



ROCpod episode 4 – Who is an officer?

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
KM	Kristina Menzies
AN	Announcer



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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.



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

Welcome to episode four of ROCpod: Talking with the Registered Organisations Commission. My name's Catherine Bebbington and with me today is Kristina Menzies. And we're both senior advisors on the Education and Reporting team, and we're here to talk to you today about who is an officer.



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CB Kristina, why are we even having this conversation about who is an officer?

KM Thanks Catherine. Now, that's a really good question. What we're finding is that in our interactions with registered organisations, during our information sessions for example, or in our interactions over the telephone, is that we're receiving confusion around what is an officer of a registered organisation.

So for some organisations this might be a very simple answer because they might have a very simple structure or a very small organisation.



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KM But for some organisations they're quite complex. So the answer of what is an officer can be quite a different answer. So we're here to address some of that confusion and to hopefully clarify how registered organisations can ascertain who in their organisation is an officer, and also who is not.

CB And it's quite important to know, now we know officers cover a wide spectrum of people. You've got people who are paid to be professional officers day in, day out as their normal job.



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CB But obviously you have a vast number of volunteers and this is quite a complex question. So fundamentally, how do we work out who is an officer?

KM I think a really good and solid starting point to answer that question is to go to the Fair Work (Registered Organisations) Act, which we often refer to as the RO Act. This is the legislation that governs registered organisations in Australia. Section 6 of the RO Act provides us with the definitions section.



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KM So it gives us a definition of what an officer is and so that tells us that it means a person who holds an office. Section 6 also tells us that an office has the meaning given to us by Section 9. So then we go to Section 9 of the RO Act, which provides us with a more detailed and prescriptive definition of what an office is.

CB Now, Section 9 is quite complex. It has a number of parts there.



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CB And we're only going to deal with the main two issues today, but my favourite is section 9(1)(a) which is nice and simple. And it says, 'office' includes all of those people you think it is, which is President, Vice-President, Secretary or Assistant Secretary. And that's going to be of both your organisation or the branch. So if you have the office of President, the person holding that is obviously an officer.



But it gets a little more complex when you look at section 9(1)(b).

KM Yes, section 9(1)(b) provides us with more of a comprehensive definition which describes many of the functions that particular people in an organisation perform.



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KM So that tells us that they would be an officer if they are a voting member of a collective body which has particular powers. So, for example, which has the power to manage the affairs of the organisation or branch... who can determine policy of the organisation or branch ...can make and alter rules, and also the enforcement of those rules.



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KM So in that definition, a collective group of members generally describes what we see in registered organisations as the committee of management, or the board of directors. So you need to look at the people in your registered organisation to determine whether their functions meet those particular function that is described in the legislation.

CB But it can also be much broader than that, because for instance it's not uncommon for an organisation to have a national conference with lots and lots and lots of people on it that has the power to determine policy.



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CB Or the ability to make rules. And once you have a big body like that that can make rules or determine policy, or any of those other functions that you've just outlined, those people are also going to be officers under the legislation.

Now, this is not the full definition, like I said there are a couple more elements to section 9 and obviously you can have a look at that. The information is available. But how do I find out, Kristina, what the duties are of these bodies or officers, to try and work if they have these things outlined in the legislation?



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KM So, after consulting the RO Act, where you can go to find those functions is your rule book. So, the rule book of your organisation and the rule book of your branch. They must describe the functions of your officers. And your rules may be very comprehensive about what particular people do in your organisation. Some of them may be less descriptive.



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CB But it is quite a complex concept, particularly if you're a new officer. And for some of our officers, they may not even know how to find their rule book. So we would strongly recommend that you go onto our website and download the Officer Induction Kit.

CB The Officer Induction Kit is a resource designed to help new and existing officers get a better understanding of their duties within their organisation or branch. And including how to even find your rules so that you can locate your duties.

KM So what's in that induction kit, Catherine?

CB The Officer Induction Kit doesn't cover all of your duties as an officer.



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CB But it is going to be a pretty good crash course as to your duties under the legislation, for some of your duties under your rules. Because it has a number of activities in it that you fill out information such as who do you contact to get a copy of your minutes from your last meeting, things like that.

