



RO POD episode 58 – Good governance in practice – from an organisation’s perspective

Speaker Key

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AN: Welcome to RO pod: Talking about governance of registered organisations with the Registered Organisation Services branch at the Fair Work Commission, the official podcast about the regulation of unions and employer associations. In this 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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BS: Hello and welcome to RO pod. I’m Bill Steenson and I head up the Governance and Protected Disclosures Team for registered organisations at the Fair Work Commission. Today, we’ve invited someone from a registered organisation to share their perspective on what good



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governance looks like in their organisation behind the scenes, including the systems, processes, and culture that make it happen.

Here with me today is Tom Lynch, who's currently the Federal President of the Community and Public Sector Union (CPSU), a role that he'll shortly finish up in. Tom brings many years of experience at the CPSU and has held a range of roles at the union, including the offices of Assistant Secretary and General Secretary of the CPSU's Tasmanian Branch. It's great to have someone from a registered organisation on our podcast, and we're very pleased to have Tom with us today. Welcome Tom.

TL: Thanks Bill.



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BS: Tom, as I mentioned, you've got an incredible amount of experience in leadership roles at registered organisations. I wanted us to start off today by talking about how you got there. What motivated you to take on these roles?

TL: "I took on a leadership role in my registered organisation because I love paperwork", said no one, ever.

There are many good and noble reasons why people take on Officer roles. To be honest meeting compliance and governance obligations was not one of them for me, and I imagine the same goes for many others. Despite that, every one of us who takes on such a role accepts serious obligations, obligations that we will be held accountable for whether we like it or not.

Personally, I always felt honoured that the members of my union placed trust in me to act in their interests by electing me to an Officer role and the best way I could repay that trust was to use all my endeavours to ensure their union was run efficiently, democratically, with high levels of accountability and transparency, and always in the best interests of members and free from conflicts of interest.



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BS: Tom, you've indicated that meeting compliance and governance obligations can seem, let's say, 'challenging'. I would love to hear more from your perspective on the issues faced by elected Officers in meeting the obligations under the *Fair Work (Registered Organisations) Act 2009* ('the RO Act').

TL: I'm happy to share. I think the important thing I always kept front of mind was that the rights we have as Officers of registered organisations come hand in hand with the obligations.

Don't get me wrong – there were plenty of times I didn't meet the standard and there were plenty of times I objected to being dragged away from other duties to concentrate on compliance work. But looking back I can see that having a well-run and compliant union is what gave us the platform to do all those important things we do for members – the bargaining, the campaigning, the individual representation.

In the period I've been a leader, the regulatory burden has certainly evolved. I've seen a significant increase in the regulation of registered organisations. In my view there was a stage where it felt like compliance for compliance's sake – ridiculously short deadlines and obligations that were often out of our control.



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BS: So it's always helpful for us to understand more and reflect on the impact of that regulatory burden on the registered organisations community – including for Branches with not that many staff. Can you share some examples of when you felt that it was "compliance for compliance's sake"? And whether you feel that's still the case?

TL: Yes. One of my "favourites" was the right of entry permit process. As you will know Bill, to exercise a right of entry our organisers needed a permit. The application process was convoluted, but the relevant obligation to highlight here is that it was our obligation to provide the organiser with the original permit that they were required to show. At the same time, we



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had an obligation to provide the original permit – an A4 sheet of paper – back to the Commission within 7 days of the organiser leaving the union.

Now I know most unions are happy workplaces but there are occasions when staff don't leave on the best of terms. To comply with my obligations, I needed to get those staff members to return an original A4 permit provided to them 3 years ago and if they didn't give it back then I was in breach.

I'm pleased to say much of this has changed. It's my view the regulatory burden on registered organisations has evolved to a stage where it is genuinely focused on registered organisations being well governed rather than compliance for compliance's sake.

And that's not to say our record is squeaky clean either. Despite our best of intentions, one of our Branches got into some trouble with a pattern of non-compliance a few years ago.



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BS: So Tom, can you tell us more about what happened in that case, and how your organisation dealt with it?

