



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 21

No-action letters

Policy	PS-21: No-action letters
Relevant legislative provisions	<i>Director of Public Prosecutions Act 1983</i> , section 9(6D)
Last updated	8 February 2013
Other relevant policies	PS-05: Exercise of Registrar's power to intervene PS-07: Exemptions Prosecution Policy of the Commonwealth

PS-21: No-action letters

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PS-21: No-action letters

1 Purpose

- 1.1 Aboriginal and Torres Strait Islander corporations have an obligation to comply with their rule book and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
- 1.2 The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) has discretion whether or not to pursue breaches of the CATSI Act or any other legislation that he or she administers. If the Registrar decides not to pursue a breach, he or she may issue a no-action letter stating that the Registrar does not intend to take regulatory action regarding a breach.
- 1.3 This policy statement sets out what is a no-action letter, how to request one, the circumstances when the Registrar will issue one and its effect.
- 1.4 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.

2 What is a no-action letter?

- 2.1 A no-action letter is a letter in which the Registrar states to a corporation or an individual that he or she does not intend to take regulatory action (excluding criminal proceedings) over a breach of the CATSI Act or any other legislation the Registrar administers. It is an expression of the Registrar's regulatory intent at the time the letter is issued and does not give rise to any legal obligation. No-action letters are used to provide comfort and some level of certainty to a corporation or an individual that the Registrar does not currently foresee that he or she will take regulatory action.
- 2.2 A no-action letter can be issued by the Registrar on the request of a corporation, its directors, an individual or on the Registrar's own initiative. A no-action letter can be issued for a particular corporation, or a class of corporations. If a no-action letter is issued for a class of corporations, the Registrar will consult and advise those who are affected.
- 2.3 The Registrar may reconsider a view of the legislation or policy and as a result vary, suspend or revoke a no-action letter at any time. In doing so, the Registrar will consider the consequences for people considered to have reasonably relied on a no-action letter.
- 2.4 The Registrar may also communicate his or her regulatory intent in correspondence other than no-action letters, for example a letter making a determination that a corporation is exempt from a particular provision of the

CATSI Act. A person should not regard such correspondence as a no-action letter. No-action letters will always contain a clear statement that they are a no-action letter—see attachment A for an example of a no-action letter.

3 How to request a no-action letter

- 3.1 A request for a no-action letter must be in writing. The request must:
- identify the provision/s of the legislation that the Registrar administers—for example, the CATSI Act or Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (the Regulations)—that has or is expected to be breached
 - identify the relevant individual or the corporation and its Indigenous Corporation Number for the whom the no-action letter is sought
 - be dated and signed by the person requesting the no-action letter
 - include full and frank disclosure of all relevant information
 - include the reasons a no-action letter should be issued.
- 3.2 There is no fee for requesting a no-action letter and no prescribed form.
- 3.3 All requests for a no-action letter will be considered, but the Registrar reserves his or her right to take alternative action when a no-action letter is not considered appropriate.
- 3.4 Requests for a no-action letter are not treated as confidential information by the Registrar. A request cannot be made on a ‘without prejudice’ basis and the Registrar may use the material contained in it for any regulatory purpose.
- 3.5 Requests should be posted to the Registrar at PO Box 2029, WODEN ACT 2606 or emailed to info@oric.gov.au.
- 3.6 For more information or help to request a no-action letter call ORIC on its freecall number 1800 622 431 (not free from mobiles).

4 When will a no-action letter be issued?

- 4.1 Upon application the Registrar can give a no-action letter in relation to actual or possible conduct that does not comply with a rule book or legislation that the Registrar administers, including:
- past conduct
 - ongoing or transitional conduct or
 - future conduct.
- 4.2 A no-action letter may be issued if:
- it would serve a clear regulatory purpose to a corporation or its directors—for example, to facilitate and improve the effectiveness, efficiency, sustainability and accountability of a corporation—section 658-5(a)

- it would have the effect of providing certainty for the corporation's members, officers, employees or other people dealing with a corporation—section 658-5(b)
- there has been an unintended breach of a rule book or legislation through conduct that was not inconsistent with the spirit of the legislation and taking regulatory action would not advance the policy of the legislation
- it is in the public interest.

