



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 02

Complaints involving corporations

Policy	PS-02: Complaints involving corporations
Relevant legislative provisions	CATSI Act sections 439-5 through to 439-20; 453-1, 453-5, 490-1, 526-15, 576-25, 604-25, 658-1(1)(g), 658-10 CATSI Act Part 10-5
Last updated	18 April 2017
Other relevant policies	PS-01: Providing information and advice PS-03: Complaints and feedback about the Registrar's staff, contractors and services PS-05: The Registrar's powers to intervene PS-12: Registers and use and disclosure of information held by the Registrar PS-15: Privacy PS-22: Disputes involving corporations PS-25: Examinations

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PS-02: Complaints involving corporations

1 About this policy statement

- 1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on complaints involving corporations: when the Registrar can handle a particular complaint, how the Registrar will deal with a complaint and whether a complainant qualifies for whistleblower protection.
- 1.2 References to sections in this policy statement are references to sections of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) unless otherwise specified. References to corporations in this policy statement are references to Aboriginal and Torres Strait Islander corporations unless otherwise specified. In addition, references in this policy statement to the Registrar are also references to a delegate who is lawfully exercising the powers of the Registrar.

2 What complaints will the Registrar handle?

- 2.1 It is a function of the Registrar to assist with complaints made under the CATSI Act:
- about the internal operation of an Aboriginal and Torres Strait Islander corporation—section 658-1(1)(g)(i) or
 - involving Aboriginal and Torres Strait Islander corporations—section 658-1(1)(g)(ii).
- 2.2 For the purpose of this policy statement, a complaint means a report made to the Registrar about a breach or potential breach of the CATSI Act, the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (the Regulations) or a corporation's rule book. This includes, but is not limited to, where a breach or potential breach may have been made by:
- a corporation
 - a director of a corporation
 - an officer of a corporation
 - an employee of a corporation
 - a member of a corporation.
- 2.3 It may include reports of:
- financial irregularities and/or
 - misconduct of directors or other officers (where the misconduct could amount to a breach of directors' duties).

- 2.4 The Registrar distinguishes these complaints from other types of complaints that are outside the Registrar’s jurisdiction. For the purpose of this policy statement, complaints do not ordinarily include:
- complaints about funding bodies
 - complaints about employment, harassment or discrimination by a corporation
 - complaints about the quality or non-performance of services provided by corporations.
- 2.5 In some circumstances the Registrar may deal with such complaints if it appears that the complaint indicates broader problems in the corporation’s internal governance.
- 2.6 Any complaints made about staff members or contractors of the Registrar’s office will be dealt with according to policy statement ‘PS-03: Complaints and feedback about the Registrar’s staff, contractors and services’.
- 2.7 Complaints made to the Registrar can indicate an internal dispute, for example, over the interpretation of a provision of the corporation’s rule book or the CATSI Act. In such circumstances the Registrar will attempt to resolve the complaint through dispute resolution processes—see ‘PS-22: Disputes involving corporations’.
- 2.8 Complaints can also involve allegations of contravention of the CATSI Act by a corporation or its officers and directors. These types of complaints may require detailed inquiry and could lead to regulatory action by the Registrar—see section 6 along with ‘PS-05: The Registrar’s powers to intervene’ and ‘PS-25: Examinations’.

3 Information obtained when a complaint is made

- 3.1 Complaints involving a corporation may be received by any staff member of the Registrar’s office—for example, by telephone or during a visit to a community.
- 3.2 To help the Registrar assess a complaint, a staff member of the Registrar’s office receiving a complaint will:
- where possible, record the name and contact details of the person making the complaint
 - ask if the complaint has been raised with the corporation being complained about
 - ensure the person provides as much relevant information as possible so the Registrar has a clear understanding of the problem
 - try to obtain specific rather than general information, and provide an opportunity to raise additional issues or matters
 - ask what action or outcome the person would like to see as a result of their complaint
 - ensure that enough information is recorded to fully assess the complaint

- let the person know that more information may be required, such as letters or other documents, or more action such as providing a complaint in writing.

3.3 The Registrar will accept anonymous complaints but will not normally take further action unless the complaint raises a serious matter and there is sufficient information in the complaint for it to be properly assessed. The reasons for the Registrar taking a more cautionary approach in relation to anonymous complaints is that by their nature they do not allow the Registrar to seek further information from a complainant or to provide updates or details of the outcome of a complaint.

