



ROCpod episode 9 – Help for organisations during the COVID-19 pandemic

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

CB	Catherine Bebbington
PC	Patrick Coyle
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. Don't forget to subscribe and see how ROCpod can help you and your organisation.

CB Welcome to episode nine of ROCpod: Talking with the Registered Organisations Commission. This episode is about the COVID-19 pandemic and issues all organisations may be experiencing.

My name is Catherine Bebbington and I'm a Senior Adviser in the Education and Reporting team at the ROC. The COVID-19 pandemic is presenting significant challenges for the community, including registered organisations as physical distancing and other measures require us to work in different ways.



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CB Like many other Australians, ROC employees are currently working remotely and you might notice that the quality of the podcast is slightly different as we're trying to get this to work on new technology over a longer distance. Today's podcast will explore some of the issues we know registered organisations are navigating at this time and the help and assistance available from the ROC.

I'm joined today by Patrick Coyle the ROC's Legal Counsel to talk through some of these issues. Hello, Patrick.

PC Hi, Catherine, it's nice to be speaking with you today.

CB Patrick, fundamentally what is the ROC doing to help organisations having problems with compliance at this time?

PC Firstly, we acknowledge that these are extraordinary times that are throwing up all kinds of new challenges which all of us are facing together. I want to emphasise that the ROC understands this situation can be quite difficult for organisations, their branches and their members. We're committed to working constructively and pragmatically with the organisations we regulate and we are mindful that they may encounter difficulties complying with their regulatory obligations due to the impact of COVID-19.



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PC Importantly, our key message is that the ROC is open and we're available to discuss and help organisations that need advice and assistance during this time. That could be about any number of day-to-day compliance issues including questions about holding meetings, conducting elections, accessing governance training, preparing and lodging financial reports, keeping records, lodging annual returns, preparing other compliance statements or making records of changes and the auditing or audit process.

I'd certainly encourage registered organisations to contact us about these or any other issues that are having with compliance at this time. What are you finding are some of the most common issues that organisations are contacting the ROC about at the moment Catherine?

CB Patrick, the most common one we're being contacted about is holding meetings, including the AGM. Organisations want to know how do they go about holding these meetings when there are government restrictions to the number of people who can even gather in one place?

PC Firstly, organisations must comply with the relevant State or Commonwealth Government restrictions that are in place regarding holding in person gatherings or any other social distancing measures. It's the ROC's view that during the pandemic



attendees of meetings may be present or participate using technology so long as that technology enables social interaction and what is called, a meeting of the minds.



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- CB** The meeting of the minds is the key point, isn't it, Patrick? The technology needs to allow for a reasonable opportunity to participate in the meeting, such as interaction between attendees, asking questions and discussion of issues. What do you think a reasonable opportunity to participate means?
- PC** I guess it means the people attending the meeting should have a reasonable ability to participate in debates and ask questions, for example, of the auditor and of the management of the organisation. They also must have the ability to be able to give their views and to move amendments to proposals. And it also needs to allow for the proper recording of votes and the conduct of votes in a way that ensures that the results are accurate, for example, having an electronic vote rather than by a show of hands.
- CB** So, things like video conference, telephone conference or livestreaming might meet these criteria?
- PC** Yes, provided that the technology used enables that interaction, by contrast, a series of emails in the form of a circular resolution might not meet those requirements. The ROC supports the holding of meetings using appropriate technology unless the rules of the organisation prohibit it, so you need to check your rules. The ROC's produced a guidance note on this that's on our website that will help organisations to determine how they might hold meetings during this period. What is another of the questions that we're being asked about?



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- CB** Another big issue that organisations are contacting the ROC about is elections, what do organisations need to know about holding their elections during this COVID-19 pandemic?
- PC** During the pandemic organisations and branches that are in the process of conducting an election or are due to hold an election at this time are likely to be affected by revised timeframes. The Australian Electoral Commission has written to all organisations advising in the light of the pandemic that it will reset the timetables for elections where ballots are currently underway by extending the time for the ballots and his going to put on hold all elections that are not yet commenced.
- It's going to review the situation towards the end of June as to whether those elections can then be re-timetabled. This means that for some organisations that have a scheduled election due, those elections will be delayed and my not be run according to the timetable that would be set out in the organisations rules. What does this mean in practice for organisations, Catherine?



CB In our experience for most organisations this will have little effect on day-to-day operations. Some organisations and their branches won't even have an election due at all, but for some organisations you might have office holders who have been elected in the past for a specified term will be front for elections under your rules.

Normally what would happen is that you would have an election and if the current office holder has retired or not been successful a new office holder would come and replace them at a time specified under the rules. What this means for most organisations is that this new election will be deferred and the existing office holder will continue to hold office until eventually the AEC holds that election.



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PC That's right, there's a legal doctrine of holding over, which means that in most cases a person will remain in office until their removal or resignation or until another person replaces them by an election to that office. This will be applicable if your rules allow for someone to stay in office until their successor is elected or if your rules don't say anything about vacating office.

