



ROCpod episode 11 – Record keeping

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

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BS	Bill Steenson
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 ROCpod. My name is Catherine Bebbington and I'm the new principal advisor of the education reporting team. Today's podcast is the first in our Good Governance and Practice series, which we're going to bringing to you over the next year, sharing hints and tips on good governance. And they're going to be aimed at a very practical level to help you identify best practice and improve your own governance.



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CB Sometimes big problems can be identified, or even averted through constant little good habits. And we're trying to share some of the things we've learnt through working with organisations. Good governance protects you. It protects your members and protects the organisation. Today, we're focusing on the importance of proper



decision making and record keeping within registered organisations.



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CB I'm joined by Bill Steenson, the ROC's principal lawyer for compliance and protected disclosures to talk about this today. Hi Bill.

BS Hi Catherine.

CB Let's start with decision making. One area we often see issues around is making decision. Bill, when it comes to meeting good governance, what sort of decisions are we talking about?

BS Well, it applies to just about every decision that the organisation takes. Some of them are very simple.



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BS When can I get my travel reimbursed? Usually that'll be in a policy. Others are more fundamental. Like who has the authority to employ someone to work for the organisation, or to purchase or sell assets. These are all relevant to decision making.

CB Okay. So, let's start with a couple of examples, then. Let's say, I want to travel to Sydney to speak on behalf of the organisation. What kind of decisions are being made and what records should I be keeping?

BS Okay, so, for the travel, we'd expect there to be some evidence that it's work-related.



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BS You've travelled to Sydney to be a speaker of behalf of the organisation, so there'd be details of that. Likewise, the travel policy may say something about the rate at which the travel gets paid, or you get reimbursed. For example, for an economy class seat rather than first class one. And ultimately, someone, usually the committee of management, has approved the policy in the first place.

The policy may also contain confirmation on whether you actually need to get the travel signed off in advance.



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CB And that is a big one we see, isn't it, Bill? When there are rules that say things must be done before the event occurs. We often see issues arising with branches and organisations making these decisions after the fact. We understand on the odd occasion things accidentally get missed, but if a decision is required before the event can occur, there should be systems and processes in place to ensure that it routinely happens before the event, rather than afterwards.

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CB But what about those bigger decisions you were talking about?

BS Well, in relation to employing someone, the rules of the organisation... And every organisation has to have rules. They set up the powers and duties of office bearers and of governing bodies. So, somewhere in those rules, there will be details on who can make decisions on behalf of the organisation as a whole.

For example, the rules might say, the branch secretary is authorised to engage such staff as are necessary or the branch performance functions.

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BS Now, in some cases, that might also be subject to endorsement by the committee, and others not. So, again, take a look at your rules.

And as for purchasing or selling assets, the rules will invariably have something to say in them. They empower a particular body to enter into contracts, to buy and sell property and so on. You're likely to find it under a heading like, Powers and Functions of the committee of management, the council, the board... Whatever your organisation chooses to call it. The name varies, but the principle stays the same

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CB And that's why people on these bodies have to take their responsibility serious, isn't it? They're spending member's money. Which is where the requirement financial governance training comes in.

BS Absolutely, Catherine. The legislation requires every officer with financial duties to undertake approved training within six months after being elected to a new office, unless they grant an exception because of their existing skills, knowledge and qualifications.

CB And we are talking about everyone on the committee of management.

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CB They all make financial decisions. The rules make that clear. It's not just treasurer or the officers who sign operating report or the declaration that lodges it with the ROC. The committee management will likely be responsible for financial reporting, loans, grants and donations, and budgeting. And if the committee collectively has the power to decide how the funds are spent, that's a financial decision and each of those committee members is a financial decision maker.

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CB The financial training is designed to help officers understand their obligations and empower them to act in accordance with their duties. It gives officers the tools and knowledge to make financial decisions properly.

Bill, we've all heard the example of the member of the committee of management who came to the committee meetings straight from work, was handed the financial document, didn't know what they meant, but they looked left and they looked right, saw what everyone else was doing and voted the same way.