TL: That branch had failed to lodge prescribed information to initiate scheduled elections on time over a number of election cycles, they had not notifying change of Officer details within the prescribed time, and they had made errors in their process for filling casual vacancies that were open to the interpretation that we were conducting elections. All-in-all, there was a pattern of poor compliance over an extended period that was not adequately addressed despite warnings.

Historically this would have been dealt with via an investigation followed by prosecution. It would have been costly both in terms of time and penalties. Instead, we were provided the opportunity to enter into an enforceable undertaking with the Commission – rather than spend our time in court, we spent our time identifying ways we could improve our systems.



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BS: So for our listeners who might not be familiar with enforceable undertakings, they are a voluntary but binding agreement that's under the RO Act. They are negotiated between a person or entity and the Commission's General Manager, and the terms are drafted by the Commission. They are designed to address non-compliance that's happened, as well as preventing future non-compliance. I'll leave it to Tom to share more about what the process was like from his perspective.



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TL: Thanks Bill. The enforceable undertaking process required us to do certain things.

We needed to acknowledge our failings – no excuses, we needed to accept our actions constituted serious breaches.

We needed to demonstrate our strong organisational desire and a commitment to learn from the experience and to elevate our compliance to a higher level. This commitment needed to be made by all parts of the organisation – not just the Branch that was the subject of the current investigation.

We needed to be willing to take actions to eliminate (or at least significantly reduce) the risk of such failings being repeated in the future. These weren't promises we'd do better – they were real, detailed, timebound actions that we were willing to sign up to.

We needed to accept that we would be monitored at a higher level, particularly in relation to the actions we had committed to undertaking and that a breach of the enforceable undertaking would be considered a breach of the Act.

This was a serious process but given we wanted to improve our systems and processes so they we would be complaint, it was a better process for us than investigation, prosecution – and then still needing to lift our game.



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BS: And look, I think Tom, that's a really important message. That no matter how the Commission chooses to deal with the non-compliance identified, whether by enforceable undertaking or by other things like pursuing civil penalty proceedings – the organisation is still going need to take time to reflect upon what happened and take steps to improve their systems and processes, so that the non-compliance doesn't recur.

And it's great to see concrete examples of organisations taking non-compliance seriously. Now, Tom, can you share some tips on what has helped promote good governance within your organisation?



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TL: Absolutely. Along the way we learned (mostly from our mistakes) some tricks and tools that shifted the compliance load from being 'another job' to being part of our business as usual.

In terms of deadlines, we created a compliance calendar that prompted us ahead of time. Most compliance obligations follow a cycle – annual returns, Officer and related party disclosures, financial reporting, loans and donations etc.

We look at the timeline for how long each obligation takes and worked backwards from there. We put the start dates in the compliance calendar along with when each step needs to be completed.

This also involves regular reporting and reminders at meetings. We have prompts in all our meeting agendas – has there been a change in Officer details? What reporting obligations are due in the next month? It is so easy for these things to slip by because nobody asked the question. You have 35 days to notify change of officer details – make sure you have a prompt to ask that question at least monthly.



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Where actions are required, these are included in the minutes and clearly assigned to a responsible person. The action items are then reviewed at the next meeting so all Officers attending can be confident the requirement has been met.



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BS: There's some really good tips there Tom. For our listeners, just a reminder that the Commission has a Compliance Calculator on our website. It's designed to help you with identifying deadlines so that you are able to meet them.

TL: Thanks Bill, that leads nicely to my next point as well. Which is to use the tools and templates the Commission has drafted to make your job easier. I suggest the starting point for any reporting obligation is to visit the relevant page on the website, read it, download the template and follow the advice.

They have a regulatory education library with fact sheets and best practice guides. They also have E-learning modules that explain in simple terms what you need to do to be compliant. Most of them take 15 – 20 minutes to view – time well spent before commencing a lodgement process.



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BS: Yes. And just to add on to your point Tom, our education and advice team review and update those resources regularly to make sure they stay accurate. So, my tip is to keep an eye out for the subscriber emails – they indicate if resources have been added or updated. It's tempting to download all the resources at once, but I'd recommend always checking if there is a new version of the template on the website before working on them. And definitely get on our subscriber list in order to get those updates.

