



Australian Government

Office of the Registrar of
Indigenous Corporations

Other information

Information about the CATSI Act is available from the ORIC website and in publications such as:

- a regular newsletter called *The ORIC Oracle*
- fact sheets, providing more information about specific topics such as duties of directors, meetings, the rule book
- this guide, *Get in on the Act*
- ORIC's policy statements
- an overview of the CATSI Act
- the legislation itself and the other related laws that support it
- a detailed explanation of the Acts and amendments (called the explanatory memorandum).

Get in

on the Act

Further information

freecall: 1800 622 431 (not free from mobiles)

email: info@oric.gov.au

website: www.oric.gov.au

a guide to the *Corporations
(Aboriginal and Torres Strait
Islander) Act 2006*

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What is it?

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act) is the law that governs Aboriginal and Torres Strait Islander corporations. It replaced the *Aboriginal Councils and Associations Act 1976* (the ACA Act) on 1 July 2007.

Since 1976 there have been many changes in the role and functions of Aboriginal and Torres Strait Islander corporations. There are now about 2300 registered under the CATSI Act. Many deliver essential services and infrastructure to remote Indigenous communities. Some corporations hold land for Indigenous groups. All groups determined by the Federal Court to hold and manage native title are registered under the CATSI Act, as are most remote Indigenous arts centres.

There have also been many changes to the law of corporate governance and regulation. The ACA Act was 30 years old and out of step with these modern corporate governance laws.

The CATSI Act was developed after an independent review of the ACA Act.

Why is it so big?

The CATSI Act creates more flexibility for corporations and also includes new provisions—all of which make it a bigger Act. Corporations can now write a set of rules that better suit their own culture and circumstances. The Act also includes new provisions such as the rights and obligations of directors and other managers, the rights of members and the support that is available.

The Act also reduces red tape by, for example, streamlining how corporations have to report. Most small corporations with minimal income only have to provide a basic general report, whereas most large and medium corporations have to provide audited financial reports. The Registrar also has the power to issue exemption determinations that increase or decrease reporting requirements in appropriate circumstances.

Setting out all these different reporting requirements makes the Act larger but will benefit most corporations. The CATSI Act is also bigger because it mirrors parts of the Corporations Act.

What does it mean for corporations?

Rights

The CATSI Act is a special measure for the benefit of Indigenous people. It provides a safeguard for how it is interpreted and administered.

Registration

To register, corporations must have at least five members, although the Registrar can exempt corporations from this requirement under certain circumstances.

People wanting to incorporate must give evidence that they are ready for it— for example, that 75 per cent of the group have agreed to apply for registration and that they have agreed to the rules.

A body corporate registered under another law can seamlessly transfer its registration to the CATSI Act if certain requirements are met. A corporation registered under the CATSI Act can also easily transfer its registration to the Corporations Act. A large corporation, for example, may decide that its future development would be best served by registering under the Corporations Act.

Corporations under the CATSI Act will be able to amalgamate, either by an administrative process approved by the Registrar or by applying to a court. Amalgamations are voluntary and may be desirable when a number of different corporations service a particular area or Indigenous group.

Names

A corporation registering under the CATSI Act must have the words 'Aboriginal corporation', 'Torres Strait Islander corporation', 'Indigenous corporation', 'Aboriginal and Torres Strait Islander corporation' or 'Torres Strait Islander and Aboriginal corporation' as part of its name.

A registered native title body corporate must have the words or the abbreviation (RNTBC) as part of its name to signal to third parties that the corporation looks after native title rights and interests.

Indigeneity

Corporations can choose whether to allow non-Indigenous people, for example, experts, spouses and step children, as members or directors by setting it out in their rule book (constitution). Indigenous people will always be in the majority, so even if a corporation chooses to allow non-Indigenous members the corporation will always be controlled by Indigenous people. It is not compulsory to allow non-Indigenous people to be members or directors; it just gives corporations a choice should they wish to do so.

Native title

The CATSI Act makes sure that requirements imposed on a corporation or individual by native title legislation do not conflict with obligations under the Act.

The rule book

A sensible approach to internal governance is built into the CATSI Act to set corporations up to succeed—with room to tailor rules to their own special circumstances.

All corporations will be required to have a rule book that sets out the corporation's aims, its name, a process for resolving disputes and any other matters the corporation wishes.