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CB It's a common story.

BS No doubt. But the financial training and the act make it clear that all officers are responsible for their decisions, especially financial ones. It doesn't matter whether you're a fulltime or an honorary officer. When it comes to good governance, all of these things are related. So, knowing who's a member of those bodies and whether they've received training is really important, especially where the people on the decision-making body are sent there by others.



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BS So, for example, branch officials who are representatives on the national executive, who will likely hold more than one office, and the training obligation is in relation to both.

CB Which is a good practical point to pick up on, Bill. If you do have collegiate officers and you're in the process of arranging financial training, have a thought to whether the election cycle is fully completed. We have had officers who were trained in relation to their branch, committee and management role, and then collegiately elected to a national office who needed to apply for an exception for the new office.



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CB But, do bear in mind that six-month deadline for training. It can't be extended. Back to decision making, Bill. What are some of the challenges to watch out for in decision making?

BS Well, conflicts of interest is a really big one. Big enough that we're actually looking at doing a whole podcast just on that issue. For now, on that one, I'd just say, if at all possible, don't participate in decisions that benefit yourself or look like they might benefit you.



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- BS** Demonstrating that you're doing the right thing can sometimes be just as important as doing the right thing. Complaints have been known to arise because something looked a certain way and then it takes time and resources to demonstrate that it was otherwise.
- CB** And that's where good record keeping comes in, Bill, and we'll talk about that shortly. But back to making a decision that benefits yourself. Do you have an example?
- BS** Like granting yourself a pay rise or backpay, for example. If that decision can be made by another authorised group or officer under the rules, it would avoid, or indeed overcome, the conflict of interest issue.

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- BS** [Unclear] some very clear examples of when you have to disclose interest to your organisation as an officer, and when the organisation has to make disclosures to the ROC. As well as when it's not appropriate for you to participate in those decisions. A guidance note on disclosures by officers and disclosures by organisations goes through scenarios like these. And if for some reason you have to participate in a decision, and I really don't encourage that when you could have an absentee, have very clear processes and keep records of every step of the decision.

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- CB** Another big challenge, Bill, is knowing whether you have the authority to make a particular decision, what it's based on, and whether it's subject to any conditions or other approval.
- BS** That's right, Catherine. An example flows from section 149 of the act, which says that every organisation's rules must set out how loans, grants and donations are approved. So, if you've got a rule that donations...

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- BS** For example, if your rules say that the executive can approve donations between meetings of the council but can only do it up to \$3000, then don't approve things beyond your authority. Panic, in doubt, go back to your rules and policies.
- And another important one in decision making, of course, is don't review your own decisions.
- CB** That's a good point, Bill. If you find yourself about to say, I have reviewed my earlier decision, stop. Think for a moment whether you are the right person to be doing that review or whether it might be best to have someone else involved to ensure to that the decision is really the right one.

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CB Now, we'll move on to record keeping. In our recent webinar, which is available on the ROC website, we talked a bit about record keeping. Bill, why is it important for organisations to keep good record?

BS Well, for one thing, to keep evidence about the sort of decisions we've just been discussing. So, the minutes of the meeting that approve the sale of an asset, travel policy and so on.



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BS Record keeping's important for transparency. It's important for accountability to members and it's important for verifying what was done when, and often, why it was done. It's important to understand that if someone raises a complaint, either internally or externally with a body like ROC, these are the records you can turn to in order to explain what happened and why.

CB Okay, Bill. In a nutshell, what records must be kept?

BS Well, the ROC has a factsheet on record keeping, and like all our guidance material, we update it based on feedback from organisations so that it can cover as many of these issues as possible.



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BS Now, for a list of records that must be kept under the [unclear], please refer to our website. But it does include things like your list of officers, your registered members, and policies about financial decisions.

CB The register of members is a confusing one for some of our organisations, Bill. It's important to know that you have keep the register up to date, but you also have to keep copies of the register as it's stored on the 31st of December every single year.



