



Australian Government

Office of the Registrar of Indigenous Corporations



## POLICY STATEMENT 01

# Providing information and advice

<b>Policy</b>	PS-01: Providing information and advice
<b>Relevant legislative provisions</b>	CATSI Act section 658-1
<b>Last updated</b>	23 October 2012
<b>Other relevant policies</b>	PS-02: Complaints involving corporations PS-12: Registers and use and disclosure of information held by the Registrar PS-14: Privacy PS-21: No-action letters PS-22: Disputes involving corporations

## **PS-01: Providing information and advice**

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## **PS-01: Providing information and advice**

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### **1 Purpose**

- 1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) sets out the Registrar's policy on the provision of information and advice and limitations on this function.
- 1.2 The Registrar will provide information and advice as described in this policy statement.
- 1.3 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 Registrar's advice function**

- 2.1 Under the CATSI Act, it is a statutory function of the Registrar to provide advice to persons about:
  - the registration of a particular corporation—section 658-1(1)(d)(i)
  - the rules governing the internal management of a corporation—section 658-1(1)(d)(ii)
  - the operation of a corporation—section 658-1(1)(d)(iii).
- 2.2 The Registrar provides information and advice to a range of people, including:
  - the members, directors or officers of corporations
  - funding bodies
  - creditors of corporations
  - agents of corporations
  - members of the public generally.
- 2.3 Guidance on the Registrar's advice-giving functions is provided in the Revised Explanatory Memorandum to the Corporations (Aboriginal and Torres Strait Islander) Bill 2006 (at paragraph 5.666):

Proposed subsection 658-1(1)(d) aims to enable the Registrar to provide non-binding factual and procedural advice about the registration of an Aboriginal and Torres Strait Islander corporation, the rules governing the internal management of the corporation and the operation of the corporation. This will assist corporations to resolve disputes or address uncertainty. The advice will be non-binding in effect. The basis for this function is that disputes and invalid actions within Aboriginal and Torres Strait Islander corporations often arise from, or are greatly exacerbated by, a misunderstanding or lack of awareness of

the legislation and or a corporation's internal governance rules. Experience has shown that disputes can often be resolved through providing independent information and advice about a corporation's (or a member's) position under the legislation or corporation's rules. Further, assistance of this kind can ensure correct procedures are followed to avoid potential invalid actions. Such assistance complements other pre-incorporation assistance, information material and ongoing training.

### **3 The Registrar's aims**

- 3.1 When providing advice, the Registrar has the following aims set out in section 658-5 of the CATSI Act, which are:
- to facilitate and improve the effectiveness, efficiency, sustainability and accountability of corporations—section 658-5(a)
  - to provide certainty for the members, officers and employees of corporations in their dealings with the corporation and each other—section 658-5(b)(i)
  - to provide certainty for persons outside corporations in their dealings with those corporations—section 658-5(b)(ii)
  - to have regard to Aboriginal and Torres Strait Islander tradition and circumstances—section 658-5(c)
  - to administer the laws of the Commonwealth that confer functions and powers on the Registrar effectively and with a minimum of procedural requirements—section 658-5(d)
  - to ensure that information is available as soon as practicable for access by the public—section 658-5(e).

### **4 Provision of information and advice**

- 4.1 The timeframe in which the Registrar will provide a response to requests for information or advice will vary depending on the complexity of the issue, sensitivity and urgency of the matter and available resources and priorities. The Registrar will aim to provide a response to all requests for information within one week and all requests for advice within one month.

#### **A. Information**

- 4.2 Information is by its nature uncontroversial. Often information given will be 'public information'. It includes the following:
- the name or ICN of a corporation
  - publicly available details about a corporation appearing on the Registrar's website
  - publically available information or documents on the Register of Aboriginal and Torres Strait Islander Corporations
  - providing copies of a corporation's rule book to its members
  - the address and contact details of the Registrar or staff

- general information about what functions the Registrar performs
  - information about the Registrar’s public education programs
  - official publications produced by the Registrar
  - standard responses covered by the Registrar’s publications.
- 4.3 Information may include telling people what forms to complete or procedures to follow.
- 4.4 Telling a person which part of the CATSI Act, the regulations, a corporation’s rule book or a publication is relevant to their concern or query would also be information.
- 4.5 In some straightforward cases, providing an explanation of part of the CATSI Act, the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (the Regulations) or a corporation’s rule book may be classified as information—for example, where the information:
- is a plain English explanation of a straightforward and uncontroversial clause which is well understood
  - relates to provisions of the CATSI Act, the Regulations or model rule book for which the Registrar is responsible
  - is information which is included in a Registrar’s publication.
- 4.6 Information can be given by any member of staff. There are no specific restrictions on how information and advice is to be provided. It may be provided in person, by phone, email, post or fax.