4.3 When deciding to issue a no-action letter the Registrar may consider:

- the corporation's particular situation (including compliance matters)
- Aboriginal and Torres Strait Islander tradition and circumstances—section 658-5(c)
- whether an exemption is more appropriate and available relating to the breach in question
- whether court-based relief is more appropriate and available relating to the breach in question
- whether any other relief is more appropriate and available relating to the breach in question
- whether the breach in question is the subject of a current investigation (including investigation by the Registrar or the police)
- whether the breach in question has been rectified and is historical in nature
- whether the breach in question indicates problems with the internal governance of a corporation
- whether the corporation or individual took all reasonable steps to avoid the breach in question
- the time taken from when the breach was discovered to when a request for a no-action letter was lodged with the Registrar
- any potential effects on third parties.

4.4 No-action letters will not be issued for corporations or individuals who have not taken all reasonable steps to avoid the need for one. No-action letters are not a substitute for corporations and their directors or individuals carefully considering their actions and any resulting consequences.

4.5 Generally speaking, the Registrar will not publish no-action letters. This does not apply to no-action letters relating to a class of corporations. Publishing particular no-action letters may inhibit people with genuine cases from making a request. However the Registrar reserves the right to publish any no-action letter and will notify recipients if intending to do so.

5 Effect of a no-action letter

5.1 A no-action letter is specific to a situation and is not a precedent which may be used in future requests. It should not be considered as a de facto 'rulings system' to indicate the Registrar's view of whether particular types of conduct are legal.

- 5.2 The Registrar may at any time withdraw or revise a no-action letter. When deciding to do this the Registrar will consider the consequences for people who have already acted in reasonable reliance on a no-action letter provided to them.
- 5.3 A no-action letter is not a guarantee that the Registrar will not take action in the future. Even when a no-action letter has been issued, it is indicative only and the Registrar reserves his or her right to take regulatory action. This may occur, for example, where the corporation or directors involved have not disclosed all relevant facts. A no-action letter also does not affect the rights of third parties (for example a member) from taking legal action relating to a breach. It does not prevent a court from finding that particular conduct breaches any legislation.
- 5.4 A no-action letter may indicate the Registrar's particular interpretation of a provision of legislation at the time it is issued. It may also indicate whether the Registrar will or will not exercise his or her regulatory power in the future. However, a no-action letter is not legal advice and should not be treated as such.

6 No-action letter is not immunity from prosecution

- 6.1 The Commonwealth Director of Public Prosecutions prosecutes alleged breaches of criminal offences under the CATSI Act in accordance with the *Prosecution Policy of the Commonwealth*. Only the Director may provide a corporation or an individual with an undertaking that no criminal proceedings will be instituted against them for an offence against a law of the Commonwealth (immunity from prosecution)—section 9(6D) of the *Director of Public Prosecutions Act 1983*.
- 6.2 A no-action letter from the Registrar cannot limit the right of the Commonwealth Director of Public Prosecutions to institute criminal proceedings against a corporation or individual for a breach of Commonwealth law, including the CATSI Act.
- 6.3 A request for immunity from prosecution for a criminal offence under the CATS Act can only be made to the Commonwealth Director of Public Prosecutions.

END OF POLICY STATEMENT

7 Attachment A—Example no-action letter

[name]
[title]
[address]

[date]

Dear [name]

No-action letter

I refer to your request received by this office on [date] for a no-action letter relating to a breach by [you/your corporation—corporation name], of section/s [section number/s] of the [legislation] (the Act/the Regulations).

In your request, you describe the breach as [description and circumstances of breach]. The reasons you believe a no-action letter should be issued are [reasons].

Based on the information you have provided, I advise you that at this time the Registrar has decided not to take any regulatory action relating to the breach of [section number/s] of the Act/the Regulations.

The Registrar has decided this because [ground upon which the no-action letter has been issued].

The Registrar can revoke, vary or suspend this no-action letter at any time. This no-action letter does not prevent the Registrar from taking action in the future, for example if further information is discovered.

This letter is not legal advice and is not intended to give rise to any legal obligation. It does not affect the rights of third parties, for example legal action undertaken by a member of the corporation or the Commonwealth Director of Public Prosecutions to commence criminal proceedings for a breach of the Act/the Regulations.

This no-action letter is specific to the circumstances of your request and should not be relied upon as a precedent.

If you have any questions about this letter please do not hesitate to contact me on freecall number 1800 622 431 (not free from mobiles).

Yours sincerely

[Delegate name]

For the Registrar of Indigenous Corporations