



Australian Government

Office of the Registrar of Indigenous Corporations



POLICY STATEMENT 20

Special administrations

Policy	PS-20: Special administrations
Relevant legislative provisions	CATSI Act Part 11-2 (including applied Corporations Act provisions) CATSI Regulations Part 11-2
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Other relevant policies	PS-14: Review of reviewable decisions

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PS-20: Special administrations

1 About this policy statement

- 1.1 The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) governs the regulation of Aboriginal and Torres Strait Islander corporations, including external administration of those corporations. In this policy statement, the Registrar of Aboriginal and Torres Strait Islander Corporations (the Registrar) provides guidance on:
- the special administration of corporations
 - the relationship between special administration and other forms of external administration and winding up
 - the appointment and termination of a special administrator
 - how the Registrar places corporations under special administration and terminates special administrations, including the availability of initial reconsideration of the decision and AAT review
 - the grounds for placing a corporation under special administration and other considerations that the Registrar takes into account
 - the role and powers of a special administrator
 - the usual steps in a special administration, such as the Registrar's expectations for communications with corporation members and key stakeholders.
- 1.2 References to sections in this policy statement are references to sections of the 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 Introduction and summary

- 2.1 Special administration is a form of external administration unique to the CATSI Act. It is a special measure that addresses the unique role and circumstances of Aboriginal and Torres Strait Islander corporations. It contributes towards the CATSI Act as a special measure to advance and protect Aboriginal and Torres Strait Islander people and their respective cultures.
- 2.2 Special administration enables the Registrar to provide early proactive regulatory assistance when a corporation experiences financial or governance difficulties. It is quite different to a receivership or voluntary administration under the *Corporations Act 2001* (the Corporations Act), which are usually driven by the interests of creditors.

- 2.3 Only the Registrar may place an Aboriginal and Torres Strait Islander corporation under special administration. The Registrar does not need to apply to a court. The grounds for placing a corporation under special administration are broad. They are not restricted to insolvency or the inability to pay a debt. They allow early intervention once certain risk factors are present and may avoid later corporate collapse. For example, a common risk factor is when a dispute between members and the board has escalated to the point of interfering with the operations of the corporation. This would be one reason for placing a corporation under special administration and is an important special measure.
- 2.4 A majority of a corporation's directors or the required number of members of a corporation may request the Registrar to place their corporation under special administration.
- 2.5 However, placing a corporation under special administration more frequently arises after an examination of the corporation's books by the Registrar or an authorised person under section 453-1—see 'PS-25: Examinations'.
- 2.6 Before a corporation is placed under special administration it is usually accorded natural justice through a show cause procedure. The corporation is invited to respond and say why it should not be placed under special administration. The length of time a corporation has in which to show cause to the Registrar will depend on the circumstances of a particular corporation, but it is the usual practice of the Registrar to allow at least 14 days. A corporation may write to the Registrar to request an extension of time in which to show cause.
- 2.7 In urgent situations the Registrar may dispense with the show cause procedure. For example, the Registrar may act immediately to prevent the loss of public money or to prevent a corporation ceasing to provide services that are essential to, or very significant for, a particular community—section 487-10(2).
- 2.8 The decision to place a corporation under special administration is a reviewable decision that can be reviewed internally by the Registrar and then by the Administrative Appeals Tribunal (AAT)—see 'PS-14: Review of reviewable decisions'. The special administrator will continue to administer the corporation pending the outcome of any review.
- 2.9 When a corporation is placed under special administration, the Registrar will appoint a person to be the special administrator for a specified period of time. The Registrar may appoint joint and several special administrators to a corporation.

- 2.10 A special administrator is responsible for the conduct of the affairs of the corporation and has comprehensive powers under the CATSI Act to do this. A special administrator will:
- secure the corporation’s books, assets and bank accounts
 - verify the financial position of the corporation and assess its ongoing viability
 - regularly communicate and meet with members and other interested parties during the administration
 - manage the day-to-day activities of the corporation and restore it to good operational order
 - prepare the corporation for return to control by members.

If a corporation is not viable the special administrator may apply to the court¹ to appoint a liquidator and wind up the corporation—section 526-15(1).

- 2.11 The Registrar may terminate or extend a period of special administration or a special administrator’s appointment. The decision to extend the period of special administration is also a reviewable decision—see ‘PS-14: Review of reviewable decisions’.
- 2.12 Special administration provisions in the CATSI Act give significant powers to the Registrar and special administrators. Intervention by the Registrar and the comprehensive powers of a special administrator are important safeguards, especially for corporations holding land or providing essential services or community infrastructure.

3 Aim of special administration

- 3.1 Special administration is a special measure that addresses the unique role and circumstances of Aboriginal and Torres Strait Islander corporations. The aim of the Registrar in placing a corporation into special administration is usually to achieve one or more of the following outcomes:
- Restore good operational order to the corporation—usually when the corporation is not complying with a provision of the CATSI Act or its rule book, is experiencing financial difficulties or a dispute within the corporation
 - Restructure the corporation—for example, where the directors or members ask the Registrar to intervene to review the governance structures of the corporation or restructure its business.

