



Australian Government

Office of the Registrar of Indigenous Corporations



## POLICY STATEMENT 14

# Review of reviewable decisions

<b>Policy</b>	PS-14: Review of reviewable decisions
<b>Relevant legislative provisions</b>	CATSI Act sections 21-1, 487-15, 617-1, 617-10, 620-5, 623-1
<b>Last updated</b>	5 February 2013
<b>Other relevant policies</b>	PS-24: Applications for permission to deny a members' request for a general meeting

## **PS-14: Review of reviewable decisions**

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1	Purpose .....	3
2	What are reviewable decisions? .....	3
3	Notice of reviewable decisions .....	3
4	Who to notify .....	4
5	Notification not warranted.....	4
6	Failure to notify will not invalidate the decision.....	4
7	How to notify.....	4
8	Internal review .....	5
9	Extensions of time .....	5
10	Review of decision—Registrar’s own initiative .....	6
	Attachment A: Section 617-1 reviewable decisions .....	8

## **PS-14: Review of reviewable decisions**

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### **1 Purpose**

1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on the merits review process for reviewable decisions made under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act).

1.2 References to sections in this policy statement are references to sections of 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.

1.3 In this policy statement:

‘affected person/people’ means a person or persons whose interests are affected by a reviewable decision made by the Registrar

‘reviewable decision’ means a decision specified in section 617-1 which may be reviewed internally by the Registrar’s office or by the Administrative Appeals Tribunal (AAT).

### **2 What are reviewable decisions?**

2.1 The CATSI Act specifies certain decisions made by the Registrar as reviewable—section 617-1. People affected by a reviewable decision can seek reconsideration through merits review processes, including internal review and review by the AAT—sections 620-5 and 623-1. The Registrar also has the power to reconsider a reviewable decision on his/her own initiative—section 620-1.

2.2 The decisions of the Registrar made under the CATSI Act which are reviewable are listed in section 617-1. A table listing the reviewable decisions is attached to this document—see attachment A.

### **3 Notice of reviewable decisions**

3.1 A decision-maker who makes a reviewable decision under the CATSI Act must take reasonable steps to notify each person whose interests are affected by the decision [section 617-10(2)]:

- of the making of the decision and
- of the person’s right to seek a review of the decision.

## **4 Who to notify**

- 4.1 The Registrar will take reasonable steps to notify people who may be substantially affected by a reviewable decision that a decision has been made.
- 4.2 In most cases it will be easy to identify such people—for example, when a corporation applies for registration under section 21-1, the person to be notified of the Registrar’s decision to accept or reject the application will be the person who lodged it.
- 4.3 However, depending on the nature and effect of the decision, other people besides the applicant or the direct ‘beneficiary’ of a decision may also be entitled to be notified about it. For example, if a decision is made to extend the period of a special administration under section 487-15(1) the Registrar may want to notify funding bodies and other people who deal with the corporation. The Registrar will determine which other people may need to be notified of a decision on a case by case basis.

## **5 Notification not warranted**

- 5.1 The Registrar is not required to give notice if he or she determines that doing so is not warranted because of the cost or the way in which the interests of the person or people are affected [section 617-10(3)]:
- 5.2 Having regard to these criteria, the Registrar may determine that notification is not warranted:
- if many people are affected and notifying all of them would be extremely difficult or expensive or
  - if the people are only affected indirectly.

## **6 Failure to notify will not invalidate the decision**

- 6.1 If the Registrar does not notify a person who should have been notified, the validity of the decision is not affected—section 617-10(4).
- 6.2 A person who has not been notified of a decision by the Registrar may still seek a review of that decision. However, the Registrar must be satisfied that the interests of the person requesting the review are genuinely affected.
- 6.3 The AAT may also accept late applications for review from affected persons who have not been notified of a decision by the Registrar—section 617-10(5).

## **7 How to notify**

- 7.1 The Registrar will, wherever possible, notify affected people in writing of a reviewable decision.

- 7.2 However, the Registrar may also consider whether it is necessary in the circumstances to notify the affected person in a different way, such as by telephone, email or the internet. In doing so the Registrar will consider the interests involved (for example, whether the decision will have a direct and immediate effect on the person) and whether the person has asked to be notified of the decision in a different way.
- 7.3 In some circumstances, the Registrar may determine that it is more appropriate to notify affected people by publishing a notice in the Commonwealth *Gazette* or on the Registrar's website. This may occur if the number of people affected by the decision is so large that writing to everybody is not reasonably possible—for example, if a large number of the affected people are not identifiable or if the Registrar considers that publishing a notice in the *Gazette* or on a website is the most effective means to give notice to affected persons of their review rights.
- 7.4 In determining whether to publish a notice in the *Gazette* or on the Registrar's website, the Registrar may consider:
- the number of affected people
  - whether the affected people can be identified
  - the costs of sending written notice to each affected person
  - the extent to which the interests of the people are affected
  - the extent to which the decision has changed the person's obligations under the CATSI Act.

