



ROCpod episode 29 – The annual return: Compliance simplified

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

AN	Unidentified announcer
CC	Claire Cotterill
CB	Catherine Bebbington

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.



00:00:41

CC Hello and welcome to our final podcast for the year. My name is Claire Cotterill and I'm a Lawyer in the Compliance and Investigations team at the ROC. This episode is about the annual return. Every year, by the 31st of March, registered organisations lodge copies of certain records with the ROC. This requirement is called the annual return, and it promotes transparency in registered organisations.



For today's discussion, I'm joined by my colleague Catherine Bebbington. Catherine is the Manager of the Education and Reporting Team. She has experience in the assessment of annual returns and providing education about the requirements. Catherine will share the common questions and compliance issues that are associated with the annual return. Welcome to *ROCpod*!

CB Thank you, Claire. This is a great opportunity to talk about the annual return before they're due. And you don't need to wait until the last day in March to lodge it - some organisations lodge it much earlier in the year.

We've been working with registered organisations to improve compliance rates, but there *are* common issues we see every year.



00:01:47

CC Okay, before we talk about the issues, let's explore the purpose of the annual return. *Why* are organisations required to keep records, and lodge the annual return every year?

CB It's about transparency to both members and the wider community. Annual returns include essential information about how organisations are governed. They're available to download on the ROC website.

Members can discover the structure of their organisation through the information about branches and the list of offices. The annual return identifies the office-holders of the organisation, which promotes their accountability to members.

And if you're interested in becoming an office-holder, the annual return will help you to find out about scheduled elections that will be conducted during the year.

CC So the annual return promotes transparency, accountability AND active participation by members of organisations?

CB Yes that's right, Claire.

And closely connected with the annual return is the requirement for organisations to update their records and notify the ROC about changes. These updates – what we call 'notifications of change' (or NOCs for short) – are also published online. Anybody can go on the ROC website and find out when and what changes organisations have made to some of their records.



00:03:02

CC So the annual return and NOCs provide a running record of information about the organisation and their branches. As organisations update their records, they notify the ROC so members can find out about the changes too...



- CB** That's it! At the moment, annual returns and notifications of change are lodged by email in a word processing document. They are then published as PDF documents on our website.
- CC** There are ROC templates to help organisations lodge the annual return, aren't there? Can you tell us more about them?
- CB** Most organisations use the ROC templates to lodge their annual return and NOCs. The templates we provide include the correct declaration and prompt the information that's required to comply with the legislation.

There is currently some manual work involved in preparing the annual return and for the ROC to check compliance. But we are looking at ways to digitally transform our services. We're exploring how we can use technology to improve the lodgement process, and one idea is to have an online portal on the ROC website.



00:04:05

- CC** Listeners may have heard about the portal project. Our Executive Director, Chris Enright, spoke about the project in last month's podcast. What stage are we up to with the project, in December 2021?
- CB** We're looking into the feasibility of having and maintaining a lodgement portal on our website. We know there's a lot to gain by digitising and integrating records. We also think a portal will improve the accuracy of information that is lodged with us, and increase efficiency. However, as with any IT project there are set up and maintenance costs, and technological changes, and we're currently working through those issues.

So the 2022 annual return will be lodged in the traditional way (and organisations are strongly encouraged to use a template), but the ROC is considering how technology can improve processes into the future.

- CC** The portal project is exciting and I look forward to seeing it unfold.

Let's now talk about the annual return requirements. You've already mentioned some of the features of the annual return. It must include a list of offices and office-holders, and their address and occupation. It also must include the organisation's address, and information about branches.

Our templates will guide you to include the required information if you choose to use them.

Catherine, you've been involved in the assessment of annual returns. What are the common compliance issues you've seen?



00:05:25



CB There are a few, and I'll start with timeframes. We're not just talking about lodgement dates, you need to be aware that there are different dates that are relevant for each piece of information in the annual return.

I'll give you a few examples: The annual return must include the number of members of the organisation as at 31 December of the previous year.

It must also include the elections scheduled but for the current calendar year.

And the list of office-holders must be current at the date the declaration is signed.

CC So in that example alone, there are three different time periods ... 31 December, the calendar year, and the date the annual return is signed...

And there are others.

How can organisations get this right? Do you have any tips to help organisations with the timeframes?