¹ An application must be made to the Federal Court, the Supreme Court of a state or territory or the Family Court.

4 When will the Registrar place a corporation under special administration?

4.1 The Registrar may place a corporation under special administration for a period of time—section 487-1.

A. Grounds

4.2 To place a corporation under special administration, the Registrar must be satisfied that at least one of the grounds set out in the CATSI Act is satisfied—section 487-1(4).

4.3 The grounds are broad. They are not restricted to insolvency or the inability to pay a debt. Section 487-5(1) outlines the grounds on which the Registrar can determine to place a corporation under special administration. They are:

- the corporation has traded at a loss for at least six months during the period of 12 months before the determination is made—section 487-5(1)(a)
- the corporation or its officers have failed to comply with, or to ensure that the corporation complies with, one or more of the following:
 - a provision of the CATSI Act or the Corporations (Aboriginal and Torres Strait Islander) Regulations 2007 (the Regulations)
 - an internal governance rule of the corporation
 - a compliance notice issued under section 439-20and the corporation or its officers have, failed to give the Registrar a satisfactory explanation for the failure—section 487-5(1)(b)
- the corporation has failed to lodge a report under Part 7-3 of the CATSI Act—section 487-5(1)(c)—a general report and, for medium and large corporations only, audited financial reports
- the officers of the corporation have acted:
 - in their own interests rather than in the interests of the members of the corporation as a whole
 - in a way that appears to be unfair or unjust to members of the corporation—section 487-5(1)(d)
- the affairs of the corporation are being conducted in a way that is:
 - oppressive
 - unfairly prejudicial to, or unfairly discriminatory against, a member or members of the corporation
 - contrary to the interests of the members of the corporation as a whole—section 487-5(1)(e)
- disputes between:
 - the corporation’s members
 - the corporation’s members and the corporation’s officersare interfering with the proper conduct of the corporation’s affairs—section 487-5(1)(f)

- disputes between the corporation’s officers are interfering with the proper conduct of the corporation’s affairs—section 487-5(1)(g)
- a majority of the corporation’s directors have requested the Registrar in writing to appoint a special administrator—section 487-5(1)(h)
- the required number of members of the corporation has requested the Registrar in writing to appoint a special administrator—section 487-5(1)(i) and (4) and regulation 487-5.01 of the Regulations. The required number of members is:

Number of corporation members	Required number of members
2–10	1
11–20	3
21–50	5
51+	10%

- the appointment of a special administrator is otherwise required:
 - in the interests of the members of the corporation
 - in the interest of the corporation’s creditors or
 - in the public interest—section 487-5(1)(j).

B. Protection for actions intended to meet native title obligations

4.4 The duties and obligations in the *Native Title Act 1993* for registered native title bodies corporate and their officers are recognised in section 487-5(2) and protect actions (or inactions) intended to meet native title obligations. The CATSI Act provides that the grounds for placing a corporation under special administration set out in section 487-5(1)(d) and (e) do not apply to the conduct of registered native title bodies corporate and their officers acting in good faith and with the belief that their actions (or inactions) are necessary to meet a native title legislative obligation of the corporation.

C. Other considerations in decision-making

4.5 When considering the grounds set out in section 487-5 and in determining whether a corporation should be placed under special administration, the Registrar may also take into account the following factors:

- Location—is the corporation based in a remote or regional area?
- Size of the corporation—how many members are there?
Does the corporation have a substantial asset base and/or income?
How many employees work for the corporation?
- Core business of the corporation.

- Protection of key services delivered by the corporation—does the corporation provide significant or essential services within the community (for example—health services, aged care or youth support services, maintaining power supply or an air strip, community council activities or a community store)? What is the potential effect on the community if such services are lost if the corporation fails? Is an alternative service provider readily available?
- Whether the corporation is a registered native title body corporate under the *Native Title Act 1993* with native title obligations and duties.
- Protection of public funding or corporation assets—does the corporation receive significant public funding? Has the corporation’s asset base been created through government grants? Has the corporation’s asset base been created through non-government payments to the community (mining royalty equivalent payments or charitable donations)? Are the corporation’s assets or income at risk?
- If it receives public funding, whether the funding agencies will continue to fund the corporation during and after a special administration.
- Cause(s) of the corporation’s financial or governance problems—did the corporation lose its government funding and for what reason? Is there a lack of business knowledge or experience within the corporation? Is there a lack of corporate governance knowledge in the corporation? Are there significant disputes among members and/or directors? Are these problems caused by negligence or acts of bad faith by the directors?
- Whether special administration can address these underlying cause(s) of the corporation’s financial or governance problems and provide adequate relief to the corporation, its members, employees, creditors and funding bodies and the wider community.
- Whether the corporation is viable in the long term.
- The potential effect of a special administration on the corporation, its members, employees and the community.
- The potential effect of a special administration on the corporation’s creditors and funding agencies—will creditors or funding agencies be prejudiced if the corporation is placed under special administration?
- Special administration is a measure under the CATSI Act that is enacted as a special measure to advance and protect Aboriginal and Torres Strait Islanders.
- Whether the corporation can be successfully restructured.

