



Australian Government

Office of the Registrar of Indigenous Corporations



## POLICY STATEMENT 29

# Disqualified persons and the Register of Disqualified Officers

<b>Policy</b>	PS-29: Disqualified persons and the Register of Disqualified Officers
<b>Relevant legislative provisions</b>	CATSI Act Divisions 279 and 418 Corporations (Aboriginal and Torres Strait Islander) Regulations 2017
<b>Last updated</b>	20 October 2017
<b>Other relevant policies</b>	PS-02: Complaints involving corporations PS-12: Registers and use and disclosure of information held by the Registrar PS-15: Privacy <i>Prosecution Policy of the Commonwealth</i>

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## **PS–29: Disqualified persons and the Register of Disqualified Officers**

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### **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:
- the basis on which a person may be disqualified
  - the offence of managing a corporation while disqualified
  - the categories of disqualified persons that are listed on the Register of Disqualified Officers
  - documents and information available on the Register of Disqualified Officers
  - procedures for monitoring disqualified persons to ensure they do not become involved with the management of Aboriginal and Torres Strait Islander corporations.
- 1.2 References to sections in this policy statement are references to sections of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (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, a reference in this policy statement to the Registrar includes a delegate who is lawfully exercising the powers of the Registrar.
- 1.3 More information about disqualifications can be found in the Registrar’s fact sheet *Disqualification from managing corporations under the CATSI Act*, which is available on the Registrar’s website [oric.gov.au](http://oric.gov.au).

### **2 How a person becomes disqualified**

- 2.1 Division 279 of the CATSI Act sets out the three ways in which a person may be disqualified from managing corporations:
- automatically under section 279-5 upon:
    - being convicted of particular types of serious offences
    - bankruptcy or signing a personal insolvency agreement, or
    - disqualification under Part 2D.6 of the *Corporations Act 2001* (Corporations Act)
  - by court order upon application by the Registrar:
    - for contravening a civil penalty provision under the CATSI Act or Corporations Act—section 279-15
    - if the person has been an officer of two or more corporations (including Corporations Act corporations) that have failed in the last seven years in particular circumstances—section 279-20

- for repeatedly contravening the CATSI Act or Corporations Act—  
section 279-25
  - by order of the Registrar if, within the preceding 7 years, a person has been an officer of two or more corporations (including Corporations Act corporations), which have been wound up and a liquidator has lodged a report about each corporation’s inability to pay its debts—  
section 279-30.
- 2.2 If a person has been automatically disqualified under sections 279-5(1) or 279-5(5) upon being convicted of an offence, the Registrar may apply to the court to extend the period of disqualification by up to an additional 15 years—  
section 279-10.

### **3 Disqualified persons must not manage corporations**

- 3.1 A disqualified person must not manage any corporation, or hold a position as a director or officer of any corporation—section 279-1. Directors and officers are defined in section 683-1.
- 3.2 A person commits an offence under section 279-1 if they are disqualified and they:
  - make, or participate in making, decisions that affect the whole, or a substantial part, of a corporation’s business
  - exercise the capacity to affect significantly a corporation’s financial standing, or
  - communicate instructions or wishes<sup>1</sup> to directors of a corporation, knowing that directors are accustomed to acting in accordance with the person’s instructions or wishes, or intending that the directors will act in accordance with those instructions or wishes.
- 3.3 If a corporation is a registered native title body corporate, a person who is a common law holder of native title does not contravene subsection 279-1(1) merely because the directors of the corporation do (or refrain from doing) an act in good faith and with the belief that doing (or refraining from doing) the act is necessary to ensure that the corporation complies with particular obligations under Native Title legislation.
- 3.4 However, a person may defend a contravention of section 279-1 if:
  - they had permission to manage the corporation under sections 279-30 or 279-35, and
  - the conduct was within the terms of that permission—  
subsection 279-1(4).

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<sup>1</sup> Other than advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the corporation.

## **4 Permission for a disqualified person to manage a corporation**

- 4.1 A person who is disqualified (for conviction, bankruptcy, or by an order of the court) may apply to the court for leave to manage a corporation or to become a director, secretary or contact person of a corporation—subsections 279-35(1) and 257-10(2)(a).
- 4.2 A person who is disqualified by the Registrar, or by the Australian Securities and Investments Commission under section 209F of the Corporations Act, cannot seek leave from the court to manage corporations—subsection 279-35(2).
- 4.3 In exceptional circumstances, the Registrar may permit a disqualified person (whether disqualified by the Registrar, under the Corporations Act, or otherwise) to manage a particular corporation, or class of corporations—subsection 279-30(7).

