



Australian Government

Office of the Registrar of Indigenous Corporations

Special administrations: what funding agencies, creditors and employees should know

This fact sheet provides general information for funding agencies, creditors and employees 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 a 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 registered under the CATSI Act 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 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 funding agency, creditor or employee 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.

Can someone 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 person affected by the Registrar's decision (who may be a funding agency, a creditor or an employee), has 28 days after they have notice of the decision to ask the Registrar for a review. If after the review the person 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.

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*.

What special administrators do

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. Funding agencies, creditors and employees have no formal role in the special administration process.

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. It may also include an important funding agency, creditor or employee but this is not usually the case. 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.

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 available on the Registrar's website at www.oric.gov.au.

Who's who?

A **funding agency** is a government body that provides grants or makes payments to a corporation under an agreement. Sometimes a funding agency may also be a creditor of the corporation.

A **creditor** is someone to whom the corporation owes money. Usually a creditor has given goods or services, or loaned money to the corporation. An employee who is owed money (for example, unpaid wages and other entitlements) is also a creditor.

Other creditors may be a person that is owed money if a certain event occurs (for example, if they succeed in a legal claim against the corporation). These creditors are sometimes called 'contingent creditors'.

An **employee** is a person hired by a corporation under an award, enterprise bargaining agreement, workplace agreement or a contract of employment. They could be paid a salary, wages or commission. Contractors are not employees. They are creditors of the company.

Effects of special administration on creditors

Special administration places a corporation's existing debts (called pre-appointment debts) 'on hold' and gives it breathing space while its future is resolved by the special administrator.

In most cases a creditor can not take any action to have their pre-appointment debt paid, such as applying to wind up the corporation—not unless the special administrator or the court agrees.

Any debts a corporation incurs during a special administration, that have been authorised by the special administrator, must be paid by the special administrator. These debts could be for purchasing goods or services; hiring, leasing, using or occupying property; or loans. The special administrator must also pay certain tax liabilities of the corporation. If the corporation does not have enough money to pay these debts the special administrator must pay them.

The special administrator will try to make arrangements to pay as many of the corporation's pre-appointment debts as possible during the special administration. If this can not be achieved before the special administration ends, the corporation is once again responsible for paying its outstanding debts. At this time creditors can start action to recover the debts (that is, the money owed to them).

What happens to employees?

Employees are not automatically dismissed when a corporation is placed under special administration. The special administrator is responsible for overseeing the corporation and has the authority to retain employees, hire new ones or dismiss those whose services are no longer required.

Separation certificates

An employee who is dismissed and wants to apply for social security may need the special administrator to sign an employment separation certificate (available from the Centrelink website).

A special administrator must prepare a separation certificate for those whose employment ends during a special administration. They are not obliged to prepare one for people that stopped being employed before the special administration started.

If former employees do not have another job to go to and want to consider claiming an income support payment they can contact Centrelink on 132 850 or visit the Department of Human Services' website at www.humanservices.gov.au.



What happens to employees' entitlements?

Employees owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, redundancy pay or other benefits are creditors of the corporation. Payment of some or all of these entitlements may be given priority over other debts of the corporation.

If the special administrator continues to employ the staff, their wages and other employee entitlements earned during the special administration must be paid by the special administrator. If the corporation does not have enough money to pay the employees the special administrator must pay them.

The special administrator will try to make arrangements to pay wages and entitlements earned before the corporation was placed under special administration. But if the corporation is in a difficult financial position there is no guarantee that this will happen.

If the special administration ends with the corporation going into liquidation, priority will be given to paying outstanding employee entitlements. Employees may also be entitled to make a claim under the Fair Entitlements Guarantee (FEG) scheme.

For more information on FEG call 1300 135 040 or visit the Department of Employment's website <http://employment.gov.au/fair-entitlements-guarantee-feg>.

Payment summaries

Most employees require a PAYG payment summary (group certificate) to complete and lodge their income tax return.

When a special administrator pays an employee, they must give the employee a PAYG payment summary outlining the wages and entitlements paid to the employee and any income tax deducted. Employees must contact the special administrator to find out if they will prepare a PAYG payment summary for employee entitlements paid by the corporation before the special administration started—and if so, what period it will cover.

If an employee can not get a PAYG payment summary for any period, they should call the Australian Taxation Office (ATO) on 13 28 61 or the ATO Indigenous Helpline on 13 10 30 to find out what to do.

WARNING! technical content

More information for creditors

If a corporation occupies or uses a property, the special administrator has five business days from the time they are appointed to tell the owner of the property whether they will continue to occupy or use it. If the special administrator decides to continue to do so, they become personally liable for any rent or amounts payable from after the end of the five business days.

To claim against a corporation, or deal with its property, written permission from the special administrator or the court is needed for:

- unsecured creditors to begin or continue their claims
- secured creditors to enforce their charges (except in limited circumstances)
- receivers and administrators appointed under the applied provisions of the *Corporations Act 2001* (the voluntary administration process) to exercise their powers.

Permission from the court is needed for:

- enforcing claims
- a creditor to act on a personal guarantee from a director of the corporation or any other person.

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.