## **B. Advice**

- 4.7 Advice would include, but is not limited to:
- advising a corporation director or member about options for taking action under the CATSI Act without advising which option the person should take in their circumstances—for example:
    - steps to take in making an application to register under the CATSI Act, including transfers and amalgamations
    - steps to take to improve corporate governance and avoid external administration
  - providing advice about the CATSI Act, the Regulations or the corporation’s rule book, where that advice reflects the view of the Registrar on the effect of the legislation or is consistent with policy approved by the Registrar (for example, as stated in a policy statement)
  - providing a view about whether a particular course of action taken, or proposed to be taken, by a person may breach the CATSI Act
  - assisting a corporation to draft a rule book or make changes to a rule book
  - advising a corporation how to comply with the CATSI Act in a particular situation

- applying a corporation's rule book and advising on what procedures should be, or should have been, followed
- advising whether a particular meeting met the requirements of a corporation's rule book and the CATSI Act
- advising whether the appointment or removal of directors, other officers or members was done in accordance with a corporation's rule book and the CATSI Act
- helping to resolve a complaint or dispute by providing advice on the requirements of the corporation's rule book and the CATSI Act, and/or whether there has been compliance with the rule book and CATSI Act—see 'PS-02: Complaints involving corporations' and 'PS-22: Disputes involving corporations'.

4.8 Advice will ordinarily be provided in writing, either by post or email.

4.9 If advice is requested by telephone, the person requesting the advice may be required to provide their name and contact details for confirmation of that advice in writing.

### **C. Advice which will not be given by staff**

4.10 Some types of advice will not be provided by the Registrar under any circumstances. Advice which will not be provided by the Registrar includes:

- advice that amounts to legal advice. If legal advice is sought not-for-profit corporations registered under the CATSI Act may apply for free legal assistance through LawHelp. LawHelp is a service started by the Registrar and volunteer lawyers (more information is available on the Registrar's website, [www.oric.gov.au](http://www.oric.gov.au))
- information or advice that could restrain the Registrar's decision making power—unless, for example, the advice is in the form of a no-action letter with the appropriate disclaimer (see 'PS-21: No-action letters')
- advice relating to legislation or laws other than the CATSI Act or related legislation—for example, dealing with employment issues or native title claims
- advice of a commercial or financial nature, or anything outside the scope of the Registrar's role under the CATSI Act—for example, business, accounting or tax advice
- advice, information or opinions of a political or personal nature.

4.11 ORIC cannot, by advice or otherwise, declare actions of corporations (such as general meetings) to be invalid. Only a court can declare such matters to be invalid—see section 576-15 of the CATSI Act.

4.12 In some circumstances, it may be appropriate to refer issues of the kind noted above to another government agency with responsibility for those issues—for example, the Australian Taxation Office or the Ombudsman. This will be discussed with the person requesting the advice.

## **D. Protection of information**

- 4.13 Under the CATSI Act all information provided to the Registrar in confidence is protected information that cannot be disclosed unless the use or disclosure is authorised by the Act.
- 4.14 Authorised uses or disclosures include a use or disclosure:
- made for the purposes of the CATSI Act—section 604-25(1)(a)
  - required or authorised by a law of the Commonwealth or a state or territory—section 604-25(1)(b)
  - made by the Registrar or a delegate of the Registrar in the course of performing the duties of the Registrar or exercising a power of the Registrar—section 604-15(2)(a)
  - made by a person engaged to assist the Registrar in the performance of the Registrar’s duties or exercise of the Registrar’s powers—section 604-25(2)(b) and
  - made by a special administrator of an Aboriginal and Torres Strait Islander corporation in the performance of a function or duty or an exercise of a power—section 604-25(2)(c).
- 4.15 The Registrar is also bound by the Information Privacy Principles in the *Privacy Act 1988* which regulate the collection, use, storage and collection of personal information. Information received from individuals will be dealt with in accordance with these statutory requirements—see ‘PS-15: Privacy’.

## **END OF POLICY STATEMENT**