CB The doctrine of holding over just makes sense, Patrick, because it allows organisations and branches to keep functioning in situations exactly like this, but it isn't the case for all organisations. Some rules state a person must vacate their office at the end of the term and this overrides the doctrine of holding over. If your rules say that the office becomes vacant then the office is empty and it will stay empty until an election is held.

You can't appoint someone to fill this vacancy like it's a casual vacancy; it is going to have to wait for the next election. So, it's important to consider if the vacancy will affect the organisations ability to function effectively. We've produced a guidance note on this issue that is available on our website, but, Patrick, what can an organisation or branch do if it considers a particular office is necessary for it to continue to function but it needs an election to fill it?



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PC Catherine, it's easy to see how a vacancy in some roles and in some organisations such as a casual vacancy to an important office like an office of the secretary could in some cases impair the ability for the organisation to function effectively.

In these circumstances we'd encourage organisations to speak with us about the issue, we intend to work co-operatively with organisation and the AEC to assist in resolving all of those issues. The AEC has advised us that it will work with us for the election of critical officers if their vacancy means that the organisation will be unable



to operate without that office being filled.

- CB** So, Patrick, with this in mind, should organisations and their branches continue to lodge prescribed information for any election or just the necessary ones?
- PC** Certainly we'd appreciate it if the organisations could make their best efforts to lodge prescribed information for all elections with the ROC. In accordance with the RO Act and their relevant rules, this can assure assessments and appropriate plans can be made about the timing and conduct of elections. If organisations and branches are experiencing any difficulties achieving this we certainly encourage them to engage with us so that we can work something out.
- CB** Contacting us for help in the process is a good step, but it's also really important at times like this to keep good records, isn't it? Because we would recommend to all organisations and branches that you keep minutes and other records explaining the decisions you're making at this time. If you can't lodge something make a note explaining what you tried to do or why you couldn't.



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- CB** If you've considered holding an election and whether an office is essential or holding a meeting or AGM and you've not been able to under the new physical distancing restrictions we would strongly recommend you note this and outline your reasons. If you've considered alternatives and found that they are impractical or if you settled on something like video conferencing, keep a minute explaining why you decided to do what you did or just as importantly why you couldn't do something.
- PC** I agree, Catherine. Undoubtedly one of the key challenges to good governance for organisations during this period will be about good record keeping. This is going to be a challenge for all of us with so many people working from home and that's why good record keeping needs to be a focus of good governance.
- CB** This is particularly important, Patrick, for the next big concern being raised with us, which is officer financial training. The ROC has received a number of enquiries about financial governance training and the barriers that organisations and their branches are facing trying to arrange it for their officers.
- PC** That's right, Catherine. Officers with financial duties are required under the RO Act to attend approved financial training within six months of taking up a new office. Training providers will however need to comply with the physical distancing measures, which may affect their ability to conduct face-to-face trainings. What options are there for officers who need to undertake training during this period, Catherine?



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- CB** In recent weeks the ROC has approved a number of online governance training



packages. These are delivered by the ACTU and Weston Woodley & Robertson, covering the duties of officers that relate to the financial management of registered organisations and their branches. There's also an online training package for employer organisations being conducted by the Australian Hotels Association Western Australian Branch.

- PC** We've also written to approved face-to-face training providers and have asked them to consider discussing with the ROC available options to deliver their training via alternative technologies such as video conferencing so long as that training meets the requirements set out under the RO Act. Details of approved training providers are on our website and we'll keep that list updated as any new online packages become available.
- CB** Our final topic today is audits and how they might be conducted during this pandemic.
- PC** That's right; the COVID-19 restrictions might make it difficult for audits to be conducted in the usual way. This may require consideration as to how organisations provide audit evidence and how auditors may need to make modifications to the way they approach audits. Things that would normally occur during the audit like attending offices or meetings in person may need to be changed.



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- CB** And the ROC encourages all its registered auditors to review the resources on the ASIC website or the Australian Auditing and Assurance Standards Board website. Accounting professional bodies such as CPA Australia or CA ANZ have also released useful and detailed guidance material relating to holding audits during the COVID-19 pandemic. These resources are equally applicable to auditing our registered organisations and they might help out auditors who are trying to do audits right now.
- PC** The situation is continually changing, we're providing information as the situation evolves. This information is available on the COVID-19 section of our website and we would recommend you go by our website regularly to stay up to date. There may be other issues out there that are causing difficulties, but unless you discuss them with us we just won't know that there's an issue. So, we do encourage you to get in contact with us and of course, contact us if you have any questions or concerns, we're here to assist.
- CB** Thank you so much for your time, Patrick. And we'd also recommend that our organisations and branches subscribe because we are sending our subscribers these updates. So, thank you, Patrick.



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- PC** You're welcome, Catherine, a pleasure.
- CB** Please join us next month for our next episode of ROCpod: Talking with the Registered Organisations Commission. We are changing these topics at the moment based on the feedback we're hearing from you about what you need to hear, so please join us next month for episode ten.
- 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 Registered Organisations Commission and its work. 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.