



Australian Government

Office of the Registrar of Indigenous Corporations



## Compliance notices

<b>Policy</b>	PS-26: Compliance notices
<b>Relevant legislative provisions</b>	CATSI Act Parts 10-2, 15.4 CATSI Act Division 439 CATSI Act Division 421 CATSI Act Division 487
<b>Last updated</b>	11 February 2013
<b>Other relevant policies</b>	PS-05: Exercise of Registrar's powers to intervene PS-14: Review of reviewable decisions PS-20: Special administrations PS-25: Examinations

## **PS-26: Compliance notices**

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## **PS-26: Compliance notices**

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### **1 Purpose**

- 1.1 The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) governs the regulation of Aboriginal and Torres Strait Islander corporations.
- 1.2 The Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) has a number of regulatory and enforcement powers under the CATSI Act to intervene in the affairs of a corporation to resolve problems. What powers the Registrar exercises and when, will depend on the circumstances of each case.
- 1.3 In this policy statement the Registrar's powers to issue compliance notices to Aboriginal and Torres Strait Islander corporations are explained.
- 1.4 In this policy statement references to sections are references to sections of the CATSI Act unless otherwise specified. References to corporations are references to Aboriginal and Torres Strait Islander corporations unless otherwise specified. References to the Registrar are also references to a delegate who is lawfully exercising the powers of the Registrar.

### **2 Compliance notices**

- 2.1 Compliance notices are notices issued by the Registrar to corporations under section 439-20 of the CATSI Act.
- 2.2 Compliance notices require a corporation to take action to rectify:
  - suspected non-compliance with the CATSI Act and/or the corporation's rule book (constitution)
  - any other irregularity in the affairs of a corporation that is brought to the Registrar's attention.
- 2.3 Compliance notices provide guidance for corporations on how to improve their standards of corporate governance and financial management. Compliance notices, which are public documents, also provide valuable information to a corporation's members and other external stakeholders (such as funding agencies and creditors) about the standards of corporate governance and financial management in a corporation at a given point in time.

### **3 Statutory purpose test**

- 3.1 The exercise of the Registrar's regulation and enforcement powers (including the issue of compliance notices) in Part 10-2 of the CATSI Act are subject to a statutory purpose test—section 450-1.

- 3.2 The purpose test is very broad and the Registrar may use the powers:
- for the purposes of the performance or exercise of any of the Registrar's functions and powers under the CATSI Act—section 450-1(a)
  - for the purpose of ensuring compliance with the CATSI Act—subsection 450-1(b)
  - in relation to certain alleged or suspected contraventions of the CATSI Act or other Commonwealth, state or territory legislation—subsection 450-1(c)(i)-(iii).

## **4 When the Registrar may issue a compliance notice**

- 4.1 The Registrar may issue a compliance notice when there is suspicion on reasonable grounds that:
- a corporation has failed to comply with a provision of the CATSI Act or its rule book—subsection 439-20(1)
  - there has been an irregularity in the affairs of a corporation—subsection 439-20(1)
  - there may be grounds to appoint a special administrator—subsection 439-20(3)
  - circumstances may occur or develop that would constitute grounds to appoint a special administrator—subsection 439-20(5).
- 4.2 Compliance notices are most commonly issued after an examination by the Registrar of a corporation's books under section 453-1—see 'PS-25: Examinations' for more information on examinations.
- 4.3 The Registrar may also issue a compliance notice to a corporation after considering its response to a notice issued by the Registrar requesting the corporation to show cause why it should not be placed under special administration—see section 487-10 for show cause notice procedures.

## **5 The draft compliance notice (natural justice process)**

- 5.1 Before the Registrar issues a final compliance notice he or she will usually provide a corporation with an opportunity to review a draft of the proposed compliance notice and make representations and/or comments about its content.
- 5.2 The Registrar will usually allow a period of 14 days for a corporation to provide written comments on a draft notice.
- 5.3 The Registrar will take into account any representations and/or comments made by a corporation in response to a draft notice and then decide whether or not a final compliance notice will be issued, and the content of the notice.