## **8 Internal review**

- 8.1 A person whose interests are affected by a reviewable decision may request reconsideration of the decision—section 620-5(1).
- 8.2 The request must be in writing and given to the Registrar within 28 days (or within a longer period if the Registrar allows) after the day on which the person first received notice of the decision—section 620-5(2).
- 8.3 An internal review will be undertaken by a person (the Reviewer) to whom the Registrar's power has been delegated under the CATSI Act—section 620-5(4). The Reviewer must be a person who has not been involved in making the decision—section 620-5(4).
- 8.4 After a decision has been made on internal review, an applicant has the right to seek review of it by the AAT if they are unhappy with the decision—section 623-1. For further information on the AAT refer to [www.aat.gov.au](http://www.aat.gov.au) or telephone 1300 366 700.

## **9 Extensions of time**

- 9.1 An affected person has 28 days to seek an internal review after he or she receives notification of a reviewable decision. However, the Registrar may

consider extending the review period if the affected person requests it. Reasons for the delay must be provided in the request.

9.2 In determining whether to extend the review period under section 620-5(2) the Registrar may consider:

- whether the reasons for the delay are acceptable in the circumstances
- whether the person seeking an extension of the review period lives in a remote area and whether this may have contributed in some way to the delay
- whether the person seeking an extension of the review period fully understood their review rights (for example, due to language or literacy difficulties)
- whether any other party's interests (including the Registrar's interests) may be adversely affected by granting the extension
- the period of time that has lapsed since the end of the review period.

9.3 Examples of circumstances where it may be appropriate to grant an extension include:

- if there are extenuating personal circumstances which prevented the person from seeking review within the 28-day period (for example, ill health or disability)
- if it is likely that advice provided by the Registrar's staff may have contributed to confusion over time limits or eligibility to seek internal review
- if the delay was due to the actions of an agent (such as a solicitor)
- if it was not possible to meet the deadline because of an event outside of the applicant's control (for example, the applicant was flood bound).

## **10 Review of decision—Registrar's own initiative**

10.1 The Registrar also has the power to review a decision on his/her own initiative—section 620-1.

10.2 The Revised Explanatory Memorandum to the Corporations (Aboriginal and Torres Strait Islander) Bill states (at paragraph 5.649):

This provision [620-1] is designed to provide appropriate procedural safeguards and to improve the quality of administrative decisions.

10.3 Accordingly, the Registrar may review a decision in circumstances where:

- it is later discovered that the reasons for the decision are incorrect or inaccurate
- the Registrar receives new information (either from an affected person or other source) that is considered to be relevant to making the decision and has not previously been considered by the decision-maker

- there is a change in a Commonwealth law, the CATSI Act or the Registrar's policies which may affect the outcome of the decision.
- 10.4 The Registrar will usually only initiate a review of a decision if satisfied that the original decision was incorrect, flawed or inaccurate in some way, or that as a precautionary measure a review is required.
- 10.5 After reconsidering a decision the Registrar must either [section 620-1(3)]:
- affirm the decision
  - vary the decision, or
  - set aside the decision.
- 10.6 The Registrar will decide to review decisions on a case-by-case basis.

**END OF POLICY STATEMENT**

## Attachment A: Section 617-1 reviewable decisions

Item	Decision	Provisions under which decision is made
1	To treat an application for registration as being withdrawn	sections 21-10(3), 22-10(3) or 23-10(3)
2	To refuse to grant an application for registration as an Aboriginal and Torres Strait Islander corporation	section 26-1(1)
3	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a small corporation	section 37-5(1)
4	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a medium corporation	section 37-5(2)
5	To alter the registration of an Aboriginal and Torres Strait Islander corporation that is registered as a large corporation	section 37-5(3)
5A	To make or refuse to make a direction about persons who would otherwise be disqualified from administering a compromise or arrangement	section 411(7)(f) of the Corporations Act as applied by section 45-1 of the CATSI Act
6	To refuse to register a constitutional change lodged under section 69-20 by the corporation	section 69-30(1)
7	To register or to refuse to register a constitutional change lodged under section 69-25 by a special administrator	section 69-30(1)
8	To change an Aboriginal and Torres Strait Islander corporation's constitution (internal governance rules requirements not being met)	section 69-35(2)
9	To change an Aboriginal and Torres Strait Islander corporation's constitution (oppressive conduct)	section 69-35(3)
10	To refuse to grant an exemption from the requirement to have at least 5 members	section 77-10
11	To allow an Aboriginal and Torres Strait Islander corporation to have a different minimum number of members to the number requested	section 77-15