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CB And how it was on the day the roll of voters closed for a ballot for an election for office. And those little snapshots have to be kept for seven years.

BS Yes, and it's not just important to do this to comply with legislation. It's important for an organisation to know how many members it has for a whole range of reasons. Planning, finances, providing services to the members. It's a fundamental part of being a member-based organisation.



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CB Okay. So, for a detailed list of records, do see the factsheet. But generally, Bill, what kind of records are best practiced to keep?



BS Well, recording all decisions is a really good start. For best practice, record who made the decision and when, whether they considered different options and why they chose the one they did. So, did they rely on any evidence or recommendation? If so, you can record that too. So, you can record that we bought a new membership software because... In order to show that the old one couldn't perform all the functions we needed.



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BS Now, obviously, the level of detail is going to vary depending on circumstances. There'll probably fewer records kept for the \$5 of petty cash to buy more paper for the photocopier than for selling a property that the organisation owns. But consider if someone asked you in a month, a year, five years or asked your successor when you are no longer around, could the decision be explained?



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CB Fundamentally, we're keeping records of decisions. All of them. In one form or another. And often the context is important as well. If a decision was made in a meeting, you should be keeping records about the meeting. The records should include whether the meeting had a quorum, whether any votes were taken, any objections. Whether the meeting considered the objections and dealt with them.

And particularly if somebody declared an interest and absented themselves while a particular decision was taken because that might have involved their interest.



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CB And it can really help an organisation to keep these records, can't it, Bill?

BS Absolutely, Catherine. We recently had a matter where a complainant said they hadn't been given an opportunity to exercise their rights to do certain things at a meeting. When the organisation was able to provide a copy of the detailed minutes, which proved that the person was present, that they'd been given the opportunity to act, but had in fact not done anything during the meeting. It shows that that kind of evidence can often be enough to address this sort of issue. And that's why we also encourage voluntary assistance and cooperation from organisations.



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BS So that we can resolve issues quickly and simply wherever we can.

CB While we're speaking of meetings, one we get asked about quite often is honorariums. Often organisations pay officers to attend meetings...



BS And in that case, you should be keeping record of attendance. In relation to attendance, you should be aware of any rules that your organisation has relating to proxies. Know when proxies can be used and what the process is. It may be a form.



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BS And what are the things that proxies can make decisions about. Some rules don't actually allow for proxies. And if the rules don't allow for them, there's no getting around that. You can't use them.

CB So, we spoke about the need to keep records, how about some hints or tips about how the records should physically be kept?

BS Well, records should be clear. As we stated, they should be able to be read and understood by anyone. Ideally, you should be able to look at a document and have it tell you a story.



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BS It is a set of minutes. You should be able to see what the issues are that the meeting dealt with, what decisions were made, and any conditions or time frames associated with those decisions. Records should be accessible. People need to know where they are and how to get to them.

CB Not to sound cynical, but that's the old hit-by-a-bus theory in action, right? If something happens to you and the organisation needs to hand the reins to another person, they should be able to see what has been done and why. This kind of change management is particularly important in organisation where many of these decision-making roles are subject to democratic elections.



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CB And being accountable to the members is another great reason to keep great records. It allows for transparency in relation to your decision making, which is vital. But it's the 21st century, Bill, and currently we are in pandemic. Are there rules around paper or electronic records?

BS Well, while rules in an organisation might specify something about that, the act doesn't.



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BS Records can be paper-based or electronic, but the current situation has shown that electronic may sometimes be easier for things like auditing, access to records outside the office and so on. Whatever you choose, records should be stored safely and in a way that allows a particular document to be found. Now, be aware that physical records can be damaged, for instance by fire or bugs. And we've had an organisation tell us about damage to a bunch of records due to flooding. These things happen.



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CB So, you have to be able to access the records. But it's also important for good governance to know who has access to records. Some records may need to be lodged with the ROC, or they're available for viewing by officers, members or an application to a body like the FWC or us here at the ROC.

