



REGISTRAR'S POSITION STATEMENT

Confidentiality of information provided to the Registrar

Background

The Office of the Registrar of Indigenous Corporations (ORIC) supports and regulates corporations that are incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

To do this, ORIC often receives information voluntarily from third parties including:

- the corporations it regulates (including members, directors and employees)
- other individuals or organisations.

ORIC often relies on this information being provided voluntarily. Receiving information this way helps ORIC work efficiently and effectively to obtain information relevant to the Registrar's regulatory functions. It also helps ORIC to establish and maintain strong relationships with corporations and individuals.

ORIC has powers to compel the production of material or provide information, such as under section 453 of the CATSI Act. However, the statutory processes and timelines associated with this power can take time. Sometimes this can impede early and collaborative regulatory support. The provision of information voluntarily allows ORIC to engage with a corporation early and offer support so that when appropriate they can resolve issues themselves. This is reflected in our proportionate regulatory posture.



Where it is necessary to use powers to compel the provision of information, trust and confidence in the protection and proper use of the information provided can assist in the securing of accurate and truthful information in a timely manner.

Trust and confidence in ORIC's work is underpinned by ORIC's independence and impartiality. It also depends on how it handles confidential information it receives. ORIC protects all information it receives. This includes information that is provided in confidence, whether voluntarily or through legal powers, and used only for purposes related to ORIC's regulatory functions

This position statement sets out how the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) treats confidential documents and information provided to ORIC voluntarily. This includes confidential information provided by registered corporations or other third parties (including by other private individuals or entities)

This position statement complements and supplements the protected information scheme within the CATSI Act.

Principles

1. The Registrar will receive and treat documents and information given to ORIC in connection with the performance of a function or exercise of a power of the Registrar as protected information.
2. The Registrar may disclose protected information where required or authorised by law.
3. The Registrar may disclose protected information with consent

Principle 1: The Registrar will receive and treat documents and information given to ORIC in connection with the performance of a function or exercise of a power of the Registrar as protected information.

1. As part of the Registrar's role, ORIC may be provided with information by regulated corporations (including where requested by the Registrar) and by other private individuals or entities. This information and/or its source may be sensitive to the discloser and/or to the regulated corporation/s to which it relates.
2. The CATSI Act provides that information given to the Registrar or another person in confidence in connection with the performance of a function or exercise of a power of the Registrar is protected information (section 604-5(1)). The Registrar is obliged to take all reasonable measures to protect protected information from use or disclosure

(section 604-10). This is unless that use or disclosure is required or authorised under law. For instance, information may be required to be reported and/or published in either the Register of Aboriginal and Torres Strait Islander Corporations (section 418-1(a)) or the Register of Disqualified Officers (section 418-1(b))¹.

3. Unless otherwise specified by the provider or the information has already been lawfully made available to the public from other sources, the Registrar will receive in confidence and treat as protected information all documents and information provided to ORIC voluntarily by registered corporations or other third parties (including by other private individuals or entities).
4. The Registrar will take steps to put in place appropriate safeguards to protect the confidentiality of protected information, including:
 - a. ensuring ORIC staff are aware of the Registrar's position, and
 - b. requiring ORIC staff to handle and treat information confidentially.

Principle 2: The Registrar may disclose protected information where required or authorised by law.

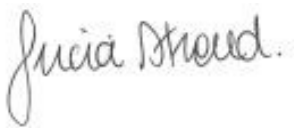
1. The CATSI Act authorises the use or disclosure of protected information for the purpose of the CATSI Act or if required or authorised by a law of the Commonwealth, a State or a Territory (section 604-25). This may include:
 - a. disclosure required by an order of an Australian Court or Tribunal
 - b. disclosure to another government agency for the purposes of the administration of a law of the Commonwealth or the law of an Australian State or Territory. This may occur, for example because the information is relevant to the functions of another Commonwealth, State or Territory agency – for example, the Australian Securities and Investments Commission, or a policing agency, such as the Australian Federal Police.
2. The Registrar will consider each circumstance on a case-by-case basis before deciding whether the Registrar:
 - a. is required, to disclose the provided information; or
 - b. is authorised to disclose the provided information and if so, whether it would be appropriate to do so.
3. If information is disclosed, the other Commonwealth, State or Territory agency will be informed that the information is protected information under the CATSI Act.
4. The Registrar acknowledges that ORIC is subject to the *Freedom of Information Act 1982* (Cth) (FOI Act). However, under section 45 of the FOI Act a document is exempt if its disclosure would give grounds for an action by a person (other than an agency or the

¹ See further Policy Statement 12: Registers and use and disclosure of information held by the Registrar (available at [PS-12: Registers and use and disclosure of information held by the Registrar](#))

Commonwealth) for breach of confidence. A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. Consistent with this Position Statement, ORIC's FOI decision makers will consider the potential application of the section 45 exemption to documents requested under the FOI Act.

Principle 3: The Registrar may disclose provided information with consent.

1. There may be circumstances where the Registrar will seek consent of the regulated corporation and/or the relevant private individual or entity to disclose protected information, for a specified purpose.



Tricia Stroud
Registrar of Aboriginal and Torres Strait Islander Corporations

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