



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 01

Providing information, advice and public comment

Policy	PS-01: Providing information, advice and public comment
Relevant legislative provisions	<i>Privacy Act 1988</i> CATSI Act sections 183-1, 421-1, 466-1, 576-15, 658-1, 658-5 and Division 604
Last updated	25 June 2018
Other relevant policies	PS-02: Complaints involving corporations PS-12: Registers and use and disclosure of information held by the Registrar PS-15: Privacy PS-21: No-action letters PS-22: Disputes involving corporations

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PS-01: Providing information, advice and public comment

1 About this policy statement

- 1.1 This policy statement sets out the kinds of information, advice and comment the Registrar will provide about Aboriginal and Torres Strait Islander corporations.
- 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 The Registrar's aims

- 2.1 In accordance with section 658-5, when providing information, advice and public comment, the Registrar aims to:
- improve the effectiveness, efficiency, sustainability and accountability of corporations
 - provide certainty for:
 - members, officers and employees of corporations in their dealings with the corporation and each other
 - people outside corporations in their dealings with corporations
 - take into account Aboriginal and Torres Strait Islander traditions and circumstances
 - perform regulatory duties effectively while minimising the regulatory burden for corporations
 - ensure that prescribed information is available as soon as practicable for access by the public.

3 Registrar's functions to give information and advice

- 3.1 Under section 658-1 of the CATSI Act, it is a statutory function of the Registrar to:
- make available to the public information about:
 - the registration of corporations
 - the administration of the CATSI Act
 - provide advice about registering, managing and operating a corporation.
- 3.2 The Registrar may also give information and/or advice in the course of performing other statutory functions, on matters such as:
- maintaining registers
 - providing public education on the operation of the CATSI Act and governance of corporations
 - conducting research into matters affecting corporations

- helping corporations with complaints and resolving disputes.
- 3.3 The Registrar provides information and advice to a range of people, including:
- members, directors or officers of corporations
 - funding bodies
 - creditors of corporations
 - agents of corporations
 - members of the public generally.
- 3.4 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.

4 Timeliness of responses to requests

- 4.1 The timeframe in which the Registrar will provide a response to requests for information, advice or public comment will vary depending on the complexity of the issue, sensitivity and urgency of the matter, 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.

5 What the Registrar will—and will not—provide

A. Information

- 5.1 Most information given to the Registrar will be ‘public information’, including:
- the name or ICN of a corporation, or other details appearing on the Registrar’s website or the Register of Aboriginal and Torres Strait Islander Corporations
 - the address and contact details of the Registrar's office
 - information about the functions the Registrar performs, the services available to corporations and publications produced by the Registrar.
- 5.2 Information may include telling people what forms to complete or procedures to follow.

- 5.3 Telling a person which part of the CATSI Act, the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 (the Regulations), a corporation’s rule book or a publication is relevant to their concern or query would also be information.
- 5.4 In some straightforward cases, providing an explanation of part of the CATSI Act, the Regulations or a corporation’s rule book may be classed as public information—for example, where the information:
- is a plain English explanation of a straightforward and uncontroversial clause which is well understood
 - is included in a Registrar’s publication.

How information is given

- 5.5 The Registrar provides public access to a range of information on two public registers:
- the Register of Aboriginal and Torres Strait Islander Corporations—information available includes the name, address, activities, officers and key documents such as the rule book, list of current members and annual reports
 - the Register of Disqualified Officers—people disqualified by the Registrar or a court order from managing a corporation for a period of time.
- 5.6 For more detail on both of the abovementioned registers, see ‘PS-12: Registers and use and disclosure of information held by the Registrar’.
- 5.7 The Registrar also routinely publishes other information about regulatory action and enforcement involving corporations including:
- placing a corporation under special administration
 - the outcome of criminal, civil or administrative litigation
 - a list of corporations in breach of their reporting requirements.
- 5.8 The Registrar may also provide information in research reports, in measuring performance outputs and outcomes of administering the CATSI Act, and in speeches and presentations.
- 5.9 Public registers, media releases, announcements and reports are available on the Registrar’s website, oric.gov.au.
- 5.10 Information can be given by any member of staff of the Registrar’s office. There are no specific restrictions on how information and advice is to be provided. It may be provided in person, by phone, email, post, fax or social media.

Protection of information

- 5.11 Under section 604-5 of 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.