D. Consultation with stakeholders

- 4.6 If a corporation is funded by a government agency, the Registrar will usually consult with key funding agencies before determining whether to place a corporation under special administration. The amount of the funding and the nature of the services funded, if any, will determine which agencies are consulted by the Registrar. Funding bodies may have information which will assist the Registrar in determining whether a corporation should be placed under special administration.
- 4.7 When a corporation receives a significant proportion of its revenue in funding from government agencies, the Registrar will not usually place a corporation under special administration unless the key funding agencies give written agreements to fund the corporation during and after the special administration. The Registrar may also require funding agencies to give written undertakings in relation to dealing with unacquitted or unexpended grants, or caveats or other securities held over or secured against assets of a corporation.
- 4.8 The Registrar may, where appropriate, also consult with creditors, debtors, members, directors, community leaders or elders, traditional owners and other stakeholders before placing a corporation under special administration.
- 4.9 Information provided by a person, funding agency or other body that is relevant to the Registrar's determination to place a corporation under special administration may be disclosed to a corporation as part of the show cause procedure, unless disclosure is prohibited by law.

5 How is a corporation placed under special administration?

- 5.1 There are two ways in which the Registrar may place a corporation under special administration: the show cause procedure and the urgent appointment.

A. Show cause procedure

- 5.2 Before a corporation is placed under special administration it is usually accorded natural justice through a show cause procedure. The corporation is provided with a show cause notice and given an opportunity to respond and say why it should not be placed under special administration.
- 5.3 The show cause notice is in writing and invites the corporation to show cause, within a reasonable amount of time, as to why a determination should not be made placing the corporation under special administration—section 487-10(1)(a). The show cause notice specifies the grounds for placing the corporation under special administration.

- 5.4 Representations by a corporation in response to a show cause notice may be verbal, but the Registrar will usually require representations to be in writing. The Registrar will consider all representations made by the corporation during the show cause notice period—section 487-10(1)(b).

B. Urgent appointments

- 5.5 In urgent situations the Registrar may dispense with the show cause procedure—section 487-10(2). For example the Registrar may act immediately to prevent the loss of public money or to prevent a corporation ceasing to provide services that are essential to, or very significant for, a particular community or group.
- 5.6 The Registrar does not have to issue a show cause notice if the Registrar is satisfied that the corporation needs to be placed under special administration as a matter of urgency to prevent:
- a likely loss of the corporation’s property
 - a likely loss of public money held or administered by the corporation—this includes money that has been granted to the corporation by the Commonwealth, a state, territory or a public authority (for example Indigenous Business Australia or a Northern Territory land council)
 - conduct that would contravene the CATSI Act or the Regulations or a law of the Commonwealth, a state or a territory—this includes conduct of the corporation (or its officers) or a related body corporate (or its officers)
 - the corporation not providing or suspending services that are essential to, or very significant for, a particular community or group.

6 Determination to place a corporation under special administration

A. Grounds for special administration

- 6.1 The Registrar may determine to place a corporation under special administration—section 487-1, only after:
- the Registrar is satisfied of at least one ground for placing a corporation under special administration as set out in section 487-5
 - the show cause procedure has been undertaken or the Registrar is satisfied that it must be done as a matter of urgency.
- 6.2 The Registrar’s determination must be in writing. The Registrar does not need to apply to a court.
- 6.3 The special administration starts when the period specified in the determination starts—section 487-25. This removes any doubt that the start of the special administration depends on the presence or absence of a special administrator.

B. Time period for a special administration

- 6.4 The Registrar's determination must specify the period of appointment.
- 6.5 The Registrar will usually specify an initial special administration period in the notice of determination. The Registrar can extend the period for which a corporation is under special administration—section 487-15, as well as the period of appointment for a special administrator—section 490-5(2).
- 6.6 The Registrar determines when a special administration ends. While this discretion retains maximum flexibility in the special administration process, the Registrar expects that a straightforward special administration should not take more than six months. The Registrar expects that a complex special administration should not take more than 12 months.

C. Notice of determination

- 6.7 The Registrar will notify a corporation of the determination that it is to be under special administration. The Registrar will also publish a copy of the notice in the *Gazette*, a national newspaper or relevant daily newspapers and on the Registrar's website, oric.gov.au.
- 6.8 The Registrar will also notify any receiver, or receiver and manager, of a corporation's property that the corporation will be under special administration.

D. Decision not to place the corporation under special administration

- 6.9 Where the Registrar initiates a show cause procedure but decides not to place the corporation under special administration, the Registrar will notify the corporation in writing of that decision as soon as practicable after the decision is made.