Now if I can just turn your mind to a different topic Tom. From our end, something that can cause a lot of grief is patchy record keeping. Do you have any tips on that side of things?



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TL: Yes. It may sound really obvious but do not slack off on maintaining good records. It saves so much time if you can easily access the report you lodged last year and use that as the starting point for the new report. Yes – things change from one year to the next but starting with last year's report allows you to make the changes needed without having to start with a blank page.

That being said, make sure you read and take the advice provided by Fair Work following lodgement the previous year. The Commission will write to you to tell you if there were any issues that should be addressed in future lodgements. These are often little warnings – you weren't 100% compliant this year but we have accepted it but make this change and you will be 100% compliant next year.

And let me say you'd be silly to ignore this advice. They really don't like it when you ignore their advice and make the same mistake the following year. Make it part of your process when preparing reports to review your last report and any feedback you received – and make those changes in your next report.



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BS: Yes, that's right. When organisations don't fix previous issues, they can be subject to what we called an advanced review, which is really an even closer look at compliance and non-compliance issues.

TL: Another tip I should mention is to share the load. Most of us are part of national organisations that have Branches with identical reporting obligations. Network your compliance people so they can share tools and templates, check each other's work and generally support each other.

Our union has established a national Governance and Compliance Committee. The people who do the compliance tasks meet monthly, talk through the obligations coming up in the next three months, share tools and templates they have developed, update each other on training they



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have undertaken, and any news worth sharing. On one occasion we invited the Commission to participate in this meeting so they could talk directly to practitioners and hear their feedback.

BS: And that was a really productive exercise Tom. On that note, in the Registered Organisations Services Branch at the Commission, we're always open to discussing any questions or issues directly with organisations. That goes in both directions. We've got our Governance to You program where subject matter experts can provide information to organisations, we've also got our Listen and Learn program that allows us to learn more about to day-to-day experience of organisations and of their compliance officers and find out how we might make things work better and easier.



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TL: And Bill, the final tip I have is to make your obligations as simple as possible. We often have complex and convoluted rules that make our compliance task harder than needed.

For example, our union used to have rules that elected councillors through a direct member election and then those councillors elected three Executive councillors from amongst them. This meant we immediately had three councillor vacancies that we needed to commence another election process to fill. We changed the rules, so the Executive councillors are directly elected by members. This leads to better democracy, and we don't have vacancies to fill immediately after our election cycle has concluded.

The AEC provides reports after each election that highlights rules they found confusing or difficult to comply with. Read these reports and act on them to make the next election process easier.

Many of us have overly complex rules as a result of decades of mergers and amalgamations. Make your job easier – review your rules to remove any ambiguity, duplication and obsolete processes and terms.



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BS: Thanks for those practical tips, Tom. And now, if I can just turn to one final question, I'm curious how your organisation approached your relationship with us, as the regulator, and if you have any words of advice for our listeners.



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TL: Well I'm not going to tell people that the regulator is your friend. They have a job to do – but they are not your enemy either.

My experience is that they have some very skilled and talented people who can help find solutions, but you need to be proactive, and you need to be transparent.

The CPSU has had an ongoing process of reviewing our rules and we have developed a positive relationship with the regulator in doing this work. We often meet with them at the concept stage, explaining what changes we are considering and seeking their feedback. We then undertake the drafting and provide those drafts back to them before commencing our internal approval processes. We then consider their feedback, make agreed changes before going through our approval process and lodging any application.

We have found that working collaboratively means that we end up with better changes and the overall timeframe is much reduced as the Commission have already seen our proposed changes before rule change applications are made.



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BS: Thanks for your time today, Tom, and for your candour and your insight in sharing your experiences with us.

TL: Thanks for the opportunity, Bill. It's been an honour and a privilege to have held elected Office for over 25 years. I hope some of the things I have learned along the way and shared with our



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listeners today help those who hold Office now or are responsible for the compliance obligations of their organisations.

BS: Thanks again Tom. And finally, a thank you to our listeners today – we hope you found this useful and hope you'll join us again next time.

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