

Regulation

Examinations

In 2015–16 ORIC completed 39 examinations.

The Registrar has the authority under the CATSI Act (section 453-1) to examine a corporation's books and records at any time. The purpose of an examination is to assess a corporation's financial health and corporate governance standards. For example, an examination checks that a corporation is:

- running in accordance with the CATSI Act and its rule book
- keeping up-to-date financial records and is managing its finances correctly, in line with proper policies and procedures
- handling appropriately any conflicts of interest and benefits to related parties.

Each year the Registrar conducts a routine program of examinations. Some initiated by the Registrar are in response to potential governance issues raised about a corporation.

Examinations contribute to the intent of the CATSI Act as a special measure to advance and protect the interests of Aboriginal and Torres Strait Islander people and their respective cultures. They also perform an important function in detecting early signs of potentially troubling issues at a corporation.

Equally, corporations that are running well often view examinations as very positive experiences. To receive a favourable examination report can be very reassuring or confirm what they already know—that they are managing their corporation's affairs to a high standard.

For more information see ORIC's policy statement *PS-25: Examinations* available on the ORIC website.

During the financial year the Registrar started 44 examinations and completed 39, as set out in tables 7 and 8.

TABLE 7: Examinations completed by state/territory 2015–16

LOCATION BY STATE/TERRITORY	NUMBER OF CORPORATIONS
Australian Capital Territory	0
New South Wales	9
Northern Territory	13
Queensland	8
South Australia	2
Tasmania	0
Victoria	2
Western Australia	5
Total	39

The examination program for the 2015–16 financial year covered corporations with the following activities:

TABLE 8: Examinations completed by activities 2015–16

MAIN ACTIVITIES OF CORPORATIONS	NUMBER OF EXAMINATIONS
Health and aged care services	10
Drug and alcohol rehabilitation services	1
Community services	4
Land management	1
Registered native title bodies corporate (RNTBCs)	3
Other native title	7
Agriculture, forestry and fishing	2
Art and cultural centres	2
Tourism	1
Housing	4
Employment and training	2
Community stores	1
Communications (radio, broadcasting and language)	1
Total	39

Outcomes of examinations

The outcomes of the 39 examinations completed over 2015–16 were:

- 6 corporations (15 per cent) were found to be operating well and required no further action. They were each sent a management letter.
- 27 corporations (69 per cent) were required to rectify less serious matters which were settled through the issue of a compliance notice³ under section 439-20 of the CATSI Act.
- 4 corporations (10 per cent) had serious findings and were issued with a 'show cause notice' under section 487-10 of the CATSI Act. These corporations were required to explain why they should not be placed under special administration.
- 2 examinations (5 per cent) were completed for subsidiaries of a parent corporation, and as such comments on the findings were sent to the parent corporation for consideration.

Five examinations were still in progress as at 30 June 2016.

TABLE 9: Outcomes of examinations 2010–11 to 2015–16

EXAMINATION OUTCOME	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16
Management letters	29	19	22	12	16	6
Compliance notices	34	31	26	26	33	27
Show cause notices	7	9	1	7	10	4
Other	2	2	2	1	0	2
Total	72	61	51	46	59	39

- 3 Compliance notices provide direction for corporations on how to improve their standards of corporate governance and financial management after an examination is done.

Compliance notices are made available on the public Register of Aboriginal and Torres Strait Islander Corporations. They provide valuable information to a corporation's members and other stakeholders (such as funding agencies and creditors) about the standards of corporate governance and financial management within a corporation at a given point in time.

Special administrations

In 2015–16:

- 5 special administrations continued from the previous year.
- 10 special administrations were started.
- 11 special administrations were completed, with all handed back to members' control.
- 4 special administrations were still in progress as at 30 June 2016.

Special administrations are a form of external administrations unique to the CATSI Act. They allow the Registrar to provide early and proactive regulatory assistance to corporations experiencing financial or governance difficulties.

The Registrar appoints an independent, suitably qualified person (the special administrator) to work with a corporation to fix its internal problems and to restore it, as soon as possible, to good health. Once this is achieved, the special administrator returns full control of the corporation to its members. In all cases the special administrator works in the best interests of the corporation and its members.

Special administrations are quite different to receiverships, liquidations or voluntary administrations as defined under the *Corporations Act 2001*, which are usually driven by the interests of creditors.

There are several grounds on which the Registrar can decide to place a corporation under special administration. As outlined at section 487-5(1) of the CATSI Act, the grounds are not restricted to insolvency or the inability to pay a debt.

For more information please see the Registrar's policy statement, *PS-20: Special administrations*.



The Registrar addressing members of the Nguuiu Club Aboriginal Corporation following its transfer to the CATSI Act and its placement under special administration, January 2016.

Four of the 10 new special administrations (or 40 per cent) in 2015–16 were started after the directors wrote to the Registrar asking for assistance.

