



Australian Government
Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 17

Deregistrations and reinstatements

Policy	PS-17: Deregistrations and reinstatements
Relevant legislative provisions	CATSI Act Division 546 CATSI Act Division 551
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Other relevant policies	PS-14: Review of reviewable decisions PS-18: Property of deregistered corporations

PS-17: Deregistrations and reinstatements

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PS-17: Deregistrations and reinstatements

1 Purpose

- 1.1 The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) governs the registration, deregistration and reinstatement of Aboriginal and Torres Strait Islander corporations.
- 1.2 This policy statement sets out the circumstances under which the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) can deregister or reinstate a corporation under the CATSI Act.
- 1.3 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.
- 1.4 For information about how the Registrar will deal with unclaimed property and assets of deregistered corporations—see ‘PS-18: Property of deregistered corporations’.

2 When can a corporation be deregistered?

- 2.1 Division 546 of the CATSI Act sets out the circumstances in which the Registrar can deregister a corporation.
- A. Voluntary deregistration**
 - 2.2 The following can lodge an application with the Registrar to deregister a corporation [section 546-1(1)]:
 - the corporation
 - a director or member of the corporation
 - a liquidator of the corporation.
 - 2.3 If the corporation lodges an application, it must nominate someone to receive any notice of deregistration.
 - 2.4 A voluntary deregistration form can be obtained from the Registrar’s website at www.oric.gov.au or by calling ORIC on its freecall number 1800 622 431 (not free from mobiles).
 - 2.5 A person may only apply if [section 546-1(2)]:
 - all members of the corporation agree to the deregistration
 - the corporation is not carrying on business
 - the corporation’s assets are worth less than \$1000

- the corporation has paid all fees and penalties (if any) under the CATSI Act
 - the corporation has no outstanding liabilities
 - the corporation is not a party to any legal proceedings.
- 2.6 The applicant must give the Registrar any information that the Registrar requests about the current and former officers of the corporation—section 546-1(3).
- 2.7 The Registrar may request evidence, such as supporting documents or a statutory declaration, that the grounds exist for the applicant to apply to voluntarily deregister the corporation.
- 2.8 If the corporation has minimal assets, it should, after payment of all debts and liabilities, hold a general meeting and pass resolutions to transfer those assets. The assets should be transferred in accordance with the corporation's rule book or, in the absence of a rule in the corporation's rule book, to a body corporate with similar objects in their constituent documents (like a constitution).
- 2.9 After the Registrar receives a correctly completed voluntary deregistration form that satisfies the requirements above, the Registrar will give notice of the proposed deregistration in the *Gazette*—section 546-1(4).
- 2.10 The Registrar can deregister the corporation after two months have passed since the *Gazette* notice. The Registrar will give notice of the deregistration to the applicant or the person nominated in the voluntary deregistration form—section 546-1(6) and (7).

B. Registrar-initiated deregistration

- 2.11 The Registrar can deregister a corporation if [section 546-5(1)]:
- the corporation has not lodged a general report within six months after it is due
 - the corporation has not lodged any other documents under the CATSI Act in the last 18 months
 - the Registrar has no reason to believe that the corporation is carrying on business.
- 2.12 The Registrar may consider the following when considering whether a corporation is not carrying on business and should be deregistered:
- consistent failure to lodge reports (general, financial or directors')—this does not include corporations that have been granted an exemption from reporting
 - the Registrar has not been able to contact, or has not received any communications from, any person associated with the corporation
 - substantiated advice in writing from third parties that the corporation is not carrying on business—this advice can come from anyone involved in

the corporation, for example members, directors, or from reliable sources such as a government funding body.

- 2.13 The Registrar can also deregister a corporation if it is being wound up and it is apparent that [section 546-5(2)]:
- the liquidator is no longer acting
 - the corporation's affairs have been fully wound up and the liquidator is at least six months late in lodging a return (report) or
 - the corporation's affairs have been fully wound up and the corporation has no property or not enough property to cover the costs of getting a court order for the corporation's deregistration.
- 2.14 The Registrar will give notice of the proposed deregistration [section 546-5(3)]:
- to the corporation and its liquidator (if any)
 - to the corporation's directors
 - in the *Gazette*.
- 2.15 The Registrar will also give notice of the proposed deregistration to the corporation's contact person or secretary. The Registrar does not have to give notice to any of the persons listed above if the person's identity or address is not known—section 546-5(4).
- 2.16 The Registrar can deregister the corporation two months after the notice was placed in the *Gazette*—section 546-5(3).
- 2.17 If, within that two months, the Registrar receives a request that the corporation wishes to remain registered, the Registrar will require (as a minimum):
- written evidence about the corporation's current activities—through lodgement of the corporation's most recent financial year's general report and any other financial or directors' reports that should have been lodged with the Registrar
 - if the corporation is not carrying on business, the reasons in writing why the corporation should remain registered.
- 2.18 The Registrar will consider the request and decide whether the deregistration process should proceed or not.
- 2.19 If the Registrar proceeds with the deregistration, notice of the deregistration must be given to everyone who was notified of the proposed deregistration—section 546-5(5).