A good example of this is material personal interest disclosures in minutes. Details have to be made available to members upon request. The other type of access that we do need to talk about is who is able to make changes to records that already exist.



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CB Best practice would include being able to control who has access to edit the record or keep track of the changes that are being made. And if you do need to make a change to an existing record, keep a record of why that change was made. It really helps.

So, now that we've talked about physically keeping records, what else do we need to know, Bill?

BS Keeping them up to date.



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BS It's the old story of keeping your tax records in the shoebox until the weekend when it's due to be lodged. And let's face it, you've got no idea what's going on until you sort through it all and get up to date. Good governance involves having systems that ensure records are maintained regularly, rather than done all at once. Particularly things like registers of members. Have routines. Ensure someone's responsible for doing the updates. Whether it's weekly, monthly, or whatever interval is appropriate for the record in question. Now, this can involve getting records from other parts of the organisation.



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BS Some records are kept at different levels of the organisation. For instance, there are bits at branches, bits at the national level. There should also be systems to ensure



that those records can travel back and forth as needed. The national office is ultimately responsible for all the records that must be kept under the RO act.

CB At the ROC, we do see this causing issues during the preparation of the organisation's annual return where the national office and the branches sometimes struggle to lodge in a timely manner because they have to go back and forth, back and forth. And this needs to be done without any systems in place or regular avenues already being established.



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CB So, if you have established processes or systems that both sides can access, this would likely help with your reporting. But it does lead to the question of privacy, Bill.

BS Yes, and privacy is a really important one. You need to be aware of your privacy obligations, in particular around personal information. And remember, everything we lodge with the ROC is a public document.



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BS If it's a document you're obliged to lodge, like an annual return or a financial report, it's probably going to be put onto our website. So, make sure document you supply us don't have personal addresses, personal phone numbers, or other private information when you lodge them with us. We recommend that organisations keep a professional address on their officer record, for instance.

CB Which has practical benefits to the organisation too, Bill. Since you do need to notify us every time the details of the officers' address changes.



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CB If you're keeping a personal address, you'd need to notify us every time any of your officers moved home. Okay. So, what about signatures and other things that signify approval?

BS Well, signatures are obviously important, especially if we're talking about digital signatures. As are things like approval emails. So, digital signatures are sometimes enough, but you need to be clear on who can use them and when. If the system is that someone sends an email authorising that their signature be affixed to document, then repeat that approval email with the document.



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BS And remember, read documents before you sign them. You're signing, you're the one responsible for them. You're the one declaring that they're true and correct.



CB Speaking of signing documents, a real problem we see at the ROC is people who sign documents and backdate them. Please don't do that. Always ensure the date under your signature is the actual date you signed the document.



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CB And if you have to submit an amended version of the document, please date it when you did the amended version. Don't leave the original document date on it. So, to summarise, record keeping requirement appear throughout the RO Act and do please see our factsheet for further details of the individual records that need to be kept. But record keeping is essential to good governance to being able to be transparent and accountable. It's important to protect you as the decision maker, your organisation and your members.



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CB Bill, do you have a quick example for us of what happens when you keep, perhaps, insufficient records.

BS So, we had an instance where the ROC received an allegation about a loan. Quick a large loan between one part of an organisation and another. The loan was made about ten years before hand, but it was yet to be repaid. So, it was an active loan and it showed in a line of the financial report. But apart from that, the organisation hadn't kept a copy of any loan agreement or any other document in its office related to the loan.



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BS And none of the committee members from that time were still on the committee ten years later. In the end, the organisation had to go back to see the now-retired head of the organisation and get further details from them before they could come back to us and answer enquiries with any level of knowledge.

CB Thank you so much for your time today, Bill. Do please have a look at our factsheets on our website and tune into the Good Governance and Practice podcast series over the next year, as we hold discussions about meetings, inducting officers, conflict of interests, and other important governance topics.



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CB Next month's podcast is a discussion with the AEC about elections, and we are looking forward to having a guest from the AEC speak with us. Thank you very much for your time today.

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