7 Appointment of a special administrator

A. Appointment and period of appointment

- 7.1 The CATSI Act differentiates between the Registrar placing a corporation under special administration and the Registrar appointing a person as a special administrator. In practice, the two events will occur at the same time, but not always. For instance a special administrator may die or be replaced by the Registrar.
- 7.2 The Registrar appoints a special administrator to a corporation. The Registrar may appoint joint and several special administrators to a corporation. The appointment must be in writing and specify the period of appointment.

B. Personal appointment

- 7.3 The appointment of a special administrator is personal.
A special administrator is not permitted to delegate any of their powers—
Division 499 of the CATSI Act but may use their staff to assist.

C. Notice of appointment

- 7.4 The Registrar will notify a corporation of the appointment of a special administrator. The Registrar will also publish a copy of the notice in the *Gazette*, a national newspaper or relevant daily newspapers and on the Registrar's website, oric.gov.au.
- 7.5 The Registrar will provide notice of the appointment of a special administrator to any receiver, or receiver and manager of a corporation's property, of whom the Registrar is aware.

D. Extension of appointment and notice

- 7.6 The Registrar may extend the appointment of a special administrator. The extension must be in writing and made before the period of appointment ends. The determination should specify the period of the extension.
- 7.7 The Registrar will publish a copy of the notice of extension in the *Gazette*, a national newspaper or relevant daily newspapers and on the Registrar's website, oric.gov.au. Any receiver, or receiver and manager, of the corporation's property must be notified.

E. Special administrators are officers of the corporation

- 7.8 A special administrator appointed to administer a corporation is regarded as an officer of the corporation for the purposes of the CATSI Act—
section 683-1(3)—and subject to the same duties as other officers of the corporation.

F. Subcontracting and outsourcing

- 7.9 Without prior approval from the Registrar, the special administrator should not subcontract or outsource services relating to the corporation that the special administrator is qualified and appointed to provide.

8 Role and powers of the special administrator

- 8.1 The special administrator is responsible for the conduct of the affairs of the corporation while it is under special administration—section 499-1.

- 8.2 The special administrator's role will vary but in most appointments it will include the following:
- Attending to critical financial and other issues that were grounds for placing the corporation under special administration.
 - Restoring good operational order (including membership, financial and other records) and implementing improved policies and practices.
 - Reviewing the corporation's rule book.
 - Ensuring that a best practice governance framework is in place to meet the needs and capabilities of the corporation and its directors and members.
 - Ensuring members and prospective directors are aware of best practice in corporate governance.
- 8.3 A special administrator has broad powers under the CATSI Act—section 499-5. The special administrator:
- has control of the corporation's business, property and affairs
 - may carry on any business and manage any property and affairs of the corporation
 - may terminate or dispose of all or part of any business, and may dispose of any property
 - may engage or discharge employees on behalf of the corporation
 - may perform any function and exercise any power that the corporation, its officers or its members could perform if the corporation were not under special administration
 - can change the corporation's rule book
 - can admit and remove members
 - can appoint and remove directors or a secretary (if not vacated by the Registrar's determination)
 - can appoint and remove a contact person
 - can apply to the court for a winding up order.
- 8.4 The special administrator's power to change a corporation's rule book is important. In the Registrar's experience, corporations can become deadlocked by rules that require, for example, higher quorums than are available or practical from the membership base. In such circumstance the special administrator can apply to the Registrar to change the rule book to remove this obstacle. A rule book change will not take effect unless it is registered by the Registrar under section 69-30. The Registrar's approval provides a safeguard against unilateral changes to the rule book by a special administrator.

- 8.5 While a corporation is under special administration, the special administrator also carries out the functions that would normally be carried out by the directors. Practically, these functions will include:
- setting goals, formulating strategy and approving business plans for the corporation
 - monitoring the management of the corporation and its business
 - approving annual budgets and making key management decisions (for example decisions on major capital expenditure, business acquisitions and debt restructuring and refinancing)
 - setting and reviewing budgets
 - appointing a chief executive officer
 - setting and reviewing policies for communication with members and approving reports to members.

9 Effect of appointment of special administrator on officers of the corporation

- 9.1 Unless the Registrar's determination states otherwise, the following offices of a corporation become vacant when a special administrator is appointed:
- the office of each director of the corporation
 - the office of each secretary (but not the contact person, if there is one) —see sections 496-1 and 496-5.
- 9.2 Only in exceptional circumstances will the Registrar not vacate the position of each director and secretary of a corporation. Exceptional circumstances may exist where the special administrator requires assistance from a person in their capacity as a director or secretary during the course of a special administration. If the position of a director or secretary is not vacated the person occupying that position can only exercise their functions or powers with the written approval of the special administrator—section 496-10.
- 9.3 The special administrator of a corporation will lodge with the Registrar notice of persons who are no longer directors—section 304-5(6). This will update the public records maintained by the Registrar and assist inquiries about the corporation.
- 9.4 The special administrator of a corporation registered as a large corporation will appoint a replacement secretary for the corporation and notify the Registrar—sections 257-5 and 304-5.
- 9.5 The appointment of a special administrator does not automatically vacate the office of the contact person. The special administrator of a corporation registered as a small or medium corporation will consider whether a different contact person needs to be appointed for the period of special administration and notify the Registrar of any replacement—section 304-5.

