



Special administrations: what members and directors should know

This fact sheet provides general information for members and directors of corporations about special administrations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

What is a special administration?

A special administration is when the Registrar appoints an independent and suitably qualified person (a special administrator) to take control and oversee the running of a corporation while, at the same time, helping it to fix its problems. These problems may be short-term financial troubles or the result of poor business practices, poor governance and/or a weak organisational structure.

The aim of a special administration is to restore the corporation to financial and organisational health and, once this is achieved, to give back control to the members.

Special administration is a special measure under the CATSI Act. It is different to a voluntary administration under the *Corporations Act 2001*. Only Aboriginal and Torres Strait Islander corporations can be placed under special administration.



Starting a special administration

Only the Registrar can place a corporation under special administration. The Registrar looks at many issues when making a decision to place a corporation under special administration. For instance, if a corporation is funded by government, the Registrar may ask the key funding agencies for their views.

The grounds for special administration are set out in section 487-5 of the CATSI Act.

The Registrar does not need to apply to a court but usually must give a corporation a chance to explain why it thinks it should not be placed under special administration (this is called a 'show cause' procedure).

To protect public money or to prevent an interruption to essential services, the Registrar can place a corporation under special administration without a 'show cause' procedure.

If a member or director makes a complaint or provides information to the Registrar about a corporation, the Registrar may refer to this material when deciding if the corporation should be placed under special administration. See the Registrar's policy statement *PS-02: Complaints involving corporations*.

The directors or members of a corporation can also write to the Registrar and request that their corporation be placed under special administration.¹

The Registrar can appoint one or more people as special administrators at a single corporation. It is not uncommon for joint special administrators to be appointed.

A corporation can be placed under special administration if a voluntary administrator or a receiver has been appointed but not if the corporation is in the process of being wound up or if a liquidator has been appointed.

¹ A majority of directors or the required number of members is needed. The number of members required depends on the size of the corporation. See the Registrar's policy statement *PS-20 Special administrations*.

Can a corporation disagree with the decision?

Placing a corporation under special administration (or extending it) is a reviewable decision. Under the CATSI Act, the first step is to ask the Registrar to reconsider the decision.

A member or a director has 28 days after they have notice of the decision to ask the Registrar for a review. If after the review the member or director still disagrees with the Registrar's decision, they can ask the Administrative Appeals Tribunal to review the decision.

What happens when a special administration begins?

As soon as they are appointed the special administrator takes the place of the directors and takes control of the corporation. The directors and secretary of the corporation no longer hold office or retain any authority (unless the Registrar decides otherwise). They also can not use or deal with the corporation's property (unless the special administrator gives them permission).

While a special administration is in progress, the corporation usually continues to deliver its normal services. In situations where the corporation is insolvent, the special administrator may decide to cease trading for a period while they endeavour to resolve the situation.



What the special administrator does

The special administrator's job is to try to resolve the issues that led to the corporation being placed under special administration. In order to do this, the first task is to take full control of the corporation, its business and property.

The special administrator:

- secures and manages the corporation's assets (for example, bank accounts, vehicles and office premises)
- reviews the corporation's financial and operational activities to find out the true financial position
- meets with funding agencies to work out and secure funding, and confirms service delivery expectations
- contacts creditors about arrangements to pay the corporation's debts
- improves internal business and governance practices, if necessary (for example, introduces rules and procedures about how money is spent) and may form an advisory group to consult with during the course of the special administration
- makes sure the corporation works as it should to meet its objectives and the needs of its directors and members
- reviews the corporation's rule book and makes changes, if needed
- checks the register of members and register of former members, and updates them as required
- sends regular reports to the Registrar on progress of the special administration
- communicates with funding agencies, members and other interested parties through newsletters and information meetings (community meetings) about what's happening at the corporation.

To carry out these tasks the special administrator works alongside people associated with the corporation—the members, former directors, funding agencies, creditors, employees, and other interested parties. It is important to note, however, that a special administrator is an independent officer and does not take instructions from any of these people. The members and former directors have no formal role in the special administration process but members are consulted regularly by the special administrator.

Advisory groups

A special administrator may set up an advisory group which can include some of the corporation's members, former directors, or other interested parties. Advisory groups are valuable because they can offer guidance and ideas about the corporation's future direction, and advice on such matters as membership and proposed rule book changes. Special administrators consult regularly with their advisory groups.

Information meetings/newsletters

The Registrar expects that the special administrator will hold information meetings (or community meetings) and send out regular newsletters. This is to keep members, former directors, funding agencies, creditors, employees and other interested parties up to date with the progress of the special administration and plans for the corporation's future.

