



# Property of deregistered corporations

<b>Policy</b>	PS-18: Property of deregistered corporations
<b>Relevant legislative provisions</b>	CATSI Act Parts 12-2 and 12-3 CATSI Act section 617-1, item 44
<b>Last updated</b>	6 March 2024
<b>Other relevant policies</b>	PS-14: Reviewable decisions PS-17: Deregistrations and reinstatements



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# 1. Purpose

- 1.1 In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on claims and applications with respect to the property of deregistered corporations.
- 1.2 For more information on the Registrar's powers to deal with the property of deregistered corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), see Property of deregistered corporations.
- 1.3 This policy statement applies to:
  - claims of a disposition of money to incorrect payee
  - claims of entitlement to money that is unclaimed property
  - applications seeking the Registrar to fulfil the outstanding obligations of deregistered corporations
  - applications to acquire property vested in the Registrar.
- 1.4 Neither the Commonwealth nor the Registrar is liable for any loss or damage suffered by a person because of the exercise of, or the failure to exercise, any of the Registrar's powers regarding unclaimed property under Part 12-3 of the CATSI Act – section 551-40.
- 1.5 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. 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. Claims of disposition of money to incorrect payee

- 2.1 If a person claims to be entitled to money (or an amount equivalent to that money) and the money has been paid to another person, the Registrar is not liable to the claimant for that money.
- 2.2 If the person making the claim is entitled to that money (or an amount equivalent to that money), they may recover it from the person the money has already been paid to – section 551-35(1) and (2).

# 3. Claim of entitlement to money

- 3.1 If a person claims to be entitled to money that is unclaimed property or the proceeds of the disposal of unclaimed property, and the Registrar is satisfied that the person is entitled to the

money, the Registrar must pay the money to the person under section 551-30 of the CATSI Act – section 551-15.

- 3.2 In this context, 'entitled to' means having a legal right. See *Re Producers' Oilwell Supplies* [1943] VLR 141; *Caratti v National Companies and Securities Commission* (1984) 2 ACLC 790; In the matter of *Tandova Pty Ltd, Commonwealth Bank of Australia v ASIC* [2003] VSC 39. The entitlement should be absolute and not contingent upon other factors. See *Re Schmid and Comcare and the Commonwealth* (1991) 24 ALD 494.
- 3.3 A person entitled to money that is unclaimed property might be, for example:
- a creditor that was owed money by the corporation before the corporation was deregistered
  - a person that has a legal right to payment of money from the deregistered corporation.
- 3.4 Persons (including outstanding creditors) who claim to be entitled to money that is unclaimed property should apply in writing to the Registrar.

## Requirements for applications

- 3.5 An application must contain:
- A covering letter requesting that the Registrar act under section 551-30. This letter should include the claimant's name, address, telephone number and any other contact details and the former corporation's name and Indigenous Corporation Number (ICN).
  - One or more statutory declarations explaining the background to the matter and why the claimant is entitled to the money. The declaration can be made by the applicant, or any other person, with personal knowledge of the circumstances or transaction giving rise to the applicant's entitlement.
  - A further statutory declaration from a former director or liquidator (if any) of the deregistered corporation confirming the circumstances or transaction giving rise to the applicant's entitlement and indicating that there is no objection to the Registrar paying the entitlement. Details of the former directors and liquidator (if any) can be obtained from the Register of Aboriginal and Torres Strait Islander Corporations, available via [oric.gov.au](http://oric.gov.au).
  - If the former directors or liquidator (if any) cannot be located, supporting documentary evidence must be included with the application. This could include receipts or contracts signed by the corporation, letters sent by the corporation or provisions in a body corporate's constitution or rule book documenting the applicant's entitlement, including the completion of any relevant transactions.
- 3.6 Copies of any other relevant supporting documentation should be included with the application.
- 3.7 Specific requirements for applications may vary with circumstances. For example, the Registrar may require an applicant to:
- publicly advertise the details of an application
  - lodge a deed of indemnity.

- 3.8 Applicants may wish to contact the Registrar's office or seek independent legal advice if they are unsure as to how to proceed with an application. ORIC is unable to provide legal advice to an applicant.
- 3.9 The Registrar will, if required, consult further with applicants once an application is lodged. Applications will usually be responded to within 28 days.
- 3.10 A decision by the Registrar to refuse a claim under section 551-15(2) is a reviewable decision – section 617-1. For more information about reviewable decisions see 'PS-14: Reviewable decisions'.
- 3.11 Generally, the Registrar will not pay out creditors on behalf of a deregistered corporation and operate a de facto winding up service. The appropriate course may be to reinstate the corporation and appoint a liquidator. See 'PS-17: Deregistrations and reinstatements'.