10 Employees of a corporation under special administration

- 10.1 Under section 499-5(1)(d) the special administrator has a broad power to hire or discharge employees. Decisions about the employment of staff will be made by the special administrator as part of their assessment of the corporation's ongoing business and the process of restoring good operational order to the corporation.

11 Creditors of a corporation under special administration

- 11.1 Generally the creditors of a corporation do not have a role to play in the determination to place a corporation under special administration, or during the special administration process.
- 11.2 The start of a special administration provides protection to the corporation from its creditors. Charges against the corporation are unenforceable and no legal proceedings may start or be continued against the corporation in a court², except with the consent of the special administrator or leave of the court.³ Enforcement processes against the corporation for outstanding debts are also suspended without the leave of the court. Further, a creditor cannot apply to the court to wind up a corporation while it is under special administration.
- 11.3 A special administrator is personally liable for debts incurred by a corporation after, but not before, their appointment. The special administrator is entitled to an indemnity out of the corporation's assets for debts they incur.

12 Stages in a special administration

- 12.1 The Registrar sees three stages in a special administration.

A. Stage one: taking control and assessing ongoing potential

- 12.2 The special administrator takes control of the corporation's affairs by securing the corporation's books, assets and bank accounts. The administrator must ensure proper ongoing security and control of these records and assets (including insurance) immediately upon appointment.

² See sections 440B (third party property rights) and 440D (proceedings) of the Corporations Act, as applied by s. 499-10 of the CATSI Act.

³ There are some exceptions, refer to Division 7 of Part 5.3A of the Corporations Act as applied by s. 499-10 of the CATSI Act.

- 12.3 After taking control, the special administrator can then verify the current financial position of the corporation and assess the long-term viability of the corporation. In particular, the special administrator will:
- assess and report to the Registrar in the first monthly report, whether it is appropriate for the corporation to continue to operate in the current circumstances or whether other action should be considered
 - include in their report an outline of a proposed strategy for the special administration, including activities relating to all three stages in the special administration—if the special administrator concludes that the corporation is viable and is able to continue to operate in the long term.
- 12.4 Within the first two to three weeks of appointment, the special administrator will hold an information meeting for members and other interested parties to explain the special administration process and pass on information about the progress of the special administration to date. At this meeting the special administrator will determine the members' interest in the continuing operation of the corporation. The special administrator will, in most instances, form an advisory group consisting of important or representative members of the corporation. The special administrator will consult the advisory group during the progress of the special administration about reviewing membership records, seeking additional members (if appropriate), reviewing and changing the corporation's rule book and businesses, and any other relevant matter.
- 12.5 During this stage the special administrator will also appoint a new secretary or contact officer; usually the special administrator or a person in their firm or office. The special administrator will lodge appropriate notifications with the Registrar advising of any new secretary or contact person and any persons who are no longer directors.

B. Stage two: restoring good operational order

- 12.6 While under special administration, the special administrator is responsible for the affairs of the corporation. The special administrator will take steps to ensure that the corporation's core functions are carried out (this responsibility would start in stage one). The special administrator will also oversee, or if necessary attend to, management of the corporation's day-to-day business.
- 12.7 The special administrator will take all necessary steps to restore good operational order to the corporation, including:
- reviewing and assessing the corporation's operational and financial activities
 - reviewing the corporation's contractual arrangements with other parties and resolving any issues as appropriate
 - ensuring the corporation complies with funding agreements and conditions
 - reviewing the corporation's staffing requirements

- reviewing the financial and other records kept by the corporation and introducing policies to maintain proper accounts and records in accordance with sections 322-5 and 322-10 and the corporation's rule book
- reviewing membership records and the register of members
- reviewing the corporation's rule book
- ensuring that the corporation's business is conducted in accordance with its rule book, CATSI Act and any other legislative requirements
- implementing improved policies and practices (including procedures manuals) covering key operations of the corporation and maintaining proper records, management practices and financial controls
- lodge any outstanding general, financial, directors' or other reports with the Registrar
- arranging training for members and prospective directors in corporate governance, if needed
- ensuring that a best practice governance framework is in place to meet the needs and capabilities of the corporation, its directors and members.

12.8 In stage two the special administrator attends to the financial or other issues that led to the corporation's placement under special administration (this step may start during stage one if the issue is critical).

12.9 Continued government funding may be critical to the ongoing financial viability of the corporation. Where the corporation receives funding from government agencies, the special administrator will closely liaise with relevant government agencies and ensure that the terms of any funding agreement or arrangement are met (this step may start during stage one). In particular the special administrator should:

- become familiar with the funding agreement or arrangement
- closely liaise with relevant government funding agencies and the Registrar
- ensure that any conditions imposed by a funding body are complied with
- lodge financial or performance reports within the required timeframes, as the funding agreement or arrangement requires
- lodge acquittals within the required timeframes, as the funding agreement or arrangement requires
- ensure that any submissions for new or continued funding are lodged within required timeframes.