And it includes some generic information about what we expect to see normally, as the duties of someone like a President or how you would normally run a meeting. So it's quite an informative resource. So it includes things like that and the calculator for timelines and deadlines.



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CB It includes general information about how to hold meetings and what is a quorum. And it's also going to include information on specific duties to your role and duties under the legislation. Don't just print it out though, because the Officer Induction Kit is being updated all the time. So make sure you just put a favourite on it and keep coming back to our website to download that.

KM So we've taken listeners through the definition of what an office and an officer is, and also where to find the functions of an officer.



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KM But why is it important that we know the distinction between what an officer is and who perhaps is not an officer?

CB It's actually really important, Kristina, to know whether or not you're an officer. Because as an officer you probably have duties under the legislation and the rule book that you need to comply with. Because some of those duties, those obligations, things like to act in good faith, these can have substantial penalties attached to them.

So as an officer you need to know so that you can best protect yourself, but you also



need to know so that you can best serve the interests of your members and the organisation.



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KM It's also important from an election perspective, isn't it?

CB It is really important from an election perspective. One of the things that we see is that sometimes election information that's lodged with us is not complete because anyone who is an officer must be elected under the rules.

KM And so the ROC template helps distinguish between what an office is and what an officer is.



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CB But Kristina, sometimes you have non-officers who are also elected, don't you?

KM You do, yes, and for that reason it's obviously important to look at your rules to determine whether or not somebody is an officer.

CB Yes, because it's not enough that someone is elected, that's not an automatic, you are an officer. But it is a very strong indication, and if you are an officer, you do need to be elected. So do have a look at the election templates, because if you are electing non-officers, it's a slightly different process.



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CB And those people can still be put through prescribed information and they can still be run through the Australian Electoral Commission as an election process. But it's a slightly different process for applying for those positions to be elected. Which means that the fact that someone is or isn't elected doesn't 100% guarantee that they are an officer.

But have a look at our election templates because it's important that you follow the different process for positions. And look forward to our elections podcast which is in April of 2020.



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CB But it's also important for the rest of the things that are done here at the Commission, isn't it?

KM It is, so for example with annual returns, they must include a list of all of your officers in your registered organisation and branches. So knowing who an officer is and who an officer isn't is important because the annual return does not include a list of people who are not officers.



CB It also has flow-on effects for things like your officer and related party disclosure statements because obviously you're just including officers within those.



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CB And things like your financial reports. We do find one of the most common mistakes on annual returns is leaving off officers that are not big names like President or Vice-President. We're leaving off things like the committee of management or that national conference, where those people are also officers.

Additionally, we're finding that many of the documents that come to us, they all need to be signed by an officer. And it's quite common for somebody to sign them who's not in an office position because they have 'office' in their name.



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CB For instance like Chief Information Officer or Chief Executive Officer, and these people aren't necessarily officers defined under the legislation. So it's vitally important that you know who your officers are, because all of our documents need to be signed by an officer.

Another reason we're having this conversation is because there seems to be a great deal of confusion about the question about financial duties. What's the relevance of financial duties to the question of who is an officer, Kristina?



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KM Those two, Catherine, are actually two separate questions. So, a registered organisation must first determine if a person is an officer or if a person is not an officer. If the answer to that question is yes, that person is an officer, then if they have financial duties, they must undertake approved financial training under section 293K or obtain an exemption.

That is a second question, so non-officers don't need to complete that training.



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CB Okay, so first I work out who my officers are, and then I ask the question, which one of these have financial duties and need to have financial training? Because some officers don't have financial duties and some officers do have financial duties. And it's actually bigger than financial training, isn't it? Because under the legislation there are some general duties that attach to people who have financial duties.

And there are additional obligations under things like the officer and related parties sections of the legislation, for those officers that do have financial duties.

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CB But it is still a confusing area, so now we've given you some examples of who is an officer, things like your secretary and president, your committee of management or your board of directors. But Kristina, how about we give them some examples of people who aren't officers?

KM Yes Catherine, I guess the most common example I can think of where a non-office is included in an annual return are examples of employees. So people who are employees and they necessarily aren't officers, though they can be... A person can hold a dual position as an employee.

