that one of the things that can help organisations in dealing with that complexity is to have a very strong focus on good governance and the handmaid of good governance, which is good, strong culture.

KM So, looking forward, Commissioner, what are some of your priorities for your remainder of your term as the Registered Organisations Commissioner?

MB In particular, I'd like to help to foster the increase in compliance that we've had the benefit of.



00:14:30

I'd like to instil with registered organisations the significance of good governance. It's something that I speak about at each of the workshops we run in different states and territories. I think that if organisations grasp the nettle of the importance of good governance, it'll take them a long way towards meeting their compliance obligations. We are continuing to invest in and will expand our education capability.



00:14:59

Where I sit in my office, I have the door open and I can hear my officers pretty much on an ongoing basis taking phone calls from stakeholders and providing tailored advice. And I know not all public sector organisations do that, but it's part of my mandate under the legislation, that we provide assistance, guidance, and advice to organisations. And we're more than happy to do that.

KM Great, I think we'll end on that note. And I think that's all we have time for today. Thank you so much for our chat today, Commissioner.



00:15:29

I appreciate that you are busy, but it's great to get an insight into your style of leadership, and also your thoughts about the future direction of the ROC. I look forward to having you again on our podcast in the very near future.

MB Thanks very much, Kristina.

KM Don't forget to subscribe to our podcast series on your favourite platform. On Apple iTunes, Soundcloud, Spotify, or YouTube. Or, you can listen to us on our website, www.roc.gov.au.

**00:16:01**

In our next podcast episode, we will be talking about what it means to be an officer in a registered organisation.

AN *ROCpod* is the official podcast of the Registered Organisations Commission. It is copyrighted to the Commonwealth of Australia. The opinions expressed in *ROCpod* are the opinions of the particular speaker, and not necessarily the opinions of the Registered Organisations Commission.

This information is general and is not intended to be comprehensive. It is designed to assist in gaining an understanding of the relevant provisions of the legislation, the ROC, and its work.

**00:16:31**

The ROC is not able to provide legal or accounting advice. For further information, please see the materials on our website, www.roc.gov.au, or contact us at regorgs@roc.gov.au.