



REGISTRAR'S POSITION STATEMENT

Special administration

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) says the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) can place a corporation under special administration.¹ For the Registrar to place a corporation under special administration, the CATSI Act specifies certain grounds that must be met.²

Special administration is unique to the CATSI Act. It enables the Registrar to appoint a special administrator to a corporation that is experiencing governance and/or financial difficulties. Generally, the purpose of special administration is to return the corporation to better health and back into the control of members. This protects the longevity of the corporation.

Principle

1. The Registrar exercises their power to appoint a special administrator independently, with purpose and without undue influence.
2. The Registrar will consider factors in addition to the grounds set out in the CATSI Act when deciding whether to appoint a special administrator.
3. The Registrar will not tolerate a person or people impeding or disrupting special administration.

¹ Section 487-1

² Section 487-5



Principle 1: The Registrar exercises their power to appoint a special administrator independently, with purpose and without undue influence.

1. The power and decision to appoint a special administrator is one held by the Registrar independently. The Registrar cannot be directed to appoint a special administrator.
2. The Registrar exercises this power with purpose – primarily with the sustainability of corporations in mind and to return healthy corporations to the ownership and control of their members.
3. The CATSI Act says that a majority of a corporation's directors can request the Registrar appoint a special administrator.
4. The CATSI Act also says that the members of a corporation can request the Registrar appoint a special administrator – the CATSI Act says how many members are required to make this request.
5. These are rights the CATSI Act confers on directors and members. The CATSI Act does not extend this right to any other stakeholders.
6. The Registrar will consider such requests from members and directors but may decide not to appoint a special administrator.
7. The Registrar will make their decision to appoint a special administrator independently and objectively.

Principle 2: The Registrar will consider factors in addition to the grounds set out in the CATSI Act when deciding whether to appoint a special administrator.

1. The Registrar can only put a corporation under special administration if certain grounds are met. The Registrar considers other factors in addition to those grounds to ensure the special administration is appropriate in the corporation's circumstances.
2. When deciding whether to appoint a special administrator to a corporation, the Registrar considers the corporation's financial position.
3. A corporation that is insolvent or at risk of becoming insolvent is unlikely to benefit from special administration. Special administration does not have the statutory framework for handling insolvency, and other forms of external administration such as voluntary administration or liquidation may be more appropriate.
4. The Registrar will also consider whether the corporation is delivering services or activities that are necessary and/or are relied on.
5. The Registrar may appoint a special administrator to ensure a corporation can continue to serve its community and deliver critical services.
6. Another factor the Registrar will consider is the sustainability of a corporation.

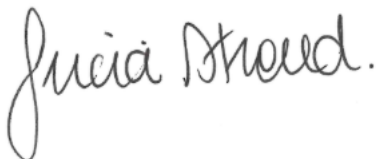
7. A corporation with a history of compliance concerns, disputes and/or governance failings may be considered unsustainable. Consequently, it may not benefit from the appointment of a special administrator.
8. The Registrar will consider who benefits from special administration including members, clients, beneficiaries and the Indigenous member-controlled sector more broadly. The Registrar will consider the corporation's membership size and level of engagement. Where it may be difficult to hand the corporation over to a new board of directors drawn from a small membership, special administration may have limited value. Similarly, where the membership is small and not fully engaged, special administration will have limited value in sustaining an Indigenous member-controlled corporation.
9. The Registrar will consider whether the challenges faced by the corporation can instead be addressed by:
 - a. other regulatory action
 - b. the directors and members of the corporation exercising their rights under the corporation's rule book.

Principle 3: The Registrar will not tolerate a person or people impeding or disrupting special administration.

1. The CATSI Act provides the right to affected parties to ask for a review of the Registrar's decision to appoint, extend or remove a special administrator.³
2. The CATSI Act also says if a person is dissatisfied with the outcome of a review, they can contact the Administrative Review Tribunal.
3. ORIC has a process to deal with complaints about ORIC staff and contractors, including special administrators.
4. Special administrators will usually put in place mechanisms for members and other stakeholders to access information about the progress of the special administration and status of the corporation that also provide the opportunity for members and other stakeholders to raise any questions or concerns.
5. There are avenues available to members and other stakeholders if they are dissatisfied with the appointment of a special administrator.
6. For this reason, the Registrar will not tolerate individuals who impede or disrupt special administration. The type of behaviour that will not be tolerated is:
 - a. rude, aggressive, violent or abusive behaviour towards a special administrator or ORIC staff
 - b. unfounded and/or repeated complaints about the special administration, special administrator or ORIC staff
 - c. disruptive conduct at meetings called by the special administrator to deal with corporation business

³ Section 617-1.

- d. persistent questioning of and complaints to the special administrator.
7. Responses to this type of behaviour will be considered on a case-by-case basis. The Registrar and special administrators will consider the following types of action in response:
- a. Treating the person or persons as [unreasonable complainants](#) which may result in restricting how and who they can interact with at ORIC, including the special administrator
 - b. Referring aggressive, threatening, abusive or violent behaviour to law enforcement agencies
 - c. Cancelling or suspending the person or persons' membership.
8. The Registrar expects that special administrators act in the best interest of the corporation and the membership as a whole – like any well governed board. The Registrar also expects that the rights of members to harmony are protected but balanced with member responsibilities. The rights of members to ask questions and seek information does not end with special administration. However members must do so in the same manner they would if a full board of directors were in place and respect that the special administrator's interest is the membership as a whole.

A handwritten signature in black ink that reads "Tricia Stroud." The signature is written in a cursive, flowing style.

Tricia Stroud

Registrar of Aboriginal and Torres Strait Islander Corporations

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