## 4. Applications seeking the Registrar to fulfil the outstanding obligations of deregistered corporations

- 4.1 Persons seeking the Registrar to fulfil an outstanding obligation of a deregistered corporation should apply in writing to the Registrar. Obligations in this context are obligations of a kind that are not obligations that involve the payment of money or the sale or disposal of property, put differently, obligations of a kind that are not dealt with in s 546-25 or Part 12-3 of the Act.

### Requirements for application

- 4.2 An application must contain:
- A covering letter requesting that the Registrar act under section 546-30. This letter should include the claimant's name, address, telephone number and any other contact details and the former corporation's name and ICN.
  - Details of the circumstances, nature and extent of the deregistered corporation's outstanding obligation that the applicant believes the Registrar should fulfil.
  - One or more statutory declarations explaining the background to the matter, why the obligation was not completed before the corporation's deregistration (giving details of any property involved and transactions to be completed) and stating how the applicant or other relevant party honoured their part of any agreement. The declaration can be made by the applicant, or any other person, with personal knowledge of the transaction and property concerned.
  - A statutory declaration from a former director or liquidator (if any) of the deregistered corporation confirming that the transaction has otherwise been completed, that the corporation would be obliged to execute the document or complete its part of the transaction if the corporation still existed, and indicating that there is no objection to the Registrar executing the final documents. Details of the former directors and liquidator

(if any) can be obtained from the Register of Aboriginal and Torres Strait Islander Corporations via [oric.gov.au](http://oric.gov.au).

- If the former directors or liquidator (if any) cannot be located, supporting documentary evidence must be included with the application. This could include receipts or contracts signed by the corporation, letters sent by the corporation or provisions in a body corporate's constitution or rule book documenting the applicant's entitlement, including the completion of any relevant transactions.
- Information regarding whether any of the former officers or senior employees of the corporation are involved or associated with the application.
- The applicant must give details of all relevant legal and beneficial interests and registered and unregistered encumbrances where a property transaction is involved.
- If applicable, duly completed original legal documents to be executed by the Registrar (for example, a transfer of land or release of charge) where property transactions are involved. The Registrar cannot prepare or lodge legal documents on behalf of applicants. If an application is successful, the Registrar will return the executed legal document to the applicant for lodgement by the applicant at the applicant's expense.
- Any other information requested by the Registrar.

4.3 Copies of any other relevant supporting documentation should be included.

4.4 Supporting documents typically required with specific applications under section 546-30 involving property rights may include:

- discharge of mortgage – a copy of the mortgage and any variations and an up-to-date title search of the relevant land
- release of charge – a copy of the instrument purporting to create the charge
- transfer of land – a copy of the contract of sale or other relevant agreement and an up-to-date title search and any other relevant searches
- withdrawal of caveat – a copy of the instrument purporting to create the caveatable interest, an up-to-date title search of the relevant land, including the details of the caveat.

4.5 The following representative and execution clauses should be used when preparing any legal documents for execution by the Registrar on behalf of a deregistered corporation:

- Representative clause: The Registrar of Aboriginal and Torres Strait Islander Corporations acting pursuant to section 546-30 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* in relation to (corporation name and ICN) formerly of (address), a corporation that was deregistered on (date of deregistration).
- Execution clause: The common seal of the Registrar of Aboriginal and Torres Strait Islander Corporations is affixed pursuant to section 546-30 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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4.6 Specific requirements for applications may vary with circumstances. For example, the Registrar may require an applicant to:

- publicly advertise the details of an application.

- lodge a deed of indemnity.

- 4.7 The Registrar will, if required, consult further with applicants once an application is lodged. Applications will usually be responded to within 28 days.
- 4.8 Applicants may wish to seek independent legal advice if they are unsure as to how to proceed with an application.
- 4.9 Generally, the Registrar will not enter into a new contract, vary an existing contract or pay out creditors on behalf of a deregistered corporation. Mortgages will not be discharged without recovering all principal and interest due after deregistration.

## 5. Applications to acquire property vested in the Registrar

- 5.1 Persons who wish to acquire property of deregistered corporations must apply to the Registrar in writing.
- 5.2 The Registrar will, in the first instance, consider whether reinstating the deregistered corporation is a preferred course of action. See 'PS-17: Deregistrations and reinstatements'.
- 5.3 The Registrar may at their absolute discretion decline to dispose of the property of a deregistered corporation to an applicant for any reason. The onus is on an applicant to make their own thorough and comprehensive searches regarding ownership, liabilities and encumbrances in respect of a property, and the quality of the property.
- 5.4 It is a matter for the applicant to put sufficient evidence before the Registrar to satisfy him or her that the discretion to dispose of vested property should be exercised in the way the applicant requests.
- 5.5 The Registrar may have regard to Aboriginal and Torres Strait Islander tradition and circumstances and, in so doing, consider the needs of Aboriginal and Torres Strait Islander people and communities when dealing with properties of deregistered corporations.
- 5.6 If the Registrar sells or disposes of an asset under section 546-25(2), it will not be sold with any warranties whatsoever. The Registrar sells or disposes of nothing more than the Registrar's interest.
- 5.7 When property is disposed of it may be sold by public auction, public tender or private contract.