An eligibility requirement, such as that a member must live in a particular region, is an example of what the corporation may wish to include in its rule book.

Like the Corporations Act, the CATSI Act provides a system of replaceable rules that gives guidance on critical matters related to internal governance. These rules can be modified or replaced by the corporation in its rule book. An example of a replaceable rule is that directors appoint the chair of a general meeting. A corporation could replace this with a rule, for example, that members appoint the chair.

There are also provisions in the CATSI Act about internal governance that the corporation must comply with. The corporation cannot modify or replace these unless the Registrar provides an exemption. An example is the rule that a corporation must hold an annual general meeting every year. The Registrar could, for example, exempt a corporation from this requirement and instead require that they only hold an annual general meeting every second year.

The Registrar has the power to change the corporation's rule book in some circumstances, especially if the corporation acts against the interests of the members.

Registered office

Large corporations must have a registered office to make sure members and others can get hold of important documents such as the corporation's rule book and to make sure that people can contact the corporation.

Small and medium corporations must have a document access address where people can inspect important documents. This can be a person's home and people wanting to inspect documents have to give seven days' written notice.

Secretaries and contact persons

Large corporations must have a corporation secretary who is responsible for making sure that the corporation meets certain responsibilities such as lodging documents with the Registrar.

Small and medium corporations must have a contact person who will essentially be the person receiving and passing on information to the directors. This is a simpler mechanism than requiring a registered office or a corporation secretary.

Members' rights

Aboriginal and Torres Strait Islander corporations have members, not shareholders. The CATSI Act brings members' rights into line with the Corporations Act—for example, members can apply to a court to inspect a corporation's books or to stop a corporation from acting in a way that is unfair to the members.

The Registrar can act for members in some circumstances, for example, when a corporation is acting unfairly towards them.

Reporting

Corporations are registered as small, medium or large. Each corporation will report according to their registered size and income. All small corporations with an income of less than \$100 000 only need to provide a general report. Small corporations with an income of \$100 000 or more, and all medium and large corporations, must provide a financial and directors' report in addition to the general report. The financial and directors' report is more comprehensive for large corporations and any other size corporation with an income of \$5 million or more.

All corporations have to prepare a general report. The general report contains the basic details of directors, current members, the contact person/secretary and the document access address/registered office. It also contains some other information about taxation status. Keeping this information up to date and keeping proper financial records are the key compliance requirements for corporations.

The registered size of a corporation is determined according to their income, assets and number of employees.

These amounts are set down through regulations rather than in the CATSI Act because regulations are easier to change to make sure the amounts remain relevant over the years to come.

The thresholds for small, medium and large corporations are:

A **small** corporation will have at least two of the following:

- total gross operating income: less than \$100 000
- total gross assets: less than \$100 000
- less than five employees.

A **large** corporation will have at least two of the following:

- total gross operating income: more than \$5 million
- total gross assets: more than \$2.5 million
- more than 25 employees.

All other corporations will be classed as **medium**, and typically have the following:

- Total gross operating income: between \$100 000 and \$5 million
- Total gross assets: between \$100 000 and \$2.5 million
- Between five and 25 employees.

Duties of directors and other managers

The CATSI Act clarifies the duties of directors and includes duties for chief executive officers and other people who manage the corporation. Directors and these managers are called officers. Their duties are in line with the Corporations Act and are designed to make sure that good corporate governance standards are applied to Aboriginal and Torres Strait Islander corporations.

These duties include a duty of care, a duty of honesty, duties to avoid conflicts of interest and of disclosure, and a duty not to trade while insolvent.

Meetings

There are two kinds of meetings—directors' and general meetings (this includes annual general meetings).

An annual general meeting must be held every year, although the Registrar can exempt corporations from having one if they have no need to hold them. For example, the Registrar could allow a small corporation to hold an annual general meeting every second year if the corporation does not undertake regular business activities or simply holds land.

Where the facilities are available, meetings can be held by video or teleconference—this is particularly useful for very remote corporations or for those whose directors cannot easily read and write English. Meetings can also be held in language so long as some parts can be translated later if required.

The Registrar has a power to call general meetings. Sometimes members are concerned if meetings are not called, so this power can be used to prevent or minimise disputes.

The Registrar can also call a meeting of other people who might be interested in a problem that is affecting a particular corporation or a number of corporations. For example, the Registrar could ask government funding bodies, creditors and other corporations to all meet to sort out a problem.