- 5.12 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 604-25(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), and
 - disclosures made for the purposes of section 466-1.
- 5.13 The Registrar is also bound by the Australian Privacy Principles in the *Privacy Act 1988* which regulate the collection, disclosure, use and storage of personal information. Information received from individuals will be dealt with in accordance with these statutory requirements—see ‘PS-15: Privacy’.

B. Advice

- 5.14 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'.

How advice is given

- 5.15 Advice will ordinarily be provided in writing, either by post or email.
- 5.16 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.

Advice that will not be given

- 5.17 Some types of advice will not be provided by the Registrar . 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, and other entities looking to transfer their incorporation to the CATSI Act, may apply for free legal assistance through LawHelp. LawHelp is a service provided by the Registrar and volunteer lawyers (more information is available on the Registrar's website, oric.gov.au/lawhelp); in all other circumstances, corporations will need to obtain their own legal advice
 - 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 on employment decisions
 - advice, information or opinions of a political or personal nature.
- 5.18 The Registrar's office 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.
- 5.19 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. Any such options will be discussed with the person requesting the advice.

C. Public comment

- 5.20 In performing regulatory functions under the CATSI Act, the Registrar is accountable to the parliament, the courts and the public.
- 5.21 Under certain circumstances the Registrar has various statutory powers to intervene in the operation of a corporation—see ‘PS-05: The Registrar’s powers to intervene’—and under those circumstances it may or may not be appropriate for the Registrar to issue a public comment on a particular corporation, or on the sector.
- 5.22 The Registrar is also at times well-positioned to comment on other aspects of the administration of the CATSI Act, or the governance of Aboriginal and Torres Strait Islander corporations.
- 5.23 To determine what is appropriate for public comment, the Registrar considers the public interest and the importance of promoting confidence and transparency in the Registrar’s work in administering the CATSI Act and regulating corporations.
- 5.24 The Registrar must balance the public interest in accessing information about the Registrar’s interventions against the rights of corporations and individuals to procedural fairness and the protection of private, confidential or commercial information.
- 5.25 In relation to interventions, the Registrar will usually only make public comment when there is an outcome. Outcomes include:
- commencement of legal proceedings (after the originating documents have been filed and served), significant steps in the legal proceedings, and decisions or orders of a court, including merits review by the Administrative Appeals Tribunal
 - issuing of a compliance notice, a notice to show cause as to why a corporation should not be placed under special administration, a notice of a Registrar-initiated meeting or a notice of examination
 - placement of a corporation under special administration, the significant steps in a special administration and ending a special administration
 - finalisation of a compliance notice
 - completion of an examination
 - issuing a notice of deregistration or reinstatement.

How public comment will be given

- 5.26 Comment will be made through a media release or the publication of an outcome on the public Register of Aboriginal and Torres Strait Islander Corporations or Register of Disqualified Officers. All media releases and the registers are available on the Registrar’s website, oric.gov.au.

Refraining from public comment

- 5.27 To maintain the privacy of corporations and individuals and to comply with legislative restrictions the Registrar will not comment on ongoing investigations or deliberative steps in regulatory action. For the same reasons and so as not to jeopardise any investigation or potential investigation the Registrar will also not comment publicly on whether or not a complaint has been received from a person or about a corporation or individual, or whether or not an investigation has commenced.
- 5.28 When the Registrar has commented publicly on the commencement of legal proceedings (civil or criminal), the Registrar will usually publicise the outcome, including the withdrawal of charges, acquittal of a defendant, the filing of an appeal or orders made against the Registrar. The outcome will be publicised even where a corporation or individual has a right to appeal against or otherwise seek a review of the decision. This is because there is significant public interest in legal proceedings involving the Registrar. A relevant court or tribunal will have the jurisdiction to suppress a decision pending the outcome of an appeal or review. The Registrar will normally oppose applications for orders to this effect.
- 5.29 When the Registrar concludes an investigation without exercising any powers to intervene, the Registrar will usually advise the person who made the complaint to the Registrar, which resulted in the investigation, of the result. The Registrar will not usually make any public comment in such circumstances, unless there are significant public interest reasons for doing so.
- 5.30 The only authorised spokespersons for the exercise of the Registrar's powers are the Registrar, Deputy Registrar/s and staff of the Registrar's Communications Section.

END OF POLICY STATEMENT