



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 28

Additional or increased reporting requirements

Policy	PS-28: Additional or increased reporting requirements
Relevant legislative provisions	CATSI Act Parts 7-3, 15-4, 10-3 CATSI Act Divisions 333, 336, 348, 418, 421, 620 CATSI Regulations Part 7-3
Last updated	31 March 2017
Other relevant policies	PS-05: The Registrar's powers to intervene PS-14: Review of reviewable decisions PS-20: Special administrations

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PS-28: Additional or increased reporting requirements

1 About this policy statement

- 1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on additional reporting and increased reporting requirements that may be placed on an Aboriginal or Torres Strait Islander corporation. In particular, the requirements under Division 336 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act).
- 1.2 References to sections in this policy statement are references to sections of 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 Standard reporting requirements

- 2.1 All Aboriginal and Torres Strait Islander corporations must prepare and lodge reports with the Registrar under the CATSI Act, unless the Registrar provides an exemption from this requirement. The reports for each corporation will vary depending on its registered size and income.
- 2.2 The types of reports and which corporations must lodge them are set out in Part 7-3 of the CATSI Act and Part 7-3 of the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007.
- 2.3 The reports can include one or more of the following (the standard reports):
- general report
 - financial report
 - auditor's report
 - directors' report.
- 2.4 More information about standard reporting for Aboriginal and Torres Strait Islander corporations can be found in the Registrar's *Corporation reporting guide* and fact sheet *Corporation size and reporting*. These are available on the Registrar's website, oric.gov.au.

3 Determination for additional or increased reporting

3.1 As well as the standard reports the Registrar may under Division 336-1 of the CATSI Act require additional reports or increase the reporting requirements of a corporation. The power is discretionary and may be issued to an individual corporation (section 336-1) or a class of corporations (section 336-5).

3.2 A determination by the Registrar under Division 336 can require a corporation or class of corporations to comply with one or both of the following categories of requirements:

A. Additional reporting

- prepare a report in addition to the standard reports (general report, financial report, auditor's report and directors' report). The report may be for a particular period or periods; as at a specified date; or for periods of a particular kind that start or end on or after a date
- provide the additional report to members generally or upon request, and within a specified time and manner

B. Increased reporting

- include additional information within one or more of the standard reports
- meet additional requirements in the way that a standard report is prepared. For example, if the standard report is a financial report the Registrar can require the report, or part of it, to be audited by a specific type of auditor and in accordance with the auditing standards
- provide a standard report to members generally or upon request, and in a specified time and manner.

3.3 A determination issued by the Registrar to an individual corporation is not a legislative instrument but a determination for a class of corporations is a legislative instrument—subsections 336-1(2) and 336-5(2).

4 Reporting periods

4.1 A determination under Division 336 for additional or increased reporting is flexible and can be issued for specific dates or periods of concern.

4.2 A determination may be in respect of a past or future period or periods but cannot relate to a period that is more than six years in the past—subsections 336-1(8) and 336-5(8).

5 Statutory criteria

5.1 The exercise of the Registrar's powers under Division 336 of the CATSI Act for additional or increased reporting is subject to statutory criteria set out in Division 358 of the CATSI Act.

5.2 In relation to the statutory criteria the Explanatory Memorandum to the Corporations (Aboriginal and Torres Strait Islander) Bill states (at paragraph 5.386):

Proposed section 358-5 is based on section 342 of the [*Corporations Act 2001*] with modifications reflecting the circumstances of CATSI corporations. Proposed subsection 358-5(2) provides additional guidance to the test for what is appropriate in the circumstances which is not provided in the Corporations Act. These criteria reflect the importance of many services that CATSI corporations provide in communities. The criteria apply to both determinations to increase or exempt from reporting requirements. This ensures consistent criteria are applied to decisions tailoring reporting to particular circumstances of CATSI corporations.

5.3 The criteria the Registrar must take into consideration before making a determination are:

- whether the current reporting obligations make a standard report misleading
- whether the current reporting obligations are, or the proposed reporting obligations would be, appropriate in the circumstances
- whether the current reporting obligations impose, or the proposed reporting obligations would impose, unreasonable burdens.