12.10 The special administrator reviews and assesses the current and future staffing requirements of the corporation to put in place an appropriate and viable long-term corporate structure. The special administrator should advise the Registrar before cancelling or varying any contracts of employment. If appropriate, the special administrator will engage new or additional staff and facilitate any necessary training for staff. The advisory group will usually be consulted about key staffing decisions affecting the corporation.

- 12.11 The special administrator will review the corporation's membership records. If necessary, the special administrator will establish a current register of members and a register of former members. The special administrator will liaise with the Registrar and the advisory group on the process for establishing the register of members.
- 12.12 In circumstances where the corporation's rule book has narrow membership eligibility requirements, the special administrator will review the reasons for this and consider whether a change to any member eligibility rules is warranted. In circumstances where the corporation's membership is low, it may be appropriate to initiate a membership drive to increase the number of members. The special administrator must liaise with the Registrar and the advisory group on any proposed change to membership eligibility and the process for increasing membership.
- 12.13 The special administrator will investigate the corporation's business, property, affairs and financial circumstances, including historical transactions. If it appears to the special administrator that:
- a past or present officer or employee or member of the corporation may have been guilty of an offence under a law of the Commonwealth or a state or territory in relation to the corporation
 - a past or present officer of the corporation may have breached their duties of care and diligence, to act in good faith in the best interests of the corporation, to act for a proper purpose, not to improperly use their position or cause detriment to the corporation, and to make proper use of information
- the special administrator must, as soon as practicable, provide a report about the matter to the Registrar.
- 12.14 In addition to the initial and monthly reports referred to below, the special administrator will also provide further reports specifying any other matter that, in their opinion, should be brought to the attention of the Registrar.

C. Stage three: preparing for return to members' control

- 12.15 The special administrator starts the closure process by focusing on the corporation's future compliance with the CATSI Act. The special administrator will liaise with the Registrar and the corporation's advisory group and members to draft a new rule book compliant with the CATSI Act (if needed) and consult the members at a general or information meeting before the special administration ends.
- 12.16 The special administrator will ensure that the corporation adopts the annual reporting requirements set out in Part 7-3 of the CATSI Act—for example, general, financial and directors' reports.

- 12.17 If required, the special administrator may, in conjunction with the Registrar, arrange for corporate governance training for members of the corporation focusing on potential directors (this may occur during stage two or even after the special administration has ended).
- 12.18 The special administrator must ensure that, immediately after the special administration ends, there will be directors who can assume control of the corporation's affairs and a secretary or contact person for the corporation—section 508-1. A special administrator may appoint directors or hold an election at a general meeting of members. The special administrator may consult with the Registrar, the advisory group, members and other stakeholders regarding the most appropriate way to appoint directors, after considering all of the circumstances of the corporation.
- 12.19 At the end of the special administration, the special administrator will arrange for the necessary notifications to be lodged with the Registrar advising of the details of the new directors and secretary or contact person—section 304-5.
- 12.20 The special administrator will also prepare and present a business plan for the corporation at this time, examining and outlining the future direction of the corporation. This document will be prepared in conjunction with the advisory group and any other key stakeholders.
- 12.21 At the end of the special administration, the special administrator will provide a handover report for directors and members of the corporation. The handover report will include:
- a summary of the special administrator's main activities during the special administration
 - an overview of the current operational status
 - information about programs and funding
 - information about staffing and structure
 - information about the financial position of the corporation
 - any other relevant matters.

13 Special administration follow up

- 13.1 The Registrar may provide follow up or mentoring to a corporation after the special administration, if appropriate. This may include business planning advice or financial or governance check-ups at regular intervals after the end of the special administration.

14 Communication with members and other key stakeholders

- 14.1 The special administrator must keep the Registrar, the corporation's members and key stakeholders (such as funding bodies) informed about the progress of the special administration.
- 14.2 The Registrar's expectation is that the following communications will occur during a special administration:
- An initial information meeting with the corporation's members within two to three weeks of the start of the special administration.
 - Regular consultation with the advisory group, including consultation on the corporation's membership, the register of members, the corporation's rule book and any other relevant matters.
 - Regular meetings with members and other key stakeholders at least every three months—the special administrator, in addition to the initial information meeting, must provide information to members and stakeholders by holding information meetings (with invitations to stakeholders as appropriate).
 - Newsletters for members and other key stakeholders informing them about the progress of the special administration at least every two months—the special administrator will consult with the Registrar on the content and format of the newsletters, which will be published on the Registrar's website, oric.gov.au. The special administrator is responsible for the content and distribution of these newsletters.
 - Media releases may be issued by the Registrar to update the public on key events, such as the appointment of the special administrator, the holding of any annual general meeting, the termination of the special administration and the holding of any meeting of members to elect new directors—the Registrar will consult with the special administrator on the content and format of the media releases which will be published on the Registrar's website, oric.gov.au.
 - Consultation with members of the local Aboriginal or Torres Strait Islander community or other interested parties about the progress of the special administration as appropriate.

