



Australian Government

Office of the Registrar of Indigenous Corporations



## Disputes involving corporations

<b>Policy</b>	PS-22: Disputes involving corporations
<b>Relevant legislative provisions</b>	CATSI Act sections 439-5 through to 439-20, 453-1, 453-5, 490-1, 576-25, 526-15, 658-1(1)(f), 658-10
<b>Last updated</b>	11 February 2013
<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

## **PS-22: Disputes involving corporations**

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## **PS-22: Disputes involving corporations**

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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 disputes involving corporations, how the Registrar can assist disputes between parties and what mediation services are provided by the Registrar.
- 1.2 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 Powers of the Registrar in resolving disputes**

- 2.1 The Registrar's statutory functions include assisting with the resolution of disputes involving Aboriginal and Torres Strait Islander corporations—section 658-1(1)(f). Section 658-10 states that the Registrar has the power to do all things necessary or convenient to perform the Registrar's functions, giving the Registrar flexibility in the way disputes are handled.
- 2.2 Specific powers which the Registrar may exercise when assisting in the resolution of disputes include:
- the power to examine the books of an Aboriginal and Torres Strait Islander corporation—section 453-1
  - the power to ask questions of those people with knowledge of the affairs of an Aboriginal and Torres Strait Islander corporation—section 453-5
  - the power to convene meetings of interested persons—section 439-5
  - the power to call a general meeting, other than an annual general meeting (AGM)—section 439-10
  - the power to call an AGM—section 439-1.
- 2.3 The Registrar also has substantive enforcement powers, including:
- the power to require compliance with the CATSI Act—section 439-20
  - the power to apply for injunctions—section 576-25
  - the power to appoint a special administrator—section 490-1
  - the power to petition the court for a corporation to be wound-up—section 526-15(1)(h).

### **3 What disputes does the Registrar look at?**

- 3.1 Section 658-1 (f) of the CATSI Act sets out the statutory function of the Registrar to assist with the resolution of disputes. It is focused on disputes that are:
- internal to the operation of an Aboriginal and Torres Strait Islander corporation
  - between an Aboriginal and Torres Strait Islander corporation and others.
- 3.2 For the purposes of this policy statement, a dispute is a disagreement between parties about the corporate governance of a corporation or compliance with a corporation's rule book, the CATSI Act or Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (the Regulations). A dispute may be:
- internal to a corporation, between:
    - members
    - members and directors or
    - directors
  - between a corporation and another party such as a funding body.
- 3.3 In this policy statement, a dispute does not mean disputes between the corporation and its employees, except where the dispute indicates broader problems in the corporation's internal governance.
- 3.4 The Registrar's approach to dispute handling is underpinned by several key principles:
- the Registrar is apolitical and therefore maintains neutrality in performing the role and in providing dispute resolution and assistance to corporations
  - the Registrar seeks to build the capacity of corporations to resolve disputes and complaints internally. This is achieved through providing assistance and training on internal dispute resolution processes and policies, including assistance with designing a rule book.
- 3.5 The Registrar treats all disputes with sensitivity and takes into consideration the culture and traditions of Aboriginal and Torres Strait Islander people.

### **4 What is the Registrar's role in disputes?**

- 4.1 The Registrar can provide independent and impartial assistance in attempting to resolve disputes involving corporations. The focus of the Registrar's dispute assistance is on early intervention, rapid response and lasting resolution of disputes.
- 4.2 The Registrar cannot offer a complete dispute resolution response to all requests. Priority is given when:
- the corporation provides essential services

- the corporation holds land
- the corporation is not functioning because of the conflict
- the corporation receives Commonwealth Government funding
- the corporation has a large number of members
- there is a public interest in resolving the dispute.

4.3 In some cases the Registrar may, with the consent of the parties to a dispute, collaborate with other bodies or government agencies with policy or operational responsibility for the subject matter of a dispute. For example, a land council in relation to a native title dispute.

4.4 How assistance is provided will depend on whether the dispute is internal (i.e. between directors, other officers or members of the corporation) or between a corporation and an unrelated party, but it can include:

**A. ADVICE**

The Registrar can give telephone, face-to-face or written advice about the CATSI Act, the corporation's rule book and options for resolving a dispute. Advice is limited to more straightforward issues and is not binding on the parties or the Registrar. Obtaining independent legal advice is always recommended. Advice can help resolve simple issues that may be in the way of resolving a dispute or help the parties clarify what is in dispute and what outcomes are realistic.

**B. ADVISORY OPINIONS**

An advisory opinion is a formal written opinion provided on behalf of the Registrar. It can be provided on the application of the CATSI Act or interpretation of a corporation's rule book regarding the dispute. An advisory opinion may follow a process of gathering information and seeking submissions from the parties. Advisory opinions are not a substitute for independent legal advice and do not bind the parties or the Registrar, but can provide greater clarity to the parties involved in a dispute.

**C. CONFERENCING**

The Registrar can convene and facilitate small group meetings. Conferencing can bring together interested parties for a facilitated discussion on the issues in dispute. Attendance is voluntary and the Registrar can provide advice and information relevant to the CATSI Act and the corporation's rule book. Conferencing can help parties define the issues in dispute and explore problem solving options in an informal setting.

**D. DISPUTE RESOLUTION**

The Registrar can provide direct dispute management or refer the parties to an independent mediator. The Registrar has staff who are dispute resolution practitioners with accreditation in mediation. They can help the parties identify the disputed issues, develop options, and consider alternatives to reach an agreement on workable and sustainable outcomes.

## **E. ATTENDING MEETINGS**

The Registrar can attend corporation meetings to observe, facilitate or give advice. Inviting the Registrar to directors' meetings or general meetings can help manage conflict. The role of the Registrar at a meeting will be confirmed with the corporation and the various parties before the meeting. A pre-meeting with key representatives from the parties in dispute may be held to assist in this process.

The role of the Registrar can be limited to observing proceedings or extended to presenting information or providing advice on process issues. If the meeting is called by the Registrar he or she may even chair the meeting.

## **F. COMPLAINTS HANDLING**

The Registrar will sensitively handle complaints about contraventions of the CATSI Act, the Regulations or the corporation's rule book. For more information about how the Registrar handles complaints, see 'PS-02: Complaints involving corporations'.

# **5 Confidentiality and disclosure**

5.1 The Registrar cannot guarantee confidentiality to disputing parties, although discretion will be a high priority.

5.2 Sometimes information about disputes will need to be disclosed as part of investigating a complaint or for other lawful reasons, for example, disclosure to the Australian Federal Police or under a subpoena issued by a court.

5.3 Information received in confidence by the Registrar (including complaints) is protected information and will only be used or disclosed if authorised by the CATSI Act—see section 604-25. Further guidance on the use or disclosure of protected information can be found in 'PS-12: Registers and use and disclosure of information held by the Registrar'. Personal information about an individual will also be collected, managed, used and disclosed according to the *Privacy Act 1988*—see 'PS-14: Privacy', for further guidance on these requirements.

# **6 What if the Registrar cannot help with a dispute?**

6.1 If the Registrar cannot help with a dispute, the parties involved in the dispute may seek help from another agency, or the Registrar may refer the dispute, with the consent of the parties, to another agency, person or body. For example, employment-related disputes may be referred to the Fair Work Ombudsman. Complaints which involve allegations of fraud or other criminal activity may be referred for investigation to the relevant state or territory police.

## **END OF POLICY STATEMENT**