Australian Government
Office of the Registrar of Indigenous Corporations

REGISTRAR'S POSITION STATEMENT

Winding up Corporations

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) says the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) and other stakeholders can apply to a court to wind up an Aboriginal and Torres Strait Islander Corporation.

The CATSI Act sets out the grounds on which a court can order a corporation to be wound up. These grounds include but are not limited to where:

- The corporation ceases to meet registration requirements relating to Indigeneity or minimum number of members
- directors of a corporation have failed to comply with a compliance notice issued under section 439-20 of the CATS Act
- the corporation is insolvent
- the corporation has failed to lodge reports
- affairs of the corporation are being conducted in a way that is unfair, unjust, oppressive or contrary to the interests of the members of the corporation as a whole.

The Office of the Registrar of Indigenous Corporations (ORIC) Regulatory Compliance Framework sets out a response continuum to non-compliance. The continuum says ORIC will work with corporations that are committed to doing the right thing and try to comply with the requirements of the CATSI Act. It also says ORIC will take enforcement action for corporations that deliberately do the wrong thing, which may include seeking to wind it up.

Principle

1. The Registrar may seek to wind up a corporation that does not meet the CATSI Act Indigeneity requirement.
2. The Registrar may seek to wind up a corporation that does not comply with a compliance notice.
3. The Registrar may seek to wind up corporations that have a history of internal disputes that continue to disrupt the governance and operations of the corporation.
4. The Registrar may seek to wind up corporations that have demonstrated they cannot adequately support members to exercise their rights.

Principle 1: The Registrar may seek to wind up a corporation that does not meet the CATSI Act Indigeneity requirement.

1. Corporations registered under the CATSI Act have certain requirements that make them Indigenous member owned and controlled, including certain member rights and obligations.
2. Corporations can only have non-Indigenous members where its rule book allows this but must still have a majority of Indigenous members and directors.
3. Sometimes a corporation's membership, governance structures or business model cannot assure a corporation is Indigenous member owned and controlled.
4. The Registrar's view is that where a corporation's governance structures cannot meet the requirements that protect the integrity of Indigenous member ownership and control, that the CATSI Act is not the most appropriate regulatory statute
5. The Registrar may seek a court order to have the corporation wound up where a corporation cannot assure it is Indigenous member owned and controlled.

Principle 2: The Registrar may seek to wind up a corporation that does not comply with a compliance notice.

6. The CATSI Act imposes obligations that corporations must comply with.
7. Corporations must hold an Annual General Meeting for their members.
8. Corporations must also have a rule book, lodge annual reports, keep a register of members and director details – all of which are published on the corporation's entry on the public Register of Aboriginal and Torres Strait Islander Corporations.
9. Members own and control corporations and have the right to question directors about non-compliance or regulatory action against the corporation. Members also have certain rights to remove directors who they have lost trust and confidence in.
10. Aboriginal and Torres Strait Islander Corporations must be able to comply with public reporting requirements and provide transparency to their members.

11. When a corporation does not comply with its obligations, the Registrar may consider regulatory action such as issuing a compliance notice under section 439-20 of the CATSI Act. Compliance notices are published on the corporation's entry on the public Register of Aboriginal and Torres Strait Islander Corporations for the visibility of members.
12. The Registrar's view is that if the directors of a corporation fail to satisfactorily respond to a compliance notice, they are demonstrating an attitude of willful or deliberate non-compliance.
13. With this view in mind, the Registrar may seek a court order to have the corporation wound up where the directors are willfully non-compliant and where members are disengaged.

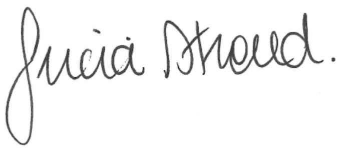
Principle 3: The Registrar may seek to wind up corporations that have a history of internal disputes that continue to disrupt the governance and operations of the corporation.

14. Internal disputes can disrupt the governance and operations of a corporation.
15. Examples of what the Registrar considers to be unacceptable disruption to a corporation's governance and operations include:
    a. Directors who are unable to operate as a board to take action and make decisions.
    b. Conflicts that affect the corporation achieving its purpose.
    c. Members who consistently undermine the decisions and actions of the board.
16. Directors are responsible for deescalating and resolving disputes within a corporation.
17. Members need to understand and exercise their rights responsibly.
18. The Registrar's view is that where a corporation has a history of disputes that have unacceptably disrupted (and continue to disrupt) its governance and operations, the affairs of the corporation are being conducted in a way that is contrary to the interests of members as a whole.
19. With this view in mind, the Registrar may seek a court order to have a corporation wound up if the corporation has a history of internal disputes that continue to disrupt the governance and operations of the corporation.

Principle 4: The Registrar may seek to wind up corporations that have demonstrated they cannot adequately support members to exercise their rights.

20. Aboriginal and Torres Strait Islander Corporations are Indigenous member owned and controlled. The CATSI Act sets out certain registration requirements that ensure a corporation is member owned and controlled. This includes minimum numbers of members and directors.
21. The CATSI Act also provides members with ownership and control rights. Members must be able to exercise these rights. The most fundamental rights of members are to approve the corporation's rule book, to appoint directors to govern the corporation on their behalf and to remove directors whom they have lost trust and confidence in.
22. Members can raise their concerns with directors by requesting directors call a general meeting or proposing a resolution to be heard at the corporation's next general meeting.

23. All Aboriginal and Torres Strait Islander corporations are required to have a dispute resolution clause in their rule book. Members can also enact the corporation's dispute resolution process to raise concerns with directors.
24. Directors should address members' concerns in good faith. Directors should consider addressing members' concerns as part of their role as a director.
25. The Registrar's view is that where a corporation has demonstrated it cannot adequately support members to exercise their rights, the corporation is being conducted in a way that is oppressive.
26. The Registrar's view is that members hold certain rights as well as obligations in owning and controlling corporations.
27. With these in mind, the Registrar may seek a court order to have a corporation wound up if the corporation cannot support members to exercise their rights or where members are disengaged in owning and controlling the corporation.



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