5.4 In determining the appropriateness of proposed additional or increased reporting the Registrar is required to take into consideration:

- the services (if any) provided by the corporation or corporations. This may include whether those services are significant or essential, such as health, aged care or youth support services, maintaining power supply or an airstrip, community council activities or a community store
- the consequences if the corporation or corporations stopped providing those services, particularly if those services are significant or essential
- whether the corporation or corporations are regarded by the Registrar as being of a high risk of becoming insolvent or of failing to comply with the reporting requirements under the CATSI Act (because of the corporation's or corporations' purposes, structures, or compliance history)
- any other matter the Registrar considers relevant.

- 5.5 In determining whether proposed additional or increased reporting would impose an unreasonable burden the Registrar is required to take into consideration:
- the expected costs of complying with the obligations
 - the expected benefits of having the corporation or corporations comply with the obligations—particularly taking into account the number of creditors, their ability to independently obtain financial information about the corporation or corporations and the nature and size of the debts owed to creditors
 - any practical difficulties that the corporation or corporations face in complying effectively with the obligations
 - any unusual aspects of the operation of the corporation or corporations during the financial year concerned
 - any other matters that the Registrar considers relevant.

6 When the Registrar will issue a determination

- 6.1 The Registrar may issue a determination under Division 336 for additional or increased reporting to a corporation or class of corporation at any time.
- 6.2 The Registrar will issue a determination, if appropriate, only after the statutory criteria, the statutory purpose of the power, the Registrar’s aims, and other matters have been considered.
- 6.3 Cases where the Registrar will most likely issue a determination include to a corporation at the end of a period of special administration. In these cases the additional and increased reporting is required to be provided to the Registrar and generally for a period of 12 months. This enables the Registrar to monitor the performance of the corporation post-special administration to reduce the risk of insolvency, the non-delivery of service or non-compliance with the CATSI Act.
- 6.4 Determinations in other circumstances will be considered case-by-case.
- 6.5 The Registrar does not use his or her statutory powers in every complaint, dispute or adverse matter that comes to his or her attention.
- 6.6 The Registrar’s resources are finite. The Registrar considers a range of factors, including the Registrar’s aims in section 658-5, to ensure that resources are directed appropriately and most effectively.
- 6.7 The Registrar also aims to exercise powers and discretions, such as determinations for additional or increased reporting, consistently—to provide fairness and certainty, while at the same time considering the particular facts of each case and different points of view. For more information see ‘PS-05: The Registrar’s powers to intervene’.

7 Review of a decision to issue a determination

- 7.1 The decision to issue a determination under section 336-1 for additional or increased reporting to an individual corporation is a reviewable decision. However, a determination issued to a class of corporations is not a reviewable decision—section 617-1.
- 7.2 The Registrar may, on his or her own initiative, reconsider a decision to issue a determination to an individual corporation if he or she is satisfied that there is sufficient reason to do so—section 620-1.
- 7.3 A person whose interests are affected by the decision may ask the Registrar for an internal reconsideration of the decision to issue the notice—section 620-5.
- 7.4 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).
- 7.5 The reviewer of an internal reconsideration will be a person appointed by the Registrar who was not involved in making the original decision.
- 7.6 The reviewer may make a decision affirming, varying, or setting aside the decision to issue the notice—subsection 620-5(5).
- 7.7 If the reviewer sets aside the decision, the reviewer may make such other decision as he or she thinks appropriate—subsection 620-5(5).
- 7.8 For more information see ‘PS-14: Review of reviewable decisions’.

8 Ending or amending a determination

- 8.1 The Registrar may at any time, in writing, revoke, vary, or suspend a determination for additional or increased reporting—subsections 336-1(9) and 336-5(9).

9 Determinations are public documents

- 9.1 Determinations by the Registrar under Division 336 for additional or increased reporting, and any revocation, variation or suspension of a determination, are required to be included in the Register of Aboriginal and Torres Strait Islander Corporations—section 418-10 and items 98 – 105 of Part 1 of Schedule 2 of the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007. Determinations are therefore publicly available documents.
- 9.2 Copies of determinations and any amendments are available on the Registrar’s website, oric.gov.au.

10 Failing to comply with a determination

- 10.1 A failure to comply with a determination under Division 336 for additional or increased reporting is not an offence.
- 10.2 However, non-compliance is a ground for the Registrar to:
- determine that a corporation be placed under special administration—subsection 487-5(1)(c). The Registrar may issue a notice to a non-compliant corporation under section 487-10 asking it to show cause why it should not be placed under special administration. For more information see ‘PS-20: Special administrations’.
 - apply for an injunction from the court directing the corporation or any other person to do or not do any act that the court thinks appropriate—section 576-25.

END OF POLICY STATEMENT