## **6 The content of a compliance notice**

- 6.1 The first part of a compliance notice sets out:
- instances of suspected non-compliance where a corporation has failed to comply with a provision of the CATSI Act or its rule book
  - suspected irregularities in the affairs of a corporation (these may be financial or operational irregularities or irregularities in the way that the corporation is being governed and/or managed)
  - circumstances that constitute, or may constitute, grounds for appointing a special administrator
  - circumstances that are likely to occur or develop that may constitute grounds for appointing a special administrator.
- 6.2 The second part of a compliance notice sets out in detail the actions that the Registrar requires a corporation to complete to rectify the matters listed in the first part of the notice.
- 6.3 The compliance notice will also include appropriate timeframes for completing the actions.

## **7 A compliance notice is a public document**

- 7.1 All compliance notices issued to corporations are documents that the Registrar makes publicly available.
- 7.2 Copies of compliance notices are made available on the Registrar's website, [www.oric.gov.au](http://www.oric.gov.au).

## **8 Monitoring a compliance notice**

- 8.1 After a compliance notice is issued the Registrar regularly monitors the corporation's progress in implementing the requirements of the notice. This is known as the monitoring period.
- 8.2 The Registrar will ensure that the actions and timeframes set out in the notice are adhered to by the corporation.

## **9 Potential outcomes of a compliance notice**

- 9.1 When the Registrar is satisfied that a corporation has completed the actions specified in a compliance notice he or she will write to the corporation informing them the monitoring period has ended. This document will be made publicly available on the Registrar's website.
- 9.2 If the Registrar is of the opinion that a corporation has failed to take the actions required by a compliance notice the Registrar may:

- call a general meeting of the members of the corporation to report his or her concerns to the members—subsection 439-10(1)(d).
- issue a show cause notice to the corporation asking it to explain why it should not be placed under special administration—section 487-10(1)—see ‘PS-20: Special administrations’.

## **10 The Registrar is not prevented from taking other action**

10.1 If the Registrar has issued a compliance notice to a corporation under section 439-20, regardless of whether the period specified in the notice has expired or not, the Registrar may take any other action under the CATSI Act in relation to the corporation that he or she thinks appropriate—subsection 439-20(7).

## **11 Review of a decision to issue a compliance notice**

- 11.1 The decision to issue a compliance notice is a reviewable decision—see ‘PS-14: Review of reviewable decisions’.
- 11.2 The Registrar may, on his or her own initiative, reconsider the decision to issue a compliance notice if he or she is satisfied that there is sufficient reason to do so—section 620-1.
- 11.3 A person whose interests are affected may ask the Registrar for an internal reconsideration of the decision to issue a compliance notice—section 620-5.
- 11.4 The person’s request for internal reconsideration must:
- be made in writing
  - be made within 28 days after notification of the decision, or later if the Registrar allows—subsection 620-5(2)
  - set out the reasons for making the request—subsection 620-5(3).
- 11.5 The reviewer of an internal reconsideration will be a person appointed by the Registrar who was not involved in making the original decision.
- 11.6 The reviewer may make a decision affirming, varying or setting aside the decision to issue a compliance notice—subsection 620-5(5).
- 11.7 If the reviewer sets aside the decision, the reviewer may make such other decision as he or she thinks appropriate—subsection 620-5(5).

## **12 Healthy corporation checklist**

- 12.1 The Registrar has developed a corporate governance self-assessment tool for corporations. It is a useful guide to the matters an authorised officer will look at in an examination under section 453-1.
- 12.2 The ‘Healthy corporation checklist’ comprises a list of questions which can be used to check compliance with the CATSI Act and a corporation’s rule book. Each question has a tick box so corporations can easily identify which areas need attention.
- 12.3 The checklist also contains links to template documents and forms which may be helpful to corporations wishing to make further improvements to their standards of corporate governance.
- 12.4 The checklist is available on the Registrar’s website at [www.oric.gov.au](http://www.oric.gov.au).

**END OF POLICY STATEMENT**