C. **Deregistration following amalgamation or winding up**

- 2.20 The Registrar must deregister a corporation when [section 546-10]:
- the court orders deregistration of the corporation under sections 413(1)(d), 481(5)(b) or 509(6) of the *Corporations Act 2001*

(the Corporations Act) (as applied by section 45-1 or 526-35 of the CATSI Act)

- three months have passed since the corporation's liquidator lodged a return (report) under section 509 of the Corporations Act (as applied by section 526-35 of the CATSI Act) and no order has been made under section 509(6) of the Corporations Act (as applied by section 526-35 of the CATSI Act) or
- two or more Aboriginal and Torres Strait Islander corporations are amalgamated under Part 2-3 of the CATSI Act (in this situation the Registrar must deregister the amalgamating corporations).

3 Registered native title body corporate

3.1 The Registrar cannot deregister a registered native title body corporate—section 546-15.

3.2 The Revised Explanatory Memorandum for the Corporations (Aboriginal and Torres Strait Islander) Bill states [at paragraph 5.577]:

Such a corporation cannot be deregistered under the proposed Act because the native title legislation requires a registered native title body corporate to be registered as an Aboriginal and Torres Strait Islander corporation. If such a native title body is no longer a registered native title body corporate under the *Native Title Act 1993*, then the Registrar can deregister the corporation.

4 The effect of deregistration

4.1 When a corporation is deregistered, the corporation no longer exists—section 546-20(1).

4.2 When a corporation is deregistered, all its property is vested in the Registrar. This includes property situated outside Australia, and property vested in a liquidator immediately before deregistration—section 546-20(2).

4.3 For further information about property vested in the Registrar see ‘PS-18: Property of deregistered corporations’.

A. Claims against insurers

4.4 A person may recover from the insurer of a deregistered corporation an amount under an insurance contract if the corporation had a liability to the person and the insurance contract covered that liability immediately before deregistration—section 546-35.

5 When can a corporation be reinstated?

5.1 Section 546-40 of the CATSI Act sets out the circumstances under which the Registrar can reinstate a corporation.

5.2 An application for reinstatement form is available on the Registrar's website at www.oric.gov.au or by calling ORIC on its freecall number 1800 622 431 (not free from mobiles).

A. *Reinstatement by the Registrar*

5.3 The Registrar may reinstate a corporation if satisfied that the corporation should not have been deregistered—section 546-40(1).

5.4 A corporation that should not have been deregistered might include, for example, a corporation that is still carrying on business.

5.5 An application to the Registrar to reinstate a corporation that should not have been deregistered will need to include:

- a completed application for reinstatement form
- the most recent financial year's general report and any other financial or directors' reports that should have been lodged with the Registrar if the corporation had remained registered
- any other relevant evidence that the corporation is still carrying on business.

5.6 The Registrar may request evidence such as supporting documents or a statutory declaration to be lodged with an application to reinstate a corporation.

5.7 The Registrar will not reinstate a corporation that has been ordered to be wound up by the court unless the court orders it.

B. *Reinstatement by the court*

5.8 The court may order the Registrar to reinstate a corporation if [section 546-40(2)]:

- an application for reinstatement is made to the court by:
 - a person aggrieved by the deregistration or
 - a former liquidator of the corporation and
- the court is satisfied that it is just that the corporation's registration should be reinstated.

5.9 If the court makes a reinstatement order, it may validate anything done between deregistration and reinstatement of the corporation and make any other order it considers appropriate—section 546-40(3).

C. *Registrar to give notice of reinstatement*

5.10 The Registrar must give notice of a reinstatement in the *Gazette*. If the Registrar decides to reinstate a corporation after receiving an application for reinstatement form, notice must also be given to the applicant listed on the form—section 546-40(4).

6 The effect of reinstatement

- 6.1 If a corporation is reinstated [section 546-40(5)]:
- the corporation is taken to have continued in existence as if it had not been deregistered
 - a person who was a director of the corporation immediately before deregistration becomes a director again from the time it is reinstated
 - any property of the corporation that is still vested in the Registrar re-vests in the corporation
 - any property the corporation held that is subject to a security or other interest or claim is taken back subject to that interest or claim.

END OF POLICY STATEMENT