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KM And they certainly can, at the same time, be an officer. But being an employee doesn't make you an officer of a registered organisation. And that distinction is very important.

CB Another one we see is people assuming that just because you have the word officer in your title, this makes you an officer. Now, that's not necessarily true, particularly if you're looking at something like a privacy officer or a chief information officer. Once again you need to go back to the duties of the people to work out whether they have those things listed in Section 9.

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CB It may be that some of these people are just going to be employees and they're not able to sign anything and they don't need to be on your annual return.

KM Yes, again I would suggest look at your rules, because that would assist you in discovering whether those people are indeed officers or not.

CB Another distinction is between the definition of officer and the definition of key management personnel. For those people who do financial reporting, you realise that key management personnel does include a lot of employees.

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CB But the definition of officer doesn't just include employees, it is only those people with those duties. And a really good indication of whether or not someone is an officer is whether or not they appear in your rule book at all. It could be you have an office manager or a privacy officer who's not even mentioned in your rule book.

And if they're not mentioned in the rules, they can't be an officer. But there are still some grey areas Kristina. I mean, there are some bits where it's hard to tell whether someone is an officer or not.



KM Yes, a really good example of that we see are organisers.



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KM So these generally aren't officers because they don't usually meet the definition of Section 9 and they aren't always within rule books. But sometimes we do see that they sit on a collective body like a committee of management. So in those cases, then clearly they would sit within the Section 9 definition.

CB Another one we see is the chief financial officer. Now, mostly these people are employees because they're working under the direction of the secretary or president, or under the committee or board.



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CB But do check your rules, because if they're in your rule book and they have sufficient management responsibilities and they're acting on their own control. So they're determining policy or they're managing the organisation, it may be enough to move them up into an actual officer.

KM And finally I just want to also mention the chief executive officer which we often see elevated to an officer in annual returns when they actually aren't. But in many cases, so for example in employer associations, they actually are because the functions they are performing are in a sense that of a secretary.



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KM So again, we just need to reiterate to look behind the actual title of a person and look at what their functions are and then whether or not their functions are mentioned in Section 9 of the RO Act.

CB So basically you're saying if there's some confusion over whether or not there's an officer or the person's an employee for instance, Kristina, fundamentally I have to keep going back to my rule book.

KM Absolutely, so the rule book and the RO Act should provide you with greater clarity about whether or not a person is an officer.



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CB And it's important for me to know whether I'm an officer because I could have duties and responsibilities under the legislation or under the rules of my organisation. So once again I'd just say if you are new to the role of officer, or if you've been there for a little while and you need a refresher, go download our Officer Induction Kit.

It's an excellent resource to help you get across what your responsibilities are as an officer, and some of the important responsibilities of other officers around you. So that you can hold each other accountable and up to the highest standard for your members.

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KM And again that distinction between an officer and a non-office position is also fundamental to many of the other compliance activities that a registered organisation must undertake. So, for example it crosses over into the annual return, which includes a list of officers of the organisation. And it doesn't include a list of people who are not officers.

For example the officer and related party disclosure statement which requires organisations and branches to disclose the remuneration of officers and not necessarily the remuneration of employees.

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CB So it is a very important distinction and I'm so glad we've been able to spend a few minutes today and have this podcast about who is an officer. I think it's so important for an organisation to know this because you can't properly comply if you don't know who your full list of officers are.

It's so important for things like notifications of change and elections and returns, the whole collection of things that we do here at the ROC.

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CB So thank you very much for keeping us company during this podcast today. We hope that you've learned something from our discussion about who is and who isn't an officer. Please continue to provide us with your questions and feedback. As we state at the beginning of this podcast, we try so hard to build our tools and pick our topics based on the things that are actually causing confusion out there amongst organisation and branches. So keep asking your questions, keep sending them in and of course subscribe.

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CB If you subscribe to our subscription service, you're not only going to get access to our podcasts. You're going to see our newsletters and you're going to see every single time we have updates to our tools. Plus you'll also get things like our media announcements and invitations to our workshops and information sessions.

Thank you so much for your time here today, Kristina.

KM Thanks Catherine.

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AN The ROC is not able to provide legal or accounting advice.

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