15 Reporting to the Registrar

- 15.1 A special administrator for a corporation must give the Registrar such information as the Registrar requires from time to time—section 502-1.

- 15.2 The Registrar requires the following written reports from a special administrator:
- An initial report within seven days of appointment outlining key findings and the special administrator’s plan of action for the next three weeks.
 - Monthly reports (from the date of appointment) outlining and reporting on progress of the special administration activities and identifying matters or concerns for the Registrar’s attention. The reports must be provided to the Registrar within one week of the date they are due. These reports can occur more frequently if appropriate.
 - A report on any significant matters arising.
 - A report on the outcome of any legal proceedings.

16 Conflicts of interest

- 16.1 When conducting a special administration, the special administrator and their firm should avoid conflicts of interest. The special administrator should inform the Registrar of any potential conflict of interest (whether actual or perceived).

17 Leave of absence

- 17.1 In light of the statutory obligations of the special administrator’s appointment, the special administrator should seek the Registrar’s prior approval for any proposed leave of absence during the special administration.

18 Remuneration of the special administrator

- 18.1 The Registrar determines the special administrator’s remuneration—section 511-1(1). It is determined when the special administrator is appointed.
- 18.2 A special administrator will consult with the Registrar before incurring significant out-of-pocket expenses.
- 18.3 The Registrar also has the power to determine how and by whom the special administrator’s remuneration, charges and expenses are to be borne—section 511-1(4).

19 Protection from liability for special administrators

- 19.1 A special administrator is protected from civil legal liability under section 609-1 while exercising their functions, powers and duties, provided the administrator acts in good faith.

- 19.2 A special administrator has a statutory qualified privilege under section 442E of the applied Corporations Act provisions regarding statements made in performing or exercising any of the administrator's functions and powers. In certain circumstances a special administrator would also have the protection of common law qualified privilege.
- 19.3 Special administrators are required to carry public liability insurance, professional indemnity insurance and worker's compensation insurance.
- 19.4 The Corporations Act provisions applied to a corporation under special administration include Division 9 of Part 5.3A. These provisions provide for the special administrator's liability for certain debts incurred and other liabilities and the special administrator's right of indemnity out of corporation property—Corporations Act, section 443D.

20 Termination of the appointment of a special administrator

- 20.1 A special administrator's appointment terminates if:
- the period for which the special administrator is appointed ends
 - the special administrator dies
 - a liquidator for the corporation is appointed and the corporation is being wound up
 - the special administrator resigns by notice in writing to the Registrar
 - the Registrar terminates the special administrator's appointment
 - the Registrar terminates the special administration.
- 20.2 The resignation of a special administrator takes effect 28 days after notice is given to the Registrar or, on application by the special administrator, such shorter time that the Registrar determines in writing.
- 20.3 The Registrar may terminate a special administrator's appointment if satisfied that it is appropriate to do so—section 505-1(4). The termination notice must be in writing.
- 20.4 The grounds for terminating the special administrator's appointment include that the Registrar has to be satisfied that:
- it is no longer necessary for the corporation to be under special administration
 - the special administrator has a material personal interest (conflict) in a matter related to the special administration
 - the special administrator's performance is not satisfactory
 - the special administrator has contravened a provision of the CATSI Act
 - it would be appropriate in the circumstances to replace the special administrator with another special administrator with different skills, experience or qualifications—section 505-5.

- 20.5 The termination of the special administrator's appointment does not necessarily end the special administration.
- 20.6 If the appointment of a special administrator is terminated, the Registrar will, as soon as is practicable after the termination, appoint another person as special administrator to the corporation. This does not apply if the Registrar is satisfied that it is no longer necessary for the corporation to be under special administration.

21 Qualifications of special administrators

- 21.1 There are no prescribed qualifications in the CATSI Act for a special administrator. The Registrar, however, maintains a panel of people with demonstrated skills, experience and qualifications to appoint as a special administrator. This includes specialist knowledge and experience in corporate governance, business turnaround and communicating and working with Indigenous people. Generally appointments are only made from this panel. The panel is re-advertised at regular intervals.

22 Extension of special administration and notice

- 22.1 The Registrar may extend the period for which a corporation is under special administration. The extension must be in writing and made before the period of special administration ends.
- 22.2 The Registrar will also publish a copy of the notice of extension in the *Gazette*, a national newspaper or relevant daily newspapers and on the Registrar's website, oric.gov.au. Any receiver, or receiver and manager, of the corporation's property must also be notified.

23 End of special administration

- 23.1 A corporation ceases to be under special administration when:
- the period specified in the determination and any extension ends
 - a liquidator is appointed to the corporation or the winding up of the corporation starts or
 - the Registrar makes a determination to end the special administration.

24 Termination of special administration by the Registrar and notice

- 24.1 The Registrar may determine that a corporation is no longer under special administration on the date specified in the determination. The determination must be in writing.