4 Person making a complaint to be kept informed

4.1 A staff member of the Registrar's office will provide a person making a complaint with:

- an email or letter acknowledging receipt of the complaint and information about how the Registrar's office handles complaints
- updates on the progress of their complaint
- if appropriate, advice in writing regarding a final decision or action in relation to their complaint
- if appropriate, an exit phone call to better explain a final decision or action in relation to their complaint
- other options, if any, that may be available should the complainant wish to pursue their concerns further.

5 Confidentiality and disclosure

5.1 Information received in confidence by the Registrar's office (including complaints) is protected information and will only be used or disclosed if authorised by the CATSI Act (see section 604-25). Further guidance on the use or disclosure of protected information can be found in 'PS-12: Registers and use and disclosure of information held by the Registrar'. Personal information about an individual will also be collected, managed, used and disclosed according to the Privacy Act—see 'PS-15: Privacy', for further guidance on these requirements.

5.2 The Registrar relies on complaints and information from members and directors of corporations and the general public to:

- identify wrongdoing or potential breaches of the CATSI Act
- properly enforce and administer the CATSI Act
- identify systemic issues facing Aboriginal and Torres Strait Islander corporations.

- 5.3 Enabling people to make a complaint or provide information in confidence and in a manner that does not result in prejudice or adverse consequences to the complainant is necessary in order for the Registrar to perform effectively and efficiently as the regulator of Aboriginal and Torres Strait Islander corporations. See also section 8 of this policy statement on protection for whistleblowers.
- 5.4 In most instances, a person will have a reasonable expectation that their complaint or the information they provide in confidence, as well as their identity, will be kept confidential. The Registrar therefore deals with all complaints and information provided in confidence on that basis, unless there is an express or implied understanding that the complaint or information would not remain confidential.
- 5.5 The name of a complainant and a copy of their complaint will generally not be provided to the subject of a complaint. In seeking a response to a complaint the Registrar will usually be able to summarise a complaint without identifying the complainant. Equally, copies of documents provided to the Registrar in response to a complaint by the subject of a complaint will generally not be provided to a complainant.
- 5.6 The Registrar will take steps to minimise the risk that a complainant or a provider of information in confidence will be identified. The Registrar will take into account factors such as whether:
- information is known only to a limited number of people and they know each other
 - a document has identifying features such as handwriting, addresses and a person's position in a company or a community
 - information is only general in nature and unlikely to identify the source
 - a complainant has widely published their complaint or information contrary to a reasonable expectation of confidentiality.
- 5.7 The Registrar will endeavour to maintain the confidentiality of all parties when making detailed inquiries into a complaint. However, sometimes information about a complaint will need to be disclosed as part of inquiries made in relation to a complaint or for other lawful reasons, for example, disclosure pursuant to a warrant issued by a police officer or court.

6 Powers of the Registrar in resolving complaints

- 6.1 The Registrar will endeavour to assist corporations to resolve complaints through the use of the mechanisms available to members and directors within their rules and the CATSI Act.
- 6.2 Any discretionary statutory powers exercised by the Registrar will be in accordance with the aims in section 658-5 and the powers in section 658-10 of the CATSI Act.

- 6.3 Section 658-10 states that the Registrar has the power to do all things necessary or convenient to perform the Registrar's functions, giving the Registrar flexibility in the way complaints are assessed and dealt with.
- 6.4 Specific powers which the Registrar may exercise when handling complaints include the power to:
- ask questions of those people with knowledge of the affairs of a corporation—section 453-5.
 - examine the books of a corporation—section 453-1
 - require compliance with the CATSI Act—section 439-20
 - convene meetings of interested persons—section 439-5
 - call a general meeting, other than an annual general meeting (AGM)—section 439-10
 - call an AGM—section 439-15
 - apply for injunctions—section 576-25
 - appoint a special administrator—section 490-1
 - petition the court for a corporation to be wound up—section 526-15(1)(h).
- 6.5 However, the Registrar does not undertake to use these powers in every complaint made to the Registrar. The Registrar's resources are finite. The Registrar considers a range of factors to ensure that the exercise of these powers is focused on the most appropriate matters and that the finite resources are directed appropriately.
- 6.6 For more detail on the Registrar's powers and how they are exercised, see 'PS-05: The Registrar's powers to intervene'.