CB Yes, use a ROC template! As you said a moment ago, our templates are designed to guide organisations to include the right information ... They identify the timeframes that apply to each piece of information.

We've also published a nifty one-page document on our website called the 'annual returns timeline'. If you're a visual person, you might prefer to look at an image that illustrates the different timeframes for you. One idea is to do a quick check of your annual return against the timeline picture before you lodge your annual return to ensure the timeframes match.



00:06:45

CC That's excellent. You can find the templates and the timeline pictograph on the 'annual returns tools and resources page' on the ROC website.

I know one of the common errors with the timeframes is about the elections scheduled for the calendar year. Some organisations have experienced delayed elections due to the COVID-19 pandemic. What elections must organisations report in their 2022 annual return?

CB Any elections that are scheduled under the organisation's rules to start in 2022, must be listed in the 2022 annual return.

But, remember the purpose of the annual return is transparency. So this year you might want to include extra information about elections – for example, if your scheduled election was delayed in 2021 and will *most likely* be conducted in 2022. You *can* include extra information like that if you want to. It isn't part of the legislative requirements to do so (remember, you would have reported your 2021 scheduled elections in your annual return earlier this year). But we'd encourage organisations to consider how the information in the annual return can help their members. You'll just need to make sure you explain any extra information clearly, to avoid confusion.



CC Now, I want to talk about the list of offices of organisations and branches, and the current office-holders. Officers make decisions on behalf of organisations, and the identity of office-holders are reported in the annual return for transparency and accountability. But I understand that we've sometimes identified errors with lists lodged by organisations. Can you tell us more about this?

CB Sure, Claire. Non-compliance is perhaps more common in larger organisations where there are hundreds or even thousands of offices, and several branches. But we've seen smaller organisations make mistakes too.

Firstly, it's essential for organisations to know their rules. Whether a position is an office will depend on your organisation's rules, and what the rules say about the powers and functions of that office. Only people who occupy these offices are identified in the annual return.



00:08:56

CC So the annual return doesn't include employees and it also doesn't include elected non-office positions ... is that right, Catherine?

CB Yes, that's correct. We sometimes see employees and non-office positions listed on the annual return and they **should not** be there. Remember – this information is published on our website and we don't want to publicly identify people when there isn't a legal requirement to do so.

And the annual return doesn't just include senior officers like the Secretary, President and the Committee of Management. That's another misconception. It will include some of your other policy or decision-making bodies like national conferences – where they meet the definition of an office under the Fair Work (Registered Organisations) Act 2009 – or as we call it, the RO Act. It's not uncommon for large organisations to have hundreds of people sitting on these bodies. If these roles are officially defined as offices, they need to go in the annual return.

CC What about vacant offices? They need to be reported in the annual return too, don't they?

CB Yes that's right. Leaving off vacant offices is another common error we see. Even if there is nobody in that office, the office itself still exists, so it needs to be included in the annual return.



00:10:18

CC Can you explain the meaning of an elected non-office position? You said they shouldn't be listed in the annual return. But what are they?



CB Some rules of organisations allow for positions that do not meet the definition of an office, to be elected to the role. An example could be an elected CEO, who acts under the direction of the organisation's committee of management.

Not all organisations' rules have elected non-office positions, but if they do, non-office positions **shouldn't** be included in the annual return even if they're elected.

CC So we've seen examples where organisations have included positions and people who they shouldn't have on their annual return. In other cases of non-compliance, the list has been incomplete.

So how can organisations provide a complete and compliant list of offices and office-holders?

CB Well, there are a few things they can do. Organisations should consider the definition of an office under the RO Act and understand how it applies to their rules.

The definition of 'office' in section 9 of the RO Act includes a list of positions that are offices – these are your senior leaders like the Secretary and President. But it's also much broader than that. For example, roles that have certain powers – like voting members of a body that can make decisions or determine policy – are also offices under the RO Act.

If you're unsure, we've covered this issue previously in episode 4 of ROCpod – '*Who is an officer?*' and I'd encourage you to go back and have a listen.



00:11:51

CC This issue isn't just relevant for the annual return, is it?

CB No it's not, you'll need to know who your offices are for other compliance matters, like elections, the officer and related party disclosure statement and the financial training requirement for new office holders.

CC So know your rules and the legal definition of an office under the RO Act. And use the ROC template.