## **5 Register of Disqualified Officers**

- 5.1 Subsection 418-1(b) requires the Registrar to keep a Register of Disqualified Officers.
- 5.2 The Register of Disqualified Officers is a register of people who have been disqualified from managing Aboriginal and Torres Strait Islander corporations by court order or by the Registrar under sections 279-15, 279-20, 279-25 or 279-30.

### **A. What the register includes**

- 5.3 Subsection 418-15(2) requires the Registrar to keep copies of certain documents on the Register of Disqualified Officers:
- every notice that was served in connection with a disqualification initiated by the Registrar under section 279-30
  - every order made by a court under sections 279-15, 279-20 and 279-25
  - every order granting leave for a disqualified person to manage Aboriginal and Torres Strait Islander corporation(s) under section 279-35
  - every permission given by the Registrar to manage Aboriginal and Torres Strait Islander corporation(s) under subsection 279-30(7)
  - any other document set out in the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017.

### **B. What the register does not include**

- 5.4 The Register of Disqualified Officers does not contain the details of people who have been automatically disqualified (under section 279-5) from managing corporations.

- 5.5 This means that the following people are **not** included on the Register of Disqualified Officers:
- people who have been convicted on indictment of an offence that concerns the making of decisions that affect the whole or a substantial part of the business of an Aboriginal and Torres Strait Islander corporation or concerns an act that has the capacity to significantly affect the financial standing of a corporation—subsection 279-5(1)(a)
  - people who have been convicted of an offence under the CATSI Act that is punishable by imprisonment for a period greater than 12 months, or involves dishonesty and is punishable by at least three months imprisonment—subsection 279-5(1)(b)
  - people who have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months—subsection 279-5(1)(c)
  - people who are undischarged bankrupts or have a personal insolvency agreement in place—subsections 279-5(3) and (4)
  - people who are disqualified from managing a corporation under the Corporations Act—subsection 279-5(5).

## **6 Access to information on the Register of Disqualified Officers**

- 6.1 Anyone from the public may inspect or search the Register of Disqualified Officers—section 421-1.
- 6.2 For convenience and accessibility the Registrar makes some of the register available through [oric.gov.au](http://oric.gov.au) but not all of it. Anyone can ask the Register to inspect documents that are not published on the website.
- 6.3 If the Registrar or the court disqualifies a person under sections 279-15, 279-20, 279-25, or 279-30, information that is published on the website will be updated to show:
- the disqualified person’s first and last name, address and date of birth
  - the start and end dates of the disqualification period
  - the reason for the disqualification.
- 6.4 The website will be updated when the Registrar or the court disqualifies a person under sections 279-15, 279-20, 279-25, or 279-30, or a person is given permission by the Registrar or the court.
- 6.5 As far as practicable, information about a disqualification that is published on the Registrar’s website will be removed within one business day of the disqualification end date.

- 6.6 There is no fee for accessing the Register of Disqualified Officers, unless providing copies would substantially or unreasonably divert the resources of the Registrar's office from its other operations.
- 6.7 See 'PS-12: Registers and use and disclosure of information held by the Registrar' for a list of documents that are exempt from public inspection, and further guidance on information that is available on the public registers, including privacy concerns.

## **7 Monitoring disqualified persons**

- 7.1 The Registrar is responsible for administering the CATSI Act, which includes monitoring disqualified persons to ensure they do not manage, or act as director, secretary or contact person of any Aboriginal or Torres Strait Islander corporation.
- 7.2 Information and complaints about persons who have been, or may be, automatically disqualified under section 279-5 may be reported to the Registrar by email to [info@oric.gov.au](mailto:info@oric.gov.au), or calling 1800 622 431. The Registrar reviews and investigates these reports in accordance with policy statement 'PS-02: Complaints involving corporations'.
- 7.3 Under section 279-1 of the CATSI Act, a disqualified person who acts as a director, secretary or contact person, manages, or becomes involved with the management of an Aboriginal or Torres Strait Islander corporation, commits an offence and is liable to prosecution. The Registrar's functions include the investigation of suspected offences under the CATSI Act.
- 7.4 The decision to prosecute alleged offences under the CATSI Act is made by the Commonwealth Director of Public Prosecutions in accordance with the *Prosecution Policy of the Commonwealth* following the referral of a brief of evidence by the Registrar.

## **END OF POLICY STATEMENT**