Newsletters and notices of information meetings sent out by special administrators are made available on the Registrar's website at www.oric.gov.au.

If members have questions or ideas about how to make their corporation stronger they should contact the special administrator, the advisory group (if there is one) or the Registrar's office.

New members during the special administration

A person can still apply for membership of a corporation while it is under special administration. A membership application should be sent to the corporation's contact address. The special administrator will decide whether the person meets the requirements for membership as set out in the corporation's rule book, usually after consulting with the advisory group.

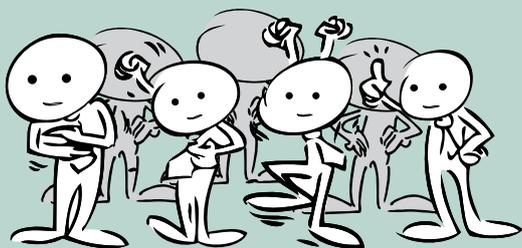
The register of members

The register of members is kept at the corporation's document access address or registered office. Members can contact the special administrator if they want to look at it.

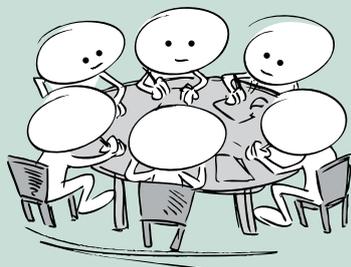
Members need to tell the corporation if their information has changed, such as if they have moved.

A special administrator will review the register of members and the register of former members during a special administration, and update them as required.

Who's who?



A **member** is a person whose name and address is recorded in the corporation's register of members.



The **directors** are the people who are appointed, usually by the members, to govern the corporation. They make decisions for the corporation and are accountable for it. They have duties under the CATSI Act. Usually the directors do not manage the day-to-day operations of the corporation—that is the role of the CEO and senior staff.



Small and medium corporations have a **contact person** and large corporations have a **secretary**. These people act as a mailbox for a corporation, passing on mail and other messages to the directors. Secretaries are responsible for making sure the corporation lodges its reports each year. Secretaries must also let the Registrar know about changes at the corporation, such as to the directors, the contact details for the corporation or its directors, and to its rule book.

Who pays the special administrator?

The Registrar sets the special administrator's costs, including their fees, charges and expenses. The Registrar may pay all these costs or decide that the corporation or a related organisation should pay them, either in full or in part.

Special administrator's protection from civil proceedings

A special administrator is protected from certain legal action² while exercising their functions, powers and duties. This protection is provided if they act in good faith.

The Registrar requires special administrators to have insurance in place for public liability, professional indemnity and workers' compensation.

Complaints or concerns about a special administrator

If a funding agency, creditor or employee is not satisfied with what a special administrator either has done or is doing, they can seek advice from the Registrar's office or make a complaint.

The Registrar's policy statement *PS-03: Complaints and feedback about the Registrar's staff, contractors and services* is available at www.oric.gov.au.

In addition, a person aggrieved by an act, omission or decision of a special administrator may appeal to a court to reverse or modify what a special administrator has or has not done.³

2. Section 609-1 of the CATSI Act.

3. Section 576-10 of the CATSI Act.

Effects of special administration on other forms of external administration

Generally, a special administration takes priority over other forms of external administration. Administrators appointed under the *Corporations Act 2001* (the voluntary administration process) and receivers need written permission from the special administrator to exercise any powers or deal with the corporation's property. Transactions involving the corporation's property may also be entered into only under a court order.

A corporation under special administration has some limited protection from winding up. Only the Registrar or the special administrator can apply to the court for a corporation to be wound up. Creditors can not do this. Also, members or creditors can not voluntarily wind up a corporation while it is under special administration.

How does a special administration end?

When a corporation is ready to be handed back to its members, new directors are appointed by the special administrator. The new directors will start their duties as soon as the special administration ends.

If it is not possible to fix the corporation's problems, an application can be made to the court to place the corporation into liquidation. The application can be made by the special administrator, the Registrar or, at the end of the special administration, by a director, creditor or member.

At the end of a special administration a corporation can also move to an administration under the *Corporations Act 2001* (the voluntary administration process)—but this does not happen very often.

A straightforward special administration usually takes no more than six months and a more complex one no more than 12 months. The Registrar can extend or end a special administration early, if the desired outcome of the special administration has been met or the corporation's problems can not be fixed.

To find out more

For more information about special administrations see the Registrar's policy statement *PS-20: Special administrations* at www.oric.gov.au.



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This fact sheet is not a substitute for legal advice. It is intended as a quick overview of the topic. For more detail see the CATSI Act or consult a lawyer.