Item	Decision	Provisions under which decision is made
12	To refuse a name being available to an Aboriginal and Torres Strait Islander corporation	section 85-5(2)
13	To consent to a name being available to an Aboriginal and Torres Strait Islander corporation	section 85-5(2)
14	To impose conditions on an agreement to a name being available to an Aboriginal and Torres Strait Islander corporation	section 85-5(3)
15	To direct an Aboriginal and Torres Strait Islander corporation to change its name	section 88-5(1)
16	To direct an Aboriginal and Torres Strait Islander corporation to change its document access address	section 115-15(1)
16A	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 4	section 187-5(1)
16B	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 4	section 187-5(5)
17	To grant an application by directors seeking to deny a request by members to call a general meeting	section 201-10(4)
18	To refuse an application by directors seeking to deny a request by members to call a general meeting	section 201-10(4)
19	To extend the period in which an AGM may be held	section 201-155(2)
20	To refuse to extend the period in which an AGM may be held	section 201-155(2)
21	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from provisions of Chapter 5	section 225-5(1)
22	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from provisions of Chapter 5	section 225-5(4)
23	To disqualify a person from managing an Aboriginal and Torres Strait Islander corporation	section 279-30(1)
24	To refuse to give a person permission to manage an Aboriginal and Torres Strait	section 279-30(7)

Item	Decision	Provisions under which decision is made
	Islander corporation	
25	To impose conditions or exceptions on the granting of permission to allow a person to manage an Aboriginal and Torres Strait Islander corporation	section 279-30(7)
26	To make a declaration in relation to voting on a proposed resolution by or on behalf of a related party	section 290-35(4)
27	To refuse to make a determination concerning a person's residential address	section 304-15(2)(b)
27A	To refuse to make a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 6	section 310-5(1)
27B	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, or its directors, from an exemptible provision of Chapter 6	section 310-5(5)
28	To determine that an Aboriginal and Torres Strait Islander corporation prepare a report	section 336-1(1)(a)
29	To determine that an Aboriginal and Torres Strait Islander corporation provide particular information etc.	section 336-1(1)(b)
30	To determine that extra requirements be met in respect of a financial report	section 336-1(7)
31	To refuse to exempt an Aboriginal and Torres Strait Islander corporation, its directors or its auditor from record-keeping and/or reporting requirements	section 353-3(1)
31A	To revoke, vary or suspend a determination exempting an Aboriginal and Torres Strait Islander corporation, its directors or its auditor from record-keeping and/or reporting requirements	section 353-3(4)
32	To certify and grant leave to re-lodge lost or destroyed registered documents	section 404-15(4)
33	To refuse to certify and grant leave to re-lodge lost or destroyed registered documents	section 404-15(4)
34	To refuse to receive or register a document submitted for lodgment	section 407-1
35	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in	section 439-20(1)

Item	Decision	Provisions under which decision is made
	the notice to comply with this Act or the corporation's constitution etc.	
36	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in the notice to cause particular circumstances to cease to exist	section 439-20(3)
37	To issue a notice requiring directors of an Aboriginal and Torres Strait Islander corporation to take the action specified in the notice to prevent particular circumstances from occurring or developing	section 439-20(5)
38	A determination that an Aboriginal and Torres Strait Islander corporation be under special administration	section 487-1(1)
39	To extend the period for which an Aboriginal and Torres Strait Islander corporation is under special administration	section 487-15(1)
40	To terminate the appointment of a special administrator for a reason specified in paragraph 505-5(b), (c) or (d)	section 505-1(4)
41	To make or refuse to make a direction about persons who are not to act as receivers	section 418(1)(f) of the Corporations Act as applied by section 516-1 of the CATSI Act
42	To make or refuse to make a direction about persons who are not taken to be connected with an Aboriginal and Torres Strait Islander corporation	section 448C(3)(b) of the Corporations Act as applied by section 521-1 of the CATSI Act
43	To make or refuse to make a direction about persons who are not taken to be connected with an Aboriginal and Torres Strait Islander corporation	section 532(6)(b) of the Corporations Act as applied by section 526-35 of the CATSI Act
44	To refuse a claim of entitlement to be paid money that is unclaimed property etc.	section 551-15(2)