



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 22

Disputes involving corporations

Policy	PS-22: Disputes involving corporations
Relevant legislative provisions	CATSI Act sections 439-5 through to 439-20, 453-1, 453-5, 490-1, 576-25, 526-15, 658-1(1)(f), 658-10
Last updated	21 February 2024
Other relevant policies	PS-02: Complaints involving corporations PS-10: Registered native title bodies corporate PS-12: Registers and use and disclosure of information held by the Registrar PS-15: Privacy

PS-22: Disputes involving corporations

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PS-22: Disputes involving corporations

1 Purpose

- 1.1 In this policy statement the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on disputes involving corporations and how the Registrar can assist with the resolution of disputes.
- 1.2 References to sections in this policy statement are references to sections of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) unless otherwise specified. References to ‘corporations’ in this policy statement are references to Aboriginal and Torres Strait Islander corporations unless otherwise specified, and include corporations which are Registered Prescribed Bodies Corporate under the *Native Title Act 1993* (Cth) (RNTBCs). 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 Powers of the Registrar in resolving disputes

- 2.1 The Registrar’s statutory functions include assisting with the resolution of disputes involving Aboriginal and Torres Strait Islander corporations – section 658-1(1)(f). Section 658-10 states that the Registrar has the power to do all things necessary or convenient to perform the Registrar’s functions, giving the Registrar flexibility in the way disputes are handled.
- 2.2 Specific powers which the Registrar may exercise when assisting in the resolution of disputes include:
 - the power to examine the books of an Aboriginal and Torres Strait Islander corporation – section 453-1
 - the power to ask questions of those people with knowledge of the affairs of an Aboriginal and Torres Strait Islander corporation – section 453-5
 - the power to convene meetings of interested persons – section 439-5
 - the power to call a general meeting, other than an annual general meeting (AGM) – section 439-10
 - the power to call an AGM – section 439-1
 - the power to change the rule book of the corporation – section 69-35
- 2.3 The Registrar also has substantive enforcement powers, including:
 - the power to require compliance with the CATSI Act – section 439-20
 - the power to apply for injunctions – section 576-25
 - the power to appoint a special administrator – section 490-1
 - the power to petition the court for a corporation to be wound-up – section 526-15(1)(h)

3 What disputes does the Registrar look at?

- 3.1 Section 658-1 (f) of the CATSI Act sets out the statutory function of the Registrar to assist with the resolution of disputes that are:
- internal to the operation of an Aboriginal and Torres Strait Islander corporation
 - between an Aboriginal and Torres Strait Islander corporation and others.
- 3.2 In this policy statement, a dispute does not mean a dispute between the corporation and its employees, except where the dispute indicates broader problems in the corporation's internal governance.
- 3.3 In assisting with the resolution of disputes, ORIC does not provide legal advice, act for individual parties, or provide information about investigations or other regulatory action other than what is available on the publicly accessible Register of Aboriginal and Torres Strait Islander Corporations.
- 3.4 The Registrar treats all disputes with sensitivity and takes into consideration the culture and traditions of Aboriginal and Torres Strait Islander people.

A. INTERNAL DISPUTES

- 3.5 For the purpose of this policy statement, an internal dispute is a disagreement about the corporate governance of a corporation or compliance with a corporation's rule book, the CATSI Act or *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* (Cth) (Regulations) that is between:
- members
 - members and directors or
 - directors.
- 3.6 The Registrar's approach to handling internal disputes is underpinned by several key principles:
- The Registrar is apolitical and therefore maintains neutrality in performing the role and in providing dispute resolution and assistance to corporations.
 - The Registrar seeks to build the capacity of corporations to resolve disputes and complaints internally. This is achieved through providing assistance and training on internal dispute resolution processes and policies, including assistance with designing a rule book.

B. DISPUTES WITH OTHERS

- 3.7 A corporation may also be in dispute with another party who is not part of the corporation. This could be where a:
- disagreement between a corporation and a funding body arises from the governance of the corporation

- person challenges the corporation's decision to refuse the person's application for membership of the corporation
- common law holder claims that a corporation that is a RNTBC has not complied with its native title legislation obligations.

3.8 The Registrar's approach to handling disputes between corporations and other parties is underpinned by several key principles:

- The Registrar is apolitical and therefore maintains neutrality in performing the role and in providing dispute resolution and assistance to corporations, including where the other party to a dispute is a Commonwealth agency.
- The Registrar seeks to build the capacity of corporations to prevent and resolve disputes that may arise from governance challenges by providing advice and training to corporations.