Anti-nepotism

Corporations are prevented from giving financial benefits to directors or related parties (such as a spouse of a director) unless this is approved by members. These related party provisions will help prevent nepotism and promote transparency within corporations. The Registrar has the power to exempt corporations from these provisions if appropriate.

The Act also strengthens members' capacity to participate in managing the corporation, such as being able to request information about director payments and approving related party transactions.

Penalties and offences

Most offences under the CATSI Act are based on those in the Corporations Act.

People who provide false or misleading statements and information—either to the Registrar, or to the directors, auditors and members of a corporation—commit an offence under the CATSI Act.

Also based on the Corporations Act is a civil penalties scheme for serious contraventions of the CATSI Act and the option for a penalty notice scheme as an alternative to criminal prosecution.

Disqualification of directors and other managers

The CATSI Act retains the provision that people cannot be directors if they have been convicted of certain offences or are bankrupt.

The Registrar can apply to a court to disqualify a person from managing corporations if they have:

- contravened a civil penalty provision of the Act
- repeatedly contravened provisions of the Act
- been involved with two or more corporations that have experienced corporate failure.

This is consistent with the Corporations Act.

If a person is disqualified they must not 'participate in the management' of a corporation.

This will help protect corporations from disqualified people getting involved in the senior management of a corporation, such as chief executive officer or finance officer.

This is consistent with the Corporations Act.

If a person is disqualified from managing a corporation under the Corporations Act they are also automatically disqualified from managing Aboriginal and Torres Strait Islander corporations and vice versa.

Registers

The CATSI Act requires corporations to keep a register of members and former members. A list of current members must be lodged with the Registrar each year as part of the general report.

The CATSI Act allows Aboriginal and Torres Strait Islander corporations to keep the register of current members and register of former members separate. This allows corporations to better manage cultural issues around publishing the names of people who may have passed away.

Other key information about corporations will be held on the public Register of Aboriginal and Torres Strait Islander Corporations, such as information about directors; the corporation's rule book; and reports such as financial statements. This public register can be accessed on ORIC's website at www.oric.gov.au. The public register provides key information to members and others interested in the corporation.

The CATSI Act stipulates that the Registrar can stop people inspecting some sensitive personal information contained on the public register. The regulations also specify documents that are exempt from being on the register.

The CATSI Act establishes a register of people disqualified from managing any corporations.

Registrar's powers

The Registrar can appoint an expert to examine a corporation's books and records. This means 'healthy organisation checks' can be carried out to help prevent any problems arising or increasing.

The Registrar can appoint a special administrator—this power can be used to provide a safety net against the possibility of corporate failure, especially for corporations providing essential services, infrastructure or holding land.

The Registrar can examine a corporation's books and the corporation's holding company if they have one or more subsidiaries. If the books are not produced the Registrar can seek a warrant from a magistrate to support the Registrar's other powers.

The Registrar can investigate matters if necessary.

Review of decisions

The CATSI Act gives people affected by certain decisions made by the Registrar the right to seek an internal review of these decisions.

Most decisions made by the Registrar can also be reviewed by the Administrative Appeals Tribunal. This tribunal provides accessible review rights for people who don't agree with the Registrar's decisions.

Capacity building

The Registrar can conduct research, training and education campaigns about good corporate governance for Aboriginal and Torres Strait Islander corporations.

The Registrar's office is already delivering a range of capacity building programs for Indigenous corporations, such as workshops and information sessions to support its regulation and compliance work.

ORIC also offers the following services:

- self-help tools to help corporations design their rule book—see our website for a suite of rule book products
- a targeted support program including training and information.

Complaints and disputes

The Registrar can help with complaints about the internal operations of an Indigenous corporation. This could include looking at the books of a corporation, asking questions of those people who know the corporation's affairs and convening a general meeting if necessary. For more details, see ORIC's policy statement—*PS-02: Complaints involving corporations*.

The Registrar can help corporations resolve disputes and has a dedicated team who offer mediation and dispute resolution services. For more information, see ORIC's fact sheet—*Mediation and dispute resolution* and also our policy statement—*PS-22: Disputes involving corporations*.

The CATSI Act contains provisions designed to protect whistleblowers. Employees and officers can report suspected breaches of the CATSI Act to the Registrar and certain other persons, for example, auditors. Employers are prohibited from victimising whistleblowers.