7 What if the Registrar cannot help with a complaint?

- 7.1 If the Registrar cannot help with a complaint, or makes a decision not to take any action, the Registrar will let the person making the complaint know the reason/s why. The complaint will then be closed.
- 7.2 The person making the complaint may seek help from another agency, or the Registrar may refer the complaint with the consent of the complainant to another agency, such as:
- the Administrative Appeals Tribunal or other tribunal
 - Commonwealth, state or territory police
 - the Human Rights Commission
 - industry or specialist ombudsman
 - other complaints-handling agencies.

8 Protection for whistleblowers

- 8.1 Certain people involved with corporations have special protection through whistleblower provisions in the CATSI Act (Part 10-5) if they make a disclosure or complaint (section 466-1(1)(b)) to:
- the Registrar
 - the corporation's auditor or audit team
 - a director, secretary or senior manager of the corporation
 - a person authorised by the corporation to receive complaints or disclosures.
- 8.2 These provisions protect a person who makes a complaint about a corporation if there are reasonable grounds to suspect that a corporation or an officer or employee of the corporation has contravened the CATSI Act—section 466-1(1)(d).
- 8.3 A person who qualifies for whistleblower protection in relation to a disclosure cannot be subjected to civil or criminal liability for making a disclosure—section 469-1(1). Corporations are also prohibited from terminating a whistleblower's employment—section 469-1(2)— and from victimising a whistleblower—section 469-5. Under the CATSI Act a person also has a right to compensation if they suffer damage due to victimisation.
- 8.4 When receiving and handling complaints from whistleblowers, the Registrar takes into consideration:
- the Commonwealth Ombudsman's view that 'special measures are needed to ensure that whistleblowers' complaints are received and handled in confidence...[and] a whistleblower should not be subject to reprisals because they have made an allegation'—*Better practice guide to complaint handling* (Commonwealth Ombudsman, Canberra, April 2009)
 - the principles for effective whistleblower protection as set out in Australian Standard AS8004-2003, 'Whistleblower Protection Programs for Entities'. The standard emphasises the importance that all whistleblower reports be kept confidential and secure. It also provides that whistleblowers should be given a guarantee of anonymity, and information received from them must be held in the strictest confidence and not disclosed unless they have been consulted and given consent, or the information is required by law to be disclosed.

A. How is a person identified as a whistleblower?

8.5 The Registrar's staff may assist a person in determining whether they are a potential whistleblower. This may require a staff member to consider whether the person making the complaint or disclosure is one of the following, as required by section 466-1(1)(a):

- a contact person of the corporation
- an officer of the corporation—this includes a director, secretary, special administrator, receiver, administrator appointed under the Corporations Act or a liquidator—see the definition in section 683-1(3)
- an employee of the corporation
- a contractor of the corporation
- an employee of a contractor of the corporation.

8.6 In addition, the person making the complaint must make their identity known to the staff member within the Registrar's office receiving the complaint (section 466-1(1)(c)) for the whistleblower provisions to apply. A person who makes an anonymous complaint will not receive whistleblower protection.

8.7 The person must make the disclosure/complaint in good faith (section 466-1(1)(e)) and also have reasonable grounds to suspect that the information they are providing indicates that (section 466-1(1)(d)):

- the corporation has, or may have, contravened a provision of the CATSI Act
- an officer or employee of the corporation has, or may have, contravened a provision of the CATSI Act.

This means that the disclosure/complaint made by the person must be genuinely made and not be an unfounded allegation.

8.8 All disclosures/complaints from a whistleblower will be recorded as such by staff of the Registrar's office.

B. The role of the Registrar

8.9 If adverse action is taken against a person who qualifies for protection as a whistleblower, that person can take their own civil legal action to protect their interests—section 469-1. In such circumstances the person should seek independent legal advice. The Registrar does not undertake civil legal action on behalf of a person.

8.10 Victimization of a whistleblower can also be a criminal offence under the CATSI Act—section 469-5. Complaints about victimisation can be made to the Registrar. As with any criminal offence, there must be sufficient evidence to prove beyond a reasonable doubt that an offence has occurred. Supporting evidence must be provided to the Registrar with any complaint.

END OF POLICY STATEMENT