- 24.2 The Registrar has a broad discretion when to terminate special administrations. The Registrar may determine that a corporation is no longer to be under special administration if the Registrar is satisfied that it is no longer necessary for the corporation to be under special administration.
- 24.3 The Registrar will notify a corporation of a determination that the special administration has ended.
- 24.4 If the Registrar terminates a special administration, the Registrar will also publish a copy of the determination in the *Gazette*, a national newspaper or relevant daily newspapers and on the Registrar's website, oric.gov.au. Any receiver, or receiver and manager, of the corporation's property will also be notified.

25 Review of decision to place a corporation under special administration

A. Internal reconsideration by the Registrar

- 25.1 Decisions to place a corporation under special administration or to extend a special administration are reviewable decisions—see 'PS-14: Review of reviewable decisions'. Internal reconsideration of a decision to place a corporation under special administration or to extend a special administration is available on written application by a person whose interests are affected—section 620-5. The Registrar may also reconsider the decision on his or her own initiative if the Registrar is satisfied there is sufficient reason to do so—section 620-1.
- 25.2 An application for internal reconsideration must be made in writing to the Registrar within 28 days after notification of the decision or such longer time as the Registrar allows—section 620-5(2). The application must set out the reasons for making the request—section 620-5(3).
- 25.3 The reviewer will be a person who was not involved in making the decision.
- 25.4 The reviewer may make a decision affirming, varying or setting aside the reviewable decision—section 620-5(5). If the reviewer sets aside the decision, the reviewer may make such other decision as the reviewer thinks appropriate.

B. Administrative Appeals Tribunal review

- 25.5 The AAT may review a decision to place a corporation under special administration or to extend a special administration if the decision has undergone internal reconsideration—section 623-1.
- 25.6 There are time limits on lodging applications with the AAT. This is usually 28 days from the date of receiving the decision to be reviewed.

- 25.7 The AAT's website (aat.gov.au) has information on how to make an application and copies of application forms.

26 Priority of special administration over other forms of external administration (excluding winding up)

- 26.1 Broadly, special administration is given priority in the CATSI Act over administration and receivership under applied Corporations Act provisions. This addresses the uncertainty that was raised in *Kazar v. Duus* (1998) 88 FCR 218 where a voluntary administration process under the Corporations Act was started after notice was given that an administrator would be appointed under the former *Aboriginal Councils and Associations Act 1976*.
- 26.2 A voluntary administrator cannot be appointed to a corporation under the applied Corporations Act provisions if the corporation is under special administration—section 521-10(1)(a). Unless the Registrar consents, a voluntary administrator cannot be appointed under the applied Corporations Act provisions if the show cause procedure is underway—section 521-10(1)(b).
- 26.3 Conversely, the Registrar may determine that a corporation is to be under special administration notwithstanding that it is being administered under the applied Corporations Act provisions—section 487-1(3)(b). Further, on the application of the Registrar, a special administrator or other interested person the court may order an end to the voluntary administration of the corporation under the applied Corporations Act provisions—section 521-15(2).
- 26.4 An administrator or receiver appointed under the applied Corporations Act provisions cannot exercise any powers—section 496-10—or deal with the corporation's property—section 496-15—without the special administrator's written approval.
- 26.5 These provisions do not affect the validity of anything done by an administrator or receiver appointed under the applied Corporations Act provisions before notice of the decision to place the corporation under special administration is published in the *Gazette* and relevant newspapers—section 496-20(7).
- 26.6 A voluntary administration under the applied Corporations Act provisions may resume after the special administration ends—section 508-1(2)(b).

27 Special administration and winding up

- 27.1 Generally a special administration does not take priority over a winding up. The Registrar may not determine a corporation is to be under special administration if the corporation is being wound up or a liquidator has been appointed—section 487-1(3).
- 27.2 However, a corporation under special administration has some limited protection from winding up. A corporation under special administration cannot resolve in a general meeting that it be wound up voluntarily—section 526-20(2)(a). If a corporation is under special administration only the Registrar or the special administrator may apply to court for an order that the corporation be wound up—section 526-15(1) and (3).
- 27.3 The special administration of a corporation ends when a liquidator is appointed or a winding up of the corporation starts—section 487-25(b)(ii).

28 Certain applied Corporations Act provisions apply to corporations under special administration

- 28.1 Under section 449-10 of the CATSI Act, the following provisions of the Corporations Act and regulations apply to a corporation that is under special administration:
- Division 6 (Protection of corporation's property during special administration) of Part 5.3A (other than section 440A)
 - Division 7 (Rights of chargee, lienee, pledge, owner or lessor) of Part 5.3A
 - Division 8 (Powers of special administrator) (other than section 442A) of Part 5.3A
 - Division 9 (Special administrator's liability and indemnity for debts of special administration) of Part 5.3A
 - the other provisions of the Corporations Act (including Parts 1.2 and 9.4 and Schedule 3, but not including Parts 1.1, 1.1A and 9.4A) to the extent to which they relate to the operation of the above provisions
 - the regulations made under the Corporations Act for the purposes of the above provisions.

END OF POLICY STATEMENT