## Requirements for applications

- 5.8 A statutory declaration must be completed by an applicant seeking to acquire property of a deregistered corporation that:

- identifies the property to be acquired – together with verified copies of any evidence of title such as a certificate of title or share certificates
- provides the name and ICN of the former corporation
- gives details of the circumstances, nature and extent of the interest that the applicant believes vests in the Registrar; the applicant must give details of all legal and beneficial interests and registered and unregistered encumbrances; the applicant will need to satisfy the Registrar that the property vested is not held on trust
- states the results of all inquiries made as to any interests of the former corporation's officers, including secretary, liquidator (if any), shareholders or secured creditors and attaching copies of all correspondence sent and replies received.

5.9 A valuation of the property must be supplied. The Registrar requires an independent sworn valuation by a person experienced and licensed (if appropriate) in valuing such property. All valuation fees are the responsibility of the applicant. A purchase offer price must also be submitted, with submissions as to why the Registrar should accept a discrepancy (if any). These submissions should have regard to this Policy Statement.

5.10 Copies of any other relevant supporting documentation should be included.

5.11 Supporting documents typically required with specific applications under section 546-25(2)(a) of the CATSI Act may include:

- discharge of mortgage – a copy of the mortgage and any variations and an up-to-date title search of the relevant land
- release of charge – a copy of the instrument purporting to create the charge
- transfer of land – a copy of the contract of sale or other relevant agreement and an up-to-date title search and any other relevant searches
- withdrawal of caveat – a copy of the instrument purporting to create the caveatable interest and an up-to-date title search of the relevant land, including the details of the caveat.

5.12 All applications for the purchase of property vested in the Registrar must include duly prepared transfer documents using the following clauses:

- Representative clause: The Registrar of Aboriginal and Torres Strait Islander Corporations acting pursuant to section 546-25 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, in relation to (corporation name and ICN) formerly of (address), a corporation that was deregistered on (date of deregistration).
- Execution clause: The Common Seal of the Registrar of Aboriginal and Torres Strait Islander Corporations is affixed pursuant to section 546-25(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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5.13 The Registrar may require that an application made by a natural person in accordance with this policy statement include evidence of the applicant's identity. In the case of an applicant that is a body corporate, the Registrar may require evidence of the identity of the officer



authorising the application. Evidence of identity will take the form that the Registrar considers satisfactory in all the circumstances.

- 5.14 The Registrar may require advertisements to be placed in major newspapers or on websites notifying:
- a claim to money from the Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account
  - an application for the Registrar to fulfil an outstanding obligation of a deregistered corporation, particularly where it affects significant property rights
  - an application to purchase or dispose of the property of a deregistered corporation.
- 5.15 The Registrar will consult with applicants on the wording of the required advertisement. Applicants will be responsible for the cost of these advertisements.
- 5.16 The purpose of an advertisement is to enable any other person with an interest in the property or a person who objects to, or would be aggrieved by, the proposed action of the Registrar, to make representations to the Registrar.
- 5.17 Specific requirements may vary with circumstances. For example, the Registrar may also require an applicant to:
- publicly advertise the details of an application
  - consult with impacted Aboriginal and Torres Strait Islander communities or common law holders of native title
  - lodge a deed of indemnity.
- 5.18 The Registrar will, if required, consult further with applicants once an application is lodged. Applications will usually be responded to within 90 days.
- 5.19 The Registrar may not always exercise his or her discretion to dispose of an asset to an applicant. For example, there may be a competing application or some statutory restriction on the transfer of the asset. In some cases a private treaty may be inappropriate.

## 6. Fees

- 6.1 No fees are payable to the Registrar for lodging:
- a claim of entitlement to money from the Aboriginal and Torres Strait Islander Corporations Unclaimed Money Account
  - an application for the Registrar to fulfil an outstanding obligation of a deregistered corporation
  - an application to purchase or dispose of the property of a deregistered corporation.
- 6.2 An applicant will be responsible for any costs, charges or expenses. For example, transfer fees, stamp duty or taxation associated with an application and any dealing with a deregistered corporation's property.

## End of policy statement