Organisations must also list the postal addresses of office-holders on the annual return. But we also need to be mindful of privacy. How can organisations comply with the RO Act AND respect the privacy of their office-holders?

CB Well, the information lodged in the annual return includes information from some of the records kept by the organisation. We encourage organisations to keep a professional address of office-holders, rather than private residential addresses. For example, you can use the office address of the organisation or branch.

If organisations keep a professional address for their office-holders the annual return will list the same professional address for public release.

**00:12:58**

- CC** So what happens if the residential address of an officer *is* reported in an annual return?
- CB** If we identify that kind of information, we'll redact it before publishing it online. But it's best practice for organisations to avoid lodging unnecessary private and sensitive information in the first place. It can sometimes be hard for an assessing officer to spot.
- CC** Another advantage of keeping a professional address for officers is the reduction in notifications of change. You won't need to update your records and let us know every time an officer moves house!

Catherine, you mentioned earlier that non-compliance is more likely with a large organisation where there are hundreds (and maybe even thousands) of offices and office-holders to report. How do organisations with branches co-ordinate their annual return? Is it up to the national branch to prepare it?

- CB** That's a good question, Claire. It's the responsibility of the registered organisation to lodge one annual return every year, but it's likely that organisations have their own internal process. For example, branches might keep records about offices and office-holders, and membership numbers too. In some large organisations the national office plays a co-ordination role, where they receive copies of records from branches, before putting them together into one document. In other organisations all records are kept by the national office.

It's up to organisations to determine their processes in a way that also supports compliance with the legislation.

They must, however, be satisfied they've complied with all of the requirements, and the information in the annual return is a correct copy of the information in their records.

**00:14:41**

- CC** That's good advice, and it leads me to my next question about the two declarations contained in the annual return. The declaration requirements are very specific. For example, one of the declarations is that the information provided are '*a record of the information contained in the organisations' records*'. We've seen examples where organisations have provided an incorrect declaration about the information being 'correct and true'. This does not meet the requirements.

Catherine, how can organisations avoid making errors with the declarations?

- CB** This is going to sound repetitive, but I don't think I can say it enough – use a ROC template! The two declarations are written into the template for you with the right wording. You'll just need to make sure the correct person signs it.



CC Who can sign the annual return? Can *any one* sign the annual return on behalf of their organisation?

CB No, the annual return must be signed by the Secretary, or other person who is authorised under the rules to keep the register of members. For most registered organisations it's the Secretary, but in some organisations it's the President (or another officer). You'll need to check your rules to be certain.

CC I think that covers the main issues. Thanks for stepping us through them, Catherine.

Before we finish today's episode, I'd like to talk about the resources that help organisations prepare the annual return. We've already spoken about the templates. Catherine, what other materials are there?

CB The ROC has a range of tools to help organisations avoid the mistakes we've discussed. We recently launched our digital classroom, and module 2 is all about the annual return.

The digital classroom on our website is a GREAT place to start. It takes you through the essential information and points you to the helpful resources. There are even some interactive features like quizzes and short videos.

Each module can be completed online and at your own pace.



00:16:36

CC This month the ROC is also releasing an e-learning module about the annual return, aren't we?

CB Yes, and we'll integrate the e-learning module into the digital classroom. We'll also include it in our online E-learning Centre.

Another resource is the filing letters from previous years' annual returns. They explain your specific compliance issues, and how to avoid repeating them. If you don't have a copy in your own records, you can find them on our website.

I'd also encourage organisations to get in touch with us if they have any questions. It can take time to fix compliance issues after lodgement, and it's always preferable to prevent non-compliance in the first place. You can give us a call, ask for a ROC to You session, or send an email to regorgs@roc.gov.au.

CC And remember – you don't have to wait until the end of March to lodge the annual return. If you've prepared it in January or February, lodge it early. Don't wait, you will risk missing the due date.

Catherine, thank you for joining me on our final episode for the year. It's been a pleasure.

CB You're welcome, Claire. Thank you for having me.

CC Well, that's a wrap for *ROCpod* in 2021. We'll be back next year. We've had more than 2,000 downloads of our podcast this year and we'd like to thank you for tuning



in. Enjoy the festive season and stay safe.

AN ROCpod is the official podcast of the Registered Organisations Commission. It is copyright 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.

AN 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.