4 What is the Registrar's role in disputes?

4.1 The Registrar can provide independent and impartial assistance to the resolution of certain disputes involving corporations, with the aim of achieving early intervention, rapid response and lasting resolution.

4.2 The Registrar cannot offer a complete dispute resolution response to all requests. Priority is given when:

- the corporation provides essential services
- the corporation holds land
- the corporation is not functioning because of the conflict
- the corporation receives Commonwealth Government funding
- the corporation has a large number of members
- there is a public interest in resolving the dispute
- the corporation holds or deals in large sums of money
- the corporation makes or has made agreements affecting significant cultural heritage and native title matters.

4.3 In some cases the Registrar may, with the consent of the parties to a dispute, collaborate with other bodies or government agencies with policy or operational responsibility for the subject matter of a dispute. For example, the Registrar may work with a native title representative body or native title service provider in relation to a native title dispute or assist in the referral of the matter to the National Native Title Tribunal.

4.4 The kind of assistance provided by the Registrar will depend on whether the dispute is internal to the corporation or between a corporation and another party and can include:

A. ADVICE

The Registrar can give telephone, face-to-face or written advice about the CATSI Act, the corporation's rule book and options for resolving a dispute. Advice is limited to more straightforward issues and is not binding on the parties or the Registrar. This advice is not legal advice. Obtaining independent legal advice is always recommended. Advice can help resolve simple issues that may be in the way of resolving a dispute or help the parties clarify what is in dispute and what outcomes are realistic.

B. ADVISORY OPINIONS

An advisory opinion is a formal written opinion provided on behalf of the Registrar. It can be provided on the application of the CATSI Act or interpretation of a corporation's rule book regarding the dispute. An advisory opinion may follow a process of gathering information and seeking submissions from the parties. Advisory opinions are not a substitute for independent legal advice and do not bind the parties or the Registrar, but can provide greater clarity to the parties involved in a dispute.

C. OPINIONS ON NATIVE TITLE CERTIFICATION

The Registrar can provide an opinion on whether a corporation which is a RNTBC has properly prepared a certificate about the consultation and consent of common law holders. This certificate is required when that corporation makes a native title decision. A common law holder or a person who has a substantial interest in the corporation's decision can request this opinion. The opinion is non-binding and can be requested pursuant to Regulation 55A(a) of the Regulations.

D. DISPUTE RESOLUTION

The Registrar can refer the parties to an independent mediator, including the National Native Title Tribunal. A mediator can help the parties identify the disputed issues, develop options, and consider alternatives to reach an agreement on workable and sustainable outcomes.

E. COMPLAINTS HANDLING

The Registrar will sensitively handle complaints about contraventions of the CATSI Act, the Regulations or the corporation's rule book. For more information about how the Registrar handles complaints, see 'PS-02: Complaints involving corporations'.

5 Confidentiality and disclosure

5.1 The Registrar cannot guarantee confidentiality to disputing parties, although discretion will be a high priority.

5.2 Sometimes information about disputes will need to be disclosed as part of investigating a complaint or for other lawful reasons, for example, disclosure to the Australian Federal Police or under a subpoena issued by a court.

- 5.3 Information received in confidence by the Registrar (including complaints) is protected information and will only be used or disclosed if authorised by the CATSI Act – see section 604-25. Further guidance on the use or disclosure of protected information can be found in ‘PS-12: Registers and use and disclosure of information held by the Registrar’.
- Personal information about an individual will also be collected, managed, used and disclosed according to the *Privacy Act 1988* – see ‘PS-14: Privacy’, for further guidance on these requirements.

6 What if the Registrar cannot help with a dispute?

- 6.1 If the Registrar cannot help with a dispute, the parties involved in the dispute may seek help from another agency, or the Registrar may refer the dispute, with the consent of the parties, to another agency, person or body. For example, employment-related disputes may be referred to the Fair Work Ombudsman. Complaints which involve allegations of fraud or other criminal activity may be referred for investigation to the relevant state or territory police.
- 6.2 The court has the power to make a determination or decision that may resolve certain disputes within the corporation or between the corporation and another party. See ‘PS-10: Registered native title bodies corporate’; ‘PS-24: Applications for permission to deny a members’ request for a general meeting’.¹

END OF POLICY STATEMENT

¹ Refer also Parts 4-4, 6-5, 14-1 (esp. s.576-1), Divisions 166, 169, 180, 279, 287, 290, CATSI Act