



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 24

Applications for permission to deny a members' request for a general meeting

Policy	PS-24: Applications for permission to deny a members' request for a general meeting
Relevant legislative provisions	CATSI Act sections 201-5, 201-10 and 201-15 CATSI Act section 617-1, items 17, 18 CATSI Regulation reg. 201-5.01
Last updated	11 February 2013
Other relevant policies	PS-14: Review of reviewable decisions

PS-24: Applications for permission to deny a members' request for a general meeting

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PS-24: Applications for permission to deny a members' request for a general meeting

1 Purpose

- 1.1 This policy statement provides guidance on how the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) deals with applications by directors seeking permission to deny a request by members to call a general meeting.
- 1.2 References to sections in this policy statement are references to sections of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (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 Members may request that directors call a general meeting

- 2.1 Unless otherwise provided by the corporation's rule book, the directors of a corporation are responsible for calling general meetings. However, the members of a corporation may also request that the directors call and arrange to hold a general meeting by following the procedure set out in section 201-5.
- 2.2 A request to call a general meeting must:
- be in writing
 - be signed by the members making the request¹
 - state any resolutions that are to be proposed at the meeting
 - nominate one member as 'the nominated member' to act as a contact member on behalf of all members making the request
 - be given to the corporation.

¹ If the document is longer than one page or comprises separate documents, the request and any proposed resolutions should be repeated on each page. See *Gratton v Carlton Football Club Ltd & Ors* [2004] VSC 379.

- 2.3 In order for a request to be valid, it must be made by the required number of members. The number of members under sub-section 201-5(4) and regulation 201-5.01 needed to make a request varies according to the number of members in a corporation, as set out in the table below:

No. of members in corporation	No. of members required to ask for a general meeting
2 to 10	1 member
11 to 20	3 members
21 to 50	5 members
51 members or more	10 per cent of members

- 2.4 The number of members in a corporation is calculated as at midnight before the request is provided to the corporation.

3 Directors' actions on receiving a request

A. Directors may apply to the Registrar for permission to deny the request

- 3.1 Upon receiving a request from the prescribed number of members to call a general meeting, the directors of the corporation may apply to the Registrar for permission to deny the request. Before this can happen, the directors must resolve that:

- the request is frivolous or unreasonable, or
- complying with the request would be contrary to the interests of the members as a whole.

- 3.2 Based on such a resolution, one director may apply to the Registrar on behalf of all directors. As soon as practicable after lodging an application, the director must also inform the nominated member of the corporation that an application has been made to the Registrar.

- 3.3 There is no equivalent provision in the *Corporations Act 2001* to section 201-10(1).

B. Meaning of frivolous or unreasonable

- 3.4 In considering whether the request is frivolous or unreasonable, directors should be aware that 'frivolous' and 'unreasonable' are not legal or technical words, and are not defined in the Act.

- 3.5 The words should therefore be given their ordinary, natural meaning. The Macquarie Dictionary provides the following definitions:

frivolous

1. Of little or no weight, worth, or importance; not worthy of serious notice: *a frivolous objection*.
2. Characterised by lack of seriousness or sense: *frivolous conduct*.
3. Given to trifling or levity, as persons.
4. Lacking seriousness or sense; silly.

unreasonable

1. Not reasonable, not endowed with reason.
2. Not guided by reasons or good sense.
3. Not agreeable to or willing to listen to reason.
4. Not based on or in accordance with reason or sound judgment.
5. Exceeding the bounds of reason; immoderate; exorbitant.

C. Meaning of contrary to the interests of members as a whole

- 3.6 Questions of what is or is not in the interests of members as a whole are often best left to be decided by the directors of the corporation. The Registrar would exercise this power with the greatest care. Applications relying on this ground would need to demonstrate by clear evidence to the satisfaction of the Registrar that the proposed course of conduct would be contrary to the interests of the members as a whole. See *Turnbull & Ors v NRMA* [2004] NSWSC 577 [51].
- 3.7 It is contrary to the interests of members as a whole to hold a general meeting if the entire point of the meeting has gone away and would be pointless and wasteful: *Turnbull & Ors v NRMA* [2004] NSWSC 577 [32] [52-54].

D. Form of the directors' application

- 3.8 An application by or on behalf of the directors of a corporation to the Registrar must:
- be in writing
 - set out the grounds on which the application is made
 - be made within 21 days of the members' request.
- 3.9 The application should also include or attach any further information or documents necessary to support the directors' claims.

4 Registrar's decision

- 4.1 Upon receiving an application the Registrar must make a decision within 21 days as to whether to give permission to the directors to deny the request. The Registrar must then notify the directors, the corporation and the nominated member in writing of the decision made.

A. Relevant factors in making the Registrar's decision

4.2 The Registrar will make his or her decision on a case by case basis, having regard to all relevant circumstances and information provided by the directors. The Registrar will use the test provided in section 201-10(1) and have regard to whether:

- the request under section 201-5 is frivolous or unreasonable
- complying with the request would be contrary to the interests of the members as a whole.

B. Reconsideration of the Registrar's decision

4.3 A decision made by the Registrar under subsection 201-10(4) either to grant or refuse an application made under subsection 201-10(4) is a reviewable decision (section 617-1 items 17, 18). A person affected by the decision, such as a member or director of the corporation, may request the Registrar to reconsider the decision—see 'PS-14: Review of reviewable decisions'.

5 Directors must call the general meeting

5.1 If the directors do not apply to the Registrar under section 201-10, they must call a general meeting of members. They must do so within 21 days after the members' request is given to the corporation.

5.2 If the directors apply to the Registrar under section 201-10 but their request is unsuccessful, they must call a general meeting. They need to call the general meeting within 21 days after being notified of the Registrar's decision.

6 Other matters

A. Proper purpose

6.1 Under section 201-55, a general meeting must be held for a proper purpose.

6.2 Members cannot convene a meeting of the corporation or propose a resolution if the subject matter of the meeting or resolution is a matter of management exclusively vested in the directors: *NRMA v Parker* (1986) 6 NSWLR 517; *Queensland Press Ltd v Academy Instruments No 3 Pty Ltd* (1987) 11 ACLR 419.

6.3 In some circumstances, calling a further meeting shortly after a meeting on substantially the same subject matter could itself be sufficient to establish an intention to harass and impropriety of purpose: *Australian Innovation Ltd v Petrovsky* (1996) 21 ACSR 218; *Howard v Mechtler* (1999) 30 ACSR 434.

B. Availability of court orders to alter or abridge time limits

- 6.4 The obligation to call a general meeting of members can be modified by an order of the court made under section 576-15(6)(d), including altering or abridging time limits laid down by the CATSI Act. See *NRMA v Snodgrass* [2002] NSWSC 590; *ASIC v NRMA* [2002] NSWSC 1135; *Turnbull & Ors v NRMA* [2004] NSWSC 577 [40].
- 6.5 A court may extend the time to call and hold a members' requested general meeting to enable the meeting to be held in conjunction with the next scheduled annual general meeting of the corporation. However, the court will not necessarily do so if the delay is long, even if substantial cost savings would accrue to the company: see *NRMA v Parkin* [2004] NSWSC 296 [65, 72, and 74] where the court refused a four-month delay.

END OF POLICY STATEMENT