Before any corporation is placed under special administration, however, the Registrar usually accords it a period of natural justice. Through a 'show cause' procedure the corporation is asked to explain why it should not be put into special administration. The time the corporation takes to respond depends on its particular circumstances but the Registrar usually allows at least 14 days.

The aim of every special administration is to achieve one or both of the following:

- **RESTORATION OF GOOD OPERATIONAL ORDER**—usually after a corporation has not complied with a provision of the CATSI Act or its rule book, has experienced financial difficulties or there has been a dispute
- a **RESTRUCTURE**—usually after the directors or members have asked the Registrar to intervene to review governance standards or organisational structures.

Eleven special administrations ended during 2015–16. Six were completed within six months in line with ORIC's key performance indicator. A successful business turnaround was achieved in all 11 corporations (100 per cent) in that they were handed back to members' control.

TABLE 10: Corporations placed under special administration in 2015–16

DATE APPOINTED	ICN	CORPORATION SPECIAL ADMINISTRATOR(S)	DATE ENDED OR DUE DATE OUTCOME
13 Jul 2015	4207	Western Desert Lands Aboriginal Corporation (Jamukurnu–Yapalikunu) RNTBC	26 Feb 2016
		Jack James and Paula Cowan	Handed back to members' control.
4 Jan 2016	8335	Nguiu Club Aboriginal Corporation	3 June 2016
		Stuart Reid and Austin Taylor	Handed back to members' control.
11 Jan 2016	7445	Lirrwi Yolngu Tourism Aboriginal Corporation	31 August 2016
		Brian Woods	Handed back to members' control.
12 Jan 2016	1473	The Central Australian Aboriginal Alcohol Programmes Unit Aboriginal Corporation	30 June 2016
		Peter McQuoid	Handed back to members' control.
18 Jan 2016	85	Woolah Aboriginal Corporation	31 August 2016
		Andrew West	Handed back to members' control.
19 Jan 2016	2164	Purga Elders & Descendants Aboriginal Corporation	21 April 2016
		Peter Saunders	Handed back to members' control.
26 Feb 2016	7897	Gulf Savannah NT Aboriginal Corporation	27 May 2016
		Gerry Mier and Tony Jonsson	Handed back to members' control.
31 Mar 2016	2989	Doon Doon Pastoral Aboriginal Corporation	28 July 2016
		Andrew West	Handed back to members' control.
3 May 2016	1276	Danila Dilba Biluru Butji Binnilutlum Health Service Aboriginal Corporation	3 May 2016
		Peter Armstrong	Handed back to members' control.
6 June 2016	3170	Larrakia Nation Aboriginal Corporation	7 December 2016
		Gerry Mier and Tony Jonsson	In progress

TABLE 11: Corporations with a special administration continuing from last year

DATE APPOINTED	ICN	CORPORATION SPECIAL ADMINISTRATOR(S)	DATE ENDED OR DUE DATE OUTCOME
16 Feb 2015	7355	Pika Wiya Health Service Aboriginal Corporation	31 August 2015
		Jack James and Paula Cowan	Handed back to members' control.
3 March 2016	3789	Mamu Aboriginal Corporation RNTBC	18 September 2015
		Gerry Mier and Tony Jonsson	Handed back to members' control.
6 March 2015	500	Murchison Region Aboriginal Corporation	3 September 2015
		Andrew West and Kahsai Tesfa	Handed back to members' control.
9 March 2015	1061	Mungoorbada Aboriginal Corporation	16 March 2016
		Stuart Reid and Austin Taylor	Handed back to members' control.
8 April 2015	7573	Thamarrurr Regional Authority Aboriginal Corporation	20 November 2015
		Stuart Reid and Austin Taylor	Handed back to members' control.



Special administration communications

During the course of a special administration the Registrar expects the special administrator to communicate regularly with members and stakeholders. This is to keep members, former directors, funding agencies, creditors, employees and other interested parties up to date with progress. The special administrator must explain the changes that have to be made as well as outline the plans for the corporation's future.

To do this special administrators send out regular newsletters and hold community information meetings.

To support the special administrators in this task the Registrar's office contributes writing and graphic design expertise.



All special administration newsletters are available on the ORIC website

Below is an email received by the special administrator of Lirrwi Yolngu Tourism Aboriginal Corporation.

4 May 2016

Hi Brian

Thank you so much for the Special Administration Newsletter - and huge compliments on the clarity of the information and the language used in describing the situation addressed by the Special Administrator and the actions being taken as part of the second and third phases of the Special Administration.

I have always been an admirer of Plain English in its most eloquent form which is a very inclusive way of communicating, especially for people whose first language is not English. So many thanks for this next step in communication re the Special Administration processes which will be of great assistance to Yolngu stakeholders.

Warm regards

Robyn